

Notice of Intent Supplemental Form for Riverfront Area

The Notice of Intent Supplemental Form for Riverfront Area is recommended for use with the Notice of Intent (Form 3) in the wetland regulations (310 CMR 10.99). This form should be used for activities that are located in the Riverfront Area. See instructions for information about completing this form. Applicants also may refer to the "Checklist for Review of Activities in the Riverfront Area" issued by the Department of Environmental Protection in November 1996. The checklist should *not* be submitted with the form; it is included to indicate how a conservation commission may evaluate application information. Attach the completed supplemental form to the Notice of Intent, including any appropriate documentation as needed. Use additional pages if necessary.

1. Mean annual high-water line determined by:

- Changes in soil, vegetation; water marks; scouring
- Top of bank (inland rivers)
 - First observable break in slope
 - Mean annual flood level
- Mean high water (for coastal rivers only)

(Identify the mean annual high-water line on the Notice of Intent plans.)

2. Width of Riverfront Area:

- 200 feet
- 25 feet

(Identify the Inner and Outer Riparian Zones on the Notice of Intent plans.)

3. Activity is not subject to Rivers Protection Act because:

- Expansion of publicly owned structures, airports, marine cargo terminals begun before November 1, 1996
- Draft EIR filed on project before November 1, 1996
- Building permit filed before October 1, 1996 and granted before April 1, 1997
- Roads, utilities, drainage structures under a definitive plan approved or endorsed on or before August 1, 1996 pursuant to the subdivision control law (MGL c. 41 §81U)
- Subject to Chapter 91 waterways license or permit

Other - describe: _____

4. Project type:

- Single family home
- Residential subdivision
- Commercial development
- Industrial development
- Transportation
- Other - describe: _____

5. Amount of alteration in Riverfront Area:

a. If Riverfront Area is 200 feet wide, identify amount of alteration:

_____ square feet of Inner Riparian Zone (0-100 feet from river)

_____ square feet of Outer Riparian Zone (100-200 feet from river)

b. If Riverfront Area is 25 feet wide, identify amount of alteration:

_____ square feet of Inner Riparian Zone (0-15 feet from river)

6. Describe why the proposed project needs to be located in the Riverfront Area.

Address the following questions in your answer:

- ◆ Can the project be moved out of the Riverfront Area? Can the project be located further away from the river or stream? If not, why?
- ◆ How do costs and logistical constraints (e.g., physical site conditions, local zoning requirements) limit the alternatives?
- ◆ What alternatives were considered?

(Use additional pages if necessary.)

7. Does the proposed project meet the criteria for no significant adverse impacts?

a. Check criteria that apply:

- meets performance standards for all other wetland resource areas
- undisturbed vegetation in the 100-foot Inner Riparian Zone (15 feet in 25-foot Riverfront Area)
- alteration in the 100-foot Outer Riparian Zone limited to 5,000 square feet or 20% of zone, whichever is greater*
- meets performance standards for stormwater management**

* This performance standard is waived for the 10-foot Outer Riparian Zone when the Riverfront Area is 25 feet.

** Stormwater management is not required for single family houses and small subdivision projects as described in the Department's Stormwater Management Policy.

b. Is the project site located in estimated rare species habitat or in a certified vernal pool as noted on the Massachusetts Natural Heritage Atlas? ___ yes ___ no

If yes, has a copy of the Notice of Intent and this form been sent to the Natural Heritage and Endangered Species Program according to Notice instructions? ___ yes ___ no

If any of the criteria listed in (a.) above are not met, describe why the project will have no significant adverse impacts on the Riverfront Area. *(Note: for single family house projects on lots recorded as of August 1, 1996 which cannot meet the performance standards, describe how the project minimizes all impacts.)*

(Use additional pages if necessary.)

Instructions:

Notice of Intent Supplemental Form for Riverfront Area

The Notice of Intent Supplemental Form for Riverfront Area is recommended for use with the Notice of Intent (Form 3) in the wetland regulations (310 CMR 10.99). The form should be used for activities that are located in the Riverfront Area. The following is a brief explanation of the information requested on the form. Additional information is available in the "Guidance for Implementation of the Rivers Protection Act Amendments to the Wetlands Protection Act" (Rivers Guidance) issued by the Department of Environmental Protection (DEP) in November 1996. Applicants also may refer to DEP's "Checklist for Review of Activities in the Riverfront Area" issued in November 1996. The checklist should not be submitted with the form; it is included to indicate how a conservation commission may evaluate application information.

1. Mean annual high-water line

Identify how the mean annual high-water line of the river or stream has been determined. This line may be identified by changes in soil characteristics and vegetation, water marks, or scouring. Otherwise, the following can be used: the top of the riverbank in inland areas (the first observable break in slope or the mean annual flood level); or the mean high-water line (for coastal rivers only). Check the appropriate box on the form and identify the mean annual high-water line for the river or stream on the Notice of Intent plans.

2. Width of Riverfront Area

The Riverfront Area is measured horizontally from and parallel to the river's mean annual high-water line. The Riverfront Area is 200 feet in all communities except Boston, Brockton, Cambridge, Chelsea, Everett, Fall River, Lawrence, Lowell, Malden, New Bedford, Somerville, Springfield, Winthrop, and Worcester; in these communities, the width is 25 feet. In addition, the Riverfront Area is 25 feet in areas specifically designated as being "densely developed" by the Secretary of the Executive Office of Environmental Affairs.

Within the Riverfront Area, there are two zones: the Inner and Outer Riparian Zones. For Riverfront Areas that are 200 feet wide, the Inner Riparian Zone is measured 100 feet from the mean annual high-water line and the Outer Riparian Zone is measured 100 feet from the edge of the Inner Riparian Zone. For Riverfront Areas that are 25 feet wide, the Inner Riparian Zone is measured 15 feet from the mean annual high-water line and the Outer Riparian Zone is measured 10 feet from the edge of the Outer Riparian Zone. Identify the Inner and Outer Riparian Zones on the Notice of Intent plans.

3. Activity jurisdiction

If the Rivers Protection Act does not apply to the proposed activity*, indicate why by checking the appropriate box and provide supporting documentation (e.g., copy of building permit or subdivision approval). Some activities are grandfathered or exempt from the Rivers Protection Act, including:

- ◆ Work that has begun on or before **November 1, 1996** for the expansion of any structures, airports, and marine cargo terminals owned by a political subdivision;
- ◆ Projects that have prepared and submitted on or before **November 1, 1996** a draft environmental impact report pursuant to MEPA, MGL Chapter 30, Section 62B**;
- ◆ Projects for which a building permit has been filed on or before **October 1, 1996** and the permit has been granted on or before **April 1, 1997*****;
- ◆ Work associated with roads, utilities, and drainage structures for which a definitive plan has been approved or endorsed on or before **August 1, 1996** pursuant to the subdivision control law, MGL Chapter 41, Section 81U;
- ◆ Projects that are subject to a Chapter 91 Waterways license or permit (e.g., dock or pier), or authorized under Chapter 91 by a special act prior to 1973. Only those parts of the project subject to Chapter 91 are exempt.

* This question assumes that the project is subject to the Wetlands Protection Act for other wetland resource areas. To determine if a project is subject to the Rivers Protection Act only, an applicant may file a Request for Determination of Applicability.

** DEP may grant an extension for just cause upon an applicant's request.

*** The conservation commission may grant an extension for just cause upon an applicant's request.

3. Activity jurisdiction (*continued*)

Examples of other activities that are **exempt** include: activities associated with wastewater treatment plants and related structures, conveyance systems, and facilities, including utility lines; and activities on land associated with historic mill complexes. (Consult Rivers Guidance for the complete list of exempt or grandfathered activities.)

4. Project type

Select or describe the general category that best identifies the type of project that is proposed. Some examples of projects include single family home, residential subdivision, commercial development, industrial development, or transportation (e.g., public roadway widening, new railroad line).

5. Amount of alteration in Riverfront Area

Identify the amount of Riverfront Area, *in square feet*, that will be altered by the proposed activity, including any temporary or permanent alteration resulting from site preparation, clearing, or construction. This information should be provided for both the Inner and Outer Riparian Zones.

According to the Rivers Protection Act, a project can be located in the Riverfront Area only if there are no practicable and substantially equivalent economic alternatives and if there will be no significant adverse impacts to the Riverfront Area. Questions 6 and 7 on the supplemental form are designed so an applicant can explain how his or her project meets these statutory requirements.

6. Describe why the proposed project needs to be located in the Riverfront Area.

The goal of evaluating project alternatives is to identify any options for locating a project so it has the least impact on the Riverfront Area. In planning a project, the applicant must consider different options that would meet this goal. Alternatives that would result in greater or equal adverse impacts should not be evaluated. DEP has determined that the scope of alternatives considered should reflect the size and type of project, and has established guidelines which spell out the required range of alternatives based on project type. (See the guidelines attached to the checklist.) For example, for a single family home on a lot that existed on August 1, 1996, the alternatives are limited to the options available on the lot. To assist in the alternatives analysis, several questions are noted on the form. Please address these questions in your answer.

Note: In assessing costs, the analysis should not involve an evaluation of the owner's personal financial situation and no such information should be submitted. Instead, the evaluation of costs should focus on the financial capability reasonably expected from the type of owner (e.g., individual homeowner, small business owner, large developer) and not the personal or corporate financial status of the particular owner.

7. Does the proposed project meet the criteria for no significant adverse impacts?

a. Although the Rivers Protection Act does not define this performance standard, DEP has identified several criteria which taken together should protect the Riverfront Area from significant adverse impacts. These criteria are described in the Rivers Guidance. For more information about meeting performance standards for all other wetland resource areas, consult the wetland regulations at 310 Code of Massachusetts Regulations (CMR) 10.00. Stormwater must be managed according to performance standards established in DEP's Stormwater Management Policy. Stormwater management is not required for single family houses and small subdivision projects. On the form, check all the criteria that the project meets.

If any of the criteria are not met, describe why the project will have no significant adverse impacts on the Riverfront Area. For example, describe measures, including precautions, design considerations, and construction techniques, that will be used to avoid and minimize significant adverse impacts to the Riverfront Area. (Note: for single family house projects on lots recorded as of August 1, 1996 which cannot meet the performance standards, describe how the project minimizes all impacts.)

b. To determine if the project site is located in estimated rare species habitat or in a certified vernal pool, consult the current Massachusetts Natural Heritage Atlas. Atlas maps for the community should be available in the conservation commission office. If the project site is within an estimated habitat area on the map, follow the Notice of Intent instructions and procedures. Copies of the Notice of Intent and the supplemental form must be sent to the Massachusetts Natural Heritage and Endangered Species Program for review.

Checklist for Review of Activities in the Riverfront Area

The Department of Environmental Protection (DEP) recommends that conservation commissioners consider the following checklist of questions when reviewing information provided by applicants in the Notice of Intent Supplemental Form for Riverfront Area. For more information, refer to the "Guidance for Implementation of the Rivers Protection Act Amendments to the Wetlands Protection Act" issued by DEP in November 1996.

● Geographic jurisdiction

- Is there a river or stream on or near the project site?
- Has the mean annual high-water line been correctly delineated?
- Have the Inner and Outer Riparian Zones been correctly delineated?
- Have all other resource areas within the Riverfront Area been correctly delineated?

● Activity jurisdiction

- Is the proposed work exempt or grandfathered under the Rivers Protection Act?
- If so, have copies of appropriate documentation (e.g., copy of the building permit) been included?

[Note: The filing of the Notice of Intent and the Supplemental Form for Riverfront Area assumes the project is subject to the Wetlands Protection Act. If the proposed work is exempt or grandfathered from the Rivers Protection Act, follow standard NOI review procedures for other wetland resource areas.]

● Application of performance standards

No practicable alternatives:

The goal of evaluating project alternatives is to identify any options for locating a project so that impacts to the Riverfront Area are avoided or minimized. In planning a project, the applicant must consider different options that would meet this goal. Alternatives that would result in greater or equal adverse impacts should not be evaluated. When reviewing project alternatives, consider:

- What is the project purpose?
- How much alteration of the Riverfront Area is proposed?
- Could the project be located outside the Riverfront Area?
- Could the project be located further from the river or stream?

DEP has determined that the scope of alternatives considered should reflect the size and type of project, and has established guidelines which spell out the required range of alternatives for consideration based on project type. For example: for a single family home on a lot that existed as of August 1, 1996, the alternatives would be different locations on the lot; for a small commercial project such as a coffee shop, the alternatives should consider currently or formerly owned adjacent lots as well as different locations and designs on the lot. Use the guidelines attached to the checklist to verify that the correct project category was selected and the appropriate scope of alternatives was considered.

- Has the applicant done an appropriate alternatives analysis based on the project purpose?

- Are any alternatives practicable?
 - ◆ Are any alternatives technically feasible (i.e., are they possible given the physical site conditions or local zoning requirements)?
 - ◆ Do any alternatives increase the cost of the project? Is the increase in cost reasonable for that type of applicant in general, not the applicant in particular? For example, is the added cost of an alternative reasonable to expect for a builder of a single family home, not for Mrs. Hanson or Mr Talbot in particular?
 - ◆ To evaluate whether the cost of an alternative is reasonable, compare the costs of similar projects recently proposed by similar types of applicants.
- Will any practicable alternatives have less adverse impacts on the Riverfront Area?

- **Practicable alternatives with less adverse impacts must be selected.** If a practicable alternative would have no identifiable difference in impact, the proposed project rather than the alternative should be allowed, but the no significant adverse impact standard (see below) must still be met.

No significant adverse impacts:

- How much alteration is planned in the Inner and Outer Riparian Zones of the Riverfront Area?
- Does the project meet the specified criteria?
 - meets performance standards for all other resource areas?
 - undisturbed vegetation in the 100-foot Inner Riparian Zone (15 feet in 25-foot Riverfront Area)?
 - alteration in the 100-foot Outer Riparian Zone limited to 5,000 square feet or 20%, whichever is greater*?
 - meets performance standards for stormwater management**?
 - no adverse effects on rare species or certified vernal pools?

- **If the project meets these criteria and there are no practicable alternatives, the project should be approved with any necessary conditions.**

Certain types of activities evaluated on a case-by-case basis may not be able to meet the criteria above and yet still may have no significant adverse impacts on the Riverfront Area. These projects may include footpaths, minor landscaping, or redevelopment of a previously developed site. As with other aspects of the Wetlands Protection Act, the issuing authority has the discretion to make decisions on a case-by-case basis. This step involves an assessment of the applicant’s demonstration that the project will have no significant adverse impact even though one or more of the criteria were not met.

- If any of the criteria are not met, will the project have significant adverse impacts on the Riverfront Area?
- Has the applicant identified precautions, design considerations, and construction techniques that will avoid and/or minimize impacts to the Riverfront Area?

[Note: Projects on single family house lots that existed prior to August 1, 1996 should meet the performance standards noted above wherever possible. However, applicants should minimize all project impacts if performance standards cannot be met.]

- **If the conservation commission agrees that there are no practicable alternatives and the project will have no significant adverse impacts on the Riverfront Area, the project should be approved with any necessary conditions.**

* This performance standard is waived for the 10-foot Outer Riparian Zone when the Riverfront Area is 25 feet.

** The Department’s Stormwater Management Policy identifies nine performance standards for stormwater management. Stormwater management is not required for single family houses and small subdivision projects as described in the policy.

DEP Guidelines:

Scope of Alternatives to be Considered Based on Project Type*

The purpose of evaluating project alternatives is to locate activities so that impacts to the Riverfront Area are avoided to the extent practicable. The Rivers Protection Act explicitly limits the evaluation of alternatives to the area within the lot only for single family house projects on lots recorded before August 1, 1996. Alternatives for other activities must extend beyond the lot to adjacent lots, subdivided lots, and any other parcels of land which reasonably can be obtained. To implement the Act prior to the promulgation of regulations, the Department of Environmental Protection (DEP) has determined that the scope of alternatives under consideration should reflect the type and size of the project.

For all activities except the single family house on a lot recorded before August 1, 1996, the issuing authority should presume that alternatives beyond the scope described below are not practicable and therefore need not be considered. The issuing authority or another party may overcome the presumption by demonstrating the practicability of a wider range of alternatives, based on cost, and whether the cost is reasonable or prohibitive to the owner; existing technology; proposed use; and logistics in light of the overall project purpose. In evaluating alternatives, the issuing authority should use these guidelines, which identify the type and size of the project and the scope of alternatives to be considered:

Alternatives limited to the lot:

- ◆ Single family house on a lot recorded before August 1, 1996

Alternatives limited to the lot and currently or formerly owned adjacent lots:

- ◆ Single family house on a lot recorded after August 1, 1996
- ◆ Single structure apartments or condominiums
- ◆ Small commercial or industrial development (independently owned and operated)
- ◆ Expansion of existing single family houses (including associated structures such as tennis courts) or small commercial developments

Alternatives extend to adjacent lots currently or formerly owned and to any other adjacent parcels which could reasonably be obtained, as documented by offers (and any responses) to purchase at market prices if otherwise practicable:

- ◆ Expansion of existing medium or large-scale commercial or industrial development

Alternatives extend to the original parcel and the subdivided parcels, any adjacent parcels and any other land which reasonably can be obtained; generally, parcels of land adequate in size to accommodate the project purpose and listed for sale within appropriately zoned areas within the town at the time of application:

- ◆ Residential subdivisions
- ◆ Apartment or condominium complexes
- ◆ Medium-sized commercial or industrial projects

Alternatives extend to any sites which can reasonably be obtained within the market area of the state that were available at the time of market entry, as described in an Environmental Impact Report:

- ◆ Large commercial or industrial projects

Alternatives for public projects, including transportation:

- ◆ Alternatives limited to municipal or state owned property, unless other alternatives are described in an Environmental Impact Report, for municipal or state projects, excluding transportation projects
- ◆ Alternatives limited to the right-of-way and adjacent areas for widening the right-of-way for improvements to existing transportation facilities
- ◆ Alternatives extend to other alignments or other modes of transportation to achieve the project purpose, as described in an Environmental Impact Report, for new transportation projects

* *Excerpted from the "Guidance for Implementation of the Rivers Protection Act Amendments to the Wetlands Protection Act" issued by the Department of Environmental Protection in November 1996.*

DEP Guidelines:

Scope of Alternatives to be Considered

Alternatives limited to the lot:

- ◆ Single family house on a lot recorded as of August 1, 1996

Alternatives limited to the lot and currently or formerly owned adjacent lots:

- ◆ Single family house on a lot recorded after August 1, 1996
- ◆ Single structure multi-family houses, apartments or condominiums
- ◆ Small commercial or industrial development (independently owned and operated)
- ◆ Expansion of existing single family houses (including associated structures such as tennis courts) or small commercial developments

Alternatives extend to adjacent lots currently or formerly owned and to any other adjacent parcels which can reasonably be obtained, as documented by offers (and any responses) to purchase at market prices if otherwise practicable:

- ◆ Expansion of existing medium or large-scale commercial or industrial development

Alternatives extend to the original parcel and the subdivided parcels, any adjacent parcels and any other land which can reasonably be obtained; generally, parcels of land adequate in size to accommodate the project purpose and listed for sale within appropriately zoned areas within the town at the time of application:

- ◆ Residential subdivisions
- ◆ Apartment or condominium complexes
- ◆ Medium-sized commercial or industrial projects

Alternatives extend to any sites which can reasonably be obtained within the market area of the state that were available at the time of market entry, as described in an Environmental Impact Report (if required):

- ◆ Large commercial or industrial projects

Alternatives for public projects, including transportation:

- ◆ Alternatives limited to municipal or state owned property, unless other alternatives are described in an Environmental Impact Report, for municipal or state projects, excluding transportation projects
- ◆ Alternatives limited to the right-of-way and adjacent areas for widening the right-of-way for improvements to existing transportation facilities
- ◆ Alternatives extend to other alignments or other modes of transportation to achieve the project purpose, as described in an Environmental Impact Report (if required), for new transportation projects