

301 CMR: EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

301 CMR 10.00: DENSELY DEVELOPED AREAS

Section

- 10.01: Authority
- 10.02 Purpose
- 10.03: Definitions
- 10.04: Designation Procedures
- 10.05: Designation Standard
- 10.06: Requests for Clarification or Correction
- 10.07: Applicability and Effect of Designation
- 10.08: Densely Developed Area Maps and Boundaries
- 10.09: Severability

10.01: Authority

301 CMR 10.00 is promulgated by the Secretary pursuant to authority granted by M.G.L. c. 131, § 40 as amended by St. 1996, c. 258, and by M.G.L. c. 21A, § 2.

10.02: Purpose

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 Act added a new resource area with performance standards to the Wetlands Protection Act called the “riverfront area” which extends 200 feet on each side of perennial rivers and streams throughout the Commonwealth, or 25 feet for certain segments of riverfront that are urbanized.

The Rivers Protection Act establishes 25 foot riverfront areas in the following locations: municipalities with a population of 90,000 or more persons, municipalities with a population density greater than 9,000 persons per square mile as determined by the 1990 federal census; along land in Waltham known as the Grover Cronin parcel and property located at 2 Granite Avenue in Milton. Fourteen municipalities have 25 foot riverfront areas according to these standards: Boston, Brockton, Cambridge, Chelsea, Everett, Fall River, Lawrence, Lowell, Malden, New Bedford, Somerville, Springfield, Winthrop, and Worcester.

Municipalities with smaller populations or lower population densities may establish 25 foot riverfront areas by petitioning the Secretary of Environmental Affairs to designate a “densely developed area.” 301 CMR 10.00 is promulgated to implement a uniform process and decision standards by which municipalities may petition the Secretary for designation of densely developed areas.

10.03: Definitions

Concurrence means a majority vote in support of the petition as presented by the municipal official.

Densely developed area means an area that has been so designated by the Secretary in accordance with 301 CMR 10.00.

EOEA means the Executive Office of Environmental Affairs.

Environmental Monitor means the publication of the Secretary pursuant to the Massachusetts Environmental Policy Act as further described in 301 CMR 11.00.

Impervious surface means a manmade surface that does not allow infiltration of water into the underlying soil. A building footprint is an impervious surface. Railroad lines are not impervious surfaces. Impervious surfaces that have breached over time, such as cracked asphalt, but still affect infiltration, are considered impervious surfaces.

Issuing authority means the conservation commission, the mayor or the selectmen, whichever is responsible for local implementation of the Wetlands Protection Act, M.G.L. c. 131, § 40.

10.03: continued

Legislative body means a town meeting, town council, city council, or other similar body as provided in a city's or town's charter.

Mean annual high-water line means the line along a river apparent from visible markings or changes in the character of soils and vegetation due to the prolonged presence of water which distinguishes between predominantly aquatic and terrestrial land. For purposes of 301 CMR 10.00, mean annual high-water line shall have the same meaning as defined in 310 CMR 10.58.

Municipal official means the mayor of a city, the board of selectmen of a town, or the council of a municipality having a manager-council form of government.

Person means any individual, partnership, trust, firm, corporation, association, commission, district, department, board, municipality, public or quasi-public agency or authority.

Proposed area means the area of land proposed for designation as densely developed in the petition of the municipal official.

River means any naturally flowing body of water that empties to any ocean, lake, pond or other river which flows throughout the year. Rivers include perennial streams but not intermittent streams as defined in 310 CMR 10.58. For purposes of 301 CMR 10.00, river shall have the same meaning as defined in 310 CMR 10.58.

Riverfront area means the area of land between a river's mean annual high-water line measured horizontally outward from the river and a parallel line located 200 feet away, except:

- (a) for new agricultural or aquacultural activities, the parallel line shall be located 100 feet away; and
- (b) in densely developed areas the parallel line shall be located 25 feet away. For purposes of 301 CMR 10.00, riverfront area shall have the same meaning as defined in 310 CMR 10.58.

Secretary means the Secretary of the Executive Office of Environmental Affairs.

10.04: Designation Procedures

(1) Petition for designation. A municipality may exercise one of two options to petition the Secretary for designation of a densely developed area:

- (a) by a vote of its legislative body requesting designation; or
- (b) through the municipal official, with concurrence of the issuing authority and the planning board.

Municipalities may jointly petition the Secretary where a proposed area crosses municipal boundaries.

(2) Pre-petition consultation session. Under either petition option the municipal official may request a consultation session with EOEА prior to submitting a petition.

(3) Notice and public hearing. In the case of petitions submitted by the municipal official, prior to submitting a petition, the municipal official shall hold a public hearing. No later than 14 days prior to the hearing or the vote of the legislative body, the municipal official shall publish notice of the proposed petition and the public hearing in a local newspaper of general circulation and shall provide written notice of the proposed petition to the issuing authority, the planning board, and municipalities abutting the proposed densely developed area.

(4) In case of petitions submitted by the municipal official, no later than 21 days after receipt of written notice from the municipal official, the issuing authority and the planning board shall vote on whether they concur in the proposed petition and inform the municipal official of their vote.

(5) Petition contents. Petitions for designation shall consist of the following items:

- (a) a copy of the vote of the legislative body or documentation from the issuing authority and the planning board indicating their concurrence with the proposed designation;

10.04: continued

- (b) a completed application form, available on request from EOEА;
- (c) proof of advertisement of the proposed petition by legal notice in a local newspaper of general circulation; copies of notices of the proposed petition provided to the issuing authority, the planning board, and abutting municipalities; copies of notices of public meetings or hearings at which the petition was discussed; and
- (d) a description of the proposed area and the character of activities and land use within the area as depicted by sufficient information to document land use as of January 1, 1997 and support the petition such as:

1. a copy of the assessor's map(s), and if available, any other medium to large scale planimetric basemap such as an EOEА orthophoto or engineering map(s) of the proposed area, depicting the boundaries of the proposed area and the existing 200 foot riverfront area;
2. aerial photography that depicts the land use in the proposed area as close in time as possible prior to January 1, 1997;
3. documentation of historic land use within the proposed area for any existing vacant structures or vacant lots formerly used for intensive uses after January 1, 1944;
4. a copy of the current zoning map for the proposed area which indicates the extent of the proposed area and describes the corresponding zoning districts and permitted uses;
5. any supplemental maps at an appropriate scale to facilitate interpretation of aerial photographs; and
6. any additional information as the municipality or the Secretary deems appropriate to assist the Secretary in her decision.

(6) Determination of completeness. Within 20 days of receipt of a petition for designation of a densely developed area, the Secretary shall determine whether the petition is complete and notify the petitioner of the determination in writing. If the petition is deemed incomplete, the Secretary shall specify what additional materials the petitioner is required to submit to complete the petition.

(7) Public notice and comment. Once a petition is deemed complete the Secretary shall publish notice of the petition for designation in the Environmental Monitor. Written public and agency comments shall be received on the petition for 20 days from the date of publication. Comments received beyond that deadline may be considered in the Secretary's discretion.

(8) Informational hearing or meeting. The Secretary may elect to hold an informational public hearing or meeting within the municipality on the petition upon the request of ten or more interested persons or where significant public or agency comment has been received which would, on its face, constitute grounds for the Secretary to deny the petition or significantly modify the extent of the proposed area.

(9) Site visit. The Secretary, at his or her discretion, may conduct or assign a designee to conduct a site visit to facilitate her review of the petition.

(10) Agency assistance. As appropriate, the Secretary may consult with the Department of Environmental Protection, the Department of Environmental Management, the Department of Fisheries, Wildlife and Environmental Law Enforcement, MassGIS, or any other public agency or persons with expertise in the designation standards of 301 CMR 10.05 in evaluating a petition.

(11) Designation decision. Within ten days after the close of public comment the Secretary shall issue a final written decision stating whether all, a portion, or none of the proposed area shall be designated a densely developed area in accordance with the designation standards in 301 CMR 10.05. The decision shall include a map or maps showing the designated densely developed area and shall state the reasons for any modifications to the boundaries of the proposed area.

(12) Effective date. The designation shall take effect immediately upon the date of issuance.

10.04: continued

(13) Notice. Notice of the designation shall be published in the next available Environmental Monitor and a copy of said notice sent to the petitioner. The petitioner shall publish notice of the designation decision in a local newspaper of general circulation and shall provide written notification of such decision to the issuing authority.

(14) Extensions. The Secretary may extend any time period during the review of a petition when significant public comment has been received which would, on its face, constitute grounds for the Secretary to deny the petition, or designate a portion of the proposed area, or when information contained in a completed petition is insufficient to evaluate the intensity of the use of the riverfront area.

10.05: Designation Standard

(1) Standard. A densely developed area is an area of ten or more contiguous acres of land that is being utilized for intensive industrial, commercial, institutional or residential activities or combinations of such activities.

The following factors shall inform the Secretary's determination as to whether a proposed area is consistent with the purposes of the Act and qualifies for designation as a densely developed area:

- (a) the extent to which the proposed area is utilized for an eligible activity in accordance with 301 CMR 10.05(3);
- (b) the extent of the proposed area that is within the 200 foot riverfront area;
- (c) the extent to which the proposed area is utilized intensively as characterized by the nature and/or density of the use or activity, or by the extent of impervious surface coverage or removal of vegetation and topsoil;
- (d) the extent to which riverfront area within the proposed area is degraded by the existence of impervious surfaces or by the absence of vegetation and topsoil; and
- (e) any other information deemed necessary and appropriate by the Secretary.

(2) Measurement of ten or more contiguous acres. For purposes of defining an area of ten or more contiguous acres, land on opposing sides of a river shall not be considered contiguous unless the uses or activities on each side of the river are sufficiently related or physically connected.

A municipality may propose an area of less than ten contiguous acres in size within its boundaries for designation provided that:

- (a) the proposed area is contiguous with an existing densely developed area or with a 25 foot riverfront area in Boston, Brockton, Cambridge, Chelsea, Everett, Fall River, Lawrence, Lowell, Malden, New Bedford, Somerville, Springfield, Winthrop, or Worcester; and
- (b) an area of at least ten contiguous acres of land meets the designation standards in 301 CMR 10.05, including land within the petitioning municipality as well as the adjacent municipality(ies).

(3) Eligible activities. Land within the proposed area must be in use as of January 1, 1997 for one or any combination of the following activities:

industrial and commercial - manufacturing, fabricating, wholesaling, warehousing, other commercial or industrial activities, or retail trade and service activities;

institutional - medical and educational institutions;

residential - residential dwelling structures at a density of three or more per two acres, or one or more 20 unit capacity or greater multi-family residential structure per acre;

vacant - lots or structures that were vacant as of January 1, 1997 but which were formerly used for a commercial, industrial, institutional or residential activity as defined in 301 CMR 10.05(3) after January 1, 1944.

(4) Non-intensive uses. Notwithstanding the requirements of 301 CMR 10.05(3), a proposed area may include areas of land that are used for activities not listed in 301 CMR 10.05(3) or areas that are not intensively used, provided that:

10.05: continued

- (a) such areas are less than one contiguous acre in size;
- (b) such areas comprise less than 10% of the total acreage of the entire proposed area;
- (c) at least ten contiguous acres of land within the proposed area meet the designation standard of 301 CMR 10.05(1); and
- (d) such areas are not within 200 feet from the river's mean annual high water line measured horizontally outward from the river.

10.06: Requests for Clarification or Correction

The Secretary may issue, at the written request of a municipal official or any person, written clarifications or corrections regarding any designation previously made.

10.07: Applicability and Effect of Designation

- (1) Designation of a densely developed area pursuant to 301 CMR 10.00 shall not invalidate an order of conditions or a superseding order of conditions issued for work in the riverfront area pursuant to 310 CMR 10.00 prior to the date a petition for designation is approved.
- (2) Upon designation as a densely developed area, the riverfront area within such area shall be measured as the area of land between a river's mean annual high-water line measured horizontally outward from the river and a parallel line located 25 feet away for purposes of 310 CMR 10.00.
- (3) Work in densely developed areas shall be conducted in accordance with 310 CMR 10.00 as administered by the Department of Environmental Protection and the issuing authority.

10.08: Densely Developed Area Maps and Boundaries

- (1) Maps. Maps depicting boundaries of densely developed areas are available upon request from EOEА at the cost of reproduction. Municipalities and EOEА shall maintain maps depicting the boundaries of densely developed areas designated within the municipality.
- (2) Boundary delineation. Except in the case of the riverfront area boundary drawn as a parallel line 25 feet horizontally outward from the river's mean annual high water line, and as otherwise determined by the Secretary, densely developed area boundaries shall coincide, to the maximum extent practicable, with roadways, property lines or other physical or legal landmarks that are generally permanent and can be ascertained with relative ease through field observation or inspection of scaled maps available from municipalities or other government sources.
- (3) Boundary determinations. In the event of a dispute over the boundary of an approved densely developed area that cannot be resolved at the local level, EOEА shall have the exclusive authority to interpret and determine the boundary of a densely developed area. Any person may submit a written request for a boundary determination to the Secretary. EOEА may consult with the Department of Environmental Protection, the Department of Environmental Management, the Department of Fisheries, Wildlife and Environmental Law Enforcement, MassGIS or the issuing authority in interpreting the boundary.

10.09: Severability

The provisions of 301 CMR 10.00 are severable, and if any provision or application thereof is held invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of the remainder of 301 CMR 10.00.

REGULATORY AUTHORITY

301 CMR 10.00: M.G.L. c. 131, § 40.

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