

BERKSHIRE PLANNING TOOLS



One in a series of “toolbox” items to accompany the *Regional Plan for the Berkshires*

June 2001

“Densely developed area” designation

Planning for the Berkshires

The designation of densely developed areas under the Rivers Protection Act is a planning tool available to encourage the redevelopment of eligible riverfront areas and to stem the loss of open space to new development. Once established, the designated “densely developed area” of the Riverfront Area is reduced from 200-feet to 25-feet, enabling the redevelopment of these sites that are often a critical component to economic growth.

A basic foundation of the *Regional Plan for the Berkshires* is to promote and maintain a settlement pattern of compact villages and downtown areas, separated by less densely developed settled areas and rural countryside. Concentrating development and new growth in appropriate locations will strengthen existing centers, protect natural resources, maintain an efficient transportation network, provide better quality services and facilities, and help each community protect its values and maintain its distinct identity.

Sprawl

Sprawl is typically characterized by lower development densities in comparison with older centers, auto dependence, and lack of public spaces and community centers. While there is no universally accepted definition, the Vermont

Forum on Sprawl concisely defines sprawl as “dispersed development outside of compact urban and village centers along highways and in rural countryside.” Sprawl may also be defined as “an inefficient development pattern.” Sprawl describes land development trends and patterns that tend to consume an unnecessarily large amount of natural resources, require redundant capital investments, and waste considerable human resources. Sprawl causes the underutilization of the sizable investments already made in urban areas.

Sprawl is distinct from compact urban centers and villages, which are:

- More densely developed than surrounding areas
- Juxtaposed with mixed uses
- Oriented towards pedestrians
- Served by public facilities, services and spaces
- Diverse in type and scale of housing, business and industry
- Centers for community activities
- Surrounded by open spaces, including farm and forest land

Sprawl can lead to unutilized and underutilized infrastructure in existing centers. Public costs increase when communities become fragmented and dispersed. This results in a decline in social interaction and a decline in vitality as well as the

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economic and fiscal viability of existing urban and village centers.

Environmental quality and natural resource protection decline when sprawl results in fragmented open space and wildlife habitat, the loss of productive farmland and forestland, an increase in auto dependency and increased fuel consumption. A resulting increase in urban runoff results in a decline in water quality.

Economic opportunity declines with premature disinvestment in existing buildings, facilities and services in urban and village centers. Economic opportunities decline further with the relocation of jobs to peripheral areas at some distance from population centers. Communities experiencing sprawl often experience a reduced ability to finance public services in urban centers and an inability to capitalize on unique cultural, historic and public space resources, such as waterfronts, in urban and village centers.

Designating Densely Developed Areas

The designation of densely developed areas was created through the Rivers Protection Act (*Chapter 258 of the Acts of 1996*.) This law amends the Wetlands Protection Act (*MGL Chapter 131 Section 40*) and provides protection to rivers by regulating activities within a newly established wetlands resource area known as the Riverfront Area. The Riverfront Area is a resource area itself and has no buffer zone. The Riverfront Area extends 200-feet on each side of perennial rivers and streams throughout the Commonwealth, or 25-feet for certain segments of urbanized riverfront. The purpose of the Rivers Protection Act is to preserve the natural integrity of rivers and adjacent land for the important values these areas provide to all citizens of the Commonwealth.

The Rivers Protection Act has established a riverfront area of 25-feet within specified locations. Municipalities may establish 25-foot riverfront areas for certain segments of riverfront that are urbanized by petitioning to receive a designation as a densely developed area.

Petitions for densely developed area status are reviewed and determinations made by the Secretary of Environmental Affairs. 301 CMR 10.00 establishes a uniform process by which a municipality may petition the Secretary of Environmental Affairs for designation of a densely developed area and standards by which the Secretary decides on a petition.

Densely Developed Area Eligibility

Areas that are eligible for designation as a densely developed area consist of 10 or more contiguous acres utilized for intensive industrial, commercial, institutional, or residential activities or a combination of these activities. Residentially zoned areas must consist of three or more structures per two acres or at least one 20 unit capacity multi-family residential structure per acre in order to be eligible. Land within the proposed area must be in use for one or any combination of these activities as of January 1, 1997. When delineating an area of ten or more contiguous acres, land on opposing sides of the river cannot be considered contiguous unless the uses or activities on each side of the river are related or physically connected. A proposed area may include areas of land that are used for activities that are not listed here or that are not intensively used if such areas meet the requirements stated in 301 CMR 10.00.

The extent to which the area is intensively used, the extent that the area is within the 200 foot riverfront area, and the extent to which the riverfront area is degraded by impervious surfaces or the absence of vegetation and topsoil are all factors in determining the designation. Guidelines for the designation standard and designation procedures have been made available through the Executive Office of Environmental Affairs (301 CMR 10.00).

How It Works

The designation of a densely developed area reduces the riverfront area from 200 feet to 25 feet. To begin, cities and towns delineate a

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densely developed area and petition to the Secretary of Environmental Affairs to receive a designation. A municipality may exercise one of two options to petition for a designation of a densely developed area: by a vote of its legislative body requesting designation; or through a municipal official, with the majority vote in support of the petition by the planning board and the conservation commission. Under either petition option, a municipal official may request a consultation session with the Executive Office of Environmental Affairs prior to submitting a petition.

Municipalities may jointly petition the Secretary where a proposed area crosses municipal boundaries. Within 20 days of receiving a petition, the Secretary shall determine whether the petition is complete and notify the petitioner in writing of any additional materials the petitioner is required to submit. Once a petition is deemed complete, the Secretary shall publish notice of the petition in The Environmental Monitor. The Secretary may elect to hold an informational public hearing or meeting within the municipality, and may conduct a site visit to facilitate review of the petition.

Within ten days of the close of the public comment period, the Secretary shall issue a written decision stating whether all, a portion, or none of the proposed area shall be designated a densely developed area. The decision shall include a map or maps showing the designated area and shall state the reasons for any modifications to the boundaries of the proposed area. The designation shall take effect immediately upon the date of the Secretary's decision.

What the Designation Means

Once receiving a designation as a densely developed area, activities within the newly developed 25-foot riverfront area shall be conducted in accordance with the Wetlands

Protection Act as administered by the local conservation commission and the Department of Environmental Protection. All work in the Riverfront Area is subject to preliminary "alternatives analysis" and must meet strict performance standards. When there is no feasible alternative or when the project has been revised using the identified alternative it is then required that there be "no significant adverse impact" from any work in the Riverfront Area. The Regulations set different criteria for meeting the "no significant adverse impact" requirement for work in the Riverfront Area when the Riverfront Area is 200 feet wide then when it is only 25 feet wide. Where the Riverfront Area is 25 feet wide, the four conditions to be met for compliance with the "no significant adverse impact" are less specific than when the Riverfront Area is 200 feet wide and are as follows:

- The alteration to be permitted within the Riverfront Area should be limited to the maximum extent feasible, with a minimum condition of preserving or establishing a corridor of undisturbed vegetation to the maximum width feasible. The Conservation Commission may allow areas of replication or compensatory flood storage required to meet performance standards for other resource areas within the Riverfront Area. Structural stormwater management measures are only allowed when it is documented that there is no practicable alternative to siting these structures in the Riverfront Area.
- The stormwater generated from the project must be managed in full compliance with the DEP Stormwater Guidance.
- The applicant must show that any work proposed in this area shall not impair the capacity of the Riverfront Area to provide wildlife habitat functions, nor impair the capacity to provide vernal pool habitat identified by evidence from a competent source for areas not yet certified as vernal pools.
- The proposed work shall not impair groundwater or surface water quality.

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For more information about the Rivers Protection Act, Contact BRPC or:

DEP Western Regional Office
Wetlands Program Coordinator
436 Dwight Street, 5th floor
Springfield, MA 01103
(413) 784-1100 x2147
<http://www.state.ma.us/dep/>

For copies of The Rivers Protection Act and Guidelines for Densely Developed Areas:

Copies of the regulations are available at the State House Bookstore.

The Rivers Protection Act 310 CMR 10.58
Densely Developed Areas 301 CMR 10.00

State Bookstore
State House West
436 Dwight Street, Room 102
Springfield, MA 01103-1317
(413) 784-1376

For more information about the Designation of Densely Developed Areas Contact BRPC or:

Executive Office of Environmental Affairs
Massachusetts Environmental Policy Act Office
251 Causeway Street, Suite 900
Boston, MA 02114
(617) 626-1020
<http://www.state.ma.us/mepa/>

This publication is one in a series of “toolbox” items to support the Regional Plan for the Berkshires. If you would like to receive additional copies of this or other toolbox items, please contact the Berkshire Regional Planning Commission, 33 Dunham Mall, Pittsfield, MA 01201 or call (413) 442-1521. Copies of the toolbox items are also available on the web. Visit www.berkshireplanning.org

*Funding provided by the Massachusetts Executive Office of Environmental Affairs
and the Massachusetts Executive Office of Transportation and Construction*