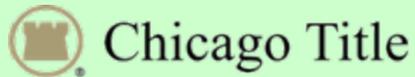


Options to Purchase Former Railroad Rights of Way and Building Permit Approval from the MA Executive Office of Transportation

A presentation by Attorney Peter M. O'Connor
Deputy Secretary for Real Estate and Economic Development, EOT

Presented by



About Our Speaker

Peter O'Connor was appointed Deputy Secretary for Real Estate and Economic Development in the Executive Office of Transportation (now the Massachusetts Department of Transportation "MassDOT") in January 2009. The first to serve in this position, he has been responsible for oversight of real estate development issues for the agencies and authorities within the Executive Office, and for ensuring that transportation infrastructure planning and real estate dispositions facilitate economic development in the Commonwealth. With the creation of MassDOT on November 1, 2009, he is leading the effort to consolidate the delivery of real estate services to MassDOT's four divisions into a single division, and to conform the real estate practices of the former constituent agencies to uniform standards. He has responsibility for the disposition of all surplus real estate, including air rights, formerly owned by the Massachusetts Turnpike Authority, the Massachusetts Highway Department, and by the MBTA.

Prior to joining MassDOT, Mr. O'Connor practiced law in Connecticut and Massachusetts both as in-house counsel and in private practice, representing public and private sector clients in the areas of real estate development, public-private partnerships, infrastructure development and urban renewal. He graduated from Connecticut College in New London, Connecticut in 1981 and the University of Connecticut School of Law in 1985.

www.eot.state.ma.us

Executive Office of Transportation - Windows Internet Explorer

http://www.eot.state.ma.us/

File Edit View Favorites Tools Help

Verizon Broadband Enter Keyword(s) Web Search Top Picks E-Mail Web Space Help On: 32

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Executive Office of Transportation



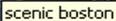
Secretary of Transportation
James A. Aloisi



Governor
Deval Patrick



Lt. Governor
Tim Murray



Public Resources

- > [Transportation Finance Commission](#)
- > [Send EOT Your Feedback on Transportation Finance Issues](#)
- > [Massachusetts Mobility Compact](#)
- > [Transit Projects](#)
- > [Renew Your Driver's License](#)
- > [Employment Application](#)
- > [Commonwealth Employment Opportunities](#)
- > [MBTA Career Opportunities](#)
- > [Who's Who](#)
- > [Current Traffic Conditions](#)
- > [Smart Driving Tips](#)

GETTING AROUND EOT



Recovery Act
Massachusetts received authority under [ARRA](#) to spend \$437.9 million over two years on road and bridge projects.



You Move Massachusetts
Learn about Governor Patrick's [transportation plan](#), [share your views](#) about the plan and [read our blog](#) to stay updated.



Massachusetts Aeronautics Commission
[About MAC](#), [Organization](#), [Airport Data](#), [MAC Commission Meeting Schedule](#)



Massachusetts Bay Transportation Authority
[About the MBTA](#), [Fares and Passes](#), [Rider Tools](#)

WHAT'S NEW

- > [MassDOT 90-Day Report](#)
- > [Jeff Mullan: MassDOT Promises Customer Focus](#)
- > [Governor Patrick Appoints Jeffrey Mullan Secretary, CEO of MassDOT](#)
- > [Road Flaggers & Police Details Map 9/16/09 Updated](#)
- > [Draft STIP Project Listing](#)
- > [Vision for the New England High-Speed and Intercity Rail Network](#)

Internet 100%

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Link to Chapter 40:54A and 161C Hearings and Applications information from the EOT Home Page (circled below).

The screenshot shows the website for the Executive Office of Transportation (EOT) in Massachusetts. The browser is Windows Internet Explorer, displaying the URL <http://www.eot.state.ma.us/>. The page features a navigation menu at the top with options like File, Edit, View, Favorites, Tools, and Help. Below the menu, there are search and utility buttons, including Verizon Broadband, Web Search, Top Picks, E-Mail, Web Space, and Help. The main content area is divided into several sections:

- Business Resources:** A sidebar on the left containing a list of links: [MHD Project Information](#), [Online Truck Permits](#), [MBTA Bidding & Solicitations](#), [Administrative Law](#), [40/54A & 161C Hearings and Applications](#) (circled in red), [FY10 Chapter 90 Apportionments](#), and [More](#).
- Massachusetts Port Authority:** A section with the Massport logo and links for [About](#), [Logan Airport](#), [Regional Airports](#), [Tourism](#), [Bridges](#), [Ports](#), and [Doing Business with Massport](#).
- Massachusetts Turnpike Authority:** A section with the Turnpike logo and links for [About](#), [Travel Services](#), [FAST LANE Program](#), [Turnpike News](#), and [Doing Business with the Turnpike](#).
- Registry of Motor Vehicles:** A section with the RMV logo and links for [Branches](#), [Forms](#), [License Information](#), and [Registration](#).
- Notice:** A section on the right with a list of links: [Enhanced 28X Bus Service](#), [South Station Direct Connect](#), [Amended 2009 STIP](#), [Charles River Basin Infrastructure Synchronization Study](#), [Accelerated Bridge Program](#), [Stem to Stern Final Close-out Report](#), and [Press Releases](#).
- Related Links:** A section on the right with links for [Hi-Ride Commuter Bus](#), [Transportation Library](#), [Official State Map \(PDF - 4.74 MB\)](#), [Regional Transit](#), and [Amber Alert](#).

At the bottom of the page, there is a footer with the text "© 2009 Commonwealth of Massachusetts" and a navigation bar with links for [Home](#), [Car](#), [Bus](#), [Train](#), [Boat](#), [Bike/Walk](#), [Plane](#), [Info](#), [Site Policies](#), and [Contact Us](#). The taskbar at the bottom shows the Start button and several open applications: Executive Office of T..., Inbox - Microsoft Out..., 8 Reminders - \\Remo..., and Microsoft PowerPoint ...

Statute and Process of Chapter 161C-Section 7 Applications

All railroad property offered for sale must first be submitted to the Executive Office of Transportation under Massachusetts General Law, Chapter 161C, Section 7.

You may access information on the EOT website regarding the Chapter 161C, Section 7 application process by following this link or pasting this address into your internet browser:

http://www.eot.state.ma.us/downloads/grants/161C_0409.doc

M.G.L. Chapter 161C, Section 7

CHAPTER 161C. RAIL TRANSPORTATION IN THE COMMONWEALTH

Chapter 161C: Section 7. Railroad rights-of-way or related facilities; sale or disposition; commonwealth's right of first refusal

Section 7. (a) To the extent not inconsistent with federal law, no railroad company which conducts or has conducted operations within the commonwealth shall sell, transfer or otherwise dispose of railroad rights-of-way or related facilities without first offering such rights-of-way or facilities for sale, transfer or disposition to either the executive office, acting on behalf of the commonwealth, or such other department, authority, agency, or political subdivision of the commonwealth as may be designated by the executive office for the purpose of any such sale, transfer or disposition; provided, that such sale, transfer or disposition may be made by the railroad company to a party other than the executive office or its designee, but only if (i) the executive office or its designee has notified the railroad company in writing of its rejection of such offer; or (ii) ninety calendar days have elapsed from the date on which said offer or a copy of such offer, as provided in the second paragraph, is made to the executive office.

(b) Said railroad company shall make such offer in writing and shall send such offer by certified mail to the executive office or to its designee. In the event that such offer is made to a designee of the executive office, a notarized copy of such offer shall be sent by certified mail to the executive office. Any such offer shall include the price at which said company proposes to offer such rights-of-way or facilities to the commonwealth, and such other terms or conditions which said company proposed to include as part of such sale, transfer or disposition. The executive office or its designee shall notify in writing and by certified mail said railroad company of its acceptance or rejection of such offer within ninety calendar days of such offer, and in the event that the designee of the executive office sends such notice, said designee shall also send a notarized copy of such notice to the executive office. The executive office is hereby authorized to notify any person that the conditions provided in clauses (i) and (ii) of paragraph (a) have been satisfied and that the commonwealth no longer has the option to acquire the rights-of-way or facilities as provided in said paragraph. Any such notice shall be binding on the commonwealth.

In no event shall said railroad company offer to sell, transfer, or otherwise dispose of railroad rights-of-way or facilities to any person on terms or conditions more favorable to said person than those offered to the commonwealth.

Statute, Process and Application of Chapter 40 Section 54A

Massachusetts General Law, Chapter 40, Section 54A states that if a city, town or person purchases any land(s) formerly used as a railroad right of way, or any property appurtenant to formerly used railroad company land, they must first obtain a consent in writing for the issuance of a local building permit from the Secretary of the Executive Office of Transportation (EOT), after a public hearing at EOT. The request for the public hearing must come from the local building inspector.

You may access information on the EOT website regarding the Chapter 40, Section 54A application process by following this link or pasting this address into your internet browser:

http://www.eot.state.ma.us/downloads/grants/4054_0409.doc

M.G.L. Chapter 40, Section 54A

CHAPTER 40. POWERS AND DUTIES OF CITIES AND TOWNS

Chapter 40: Section 54A. State consent to issuance of permits to purchaser required; damages in absence thereof

Section 54A. If a city or town or any other person purchases any lands formerly used as a railroad right-of-way or any property appurtenant thereto formerly used by any railroad company in the commonwealth, no permit to build a structure of any kind on land so purchased shall be issued by any city or town in the commonwealth without first obtaining, after public hearing, the consent in writing to the issuance of such permit from the secretary of the executive office of transportation and construction. If said secretary does not consent to the issuance of such permit, the owner of the land may recover from the commonwealth such damages as would be awarded under the provisions of chapter seventy-nine.

Notwithstanding the provisions of the second sentence of the foregoing paragraph, there shall be no recovery from the commonwealth in damages under said sentence by an owner of such land purchased after January first, nineteen hundred and seventy-six.

Hearings and Applications: Chapter 40, Section 54A and Chapter 161C

You may access a calendar of hearings, a list of files in review, and a list of projects which have been released and consent issued by the EOT under both the 40/54A and 161C processes, by following this link or pasting this address into your internet browser:

http://www.eot.state.ma.us/default.asp?pgid=content/programs_hearings&sid=about

- Questions?
- Recorded webinar and materials will be posted on www.fnf-ma.com under “training”
- November webinar: New Respa Rules & the Implementation of the new HUD-1

THE EXECUTIVE OFFICE OF TRANSPORTATION RAIL UNIT

CHAPTER 161C-7

RAIL TRANSPORTATION IN THE COMMONWEALTH OF MASSACHUSETTS

SECTION (7) RAILROAD RIGHTS-OF-WAY OR RELATED FACILITIES; SALE OR DISPOSITION; COMMONWEALTH'S RIGHT OF FIRST REFUSAL

Note: *The process for Chapter 161-Section 7 does not require a public hearing. The 161C-7 processes is a right of first refusal on the purchase of railroad property and must be completed within (90) days of receipt of an offer. Both processes require an internal canvas to identified public agencies.*

- (a) To the extent not inconsistent with federal law, no railroad company which conducts or has conducted operations within the Commonwealth shall sell, transfer or otherwise dispose of railroad rights-of-way or related facilities without first offering such rights-of-way or facilities for sale, transfer or disposition to either the executive office, acting on behalf of the Commonwealth, or such other department, authority, agency, or political subdivision of the Commonwealth as may be designated by the executive office for the purpose of any such sale, transfer or disposition; provided, that such sale, transfer or disposition may be made by the railroad company to a party other than the executive office or its designee, but only if (i) the executive office or its designee has notified the railroad company in writing of its rejection of such offer; or (ii) ninety calendar days have elapsed from the date on which said offer or a copy of such offer, as provided in the second paragraph, is made to the executive office.
- (b) Said Railroad Company shall make such offer in writing and shall send such offer by certified mail to the executive office or to its designee. In the event that such offer is made to a designee of the executive office, a notarized copy of such offer shall be sent by certified mail to the executive office. Any such offer shall include the price at which said company proposed to offer such rights-of-way or facilities to the Commonwealth, and such other terms or conditions, which said company, proposed to include as part of such sale, transfer or disposition. The executive office or its

designee shall notify in writing and by certified mail said railroad company of its acceptance or rejection of such offer within ninety calendar days of such offer, and in the event that the designee of the executive office sends such notice, said designee shall also send a notarized copy of such notice to the executive office. The executive office is hereby authorized to notify any person that the conditions provided in clauses (i) and (ii) of paragraph (a) have been satisfied and that the Commonwealth no longer has the option to acquire the rights-of-way or facilities as provided in said paragraph. Any such notice shall be binding on the Commonwealth.

In no event shall said railroad company offer to sell, transfer, or otherwise dispose of railroad rights-of-way or facilities to any person on terms or conditions more favorable to said person than those offered to the Commonwealth.

**Executive Office of Transportation
Massachusetts General Law, Chapter 161C, Section 7**

Statement of Procedures

1. All requests of offered Railroad property must be submitted to the Executive Office of Transportation (EOT) from the Railroad Company.
2. The letter should be addressed to:

James A. Aloisi, Jr.
Secretary of Transportation
Executive Office of Transportation
10 Park Plaza, Suite 3170
Boston, Massachusetts 02116-3969
3. The following information should be submitted with a completed M.G.L. Chapter 161C, Section 7 Application form:
 - (a) A letter from the railroad company, on company letterhead, offering the railroad property to the Commonwealth and shall submit such offer by certified mail to the Executive Office of Transportation
(See attached sample letter).
 - (b) A copy of the purchase and sale agreement.
 - (c) A map (locus) of the city, town, or surrounding area showing (highlighted) the location of the property in question.
 - (d) A copy of the deed from the railroad company.
 - (e) A plan of outlining the property in question (plot plan).
4. Upon receipt of the complete application package, EOT will conduct a review of the offered railroad property, which may include reviews by other public agencies.
5. After further review, EOT will notify the railroad company in writing of its decision.
6. Any questions regarding this matter should be directed to the Office of the Rail Unit at (617) 973-7000 or 10 Park Plaza, Room 3170, Boston, MA 02116-3969.

SAMPLE

Note: This letter should be re-typed on the railroad company letterhead. The outlined information below should be supplied and signed by the appropriate individual.

(DATE)

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUEST
(Article No.)**

James A. Aloisi, Jr.
Secretary of Transportation
The Executive Office of Transportation
State Transportation Building
10 Park Plaza, Suite 3170
Boston, Massachusetts 02116-3969

Re: Sale of Railroad Property - (CITY/TOWN), Massachusetts

Dear Mr. Secretary:

Pursuant to Massachusetts General Laws, Chapter 161C, Section 7(b), we hereby notify you of a proposed sale of (RAILROAD COMPANY) property in the amount of (\$). The railroad property is located in (CITY/TOWN), Massachusetts containing an area of (# SQUARE FEET) as shown outlined in bold line style on the attached plan.

We hereby offer the subject parcel of land to the Commonwealth of Massachusetts as provided in said section 7(b) as mentioned above.

Sincerely,

(SIGNATURE)
(PRINT NAME, TITLE)

Enclosures:

cc: Timothy Doherty
Director of Rail Programs - Rail Unit

OFFER OF RAILROAD PROPERTY PURSUANT TO M.G.L. 161C

Please complete the following questionnaire so that your offer may be processed promptly. If a question does not apply, state 'not applicable'.

1. Offering Railroad: _____
2. City or town of offered parcel: _____
3. Purchase price: _____
4. Is the parcel part of the right-of-way? _____
5. Is the parcel adjacent to the right-of-way? _____
6. Is the right-of-way abandoned: If yes, when? _____
How much of the line is abandoned? _____
7. Is the track structure in place? _____
8. Is the right-of-way active? _____
9. What is the branch name of right-of-way? _____
10. What are the beginning and ending towns through which this right-of-way runs in?
Massachusetts: _____

11. If the right-of-way is a spur, with what main line does it connect and where? _____

OFFER OF RAILROAD PROPERTY

Page (2)

12. Who is the current owner of the right-of-way? _____

13. What is the parcel size? _____

If the parcel is part of the right-of-way, what is the length to be sold? _____

15. If the parcel is adjacent to the right-of-way, what is the distance of the parcel from?
the centerline of track: _____

16. What is the zoning of the parcel? _____

17. What is the intended use of the parcel? _____

Additional Comments: _____

THE EXECUTIVE OFFICE OF TRANSPORTATION RAIL UNIT

STATUTE, PROCESS & APPLICATION OF CHAPTER 40 SECTION 54A

Note: When applying for an application, please note that the process for Chapter 40, Section 54A (a two-month process) requires a public hearing with notice in a local paper. For more information, contact the Rail Division of the Executive Office of Transportation or by calling (617) 973-7000 or email to feedback.eot@state.ma.us.

MASSACHUSETTS GENERAL LAW, CHAPTER 40 PERMITS FOR CONSTRUCTION ON RAILROAD RIGHTS-OF-WAY

SECTION 54A – STATE CONSENT TO ISSUANCE OF PERMITS TO PURCHASER REQUIRED: DAMAGES IN ABSENCE THEREOF

If a city or town or any other person purchases any lands formerly used as a railroad right-of-way or any property appurtenant thereto formerly used by any railroad company in the Commonwealth, no permit to build a structure of any kind on land so purchased shall be issued by any city or town in the Commonwealth without first obtaining, after public hearing, the consent in writing to the issuance of such permit from the Secretary of the Executive Office of Transportation. If said Secretary does not consent to the issuance of such permit, the owner of the land may recover from the Commonwealth such damages as would be awarded under the provisions of Chapter seventy-nine.

Notwithstanding the provisions of the second sentence of the foregoing paragraph, there shall be no recovery from the Commonwealth in damages under said sentence by an owner of such land purchased after January first, nineteen hundred and seventy-six.

Executive Office of Transportation
Massachusetts General Law, Chapter 40, Section 54A

Statement of Procedures

1. All requests for permission to build on former railroad property must be submitted to the Executive Office of Transportation (EOT) from the building inspector of the city or town in which the proposed construction will take place.
2. When applying for an application, please note that the process for Chapter 40, Section 54A (a two-month process) requires a public hearing with notice in a local paper. Any questions or for more information regarding this matter should be directed to the Office of the Rail Unit by calling (617)-973-7000. Emails can be sent to feedback.eot@state.ma.us.
3. All requests should be addressed to:

James A. Aloisi, Jr.
Secretary of Transportation
Executive Office of Transportation
10 Park Plaza, Suite 3170
Boston, MA 02116-3969

4. The following information should be submitted with a completed M.G.L. Chapter 40, Section 54A Application form:
 - (a) A letter from the building inspector requesting a public hearing with a copy of the building permit application (see attached sample letter).
 - (b) A copy of the plan submitted to the building inspector, with a title block and outlining the former railroad land.
 - (c) A signed property deed with corresponding plot plan.
 - (d) A copy of the deed out from the railroad with corresponding plot plan.
 - (e) A plan of the parcel on which the construction will take place, showing the location of the proposed building and the current and/or former railroad property line boundaries.
 - (f) A map (locus) of the city, town, or surrounding area showing (highlighted) the location of the property in question.
5. Upon receipt of the complete application package, EOT will conduct a review of the proposal, which may include reviews by other public agencies.
6. When the EOT review is complete a date will be set for the public hearing by EOT. **The applicant will be responsible for advertising the hearing once in a local newspaper at least twenty-one (21) days prior to the hearing date and to provide the tear sheet with the advertisement prior to the hearing to EOT. A sample hearing notice is attached.**
7. After the public hearing, EOT will review all comments submitted and will send a decision letter to the building inspector. A copy will be sent to the applicant.

SAMPLE

BUILDING INSPECTOR LETTER

NOTE: This letter should be re-typed on city or town letterhead. The outlined information below should be supplied and signed by the building inspector

(DATE)

James A. Aloisi, Jr.
Secretary of Transportation
Executive Office of Transportation
Ten Park Plaza, Suite 3170
Boston, Massachusetts 02116-3969

Attn: Office of the Rail Unit

Dear Secretary Aloisi:

(NAME OF APPLICANT) has requested a permit to build **(DESCRIPTION OF PROPOSED CONSTRUCTION)** in **(CITY/TOWN)**, Massachusetts. The property for which the permit is requested is located at **(ADDRESS OF PROPERTY)**.

In accordance with Massachusetts General Law, Chapter 40, Section 54A, a permit shall not be issued without first obtaining, after a public hearing, the consent in writing to the issuance of such permit from the Secretary of the Executive Office of Transportation (EOT).

I hereby request that a public hearing be held for **(NAME OF APPLICANT)** to determine whether consent will be granted by EOT to construct the above on the former railroad property.

Sincerely,

(BUILDING INSPECTOR'S SIGNATURE)
(PRINT NAME)
(TITLE)

M.G.L. CHAPTER 40, SECTION 54A, APPLICATION
(PLEASE TYPE OR PRINT)

1. CONTACT PERSON:

2. ADDRESS OF CONTACT PERSON:

Tel. No:

3. BUILDING INSPECTOR OR
CITY/TOWN OFFICIAL:

4. ADDRESS OF BUILDING INSPECTOR
OR CITY/TOWN OFFICIAL:

5. NAME OF PRESENT PROPERTY
OWNER:

6. ADDRESS OF PROPERTY OWNER:

7. NAME OF APPLICANT:

8. ADDRESS OF APPLICANT:

CO APPLICANT IF APPLICABLE:

9. PROPERTY LOCATION (CITY/TOWN):

10. TYPE OF CONSTRUCTION:

11. TOTAL NUMBER OF STRUCTURES
TO BE CONSTRUCTED: _____

12. USE: COMMERCIAL, RESIDENTIAL,
INDUSTRIAL: _____

13. PROPERTY IS:

14. PROPERTY IS ADJACENT TO:
(Check N/A, if not applicable)

- on railroad corridor
- adjacent to a railroad corridor
- includes land both adjacent to a
corridor and on a corridor

- an abandoned railroad line
- an active railroad line
- N/A

If property is adjacent to the railroad
corridor, please indicate approximate
distance from (former) railroad property
boundary line to the proposed structure:

Name of Right of Way – i.e. Branch Line

Distance from boundary line to nearest track:

15. APPROX. WIDTH OF CORRIDOR:

16. TOTAL PARCEL AREA INCLUDING FORMER RAILROAD PROPERTY:

15a ATTACHED A BRIEF DESCRIPTION OF PROPERTY TO BE CONSTRUCTED
17. CITY/TOWN ASSESSOR'S PARCEL IDENTIFICATION NUMBER:

APPROXIMATE AREA OF FORMER RAILROAD PROPERTY:

Lot # _____ Map # _____

18. FORMER RAILROAD OWNER:

Date of Abandonment:

19. APPROXIMATE DATE OF RAILROAD DISPOSITION:

20. DATE OF PRESENT OWNER ACQUISITION:

21. Please note that the M.G.L., Chapter 40, Section 54A decision letter will be forwarded directly to the City/Town building Inspector and Applicant. If the applicant wishes a copy of the letter sent to any other person (s), please indicate name and address below:

Print Name

Signature
Applicant, Contact Person or Attorney

Date

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION**

SAMPLE

ADVERTISEMENT FOR NOTICE OF HEARING

Upon request of (NAME) Building Inspector of the (CITY/TOWN), Massachusetts, pursuant to Massachusetts General Laws, Chapter 40, Section 54A, the Executive Office of Transportation shall conduct a hearing to determine whether a building permit shall be issued to (NAME) of (DESCRIPTION OF PROPOSED CONSTRUCTION) located at (ADDRESS), Massachusetts and bound by (GENERAL DESCRIPTION OF PARCEL). The parcel of land includes part of the properties formerly of the (NAME OF RAILROAD).

The hearing will take place on (DATE) at (TIME) at the Executive Office of Transportation, Suite 3170, located in the Transportation Building, Ten Park Plaza, Boston, MA 02116. All interested parties should attend. Inquiries concerning the hearing may be made to the Office of the Rail Unit, Executive Office of Transportation at (617) 973-7000.

**TEAR SHEET FROM NEWSPAPER MUST BE SENT TO EOT, ATTN: RAIL UNIT,
PRIOR TO HEARING DATE**