



Commonwealth of Massachusetts

Mobilization for Federal Economic Recovery Investment – Task Force Report to the Governor

January 27, 2009

I. Task Force Overview – Permitting

1. Introduction

The Permitting Task Force is charged with developing a process to speed up state and local permitting processes for ready-to-go federal stimulus projects identified in the work plans. The Task Force focuses its efforts on ways in which to expedite the permitting and review process while also maintaining the state's high standards of environmental protection and other land use objectives.

The Task Force utilized an existing forum – the Interagency Permitting Board – and supplemented the membership to include all potential stakeholders in the deliberations. Membership includes nearly all state stakeholders involved with permitting and review during the development process, including quasi-public partners such as the Massachusetts Bay Transportation Authority, Massachusetts Port Authority and MassDevelopment. Participating agencies and organizations are as follows:

- Executive Office of Housing and Economic Development
- Massachusetts Permit Regulatory Office
- Department of Housing and Community Development
- Massachusetts Office of Business Development
- Office of Consumer Affairs and Business Regulation
- Executive Office of Energy and Environmental Affairs
- Department of Environmental Protection
- Department of Fish and Game
- Executive Office of Transportation and Public Works
- Executive Office of Labor and Workforce Development
- Department of Labor
- Division of Capital Asset Management
- Department of Public Safety
- Joint Committee on Consumer Protection and Licensure
- Massachusetts Bay Transportation Authority
- Massachusetts Port Authority
- MassDevelopment
- Massachusetts Building Trades Council
- South Shore Building Trades Council
- Massachusetts Municipal Association
- City of Attleboro
- City of Lowell
- Town of Foxborough
- US Army Corps of Engineers
- US Environmental Protection Agency

The Permitting Task Force met six times between December 22nd and January 26th to develop a strategy to speed the permitting and review of federal stimulus projects. The results of these deliberations include agency-specific remedies and the establishment of a multi-agency framework to review and advance complicated projects involving multiple reviews by a variety of state, local and federal agencies.

Expedited permitting and related review is critical to the successful deployment of federal stimulus funding. Through an expedited review process, the Patrick Administration will maximize the number of eligible projects for federal infrastructure dollars and therefore maximize the stimulus effect of that spending.

2. Members

Name	Title	Agency / Organization
Bialecki, Gregory	Undersecretary for Business Development	Executive Office of Housing and Economic Development
Anderson Lamoureux, April	Permit Ombudsman/Director	Massachusetts Permit Regulatory Office
Ayrassian, Gary	Planner	City of Attleboro
Baacke, Adam	Assistant City Manager	City of Lowell
Brennan, Andrew	Director of Environmental Affairs	Massachusetts Bay Transportation Authority
Buckley, Jack	Deputy Director	Division of Fish and Game
Caspbarra, William	Building Commissioner and Director of Code Enforcement	Town of Foxborough
Clarke, Sandra	Chief of Staff	Office of Consumer Affairs and Business Regulation
Dalzell, Stewart	Deputy Director, Environmental Planning & Permitting	Massachusetts Port Authority
Feher, Matthew	Senior Legislative Analyst	Massachusetts Municipal Association
Gaertner, Kurt	Planning Coordinator	Executive Office of Energy and Environmental Affairs
Gatzunis, Thomas	Commissioner	Department of Public Safety
Goodman, Nancy	Executive Director	Environmental League of Massachusetts
Hunter, Michael	Director, Business Resource Team	Massachusetts Office of Business Development
Kimmell, Ken	General Counsel	Executive Office of Energy and Environmental Affairs
Lehan, Richard	General Counsel	Department of Fish and Game
Lucien, Lionel	Manager, Public-Private Development Unit	Executive Office of Transportation and Public Works
Marlin, Rich	Legislative Director	Massachusetts Building Trades Council
McGrail, Robert J.	Director of Special Projects	Executive Office of Labor and Workforce Development
McMahon, Martha	Deputy General Counsel	Division of Capital Asset Management
Meeker, Carol	Deputy General Counsel	Division of Capital Asset Management
Miller, Michael	Senior Vice President for Real Estate	MassDevelopment

Name	Title	Agency / Organization
Moran, Gary	Deputy Commissioner	Department of Environmental Protection
Murphy, Alana	Policy Director	Department of Housing and Community Development
Noel, George	Director	Department of Labor
Rizzi, Robert	President	Quincy & South Shore Building Trades Council
Rodriques, Michael	Chairman	Joint Committee Consumer Protection and Licensure
Weinberg, Philip	Associate Commissioner	Department of Environmental Protection

3. Permitting Task Force Objectives

Building on the Governor's charge for the Permitting Task Force and the guiding principles he articulated for the projects to be funded under the Federal Act, the Task Force agreed to use the following questions about the permitting process to guide the Task Force in its deliberations and in the development of its recommendations:

- How can state agencies expedite permitting and related reviews for priority projects in order to maximize the number of projects eligible for federal stimulus funding? For this exercise, the Task Force assumed that six months would be available to complete all project reviews, issue permits and complete the procurement process. With this six-month period the Task Force assumed there is a 90 day window to complete the permitting process.
- What resources are necessary to complete 90-day reviews? Agencies were asked to evaluate the current capacity of their organization and additional resources that may be necessary to improve efficiencies and meet the anticipated demand created through a federal recovery bill. Agencies were also asked to consider innovative avenues for expediting reviews.
- How can all applicable agencies collaborate most effectively to address the needs of individual project proponents?

In response to the aforementioned questions, all agencies participating in the Permitting Task Force have committed to the following Statement of Commitment:

Participating agencies commit to the following principles for any state or federal infrastructure project identified as a priority project by the Patrick Administration during the CY 2009 – 2010:

- Projects will be given administrative priority;
- Projects will be assigned to dedicated project managers within each agency;
- Permitting decisions and relevant reviews on priority projects will be rendered within 90 days;
- Participating agencies will develop a procedure by which the 90 day reviews will be accomplished;
- All agencies will participate in the Task Force collaborative review process, as needed.

4. Permitting Task Force Findings

The Permitting Task Force has found that the existing permitting processes generally work well, and serve to ensure the state maintains the highest standards of environmental protection and other land

use objectives. However, the Task Force recognizes the unique opportunity presented by the American Recovery and Reinvestment Act and has identified several aspects of the review process that should be considered, including:

- Projects not already in the permitting process should be assessed for potential permitting challenges by the Task Force prior to being considered for federal stimulus.
- Permit appeals can create substantial delays for projects and should be settled in an expeditious fashion.
- The need to comply with federal permitting may reduce the number of projects eligible for federal stimulus.
- The lack of coordination among approving agencies may cause projects to be delayed.
- Projects requiring permits from multiple agencies may exist and will require special attention.

5. Permitting Task Force Recommendations

Recommendations. Based on the objectives and findings above, the Permitting Task Force recommends the following general recommendations to the existing permitting processes in order to accelerate or otherwise improve those processes for projects funded under the Federal Act.

A. PLACEMENT ON PRIORITY FUNDING LIST

- The Permitting Task Force recommends that any project being considered for federal stimulus funding that has not yet commenced or completed the State permitting process be subject to review by the agencies participating in the Permitting Task Force. The Task Force recognizes its role is to maximize the number of projects that can be ready for federal funding. That said, the Task Force recommends that a list of potential projects be vetted by the Permitting Task Force to "red flag" any projects that will have substantial permitting or regulatory challenges before they are prioritized for funding.
- The Task Force will conduct preliminary evaluations of projects that are not yet fully permitted and "red flag" projects with substantial permitting or regulatory challenges. This period of preliminary evaluation will be conducted in an expeditious fashion by all affected agencies.

B. APPEALS

- Permit appeals can create a substantial delay for projects. The Permitting Task Force recommends several means by which to address this issue:
 - Broad-based reform of the permit appeals process for designated federal stimulus projects to enable project proponents to proceed at their own risk when an agency permit is issued and subsequently appealed. This recommendation mirrors the local appeals process that allowed by MGL c.40A s. 11 that allows proponents to proceed at their own risk when a previously issued special permit has been appealed;
 - Chapter 205 of the Acts of 2006 established a separate session of the land court department, known as the permit session. This session has original jurisdiction, concurrent with the superior court department over certain civil actions involving land use and environmental permitting. Currently, cases filed in the permit session are limited to those involving either 25 or more dwelling units or the construction or alteration or 25,000 square feet or more of gross floor area or both. The Permitting Task Force recommends that all federal stimulus projects be referred to the Permit Session of Land Court, and that the Permit Session be granted additional staff resources to meet the increased demand.

C. FEDERAL EXEMPTIONS

- The Permitting Task Force recommends that the State pursue federal legislation that exempts federal stimulus projects from federal reviews that are triggered by federal funding sources. This exemption would be limited to those projects where the federal funding is the *only* federal action that triggers federal review. These reviews include National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (see next bullet) or any of the review programs of the US Department of Transportation Act. This exemption would be limited to federal environmental review processes and would not exempt any project from the requirements of any federal permit (e.g., the US Clean Water Act, US

Endangered Species Act, etc). Projects that would otherwise require a federal permit would still be subject to the federally required review processes.

- The Task Force recommends that federal funds are instead provided to states in the form of a "block grant" which then requires the state to conduct its own environmental review thereby avoiding any significant delays caused by federal agency reviews.
- The Task Force recognizes that transportation infrastructure funds are likely to be provided through sources governed by Title 23. As such, it will be necessary for transportation projects to be included in Metropolitan Planning Organization (MPO) Transportation Improvement Programs (TIPs) and the State Transportation Improvement Program (STIP). To maximize the projects eligible for federal funding the Task Force recommends:
 - MPOs work closely with the EOT to institute an expedited process for TIP amendments, including both member and public review. The process should allow for TIP amendments to become effective immediately after bill passage and for the STIP to be amended immediately thereafter.

D. MASSACHUSETTS HISTORIC COMMISSION

- The Massachusetts Historic Commission (MHC) declined participation in the Permitting Task Force on the grounds that they are charged with carrying out federal regulation and federal reviews. However there will be federal stimulus projects that require MHC review and under traditional mechanisms, it can take several months for project proponents to consult with MHC and obtain their approval of plans to eliminate, minimize or mitigate the project's adverse effects on historic resources.
- If stimulus were to pass through federal agencies, under current law the project must be reviewed for compliance with Section 106 of the National Historic Preservation Act of 1966.
- All projects requiring state funding, licenses or permits must be reviewed for compliance with MHC in compliance with MGL c.9, s.26-27C. If federal stimulus projects are exempt from Section 106 of the National Historic Preservation Act and projects are instead subject to MGL c.9, the Task Force has drafted an amendment to this statute that it believes will help facilitate an expedited and transparent review process through the Massachusetts Historical Commission.
- The Task Force acknowledges the importance of historic resources and has proposed the following solutions to expedite the MHC consultation process:
 - Statutory amendment to create a 90-day consultation period between the proponents and MHC that results in recommendations to eliminate, minimize or mitigate the project's adverse effects on historic resources. This 90-day process would be available only to proponents that request the assistance. For projects that have requested assistance after a determination of adverse effect, and if MHC does not respond and consult with the proponent to development recommendations within 90 days, the proponent would be able to proceed with the project. Current law applies this form of constructive approval to the 30-day period for initial determination by MHC.
 - The Task Force recommends the ability to contract with outside consultants is made available to the MHC to facilitate the expedited review process. A list of pre-qualified consultants can be accessed through DCAM as described below.
 - DCAM has contracted with 10 firms to assist with their compliance with federal and state historic laws and regulations. Other Commonwealth agencies including the Massachusetts Historic Commission may use these consultants provided prior written approval is received from DCAM's contract administrator. The Consultant will bill the agency it performs services for and user agencies will be responsible for making payments directly to the Consultant. A list of approved consultants is available on the Commonwealth's Procurement website <http://www.comm-pass.com/>
 - The Task Force respectfully requests the Secretary of State's approval for MHC to participate in the Permitting Task Force and collaborate with other state and federal agencies on the review of federal stimulus projects.

E. PERMITTING TASK FORCE

- The Permitting Task Force will be used as a place where project proponents can vet perceived permitting problems and obtain assistance, and where state agencies can collaborate on projects requiring review of multiple agencies. When proponents perceive a potential permitting delay, they may contact the Massachusetts Permit Regulatory Office (MPRO) and complete a Permitting Task Force Project Template (see Appendix A). MPRO will analyze the issue, assign an MPRO project manager to the case, and take one of three actions:
 1. When the issue involves a single agency, MPRO will refer the case to the relevant agency for review;
 2. When the issue involves multiple issuing authorities, MPRO will convene the Permitting Task Force and invite the relevant state agencies and municipal officials to meet with the project proponent and attempt to coordinate the state and local review and permitting process.
 3. In the event that the State Permit Ombudsman determines there is no cause for action, the MPRO will notify the project proponent of such finding.
- The Permitting Task Force will also be a resource for state agencies that are having difficulty receiving timely information or responses from proponents of federal stimulus projects. In this case, the state agency may contact MPRO who will facilitate a meeting with the project proponent, municipality and any affected agencies.

Potential Barriers. As with any expedited process, there are potential barriers which will need to be overcome. Below are the barriers identified by each agency and a proposed solution to mitigate those barriers.

- A. EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT
MASSACHUSETTS PERMIT REGULATORY OFFICE (MPRO) - POTENTIAL BARRIERS TO 90 DAY REVIEWS
- Timing and coordination of multiple agencies reviews for individual federal stimulus project.
 - Timing and coordination of single agency reviews for individual federal stimulus project.
 - Additional project managers will be required.

RECOMMENDED SOLUTIONS

- The Permitting Task Force will convene weekly for the duration of the deployment of Operation Recovery funds to collaborate and discuss multi-agency reviews of individual projects.
 - For individual projects that require multiple agency reviews and are concerned about the permitting process or regulatory complications or delays, the Task Force will be available to meet with the project proponent and attempt to remedy their concerns.
 - For individual projects that require single agency reviews and are concerned about permitting process or regulatory complications, the Task Force will work with the proponent and agency responsible for the review to seek a solution.
 - MPRO will serve as the single State point of contact for permitting issues and will convene the Task Force as appropriate. An MPRO project manager will be assigned to each incoming project.
 - MPRO proposes hiring two additional Project Managers on a contract basis for CY2009 – CY2010.
- B. EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION - POTENTIAL BARRIERS TO 90 DAY REVIEWS
- Additional permitting staff is essential in order to ensure timely permitting and to provide technical assistance for stimulus projects, while continuing efficient and timely permitting of existing projects that support economic development;
 - There are also a number of permit categories for which 90 day permitting may be infeasible. These categories include permits where:
 - Collection of required field and technical data takes a sufficient portion of or is greater than 90 days (e.g., groundwater discharge and major new water supply permits)

- Mandated public notice process requirements and/or historic pattern of public involvement takes a sufficient portion of or is greater than 90 days (i.e., Chapter 91, wetlands protection act variance; and
- Other agencies control permitting timelines (e.g., wetlands reviews commenced at local Conservation Commissions, federal permits such as NPDES discharge permits or Army Corps 404 permits for fill or dredge).
- Completeness of the proponent's application and responsiveness to information requests; A proponent's failure to adequately respond within ten business days to a notice that their application is deficient will result in an extension of the permit deadline equal to the number of days an adequate response is delayed.
- Appeals of permitting decisions.

RECOMMENDED SOLUTIONS

- Temporary staff/resources to ensure timely permitting and technical assistance for stimulus projects. MassDEP estimates 4-7 staff needed per 100 permits (based on an average of 2 permits per project, 8-14 staff would be needed for permitting of each 100 projects requiring MassDEP permits).
- Emergency legislation authorizing state permitting agencies [and municipal authorities] to promulgate emergency regulations that would exempt/waive federal stimulus projects from current statutory or regulatory requirements to obtain an individual preconstruction permits or otherwise streamline the permit process by revising existing permit procedures or standards; provided that agency makes a finding that the exemption/waiver or streamlined approval will be conditioned in order to prevent significant damage to the environment. The regulations adopted under this provision would sunset within 6-12 months from promulgation;
- Establish resource protection conditions and best management operating practices in "permits by rule" that would prevent adverse impact to the environment for federal stimulus projects. Compliance with those pre-conditions would be required to obtain an exemption from individual permit application submission and review. The regulation would require plans to be prepared by a registered professional engineer or similarly licensed professional who would submit a certification that the project was completed in accordance with the permit by rule conditions. Certifications would be subject to compliance audits. Examples of activities to be considered for conditional exemption from individual permit process may include the following:
 - Reconstruction Projects: The transportation bond bill exempts state highway projects from compliance with MEPA, c. 91 (Waterways) and Wetlands permitting where the project is a reconstruction or rehabilitation project within the same alignment. This exemption could be expanded to municipal road and bridge projects or other reconstruction projects that will occupy the same footprint, subject to best management rules to ensure that surrounding resource areas are not impacted during the reconstruction process. The concept could be expanded to include expansions of appropriate scale in relation to resource area protection required.
 - Dredge and Fill Projects: The current Water Quality Certification regulations ("401 Certification") do not require a DEP permit for the dredging or disposal of 100 cy of fill where a federal Category 1 Programmatic General Permit (PGP) is applicable. These exemption criteria could be expanded to allow for greater volumes of dredging or filling with resource protection performance standards and best management practices established that ensure the work would not impact the aquatic environment or riverbanks.
 - Projects in Wetland Resource Areas: The state wetland regulations currently establish a 100 foot buffer zone around Bordering Vegetated Wetlands (BVW) and a 200' buffer zone around Riverfront Areas. Work in the resource area and buffer zone requires local Conservation Commission approval with potential appeals to DEP. In addition, there is a list of limited projects that are not required to meet specific performance standards, but are still required to proceed through the full approval process. At "Greenfield developments in buffer zones, permit by rule conditions regarding project scaling, activity setbacks, and storm water, erosion and sediment controls work would

prevent impacts to resource areas. At "Brownfield" developments in urban waterfronts, expanding the exemptions for redevelopment projects and economic alternative analysis will reduce permit timelines. The limited projects lists could also be expanded to expedite reviews subject to implementation of resource protection performance standards and associated best management practices.

- MassDEP will explore potential statutory reforms to enable further streamlining for federal stimulus projects. Such measures may include reduced public comment periods and the ability of project proponents to proceed at their own risk in the face of an appeal. Under the current wetland protection review process, construction cannot proceed—even if MassDEP has issued a permit—if that approval is under appeal. This can sometimes be a major cause of delay. MassDEP will conclude its statutory review within 30 days of the issuance of this report and make recommendations shortly thereafter.

C. DEPARTMENT OF FISH AND GAME - POTENTIAL BARRIERS TO 90 DAY REVIEWS

- As a general matter, a project proponent's failure to timely submit a complete application and or to timely respond to any follow-up information requests are barriers to 90 day reviews. For example, delays may result if a project proponent does not submit a final conservation plan reflecting agency recommended modifications in a timely fashion;
- Potential delays may occur if projects require a take permit and the project has not yet commenced with the DFW/NHESP process. The period for reviews is set forth in Department regulations as follows:
 - 321 CMR 10.18 of the Massachusetts Endangered Species Act (MESA) regulations requires that any project or activity that will take place in DFW-delineated priority habitat for a state-listed species must be reviewed by the Natural Heritage Endangered Species Program (NHESP) prior to the commencement of work in the priority habitat. The NHESP has 30 days to determine whether an application for review is complete, and 60 days to complete its review.
 - If the NHESP's review determines that a take will occur, the project or activity must either be modified to eliminate the take or the proponent must obtain a conservation and management permit from the NHESP pursuant to 310 CMR 10.23. The NHESP has 30 days to approve or deny the proponent's proposed final conservation plan,
- The MESA regulations at 321 CMR 10.14 contain 12 categories of projects and activities that are exempt from the above MESA review and permitting requirements in 321 CMR 10.18 through 10.23. These include exemptions associated with certain maintenance, repair, or replacement work on existing commercial and industrial buildings and mixed use structures, and road or utility work. DFW has also promulgated guidance that allows certain project proponents to be exempt from MESA review if they took significant action towards implementing their project even though the site was later designated as priority habitat by the NHESP.
- The most recent DFW mapping of priority habitat in October, 2008 resulted in a 15% reduction in the total area of non-aquatic/non-wetland/non-protected open space designated as priority habitat in MA.

RECOMMENDED SOLUTIONS

- Prior to being added to a list of priority projects for federal stimulus funding, DFW/NHESP has the opportunity to map the project and determine whether or not the project will take place in DFW-delineated priority habitat for a state-listed species and if so, whether or not the review process has commenced. Assuming DFW/NHESP is provided sufficiently specific project location information it will conduct expeditious project evaluations after receiving the completed project template for each project;
- In order to conduct faster reviews of federal stimulus projects, DFW/NHESP will:
 - Consideration of MESA regulatory exemptions for one or more categories of federal stimulus projects. This review will include an evaluation of the existing exemptions under the MESA regulations as well as the NHESP's recent project review and permitting experience. DFW/NHESP expects to conduct this regulatory review within 30 days of the issuance of this report.

- Establish a permitting team that will seek to complete its review and permitting of federal stimulus projects faster than the existing regulatory deadlines (assuming staffing needs are met). The team will be modeled on the December 2008 MOU between MHD and DFW that provides funding for staff to meet accelerated MESA review and permit deadlines for MHD projects. The team will use dedicated NHESP staff to provide outreach to the project proponents and help guide them through the MESA process.
- Development of best management practices ("BMPs") for certain state-listed species listed below and a related storm water protection plan ("SWPP"). DFW/NHESP has already committed, in connection with its December, 2008 MOU with MHD, to develop these MOUs, and expects them to be well underway in the next 3 months. DFW/NHESP already has permitting guidelines for the eastern box turtle. Regardless, assuming its staffing needs are met (see below), DFW/NHESP is committed to meeting accelerated timeframes for permitting federal stimulus projects even if the new BMPs identified below are not fully in place.
- More specifically, BMPs will be developed for the following state-listed species that frequently require project conditioning:
 - Freshwater mussels;
 - Marsh birds (e.g., bittern, rail, grebe);
 - Freshwater turtles (Blanding's and wood turtles).
- Development of a BMP or a Frequently Asked Questions ("FAQ") document for the bald eagle, the atlantic sturgeon, shortnose sturgeon, and other state-listed fish species.
- Exploration of ways to facilitate an expedited path to off-site mitigation, including the concept of an expanded conservation bank for such MESA-related projects. In that regard, DFG and DFW signed an MOA with the Nature Conservancy ("TNC") in July 2008 that utilizes the TNC as a resource for MESA permit applicants to provide enhanced off-site mitigation.
- DFW requires additional staff to support the aforementioned streamlining plan:
 - In FY 2009 a total of 14 NHESP staff completed 1,016 reviews of projects under MESA. This averages out to one staff person handling 79 projects over the course of a year. Consequently, the estimated number of new staff needed to handle the federal stimulus projects would be 1 for every additional 79 projects.
 - For example, a 10% increase in the number of projects reviewed under MESA (over the FY 2009 total) would require an increase of 2 NHESP staff.
 - NHESP is also requesting 2 staff to be dedicated to providing technical assistance and outreach to the project proponents and to guide federal stimulus project proponents through the MESA process.

D. EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

MASSACHUSETTS HIGHWAY DEPARTMENT - POTENTIAL BARRIERS TO 90 DAY REVIEWS

- Timely review of MassHighway submissions is dependent on complete submissions and timely responses to MassHighway comments at various stages of design and review.
- Staff resources are required to expedite MassHighway reviews.

RECOMMENDED SOLUTIONS

- 14 employees are required to review every \$100 million in total project costs. The personnel are required to address the design, review, permitting, and construction oversight of private development projects that could benefit for funding through the stimulus package. These projects would consist of private developments that have completed MEPA and need design review by MassHighway to secure their permit, and subsequently construct these improvements.
- Additionally, MassHighway will consider utilizing outside consultants as peer reviewers if necessary to enable 90 day reviews.

E. EXECUTIVE OFFICE OF PUBLIC SAFETY

DEPARTMENT OF PUBLIC SAFETY - POTENTIAL BARRIERS TO 90 DAY REVIEWS

- Building Code revisions effective March 1, 2009 may affect the timely issuance of building permits for projects that were designed under the Sixth Edition of the Building Code.

RECOMMENDED SOLUTIONS

- There are two ways in which the Department of Public Safety can remedy potential delays caused by new Building Code Revisions:
 - First, a project applicant may apply for variances from the Building Code Appeals Board (BCAB) for building features that are not in compliance with the Seventh Edition of the Code. The BCAB is a three-member subset of the full Board of Building Regulations and Standards. The BCAB meets at least twice each month to consider variance requests. However, it may take 30-60 days in order to receive a hearing before the BCAB, probably more if there is an increase in applications due to stimulus dollar projects. Consequently, this may not be the most effective solution.
 - Second, and possibly the more viable solution, members of the Board of Building Regulations and Standards may consider an extension of the concurrency period so that permit applicants may continue to design and build to the more familiar Sixth Edition of the Code. Board members meet the second Tuesday of each month. The next scheduled meeting will convene on February 10, 2009. Typically, Board members would consider and debate a request for an extension to the concurrency period during a regular meeting. Recognizing that swifter action may be necessary, Board members may be able to consider and vote the matter via a conference call or e-mail correspondence. There are trades offs however with this second solution, as an example the 7th edition has higher standards for some life safety and energy efficiency requirements.

FEDERAL AND STATE ACCESSIBILITY STANDARDS DIFFER - PROPOSED SOLUTION

- Legislation has been drafted and previously filed to regulate areas not generally open to the public, including employee-only areas, consistent with the ADA. The legislation clarifies the Board's jurisdiction as including not only public buildings but also facilities, and brings parking space requirements into conformity with the ADA.
 - The proposed legislation seeks to extend the Architectural Access Board's current jurisdiction over "public buildings" to include employee areas and bring the Board's enabling legislation into compliance with the Americans with Disabilities Act (ADA) as well as modify the make-up of the Board.
 - The Board's jurisdiction must be expanded in order to submit its regulations to the United States Department of Justice (DOJ) for certification as substantially equivalent to Title III of the ADA. The AAB promulgates rules and regulations designed to make public buildings accessible to and safe for individuals with disabilities, whether they are employed in or visiting the building. Title III of the ADA, which covers public accommodations and commercial facilities, recognizes the role that regulations like these play in ensuring compliance with building-related aspects of accessibility. As a result, certification by the DOJ indicates that local regulations meet or exceed the ADA's accessibility requirements for new construction or alterations.
 - In recognition of the jurisdictional triggers of 521 CMR, and in an effort to insure that federal stimulus monies are able to be expended for immediate and proper use, the Department, on behalf of the AAB, is agreeable to granting a blanket time variance for compliance with the Board's regulations. It is understood that requiring immediate compliance would potentially cause unintended, negative consequences of preventing timely commencement of construction projects and hamper the success of the federal stimulus package. This variance would apply to all projects that are funded with federal stimulus monies. This arrangement has been discussed and agreed upon in general terms with representatives from DCAM and EOCD. To those ends, it is the Department's intention to pursue an MOU commemorating this agreement with A&F.

F. EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE

DIVISION OF CAPITAL ASSET MANAGEMENT - POTENTIAL BARRIERS TO 90 DAY REVIEWS

- Additional staff or the use of consultants may be required.
- If any particular project does involve the transfer or disposition of state lands, and legislation authorizing such transfer or disposition has not been enacted, special legislation will probably be required for that transfer or disposition.

RECOMMENDED SOLUTIONS

- DCAM notes that if any of the priority projects involve the acquisition of real estate interests by the state, DCAM will need to hire outside counsel (subject to MGL Ch. 30, s. 65), environmental and other consultants;
- Project proponents requiring legislative approval seek assistance from DCAM's single point of contact, Martha McMahon and utilize the legislative text provided by DCAM.

G. MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

- Timely review (i.e., within 90 days) is dependent on the proponents submitting full and complete applications to the MBTA.
- For most foreseeable projects, a license can be issued within the 90 day timeframe. A project that requires an easement or a direct interest in real estate must go through the MBTA review process and then by statute, must be presented to the MBTA Board of Directors for its approval. This additional step may take closer to 120 to 150 days to complete.
- MBTA must perform an engineering review for all projects.

RECOMMENDED SOLUTIONS

- Prospective proponents should identify as soon as possible any MBTA license that may be required. Proponents should go to the MBTA's Real Estate website (www.transitrealty.com/licensing) for a copy of the license application and guidelines for processing an application. Proponents should be prepared to provide engineering drawings, survey plans, proof of insurance, etc. This information and the contact information for the MBTA staff appointed to these projects is included on the MBTA website under the guidelines for how to apply for a license or easement.
- For those projects that require an easement or a land transfer that require a Board of Directors approval, the MBTA can grant a license to allow the work to go forward pending Board Approval of the permanent easement. While the MBTA can make this accommodation, it is important to point out that many developers may not be able willing to move forward with a temporary license. This is particularly true for financing entities who will only be satisfied with the full and permanent easement. The MBTA will make all efforts to move these projects as quickly as possible.
- The MBTA anticipates that additional engineering assistance may be required on a short term basis.

H. MUNICIPALITIES

MUNICIPAL PERMITTING: POTENTIAL BARRIERS TO 90 DAY REVIEWS

- Every city and town manages their own local permitting process. Municipal processes may occur before, during or after the state process and there is no uniformity across communities. This may cause local permitting delays even after expedited reviews at the state level due to a lack of staff capacity, volunteer boards and commissions, or state revisions that impact local development.

RECOMMENDED SOLUTIONS

- The Permitting Task Force recommends that all federal stimulus projects be assigned a single point of contact on the local level to easily and effectively communicate with state agencies on that project;
- Proponents of federal stimulus projects consult with the municipality before pursuing state permits in order to ensure the highest level of coordination;
- Municipal officials and the designated municipal point of contact are encouraged to attend any Task Force meetings involving projects in that community.

- State and local permitting agencies coordinate to the highest degree possible to ensure timely and coordinated decisions on federal stimulus projects;
- Technical assistance to municipalities with a lack of capacity to conduct timely reviews would prove helpful to expedite matters on the local level. The Task Force recommends that technical assistance be delivered through existing quasi-public agencies that currently offer municipal technical assistance such as MassDevelopment and the Regional Planning Agencies. The Task Force recommends that funding be allocated for additional staffing in each quasi-public agency assisting with increased requests for technical assistance, as needed;
- For regional infrastructure projects involving two or more communities, the Task Force recommends that the communities work together to conduct joint municipal reviews.

6. Actions Needed

In order to enable 90 day reviews of federal stimulus project, each participating agency will undertake the action plans described below. In order to meet the increased demand from the federal stimulus projects, participating agencies will require supplemental staff. Each agency's staffing needs are described in the sections below and summarized in the following table:

Agency/Office/ Department	Type of Internal Staff Needed	Method Used to Estimate # of Staff Needed	Notes
Massachusetts Permit Regulatory Office	Project Manager	Estimate based on current workload with 1 director and 3.5 project managers	Hiring to be on contract basis for CY2009—CY2010
MassHighway	Project Management, Environmental Services, Right of Way, and Construction Support Staff	14 staff per \$100 million in total project costs	<i>See Transportation Section for full staffing analysis.</i>
Department of Environmental Protection	Environmental Analysts, Environmental Engineers, and Regional Planners	8-14 staff per 100 projects. Based on estimate of 2 permits per project and 4-7 staff required for every 100 permits	Hire consultants to provide permit review and legal/technical assistance and contractors to provide administrative support. Apply resources towards overtime for experienced permitters.
Department of Fish and Game	Conservation Biologist III	1 staff per 79 projects plus 2 additional staff for technical assistance. Based on FY2009 review of 1,016 projects by 14 NHESP staff	2 additional staff would be dedicated to technical assistance and outreach for projects going through the MESA process
Department of Public Safety	Building Inspectors, Engineering Inspectors, Elevator Inspectors, Administrative Support	1 building inspector per \$100 million and 1 support staff per \$500 million. 1 engineering inspector per 200 new boilers and 1 elevator	Additional support staff may be needed based on number of new boilers and elevators installed

Agency/Office/ Department	Type of Internal Staff Needed	Method Used to Estimate # of Staff Needed	Notes
		inspector per 650 new elevators are also needed.	
Division of Capital Asset Management	No add'l internal staff requested. Outside Counsel and/or environmental consultants may be needed.	Anticipates using current staffing but based on volume of projects may need to hire additional staff.	If projects involve acquisition of real estate, DCAM will need to hire outside counsel, environmental or other consultants on a case by case basis. <i>See State Facilities Section for full staffing analysis.</i>
Massachusetts Bay Transportation Authority	Engineering		The MBTA will need temporary engineering assistance to supplement existing staff. <i>See Transportation Section for full staffing analysis.</i>

A. EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT
MASSACHUSETTS PERMIT REGULATORY OFFICE (MPRO)

- Information on the Task Force and its ability to assist federal stimulus project proponents with permitting will be added to the EOHED and MPRO websites;
- Templates with all necessary information have been prepared and will be completed by project proponents.
- Permitting Task Force will begin meeting with project proponents on February 2, 2009

STAFFING PLAN

- MPRO consists of one director and 3.5 Project Managers. In order to handle the increased workload of federal stimulus projects, MPRO will add two Project Managers on a contract basis for CY2009 – CY2010.

B. EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS
MASSHIGHWAY

- Streamlining Underway: In October 2007 MHD implemented 720 CMR 13.00: Approval of Access to State Highways regulation to govern, among other things, expedite the overall environmental review and permitting process by providing project proponents with transparency, predictability, and timeliness of MassHighway actions on access permits;
- The MassHighway streamlining plan will be accomplished by utilizing:
 - Existing MassHighway procedures that call for "single points of contact" and dedicated project manager;
 - Current regulations allow permitting decisions and relevant reviews on projects to be rendered within a 90-day period subject to MassHighway receiving within all required submissions in a timely fashion;
 - Recent revisions to the Standard Operating Procedure (SOP) for the Review of Access Permits to be consistent with the regulations. The SOP assists project proponents and MassHighway in meeting the 90-day review, and if needed could be modify to meet the need of the Operation Recovery program.

STAFFING PLAN

- 14 employees are required to review every \$100 million in total project costs. The personnel are required to address the design, review, permitting, and construction oversight of private development projects that could benefit for funding through the stimulus package. These projects would consist of private developments that have completed MEPA and need design review by MassHighway to secure their permit, and subsequently construct these improvements.
- Additionally, MassHighway will consider utilizing outside consultants as peer reviewers if necessary to enable 90 day reviews.

C. EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS DEPARTMENT OF ENVIRONMENTAL PROTECTION

- Streamlining Underway: In 2007, MassDEP reduced its permitting timelines 20% across the board, and committed to issuing 90% of its permits within 180 days—and DEP is meeting these commitments.
- Existing FASTrack Program: Fast Track Permitting incorporates a set of sound environmental policies and procedures that promote smart growth and economic development across the Commonwealth. In the Fast Track program, MassDEP negotiates individual agreements with proponents of eligible projects, and guarantees:
 - Expedited administrative and technical reviews for all eligible projects.
 - Negotiated permit schedules and fees.
 - A single point of contact through the entire permitting process.
 - Protection of natural resources and promotion of smart growth.
- The DEP streamlining plan will be accomplished through an enhanced FASTrack permitting program which encompasses the following features:
 - Pre-permitting meetings;
 - Ongoing technical assistance with applicants/consultants;
 - Dedicated "single points of contact" and project managers;
 - Senior management "ombudspersons" to resolve bottlenecks and coordinate multiple agency reviews;

STAFFING PLAN

- Reassignments of experienced permit staff;
- Temporary staff/resources to ensure timely permitting and technical assistance for stimulus projects. MassDEP estimates 4-7 staff needed per 100 permits (based on an average of 2 permits per project, 8-14 staff would be needed for permitting of each 100 projects requiring MassDEP permits).

D. DEPARTMENT OF FISH AND GAME

- Existing Exemptions and Guidance: The MESA regulations at 321 CMR 10.14 contain 12 categories of projects and activities that are exempt from the above MESA review and permitting requirements in 321 CMR 10.18 through 10.23. These include exemptions associated with certain maintenance, repair, or replacement work on existing commercial and industrial buildings and mixed use structures, and road or utility work. DFW has also promulgated guidance that allows certain project proponents to be exempt from MESA review if they took significant action towards implementing their project even though the site was later designated as priority habitat by the NHESP.
- Reduction in Priority Habitat Mapping Area: The most recent DFW mapping of priority habitat in October, 2008 resulted in a 15% reduction in the total area of non-aquatic/non-wetland/non-protected open space designated as priority habitat in MA.
- The DFW/NHESP streamlining plan will include:
 - Consideration of MESA regulatory exemptions for one or more categories of federal stimulus projects. This review will include an evaluation of the existing exemptions under the MESA regulations as well as the NHESP's recent project review and permitting experience.

- Establish a permitting team that will seek to complete its review and permitting of federal stimulus projects faster than the existing regulatory deadlines (assuming staffing needs are met). The team will be modeled on the December 2008 MOU between MHD and DFW that provides funding for staff to meet accelerated MESA review and permit deadlines for MHD projects. The team will use dedicated NHESP staff to provide outreach to the project proponents and help guide them through the MESA process.
- Development of best management practices ("BMPs") for certain state-listed species listed below and a related storm water protection plan ("SWPP") in connection with DFW/NHESP's MOU with MHD. While having the BMPs and the SWPP in place will facilitate the expedited permitting of the federal stimulus projects. DFW/NHESP, utilizing the requested additional staff, is committed to meeting accelerated permitting timeframes for the stimulus projects even if the BMPs are not fully in place.
- More specifically, BMPs will be developed for the following state-listed species that frequently require project conditioning:
 - Freshwater mussels;
 - Marsh birds (e.g., bittern, rail, grebe);
 - Freshwater turtles (Blanding's and wood turtles).
- Development of a BMP or a Frequently Asked Questions ("FAQ") document for the bald eagle, the atlantic sturgeon, shortnose sturgeon, and other state-listed fish species.
- Exploration of ways to facilitate an expedited path to off-site mitigation, including the concept of an expanded conservation bank for such MESA-related projects. This approach will take advantage of the existing July, 2008 MOA between DFG, DFW and the Nature Conservancy ("TNC") that utilizes the TNC as a resource for MESA permit applicants to provide enhanced off-site mitigation.

STAFFING PLAN

- In FY 2009 a total of 14 NHESP staff completed 1,016 reviews of projects under MESA. This averages out to one staff person handling 79 projects over the course of a year. Consequently, the estimated number of new staff needed to handle the federal stimulus projects would be 1 for every additional 79 projects. For example, a 10% increase in the number of projects reviewed under MESA (over the FY 2009 total) would require an increase of 2 NHESP staff.
- NHESP is also requesting 2 staff to be dedicated to providing technical assistance and outreach to the project proponents and to guide federal stimulus project proponents through the MESA process.

E. EXECUTIVE OFFICE OF PUBLIC SAFETY DEPARTMENT OF PUBLIC SAFETY

- Additional Building, Engineering and Elevator Inspectors to meet anticipated demand;

STAFFING PLAN

- It is estimated that the Department of Public Safety would need to hire a minimum of one (1) additional building inspector for each 200 million stimulus dollars spent on state building construction projects and retain at least one (1) support staff for each 500 million spent. For instance, if a total of one billion is intended to be spent on varied state building projects, the Department would require at least 5 additional building inspectors and 2 support staff to handle added workload. This figure anticipates full staffing of its 14 FTE building inspector positions, for a total of 19 inspectors.
- It is estimated that the Department would need to hire a minimum of one (1) additional engineering inspector per 200 new boilers or pressure vessels added to existing stock which translates into approximately 1 new inspector for each 4 million stimulus dollars spent on this type of activity. Additionally, it is estimated that the Department would require at least one (1) support staff for each 400 million spent. For instance, if a total of 400 million is intended to be spent on varied state engineering projects, the Department would require at least 10 additional engineering inspectors and 1 support staff to handle added workload. This figure

anticipates full staffing of its 11 FTE engineering inspector positions, for a total of 21 inspectors

- It is further estimated that the Department will need 1 additional Elevator inspector for each 650 new elevators constructed.

**F. EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE
DIVISION OF CAPITAL ASSET MANAGEMENT**

- DCAM has designated two representatives, Deputy General Counsels Carol Meeker and Martha McMahon, to serve on the Task Force. They will communicate with others at DCAM as necessary, and will participate in ongoing Task Force review of projects.
- DCAM assumes its involvement in priority projects coming before this Task Force will relate to transactions involving the transfer or disposition of state lands. DCAM therefore proposes to meet the objectives of the Task Force by:
 - Identifying a single point of contact for project requiring legislative approval;
 - Identifying the transactions related to such projects as priority transactions;
 - Assigning experienced real estate property managers, attorneys, and others as necessary to address each priority transaction;
 - Using best efforts to complete each priority transaction within 90 days, subject to the requirements set forth in the legislation authorizing such transaction for appraisals, Inspector General review and approval of appraisals, surveys, Inspector General review and comment on documents, advance notices to the General Court and others, etc.
- DCAM does not anticipate the need for any general legislative amendments relating the transactions involved in the priority projects. If any particular project does involve the transfer or disposition of state lands, and legislation authorizing such transfer or disposition has not been enacted, special legislation will probably be required for that transfer or disposition. A sample bill is available by request.

STAFFING PLAN

- DCAM's current plan is to use existing staff to meet these objectives. Depending on the number and complexity of the transactions involved in the priority projects, however, additional staff, or the use of consultants, may be required.
- If any of the priority projects involve the acquisition of real estate interests by the state, DCAM will need to hire outside counsel (subject to MGL Ch. 30, s. 65), environmental and other consultants on a case-by-case basis.

G. MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

- The MBTA has identified a single point of contact for federal stimulus project inquiries and those projects will be given priority in the license/easement review process;
- A project that requires an easement or a direct interest in real estate must go through the MBTA review process and then by statute, must be presented to the MBTA Board of Directors for its approval. This additional step may take closer to 120 to 150 days to complete. MBTA staff commits to taking all possible steps to shorten this timeframe as much as possible. Additionally, MBTA can grant a temporary license to perform the work while the Board of Directors' review and approval is pending.

STAFFING PLAN

- Temporary engineering assistance will be needed to supplement the MBTA's existing staff.

Metrics for Measuring Success

Metric	Description	Method for Monitoring / Measurement
Improve	Timely Review of Federal Stimulus	• Database of federal stimulus

Metric	Description	Method for Monitoring / Measurement
Review Timeliness	Projects <ul style="list-style-type: none">MPRO/Permitting Task Force will track the success rate of 90 day state agency reviews.	projects detailing the date completed applications were received, date permits were issued by agency, and total permitting time by project.

Permitting Appendix Appendix A

OPERATION RECOVERY: PERMITTING TASK FORCE PROJECT TEMPLATE

1. Project Identification			
Project Title			
Municipality		Growth District?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Location			
Project Manager			
Telephone		Email	

2. Project Description and Permitting Requirements	
Project Description (attach project template and ENF if applicable)	

Does this project require the transfer of state land? Yes <input type="checkbox"/> No <input type="checkbox"/>	Has legislation been approved? Yes <input type="checkbox"/> No <input type="checkbox"/>
Legislative Act	

Does this project require a state agency license or easement? Yes <input type="checkbox"/> No <input type="checkbox"/>	Has license or agency approval been granted? Yes <input type="checkbox"/> No <input type="checkbox"/>
Explain	

Status of Local Review?	Complete <input type="checkbox"/> Incomplete (explain below) <input type="checkbox"/>

MEPA review been completed? Yes <input type="checkbox"/> No <input type="checkbox"/>	EEA File No.
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Permitting Requirements	Agency	Date of Application	Reference No.
1.			
2.			
3.			

Anticipated Permitting/Regulatory Barriers	
(Check one and explain below)	
Timing <input type="checkbox"/> Compliance <input type="checkbox"/> Mitigation <input type="checkbox"/> Other <input type="checkbox"/>	

3. Project Schedule			
High-Level Project Milestones	Expected Start Date	Projected Cost	Expected Date of Completion
1.			
2.			
3.			