

APPEALS

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I. TYPES OF APPEALS

- To a local zoning board of appeals (“ZBA”)...
 - Decision or determination of the Building Inspector. G.L. 40A, § 8.
- To DEP...
 - Conservation Commission decision applying the Wetlands Protection Act.
 - DEP regulations apply: New regulations designed to improve the efficiency of the wetlands appeal process are pending.
- To Superior Court...
 - Conservation Commission decision applying a local bylaw. G.L. c. 249, § 4.
 - Planning Board or ZBA permit decision on a special permit, variance, or site plan approval. G.L. c. 40A, § 17.
 - ZBA review of Building Inspector action. G.L. c. 40A, § 17.
 - MEPA determination.
 - A Notice of Intent to Commence an Action must first be filed with the Secretary of the Executive Office of Energy and Environmental Affairs (“Secretary”), the Attorney General and the project proponent.
 - MEPA provides statute of limitations but no separate causes of action.
 - Potential causes of action:
 - G.L. c. 214, § 7A: Ten Citizens Suit;
 - G.L. c. 231A: Declaratory Judgment;
 - G.L. c. 30A: Administrative Procedure Act.
 - A decision regarding a private project may not be challenged until after the first issuance of a permit, grant of financial assistance or closing of a land transfer for that project.
 - A developer may bring a declaratory judgment action pursuant to G.L. c. 231, § 2, to challenge the scope of an Environmental Impact Report (“EIR”) required by the Secretary. Villages Dev. Co. v. Secretary of the Executive Office of Env’tl. Affairs, 410 Mass. 100 (1991).

- To Land Court...
 - Planning Board or ZBA permit decision on a special permit, variance, or site plan approval. G.L. c. 40A, § 17.
 - ZBA review of Building Inspector action. G.L. c. 40A, § 17.
 - A declaration of extent or validity of zoning provision. G.L. c. 240A, § 14A.
 - If a project meets the statutory threshold of 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area, or both, then an appeal may be filed in the Permit Session:
 - Appeals of any municipal, regional, or state permit, order, certificate or approval or denial including those under G. L. c. 21, G.L. c. 30, §§ 61 to 62H, G.L. c. 30A, 40A to 40C, 40R, 41, 43D, 91, 131, 131A or G.L. c. 249, §§ 4 and 5, or Chapter 664 of the Acts of 1956, or any local bylaw or ordinance;
 - Appeals seeking equitable or declaratory relief designed to secure or protect the issuance of any permit or approval or challenging the interpretation or application of any regulations, statutes, bylaws, ordinances concerning any permit or approval;
 - Claims under G.L. c. 231, § 6F, or for malicious prosecution, abuse of process, intentional or negligence interference with advantageous relations concerning any permit or approval; and
 - Any other claims between persons holding any right, title, or interest in land and any board, commission, authority, or public official relating to permit or approval.

- To the Appeals Court...
 - Decision from the Superior or Land Court.

II. STANDING

- Zoning Appeals (G.L. c. 40A, § 17)
 - Status as an “aggrieved” person is a jurisdictional prerequisite to judicial review of a zoning appeal. G.L. c. 40A, § 17.
 - Abutters are presumed to have standing. G.L. c. 40A, § 17.
 - Although abutters are among those presumed to have standing once they have articulated a basis for standing that is legally cognizable, the presumption recedes when standing is contested by an offer of evidence “warranting a finding contrary to the presumed fact.” Barvenik v. Board of Aldermen of Newton, 33 Mass. App. Ct. 129, 131 (1991).
 - When the presumption of standing has been rebutted, the burden of proof then shifts to the plaintiff, who must come forward with a plausible claim of a definite violation of a private right, a private property interest, or a private legal interest, supported by credible evidence. Harvard Square

- Defense Fund, Inc. v. Planning Bd. of Cambridge, 27 Mass. App. Ct. 491, 493 (1989); Marashlian v. Zoning Bd. of Appeals of Newburyport, 421 Mass. 719, 723 (1996).
- Standing must be based on a claimed injury that is “special and different from the concerns of the rest of the community.” Cohen v. Zoning Bd. of Appeals of Plymouth, 35 Mass. App. Ct. 619, 622 (1993).
- The injury claimed must stem from an interest protected by the Zoning Act. Sheehan v. Zoning Bd. of Appeals of Plymouth, 65 Mass. App. Ct. 52, 55 (2005).
- Chapter 40B (G.L. c. 40B, § 21)
 - While many of the principles governing standing under Chapter 40A apply to appeals of comprehensive permits issued pursuant to Chapter 40B, unlike traditional zoning statutes, Chapter 40B does not protect against decreases in property values and therefore such a decline cannot form a basis for standing. Standerwick v. Zoning Bd. of Appeals of Andover, 447 Mass. 20 (2006).
- Certiorari Appeals (G.L. c. 249, § 4)
 - A plaintiff must demonstrate that (1) a judicial or quasi-judicial proceeding; (2) a lack of all other reasonably adequate remedies; and (3) a substantial injury or injustice arising from the proceeding under review. G.L. c. 249, § 4.
 - The “substantial injury” or “manifest injustice” must be distinct from one affecting the public in general. Friedman v. Conservation Comm’n of Edgartown, 62 Mass. App. Ct. 539, 545 (2004).

III. “TEN CITIZENS SUITS”

- Intervention in Adjudicatory Proceedings (G.L. c. 30A, § 10A)
 - The Administrative Procedure Act authorizes ten citizens to intervene in an adjudicatory proceeding in which “damage to the environment” is or might be at issue.
 - “Damage to the environment” is defined in G.L. c. 214, § 7A (see below).
 - The Streamlined Permitting Bill amended this provision to require that, in a proceeding pursuant to Chapter 91, at least five of the 10 persons shall reside in the municipality in which the license or permitted activity is located.
- G.L. c. 214 § 7A
 - Provides for an action in Superior Court to enjoin “damage to the environment” that is “occurring or is about to occur.” Statute authorizes award of plaintiffs’ attorneys’ fees.

- Three keys:
 1. Requires ten persons (including corporations and other listed entities);
 2. There must be a finding of some imminence—that the harm is “occurring or is about to occur”; and
 3. The “damage to the environment” must constitute a violation of a statute, ordinance, by-law or regulation the major purpose of which is to prevent or minimize damage to the environment.”
- Wetlands Appeals to DEP:
 - Any ten residents of the city or town where proposed work is to be located may request DEP to issue a superseding determination or order. 310 CMR 10.05(7).
 - Under the current regulations, any ten residents’ group that had participated in prior permit proceedings, regardless of standing, may bring an appeal of a superseding determination or order issued by DEP. 310 CMR 10.05(5)(j).
 - Under DEP’s proposed amendments, the right to file such an appeal would be restricted to aggrieved persons who had previously participated in permit proceedings, in addition to the applicant, landowner or conservation commission. Ten residents’ groups still would be able to intervene in pending appeals.

IV. TIME FRAMES FOR TAKING APPEALS

Under the Zoning Act:

- Appeal of a decision of the Building Inspector to the Zoning Board of Appeals must be filed within **30 days** of the date of the decision. G.L. c. 40A, § 15.
- Appeal of a decision of the ZBA to Superior or Land Court must be filed within **20 days** of the date on which the decision is filed in the Town Clerk’s office. G.L. c. 40A, § 17.

Wetlands Appeals to DEP:

- An appeal to DEP of a decision such as an Order of Conditions or Determination of Applicability under the WPA must be filed within **10 business days** of the issuance of the decision. 310 CMR 10.05(7).
- An appeal to DEP based on a Conservation Commission’s failure to act may be made up to **70 days** of the expiration of the time period for action.

If requested to issue a Superseding Determination of Applicability, DEP is to act with **35 days** of the request. 310 CMR 10.05(7)(e).

- If requested to issue a Superseding Order, DEP is to act within **70 days** of the request, unless MEPA review is required or DEP requests further information on the matter.
- After DEP issues a Superseding Order or Superseding Determination, certain parties, including the applicant and ten residents' groups, may request a DEP adjudicatory hearing within **10 days**. 310 CMR 10.05(7)(j).
- It is within DEP's discretion to transfer cases for adjudicatory hearings to the Division of Administrative Law Appeals ("DALA").
- DEP has proposed amendments to its wetlands regulations with the stated goals of reducing the time it takes to resolve wetlands appeals, minimizing frivolous appeals, and limiting who may initiate an appeal (see appendix).

Wetland Appeals to Superior Court:

- Certiorari appeals of a decision under a local wetland bylaw must be filed within **60 days**. G.L. c. 249, § 4.

Challenge of a MEPA Decision in Superior Court:

- In order to bring a challenge of a decision that no Environmental Impact Review ("EIR") is required or that a single or final EIR does not comply with MEPA and its regulations, a party must provide notice of intent to challenge the act within **60 days** of the publication of the challenged decision in the *Environmental Monitor*.
- Any action challenging the decision that a private project requires an EIR must be filed no later than **30 days** following the first issuance of a permit, grant of financial assistance or closing of a land transfer; or **60 days** after publication of the decision in the *Environmental Monitor*.
- Any action alleging that a single or final EIR for a private project fails to comply with MEPA and its regulations must be filed within **30 days** following the first issuance of a permit, grant of financial assistance or closing of a land transfer.
- Any action alleging that there was an improper decision that a public project requires an EIR or that a single or final EIR for a public project fails to comply with MEPA and its regulations must be filed no later than **120 days** after publication of notice in the *Environmental Monitor*.

Appeals to the Appeals Court:

- An appeal of a decision in Superior Court or Land Court must be filed with the Appeals Court within **30 days** of the decision.

V. TIME FRAMES FOR LITIGATING APPEALS

- Superior Court
 - Fast (“F”) Track: 16 months to trial + 6 months to decision.
 - Average (“A”) Track: 33 months to trial + 3 months to decision.
 - Accelerated (“X”) Track: applies to judicial review of administrative proceeding to be resolved on the pleadings, and requires that cases shall be resolved and judgment issued within 12 months of the filing of the complaint.
- Land Court
 - Tax (“T”) Track: 14 months to trial.
 - Fast (“F”) Track: 16 months to trial.
 - Average (“A”) Track: 31 months to trial.
 - Accelerated (“X”) Track: discretionary with Court.
 - Land Court Permit Session (see below).
- A Motion to Expedite or Shorten Time may be employed to reduce the timeline set by a Tracking Order.

VI. MEDIATION/ARBITRATION/SETTLEMENT

- By agreement of the parties, any pending appeal may be settled or sent to mediation or arbitration.
- Any case at DALA may be assigned to mediation at the request of both parties. 801 CMR 1.04.
- In the case of ongoing litigation, an exception to the Open Meeting Law (G.L. c. 39, § 23B) allows meetings to be held between an applicant, permit-granting authority and the mediator regarding settlement.

VII. LAND COURT PERMIT SESSION

- The Permit Session of the Land Court may hear expedited appeals affecting any project involving 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area, or both.

- The Permit session may hear a broad range of claims impacting such a project, including:
 - Appeals of any municipal, regional, or state permit, order, certificate or approval or denial including those under G. L. c. 21, G.L. c. 30, §§ 61 to 62H, G.L. c. 30A, 40A to 40C, 40R, 41, 43D, 91, 131, 131A or G.L. c. 249, §§ 4 and 5, or Chapter 664 of the Acts of 1956, or any local bylaw or ordinance;
 - Appeals seeking equitable or declaratory relief designed to secure or protect the issuance of any permit or approval or challenging the interpretation or application of any regulations, statutes, bylaws, ordinances concerning any permit or approval;
 - Claims under G.L. c. 231, § 6F, or for malicious prosecution, abuse of process, intentional or negligence interference with advantageous relations concerning any permit or approval; and
 - Any other claims between persons holding any right, title, or interest in land and any board, commission, authority, or public official relating to permit or approval.

- Cases in the session are assigned to a single judge and assigned to one of three tracks:
 - Track A: 12 months to trial + 4 months to decision.
 - Track F: 9 months to trial + 3 months to decision.
 - Track X: 6 months to trial + 2 months to decision.

Source: DEP's Summary of Proposed Revisions to 310 CMR 10.00: Wetlands Protection Act (www.mass.gov/dep/service/regulations/proposed/wlapbg.doc) October 1, 2007

BACKGROUND TO 2007 CHANGES TO WETLAND APPEALS REGULATIONS

1. Introduction

MassDEP typically receives more than 80 wetlands appeals each year. Many of these cases are resolved within 6 months through settlement and prescreening conferences. Many take more than a year to resolve. On March 1, 2007, Governor Patrick directed MassDEP to reform the wetlands appeals process to allow for more timely action on these appeals, without reducing the level of environmental protection. The revisions to the appeal process explained below keep those parts that work well; prescreening, prefiled testimony and prior participation. But the revisions also make several fundamental changes by limiting the parties who can initiate an appeal, requiring parties to present their evidence early in the proceedings, and establishing a 6 month deadline for the appeal to be resolved. In addition, once these new regulations are in place, MassDEP will hear and decide these appeals in-house using its experienced staff and counsel, retaining the option to transfer cases to the Division of Administrative Law Appeals, on a case-by-case basis where timely resolution of a matter will benefit from DALA's assistance.

2. Background

Following what for many projects is an already time-consuming and thorough review by a local conservation commission MassDEP handles review of wetlands decisions through a three-step process. First, a MassDEP regional staff person typically conducts an informal site visit, reviews documents, and issues a superseding decision. Second, a landowner, abutter, aggrieved person, ten resident group, or conservation commission can appeal the regional decision, requesting an adjudicatory hearing consistent with the procedures set out in M.G.L. c. 30A and 310 CMR 1.00. An appeal is prescreened at MassDEP by a Presiding Officer who attempts to resolve the matter within 90 days. If an appeal is not resolved during this time period the appeal is transferred to the Division of Administrative Law Appeals (DALA). A DALA magistrate presides over a formal, "trial-type hearing" in which witnesses present testimony under oath and are subject to cross-examination. After the hearing is concluded, the magistrate issues a Recommended Decision. Third, the Commissioner reviews the magistrate's Recommended Decision, and either issues the Decision as written, clarifies legal findings, overturns it, or sends it back to the magistrate for further fact-finding. When the Commissioner issues her Final Decision, the permit is final and effective.

There is general consensus that the second step of this process, the trial-type proceeding, often causes significant permitting delays and diverts MassDEP staff time that could be spent on other pressing priorities. It also provides some opponents of a

project with an opportunity to defeat it through additional delay and expense, rather than on the merits.

MassDEP and the Executive Office of Energy and Environmental Affairs (EOEEA) convened an advisory group chaired by the general counsels of MassDEP and EOEEA, that consisted of attorneys with substantial experience in wetland proceedings. The committee considered ways of simplifying the procedures as well as an array of potential reforms.

3. The Legal Framework

The Wetlands Protection Act, G.L. c. 131, section 40, requires an applicant that seeks to work in or near wetlands to file a Notice of Intent with the local conservation commission, and to obtain an Order of Conditions before proceeding with the work. The Act mandates that the local conservation commission provide notice and a hearing before issuing a decision. The Act also allows the applicant, an aggrieved person, an abutter, a “ten resident” group, or the Department itself to request a superseding order from the Department. However, the Act does not require MassDEP to hold a hearing prior to issuing a superseding decision, and clearly does not require MassDEP to conduct a trial-type hearing before issuing a Final Decision.

Also relevant to the legal inquiry is the State Administrative Procedures Act, G.L. c. 30A. That statute defines an “adjudicatory proceeding” as “a proceeding before a [state] agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined, after opportunity for agency hearing.”

Neither the Wetland Protection Act nor any other statute requires MassDEP to hold a hearing before issuing a superseding decision on a wetlands matter. Thus, the only relevant legal question is whether a constitutional provision requires such a hearing. An extensive review of Chapter 30A and case law indicates that there is no constitutional requirement that MassDEP hold a hearing for an appeal brought by a nonaggrieved-abutter, a conservation commission, or a ten resident group. Case law provides no clear answer as to whether a hearing is constitutionally required for an appeal brought by an applicant or a person who is aggrieved by a decision. However, as a policy matter MassDEP believes that providing a hearing in such instances is consistent with common law principles. See *Yerardi’s Moody Street Restaurant v. Board of Selectmen of Randolph*, 19 Mass. App. Ct. 296, 303 (1985) (“in this Commonwealth the right to a hearing where government exerts power upon an individual in a matter of consequence has been related, on occasion, not strictly to the Constitution, but to an ethic that pervades our legal system.”)

4. The Reform

The comprehensive reform contained in the 2007 regulations is intended to accomplish three principal results.

First, the new regulations change the policy of allowing persons with no legal standing to bring appeals. Under the current system, persons or entities with no legal standing to request an adjudicatory hearing (*e.g.*, abutters, ten resident groups, conservation commissions) are allowed to do so as of right. Under the new regulations, only an applicant who filed the notice of intent, an aggrieved person, and a conservation commission may file an appeal. While not legally required, the new regulations continue to allow conservation commissions to initiate appeals. Conservation commissions play a very important role in the implementation of the Wetlands Protection Act and have a stake in the outcome of cases that they have ruled upon. The regulations also allow a group of ten residents, or a person who may be aggrieved by the outcome of the appeal to intervene in an appeal.

Second, the new regulations require the appealing party and other parties to submit their evidence early in the process. Under the current system, the appealing party must file a Claim for an Adjudicatory Appeal, and the claim is deemed sufficient if it identifies in general terms the grounds for the appeal so as to give notice as to what issues are in dispute. The claimant does not have to submit evidence to support the claim until later in the process, and the claim can only be dismissed if, assuming all facts alleged in the claim are true, the claimant is not entitled to relief as a matter of law. As a result, an appeal that is not resolved in prescreening may take many months before a lack of evidentiary support is brought to light and results in the termination of the appeal.

The new regulations fundamentally change this practice for wetlands appeals. Under the new regulations, an appealing party must present its case in two parts. First, a party must file notice of the appeal, similar to a Claim filed today. Within approximately two and one half months of the filing of the appeal, the appealing party must submit its “direct case.” The direct case must identify the factual and legal bases for the appeal, *and must contain all of the evidentiary support for the appeal.* The regulations also establish timelines for other parties to submit their direct cases, and for parties to submit rebuttal testimony. This deadline for filing the direct case is reasonable, given that the appealing party will have had the opportunity to learn about the project at the local conservation commission stage and the superseding decision stage, and line up outside assistance during that typically lengthy time period. To ensure that the process is fair for opponents of the project, the new regulations mandate that the applicant provide information about the project, and allow a site visit, within five days of a request.

This reform promotes several important objectives. First, it reduces the incentive to file an appeal that lacks a sound factual and legal basis. Second, it ensures that all parties know what the disputed issues are at an early stage in the process, which facilitates settlement and hearing preparation. Third, it enables the hearing to be short and productive, and focused primarily on cross-examination.

Third, the new regulations establish that wetland appeals will be resolved within six months, rather than the current practice of one year or more. In order to achieve the six-month goal, the regulations include presumptive timelines for the major events of the appeal, and other efficiencies, such as issuing notice of the hearing date as soon as the appeal is filed, rather than scheduling the date many months into the process.

There are three existing components of the appeal process that are built into the 6-month wetlands appeal process. Prescreening will continue to be utilized, and by regulation will be scheduled 30 days after the appeal is filed. Prefiled testimony will also be maintained, in the form of the parties' "direct case" described below, due 45 days after the prescreening in any matter not resolved in prescreening. This practice will allow the presiding officer to identify issues, settle or resolve a case before parties have invested time and effort in supporting their case, or to set a schedule for hearing if the case is not resolved. The hearing will occur approximately 120 days after the appeal is filed, with a final decision from the Commissioner coming approximately two months later. The requirement of prior participation in the Conservation Commission or MassDEP regional proceeding will also be retained to ensure that parties have made reasonable effort to exhaust all remedies.

By keeping what works and revising what does not, these reforms will ensure that parties who have legal standing to appeal will be heard, parties will have to provide their evidence early in the process, and Final Decisions will be issued within 6 months of the appealed decision.

5. Pending Cases

MassDEP has discussed the status of pending cases at DALA with senior staff of the Executive Office for Administration and Finance. A&F has informed MassDEP that it will work with DALA to expedite the resolution of pending cases.

6. Notes to Reviewers

Appellants: This proposal limits those parties who can initiate an appeal. That group includes applicants, property owners (including easement holders), and persons aggrieved. Due to conservation commission's interest and significant role in the process, a conservation commission may also initiate an appeal. 10 residents may seek to intervene in an appeal, once another party initiates it. We are interested in comments on this change in process.

Timeline: The practical effect of having a 6-month timeline in the regulation will be that parties will need to seriously explore settlement opportunities in advance of prescreening and at prescreening. Parties will be required to present their full cases early in the process, but they will not have to do so until 45 days after the prescreening. Our goal in breaking out the timeline in this manner is to front load settlement opportunities followed shortly thereafter with presentation of a parties' case when a case does not

settle. Settlement is not precluded at a later time, but later settlement will not enable the parties to delay moving forward to hearing. We are interested in comments on whether draft regulation breaks down the timelines as effectively as possible for most cases.

Document Requests: These regulations provide that the applicant will make their file available to parties within 5 days of a request. This addition to the regulations reflects the expedited nature of the appeal timeline and seeks to take advantage of the fact that the applicant, will have the relevant documents available. We are interested in comments on whether an applicant could make the files available in this amount of time.

Chapter 205 of the Acts of 2006

AN ACT RELATIVE TO STREAMLINING AND EXPEDITING THE PERMITTING PROCESS IN THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith expedite the permitting process in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. To provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2006 the sums set forth herein are hereby appropriated from the General Fund unless specifically designated otherwise herein or in said appropriation acts, for the several purposes and subject to the conditions specified herein or in said appropriation acts, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2006 provided, that the sums shall be in addition to any amounts previously appropriated and made available for the purposes of the items; and provided further, that all funds appropriated in this section shall be available for expenditure through June 30, 2007.

SECTION 2. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth herein are hereby appropriated from the General Fund unless specifically designated otherwise herein, for the several purposes and subject to the conditions specified herein, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2006 provided, that the sums shall be in addition to any amounts previously appropriated and made available for the purposes of the items; and provided further, that all funds appropriated in this section shall be available for expenditure through June 30, 2007.

EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT.

Office of the Secretary.

7002-0013 For the streamlining of state and local permitting processes; provided, that not less than \$3,000,000 shall be expended for technical assistance grants as established in subsection (b) of section 3 of chapter 43D of the General Laws to be administered by the interagency permitting board; provided further that not less than \$500,000 shall be expended for the creation of the Massachusetts permit regulatory office and the state permit ombudsman who will direct the interagency permitting board to conduct state permit evaluation and to overhaul state agency services for streamlined and expedited permitting; provided further, that the analysis and evaluation shall include input from the

executive office of environmental affairs, the executive office of public safety, the executive office of transportation, the chairman of the commonwealth development coordinating council and the executive office of economic development; provided further, that not less than \$500,000 shall be expended by the Massachusetts Development Finance Agency for permitting specialists in each of their regional offices, in consultation with the Massachusetts permit regulatory office to work with new and existing businesses to assist in their relocation and expansions permitting, licensing, and regulatory processes, to help foster job creation efforts within the municipality and region \$4,000,000

SECTION 3. Section 4H of chapter 7 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following 2 paragraphs:-

The division of administrative law appeals shall prepare annually a report concerning all appeals filed with the division during the preceding calendar year. It shall be the responsibility of the chief administrative magistrate to cause a statistical list to be maintained of all matters assigned to each administrative magistrate as relating to any appeals required by law. The report shall contain, at a minimum, the following information: the number of new appeals filed and received; the names of all parties to each appeal; the type of each appeal; the date of submission and of disposition of the appeal; its disposition, whether by decision, withdrawal, settlement or dismissal, the number of appeals currently pending, the total number of simplified hearings; and the length of time from receipt of the appeal by the division of administrative law appeal until a written recommended final decision, summary decision, or other interlocutory ruling is issued, including the basis for any case at the division for longer than 6 months. Each calendar year the original of the report shall be submitted to the office of the house and senate clerk and to the house and senate committee on ways and means as well as to the director of the Massachusetts permit regulatory office in section 3H of chapter 23A.

It shall be the responsibility of the chief administrative magistrate to verify that written recommended final decisions are issued within 90 days after the record is closed.

SECTION 4. Chapter 23A of the General Laws is hereby amended by striking out section 3H, as so appearing, and inserting in place thereof the following section:—

Section 3H. The governor shall appoint the director of the Massachusetts permit regulatory office within the executive office of economic development. The director shall have experience with permitting and business development. The director shall serve as the state permit ombudsman to new and expanding businesses, to provide one-stop licensing for businesses and development in order to streamline and expedite the process of obtaining state licenses, permits, state certificates, state approvals, and other requirements of law, but not including divisions of the state secretary's office. The ombudsman shall facilitate communication between the municipality and state agencies. The Massachusetts permit regulatory office shall consult with each

regional office of the Massachusetts office of business development and each regional office of the Massachusetts Development Financing Agency, in order to better serve local businesses.

There shall be a permitting specialist within each of the 5 regional offices of the Massachusetts Development Finance Agency. It shall be the responsibility of the specialist to work with new and existing businesses to assist in their selection, application, and finalizing of permits, local approvals, licensing and regulations. The specialists shall communicate with the regional planning agencies and the municipal officials responsible for local review procedures, to determine the municipal perspective on the proposed project.

The ombudsman shall file an annual report with the house and senate committees on ways and means by January 1 on the activities of the Massachusetts permit regulatory office and the interagency permitting board, including legislative recommendations on business development and expansion efforts.

SECTION 5. Said chapter 23A is hereby further amended by adding the following section:—

Section 62. There shall be an interagency permitting board within the department of economic development. The members of the board shall be comprised of the state permit ombudsman who will serve as the chair of the interagency permitting board, the secretary of economic development, the secretary of transportation, the secretary of environmental affairs, the secretary of public safety, the director of the department of housing and community development, the director of the department of business and technology, the director of the department workforce development, the director of the department of consumer affairs and business regulation, the chair of the commonwealth development coordinating council, and the executive director of the Massachusetts Development Finance Agency; or their designees. Six members shall be a quorum for the transaction of business. The chair shall communicate with municipal officials responsible for local review procedures to determine the municipal perspective on the proposed project, and to facilitate communication between the municipality and state agencies. The interagency permitting board shall consult with each regional office of the Massachusetts office of business development as well as each regional planning agency, in order to better serve local businesses. At the direction of the chair, the board shall meet no less than 8 times a year, and shall monitor the development of priority development sites as provided for in chapter 43D and investigate ways in which to expedite priority development site projects. The board shall evaluate state agency permit procedures and recommend changes for improved efficiency. The board shall administer the technical assistance grants program established in subsection (b) of section 3 of chapter 43D of the General Laws. The secretary of economic development shall work with the chair of the interagency permitting board and senior staff members to develop a recommended format for an application form and procedure which shall be used by all executive offices when possible.

SECTION 6. Chapter 29 of the General Laws is hereby amended by inserting after section 2WWW, inserted by section 31 of chapter 123 of the acts of 2006, the following section:—

Section 2XXX. There shall be established and set upon the books of the commonwealth a separate fund to be known as the District Local Technical Assistance Fund. Amounts credited to the fund shall be administered by the bureau of municipal assistance within the department of revenue which shall determine that the funds are used for activities consistent with the purpose of this act and the Massachusetts management and accounting reporting system, so-called. The amounts shall be used solely for the administration and implementation of this section.

One hundred per cent of the monies deposited in the district local technical assistance fund, but not more than \$2,800,000 in the aggregate in any fiscal year, shall be used by the department of housing and community development to provide grants to regional planning agencies for technical assistance to municipalities and to develop a state-wide permitting model. The department shall grant each regional planning district created under chapter 40B or by special act a fixed base allocation of \$150,000, except that the metropolitan area planning council shall receive a base allocation of \$200,000, the Martha's Vineyard commission shall receive a full annual allocation of \$100,000, and the Nantucket Planning and Economic Development Commission shall receive an annual allocation of \$50,000. One-half of the remainder of the annual disbursement of net cash proceeds to the department of housing and community development for technical assistance grants under this section shall be allocated among said entities based on the percentage of the commonwealth's population served by each entity, with the other half allocated based on the percentage of the commonwealth's communities served by each entity. Each regional planning agency receiving the funds shall provide matching resources of not less than 10 per cent, no more than 1/2 of which may be in-kind services, and shall annually file with the department of housing and community development, the house and senate committees on ways and means and constituent local governments a report detailing their expenses and program activities.

Technical assistance services funded by these grants shall be provided at the request of a municipality in any subject within regional planning expertise, including but not limited to: zoning and permitting; economic development; land use planning, conservation planning, and water resources; municipal management; public safety planning and emergency response; transportation; data management, information technology, geographic information systems, statistical trends and modeling; and other land use and smart growth issues.

SECTION 7. Section 10A of chapter 30A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the first sentence the following 2 sentences:- In any proceeding pursuant to chapter 91, at least 5 of the 10 persons shall reside in the municipality in which the license or permitted activity is located. The intervention shall clearly and specifically state the facts and grounds for intervening and

the relief sought, and each intervening person shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative.

SECTION 8. Section 9 of chapter 40A of the General Laws, as so appearing, is hereby amended by inserting after the fifteenth paragraph the following 3 paragraphs:—

In any city or town that accepts this paragraph, zoning ordinances or by-laws may provide that research and development uses, whether or not the uses are currently permitted as a matter of right, may be permitted as a permitted use in any non-residential zoning district which is not a residential, agricultural or open space district upon the issuance of a special permit provided the special permit granting authority finds that the uses do not substantially derogate from the public good.

“Research and development uses” shall include any 1 or more of investigation, development, laboratory and similar research uses and any related office and, subject to the following limitations, limited manufacturing uses and uses accessory to any of the foregoing.

“Limited manufacturing” shall, subject to the issuance of the special permit, be an allowed use, if the following requirements are satisfied: (1) the manufacturing activity is related to research uses; (2) no manufacturing activity customarily occurs within 50 feet of a residential district; and (3) substantially all manufacturing activity customarily occurs inside of buildings with any manufacturing activities customarily occurring outside of buildings subject to conditions imposed in the special permit.

SECTION 9. Section 11 of said chapter 40A, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following 3 paragraphs:—

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk.

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the

variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit- accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.

SECTION 10. Chapter 40B of the General Laws is hereby amended by adding the following section:—

Section 30. (a) There shall be within each regional planning district created under this chapter or by special act, a technical assistance center for the delivery of coordinated, comprehensive, and continuing technical services to and among local governments for the purpose of expediting permitting.

The board of executive directors of the Massachusetts association of regional planning agencies shall develop a state-wide permitting model that municipalities may adopt. The model processes shall expedite local permitting and zoning consistent with chapter 43D.

The board shall direct each regional planning agency to conduct an evaluation of its member cities' and towns' permitting processes and to report its findings to the board. It shall be the responsibility of each regional planning agency to work under the guidance of the board to assist in the development of a state-wide model. The board shall report to the house and senate committees on ways and means not later

than November 1, 2007, on recommendations necessary to implement the state-wide model proposed to effectuate such expedited permitting.

The regional planning districts shall, at the request of a member city or town, provide the city or town services and assistance to:-

- (1) reduce unnecessary delays and create certainty and predictability as well as promote an efficient and timely appeals process;
 - (2) create a positive regulatory culture with a bias toward making decisions;
 - (3) conduct on-going staff training to address applicant questions;
 - (4) select sites for expedited permitting, while identifying potential issues, concerns, or problem areas;
 - (5) prepare applications for approval of the sites;
 - (6) establish clear criteria for determining the completeness of permit applications;
 - (7) update or eliminate conflicting, cumbersome, and redundant permit processes and procedures;
 - (8) examine and redraft zoning by-laws to aid in the balanced development of the community; and
 - (9) develop plans and incentives for residential and commercial development, while taking steps to mitigate the environmental and transportation impacts of new growth.
- (b) A city or town shall not be required to receive technical assistance from a regional planning agency in order to participate in the expedited permitting process, pursuant to chapter 43D.

SECTION 11. The General Laws are hereby further amended by striking out chapter 43D and inserting in place thereof the following chapter:—

CHAPTER 43D.
Expedited Permitting.

Section 1. Notwithstanding any general or special law, charter provision, by-law or ordinance to the contrary this chapter shall apply upon its acceptance by a city or town.

Section 2. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Governing body”, in a city having a Plan D or Plan E charter the city manager and the city council and in any other city the mayor and city council, and in towns the board of selectmen.

“Interagency permitting board”, the board, as described in section 62 of chapter 23A, established to review and approve or deny municipal priority development site proposals and to grant and administer technical assistance grants.

“Issuing authority”, a local board, commission, department or other municipal entity that is responsible for issuing permits, granting approvals or otherwise involved in land use development including redevelopment of existing buildings and structures.

“Permit”, a permit formal determination, order of conditions, license, certificate, authorization, registration, plan approval, zoning relief or other approval or determination with respect to the use or development of land, buildings, or structures required by any issuing authority including but not limited to those under statutory authorities contained in chapter 40A, sections 81A to 81J, inclusive, and sections 81X to 81GG, inclusive, of chapter 41, sections 40 and 40A of chapter 131, sections 26 to 32, inclusive, of chapter 111, chapter 40C, sections 13 and 14 of chapter 148, chapter 772 of the acts of 1975, or otherwise under state law or local by-law or ordinance, and all associated regulations, by-laws and rules, but not including building permits or approvals pursuant to sections 81O to 81W, inclusive, of chapter 41. “Permit” shall not include the decision of an agency to dispose of property under its management or control; predevelopment reviews conducted by the municipal office of permit coordination or a technical review team; or permits granted by the Massachusetts Water Resources Authority.

“Priority development site”, a privately or publicly owned property that is: (1) commercially or industrially zoned; (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and (3) designated as a priority development site by the board. Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites should be located adjacent to areas of existing development or in under utilized buildings or facilities, or close to appropriate transit services.

“Secretary”, the secretary of the executive office of economic development.

“Technical review team”, an informal working group consisting of representatives of the various issuing authorities designed by the head of their issuing authority to review requests submitted under this chapter. The technical review team shall not include members of the zoning board of appeals.

Section 3. (a) For a property to receive a designation as a priority development site, the governing body, after approval by a town meeting in a town, shall file a formal proposal with the board. The proposal shall include: (1) a detailed description of the property; (2) good faith commitment to comply with this chapter; (3) written authorization of the property owner; and (4) at the discretion of the governing body, a request for a technical assistance grant.

(b) All requests for a technical assistance grant shall include a detailed description of how the grant will be used and shall be submitted with the formal proposal as described in subsection (a). The grants shall be used to implement the requirements of this chapter, which shall include but not be limited to, professional staffing assistance, local government reorganization, and consulting services. The amount of any single grant awarded from the fund, shall not exceed \$150,000. The board shall review and determine eligibility of the proposals and approve requests within 60 days of receipt of the proposals. In special circumstances where a specific and originally unforeseen need can be demonstrated, the governing body may be eligible for an additional technical assistance grant if approved by the board and the secretary.

Section 4. Within 120 days of the acceptance of this chapter the governing body shall implement the following: (a) appoint a single point of contact to serve as the primary municipal liaison for all issues relating to this chapter; (b) amend rules and regulations on permit issuance to conform to this chapter; (c) along with the issuing authority, collect and ensure the availability of all governing statutes, local ordinances, by-laws, regulations, procedures and protocols pertaining to each permit; (d) establish a procedure whereby the governing body shall determine all permits, reviews and predevelopment reviews required for a project; all required scoping sessions, public comment periods and public hearings; and all additional specific applications and supplemental information required for review, including, where applicable, the identification of potential conflicts of jurisdiction or substantive standards with abutting municipalities and a procedure for notifying the applicant; and (e) establish a procedure, following the notification of the required submissions for review as set forth in clause (d), for determining if all the materials required for the review of the project have been completed.

Section 5. (a) Priority development permit reviews and final decisions shall be completed within 180 days subject to the extension herein. The time period shall begin the day after the issuance of the notice that the application materials are complete pursuant to clause (e) of section 4. The governing body shall notify the applicant in writing within 20 business days from receipt of the completed form of additional information needed or requirements that it may have. The governing body may provide for pre-application conferences to facilitate this process.

(b) The resubmission of the application or the submission of such additional information required by the governing body shall commence a new 30-day period for review of the additional information.

(c) If, at any time, an issuing authority determines that a permit or other predevelopment review is required which it did not previously identify, it shall immediately notify the applicant by certified mail and shall where public notice and comment or hearings are not required complete action on the application filed for the previously unidentified permit within 30 days of receipt of the completed application or not later than the latest required decision date for a pending permit, whichever is later. Where public notice and comment or hearing are required for the previously

unidentified permit, the required action date shall be not later than 30 days from the later of the close of the hearing or comment period, which shall be scheduled to commence as quickly as publication allows. The failure of the governing body to notify an applicant of the requirement of a public hearing or comment period shall not constitute a waiver of the requirement.

Section 6. (a) In accordance with this chapter, the governing body may establish an informal procedure to allow permit applicants to obtain advisory review by a technical review team of any issue of law, policy, procedure, or classification that the applicant claims is in dispute between the applicant and the issuing authority which has affected or will affect the ability of the applicant to obtain timely review of the permit application. The procedures shall provide for filing a request for review by the applicant, representation by the issuing authority on the technical review team, and a period not to exceed 30 days for issuance of a decision. Use of this procedure shall toll the review time periods. An advisory determination or ruling made pursuant to a procedure established in this section shall not constitute a decision or final action and shall not be subject to any right of administrative or judicial review.

(b) The governing body may establish an additional and separate fee, in addition to any fees that may be assessed by an issuing authority in order to carry out its duties under this chapter, and may deposit the fees in a special account to be maintained by the treasurer. The special account, including any accrued interest shall be expended at the direction of the governing body, without further appropriation; but, the funds shall be expended only in carrying out its responsibilities under this chapter.

Section 7. Failure by any issuing authority to take final action on a permit or approval within the 180-day period or extended time, if applicable, shall be considered a grant of the relief requested of that authority. In that event, within 14 days after the date of expiration of the time period, the applicant shall file an affidavit with the city or town clerk, attaching the application, setting forth the facts giving rise to the grant and stating that notice of the grant has been mailed, by certified mail, to all parties to the proceedings and all persons entitled to notice of hearing in connection with the application.

Section 8. The grant shall not occur where: (1) the governing body has made a timely determination that the application is not complete in accordance with its requirements and notified the applicant as set forth herein and the applicant has not made a timely response to complete the application; (2) the governing body has determined that the final application contained false or misleading information; or (3) the governing body has determined that substantial changes to the project affect the information required to process the permit application have occurred since the filing of the application.

Section 9. The 180 day time period may be waived or extended for good cause upon written request of the applicant with the consent of the governing body or upon written request of the issuing authority with the consent of the applicant. The 180-day period may be extended for up to 30 days by the governing body in the event an additional permit or other predevelopment review is required in accordance with subsection (c) of section 5, if the requirement for the previously unidentified permit or review has been determined no less than 150 days after the issuance of the notice of completeness. The 180 day time period shall be extended when the issuing authority determines either: (1) that action by another federal, state or municipal government agency is required before the issuing authority may act; (2) that judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application; or (3) that enforcement proceedings that could result in revocation of an existing permit for that facility or activity and denial of the application have been commenced. In those circumstances, the issuing authority shall provide written notification to the secretary. When the reason for the extension is no longer applicable, the issuing authority shall immediately notify the applicant, and shall complete its decision within the time period specified in this section, beginning the day after the notice is issued. An issuing authority may not use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application and met all other obligations in accordance with this chapter. If the Martha's Vineyard commission as described in chapter 831 of the acts of 1977, or the Cape Cod commission, as described in chapter 716 of the acts of 1989, require or allow referral of a permit application, the 180-day time period as described in this chapter shall be suspended upon receipt of the permit application. The 180-day time period shall recommence at the completion of the regional commission's review; but if either commission denies a regional permit on a priority development site, section 7 shall not apply and the issuing authority, upon receipt of the denial notice, shall permanently cease the 180 day time period.

Section 10. (a) Appeals from issuing authority decisions or from a grant by operation of law shall be filed within 20 days after the last individual permitting decision has been rendered or within 20 days after the conclusion of the 180 day period as set forth in subsection (a) of section 5, whichever is later. The 180 day period shall be increased by the number of days in any extension granted under this chapter.

(b) A person aggrieved by a final decision of any issuing authority, or by the failure of that authority to take final action concerning the application within the time specified, whether or not previously a party to the proceeding, or any governmental officer, board, or agency, may appeal to the division of administrative law appeals by bringing an action within 20 days after a written decision was or should have been rendered. Appeals from decisions of multiple permitting authorities shall be filed simultaneously and shall be consolidated for purposes of hearing and decision. This section shall not apply to appeals pursuant to sections 40 and 40A of chapter 131, which shall continue to be appealed in accordance with said chapter 131, chapter 30A and applicable regulations.

(c) When hearing appeals under this chapter, the division shall revise its rules, procedures and regulations to the extent necessary to accord with the requirements of this chapter.

(d) The division shall render a final written decision within 90 days of the receipt of the appeal. Thereafter, an aggrieved party may appeal to the superior court department by bringing an action within 20 days after the division has rendered a final decision.

Section 11. (a) Permits shall not transfer automatically to successors in title, unless the permit expressly allows the transfer without the approval of the issuing authority.

(b) Issuing authorities having substantive jurisdiction over permit issuance may develop procedures for simplified permit renewals and annual reporting requirements. If the procedures are not developed, renewals of permits shall be governed by the same procedures and timelines as specified in conjunction with this chapter.

(c) Issuing authorities shall make reasonable effort to review permit modification requests within as short a period as is feasible to maintain the integrity of the expedited permitting process. An issuing authority shall inform an applicant within 20 business days of receipt of a request whether the modification is approved, denied, determined to be substantial or additional information is required by the issuing authority in order to issue a decision. If additional information is required, the issuing authority shall inform an applicant within 20 business days after receipt of the required additional information whether the modification is approved or denied or that additional information is still required by the issuing authority in order to render a decision. In cases in which the issuing authority determines that a requested modification is substantial, the original review period for permit categories as set forth in section 5 shall apply.

(d) Permits issued pursuant to this chapter shall expire 5 years from the date of the expiration of the applicable appeal period unless exercised sooner. Where permits cover multiple buildings, commencement and continuation of construction of 1 building shall preserve the permit validity. Changes in the law subsequent to the issuance of permits based upon the priority proposal shall not invalidate the permits or review certificates. Nothing in this section shall limit the effectiveness of section 6 of chapter 40A.

Section 12. A priority development site shall be eligible for the following:

(a) priority consideration for community development action grants, and public works economic development grants;

(b) priority consideration for other state resources such as quasi-public financing and training programs;

- (c) brownfields remediation assistance;
- (d) enhanced marketing by the Massachusetts office of business development, and the Massachusetts alliance for economic development; and
- (e) technical assistance provided by the regional planning council.

Section 13. (a) Technical assistance funding is intended to be a one-time grant to municipality, if the municipality has adopted expedited permitting as provided in sections 3 to 11, inclusive.

(b) A municipality shall be eligible for technical assistance funding, which may be less than the previous amounts awarded, for a second time if it has identified and successfully permitted one priority development site.

Section 14. Any required reviews established under sections 61 to 62H, inclusive, of chapter 30 or sections 26 to 27C, inclusive, of chapter 9 shall conclude within 120 days of a state determination of completeness of required review materials, as established by the executive office of environmental affairs in consultation with the state secretary. The secretary of environmental affairs and the state secretary shall establish time frames for all required filings and additional filings by the applicant in order to comply with this section. In the event an applicant fails to comply with all relevant time frames, the time shall be tolled until the applicant files the required documents.

Section 15. Nothing in this chapter shall be construed to alter the substantive jurisdictional authority of issuing authorities.

Section 16. The secretary shall promulgate rules and regulations to implement this chapter.

SECTION 12. Section 21 of chapter 81 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:-
The commissioner of highways shall adopt regulations to effectuate the purposes of this section.

SECTION 13. Section 32 of chapter 184 of the General Laws, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Such conservation, preservation, agricultural preservation, watershed preservation and affordable housing restrictions are interests in land and may be acquired by any governmental body or such charitable corporation or trust which has power to acquire interest in the land, in the same manner as it may acquire other interests in land. The restriction may be enforced by injunction or other proceeding, and shall entitle

representatives of the holder to enter the land in a reasonable manner and at reasonable times to assure compliance. If the court in any judicial enforcement proceeding, or the decision maker in any arbitration or other alternative dispute resolution enforcement proceeding, finds there has been a violation of the restriction or of any other restriction described in clause (c) of section 26 then, in addition to any other relief ordered, the petitioner bringing the action or proceeding may be awarded reasonable attorneys' fees and costs incurred in the action proceeding. The restriction may be released, in whole or in part, by the holder for consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice, by the governmental body holding the restriction or if held by a charitable corporation or trust, by the mayor, or in cities having a city manager the city manager, the city council of the city or the selectmen of the town, whose approval shall be required, and in case of a restriction requiring approval by the secretary of environmental affairs, the Massachusetts historical commission, the director of the division of water supply protection of the department of conservation and recreation, the commissioner of food and agriculture, or the director of housing and community development, only with like approval of the release.

SECTION 14. Section 1 of chapter 185 of the General Laws, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

The court shall hold its sittings in the cities of Boston, Fall River, and Worcester, but may adjourn from time to time to such other places as public convenience may require. In Suffolk county, the city council of the city of Boston shall provide suitable rooms for the sittings of said court in the same building with, or convenient to, the probate court or the registry of deeds. In Fall River and Worcester, and other counties, the chief justice of administration and management shall make court rooms, clerk facilities, and other trial facilities available to the land court. On or before February 1, 2007, the chief justice of the land court department shall establish procedures for holding regular sessions of the land court in Fall River and Worcester for the consideration of cases arising from central, western, and southeastern Massachusetts, as the caseload requires but not less than once per quarter.

SECTION 15. Said chapter 185 is hereby further amended by inserting after section 3 the following section:-

Section 3A. There shall be established a separate session of the land court department, which shall be known as the permit session of the land court department.

Sessions of the permit session shall be held in Suffolk, Middlesex, Essex, Norfolk, Plymouth, Worcester and Hampden counties, and other counties as the chief justice of the land court department shall from time to time designate.

The permit session shall have original jurisdiction, concurrently with the superior court department, over civil actions in whole or part: (a) based on or arising out of the appeal of any municipal, regional or state permit, order, certificate or approval, or the denial thereof, concerning the use or development of real property, including without limitation appeals of such permits, orders, certificates or approvals, or denials thereof, arising under or based on or relating to chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive, 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of 1956; or any local bylaw or ordinance; (b) seeking equitable or declaratory relief (i) designed to secure or protect the issuance of any municipal, regional or state permit or approval concerning the use or development of real property or (ii) challenging the interpretation or application of any municipal, regional or state rules, regulations, statutes, laws, bylaws, ordinances concerning any permit or approval; (c) claims under section 6F of chapter 231, or for malicious prosecution, abuse of process, intentional or negligent interference with advantageous relations or intentional or negligent interference with contractual relations arising out of or based upon or relating to the appeal of any municipal, regional, state permit or approval concerning the use or development of real property; and (d) any other claims between persons holding any right, title or interest in land and any municipal, regional or state board, authority, commission or public official based on or arising out of any action taken with respect to any permit or approval concerning the use or development of real property but in all such cases of claims (a) to (d), inclusive, only if the underlying project or development involves either 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area or both.

Notwithstanding any other general or special law to the contrary, any action not commenced in the permit session, but within the jurisdiction of the permit session as provided in this section, may be transferred to the permit session, upon motion by any party to the chief justice for administration and management. There shall be a presumption against more than one transfer of a case between any departments of the trial court. If a party to an action commenced in or transferred to the permit session claims a valid right to a jury trial. Then the action shall be transferred to the superior court for a jury trial.

Each case filed in the permit session shall be assigned to a single judge from the commencement to the conclusion of the case. The judge assigned to the case will hold all hearings and preside at the trial, except in the case of death, disability, expiration of judicial appointment to the permit session or emergency.

At the time of filing, all cases in the permit session shall be assigned to 1 of the following tracks: 12 months to trial, Average or "A" Track; 9 months to trial, Fast or "F" Track; or 6 months to trial, Accelerated or "X" Track. Particular classes of cases shall be assigned to each of these tracks in accordance with rules established by the chief justice of the land court department. On motion by a party or the court's own motion, where an exceptional cause is shown, cases may be reassigned to a different track or tracking order dates may be extended or modified.

The chief justice of the land court shall report to the chief justice for administration and management, the clerks of the house and senate, and the chairs of the judiciary committee of the general court on an annual basis, with: (1) the number of cases handled under this session; (2) the timelines achieved in cases pursuant to this session; (3) any additional resources required by the land court to meet its goals for this session; and (4) the number of cases before the land court according to the county from which they originate. To the extent that the chief justice of the land court does not have sufficient resources to maintain the timeframes mentioned above, then the chief justice for administration and management shall assign judges with land use and environmental expertise from other departments of the trial court to sit as justices of the permit session. In making such appointments, the chief justice for administration shall make reasonable efforts to select justices who, by reason of their past experience in private practice or practice with public agencies or as jurists have particular skills related to environmental and land use permitting and disputes concerning the same.

The final disposition of cases in the permit session by the court by dismissal, judgment or otherwise shall be in accordance with the following timeframes which shall commence on the filing of the trial transcript with the court or in the case of a summary judgment motion, from the date the motion is taken under advisement: A Track in 4 months, F Track in 3 months and X Track in 2 months.

The chief justice of the land court department shall establish a procedure for the assignment to mediation of disputes that have been filed with or transferred to the permit session, and shall promulgate rules, subject to the approval of the chief justice for administration and management, that promote the expeditious resolution of the disputes within the time periods provided in this chapter. The mediators shall be persons who by reason of their past experience in private practice or practice with public agencies, or as jurists have particular skills related to environmental and land use permitting and/or disputes concerning the same. The chief justice of the land court department may approve qualified providers of mediation services. The mediator shall have the protections provided under section 23C of chapter 233, and to the extent that public agencies are participants in the mediation, their deliberations shall not be subject to the provisions of section 23B of chapter 39.

SECTION 16. Section 2 of chapter 211B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 2, the figure “6” and inserting in place thereof the following figure:— 7.

SECTION 17. Chapter 45 of the acts of 2005 is hereby amended by striking out item 1110-1000 and inserting in place thereof the following item:-

1110-1000 For the operation of the division of administrative law appeals established by section 4H of chapter 7 of the General Laws; provided, that said division shall maintain, to the fullest extent practicable, a complete physical and technological separation from any agency, department, board, commission or program whose decisions, determinations or actions may be appealed to it; provided further, that

every decision issued by a commissioner or other head of agency, or designee, following the issuance of a recommended decision by an administrative law judge of the division, shall be an agency decision subject to judicial review pursuant to chapter 30A of the General Laws; and provided further, that not less than \$250,000 shall be expended for the processing and adjudication of all pending and newly-filed department of environmental protection appeals..... \$1,352,144

SECTION 18. Said chapter 45 is hereby further amended by striking out item 7007-0515 and inserting in place thereof the following item:-

7007-0515 For economic development grants to be administered by the department of business and technology; provided, that not less than \$150,000 be expended on the Cape Cod Regional Incubator Project to be operated by the Cape Cod Chamber of Commerce; provided further, that not less than \$200,000 shall be expended on the operation of the Massachusetts Fisheries Recovery Commission, not less than \$60,000 of which shall be expended for the purposes of a socio-economic study and analysis of the commonwealth's fishing industry; provided further, that not less than \$250,000 shall be expended for a grant to the South Shore Tri-Town Development Corporation established in chapter 301 of the acts of 1998; provided further, that \$350,000 shall be expended for a grant to the Massachusetts Alliance for Economic Development for the purpose of enhancing economic development related services, including but not limited to implementation of a statewide online site finder to assist business growth; and provided further, that not less than \$500,000 shall be expended for the Massachusetts Alliance for Economic Development to manage and market an online inventory of priority development properties and other development sites as established in chapter 43D of the General Laws \$1,510,000

SECTION 19. The state comptroller shall transfer \$1,850,000 from the general fund to the District Local Technical Assistance Fund established pursuant to section 2XXX of chapter 29 of the General Laws.

The fund shall be a separate and expendable trust fund administered by the division of local services within the department of revenue. There shall be credited to the fund, revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund and investment income earned on the fund's assets, and all other sources. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund, and shall be allocated to the regional planning agencies the following fiscal year pursuant to the formula established in said section 2XXX of said chapter 29.

SECTION 20. The secretary of environmental affairs shall report to the house and senate clerk of the general court on January 1, 2009 and January 1, 2012 with respect to the state-wide environmental justice program adopted by the secretary of environmental affairs. The report shall address the scope and effectiveness of the existing environmental justice program in the commonwealth, and shall identify and discuss the problems and deficiencies of the program as well as its accomplishments. The report

shall identify the resources devoted to administration of the environmental justice program and its organizational structure. The report shall address the methodologies used to identify environmental justice communities and the process used to assure meaningful participation of environmental justice communities in the environmental review of projects that have a significant potential to impose disproportionate environmental burdens on such communities. The report shall assess whether enhanced environmental justice review has resulted in environmental benefits for environmental justice communities and whether such enhanced environmental review may have resulted in unintended adverse consequences in some cases. The report shall also consider the likely effects of this act on environmental justice concerns.

SECTION 21. Section 9 shall apply to all special permits issued after the effective date of this act.

SECTION 22. Notwithstanding any general or special law to the contrary, section 13 shall apply to all enforcement actions commenced after its effective date relative to applicable restrictions granted before, on and after that date.

SECTION 23. The department of environmental protection shall adopt rules and regulations as necessary to be consistent with section 10A of chapter 30A of the General Laws on or before January 1, 2007.

SECTION 24. The commissioner of highways shall adopt the regulations required by section 12 on or before July 1, 2007.

Approved August 2, 2006.