

974 CMR 1.00: ADMINISTRATION

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1.01: Preamble

(1) The Devens Enterprise Commission (the DEC) is vested with broad regulatory authority related to land use planning and permitting functions. Such permitting functions, described in St. 1993, c. 498, § 11, and in greater detail in the Devens Zoning By-laws (the By-laws), are those normally assumed in cities and towns by Planning Boards, Boards of Health, Conservation Commissions, Boards of Appeal, and Historic District Commissions.

Functions include the following: (references are to applicable sections of the By-laws unless otherwise specified):

- (a) Adoption of 940 CMR consistent with the By-laws and St. 1993, c. 498, § 11.
- (b) Enforcement of By-laws and 974 CMR (Article II, Section C)
- (c) Special (Short Duration) Events (in part) and Earth Removal Permits (Article IV, Sections B and K)
- (d) Delegation of certain powers to the Director to assist in the administration and enforcement of the By-laws (Article II, Section E.2)
- (e) Approval of Innovative Development Regulations and Unified Permits (Article III, Sections D, E, and F)
- (f) Site Plan Review (Article III, Section H)
- (g) Variances, Reconsiderations and Appeals (Article IV, Sections A, C through F)
- (h) Expansion and/or Alteration of Nonconforming Buildings, Uses and Structures (Article VII)
- (i) Subdivision Review (Article VIII)
- (j) Historic District Reviews (Article X, Section D)
- (k) Water Resource Protection (Article XI, Sections B through E)
- (l) Wetlands Protection (Article XII)
- (m) Sign Regulation (Article XIII)

(2) Relationship of Reuse Plan and By-laws. The Devens Reuse Plan and By-laws establish objectives, policies and standards to guide public and private decision-making and investment, ensure the maintenance of quality of life, and protect natural resources.

The By-laws and any amendments shall be consistent with the Reuse Plan. Consistency shall mean that the By-laws shall affirmatively carry out the goals, objectives, policies, and purposes of the Reuse Plan.

(3) Precedence. Unless specified otherwise, in case of conflict between 974 CMR, St. 1993, c. 498, § 11, or the By-laws, the order of precedence shall be:

- (a) St. 1993, c. 498, § 11,
- (b) The Reuse Plan,
- (c) The By-laws
- (d) 974 CMR

1.01: continued

(4) Other Key Reference Documents.

- (a) Stormwater Pollution Prevention Plan dated July 1995
- (b) Water Resources Protection Plan dated November 1994
- (c) Devens Open Space and Recreation Plan dated September 12, 1996
- (d) Devens Spill Prevention Control and Countermeasure Plan dated February 27, 2001
- (e) Devens Main Post Trails report dated July 2001

1.02: Definitions

For the purposes of 974 CMR, the following words shall have the following meanings. Unless the context clearly indicates the contrary, words used in the plural include the singular.

Abandonment. To cease or discontinue a use or activity without intent to resume, but excluding temporary or short term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure.

Access. The means of egress and ingress for a lot or structure.

Accessory Use. A use incidental to, meaning less than 50% (unless another percentage is specified in the By-laws or 974 CMR) of the area of, and on the same lot as, a principal use.

Applicant. The owner of land proposed to be developed or its representative who shall have express written authority to act on behalf of the owner.

Bikeway. Way designed to be used principally or exclusively by a bicycle or similar non-motorized vehicle. May also include designated bicycle routes within paved street shoulders abutting vehicular travelways.

Bordering Vegetated Wetlands. As defined in M.G.L. c. 131, the Wetlands Act and (310 CMR 10.00).

Buffer Zone (Wetlands). This zone is the area of land extending 100 feet radially landward from the boundary of any Resource.

Building Official. The professionally credentialed person (under 780 CMR R7: *Certification of Inspectors of Buildings, Building Commissioners and Local Inspectors*) appointed by the DEC to act as either the Building Inspector or, if qualified by the licensing authority of the Commonwealth, the Building Commissioner.

By-laws. The Devens By-laws enacted November 18, 1994.

Collector Street. A Major Collector will serve as a principal boulevard for all types of traffic and will connect to a general access gate, which in turn connects to a State Highway or arterial roadway outside Devens. A Minor Collector is a street that connects to a Major Collector, serving primarily local traffic generated by the developed sites with frontage on that collector.

Critical Edge. The portions of a lot visible from a public road, or a Residential or Open Space & Recreation Zoning District. Critical edges require the highest level of screening.

Dead End Streets/Cul-de-sacs. A street or portion of a street that joins another street at only one end, usually terminating in a radius of sufficient dimension to accommodate the maneuvering of fire protection vehicles.

DEP: Massachusetts Department of Environmental Protection.

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Determination of Completeness (DOC). A determination by the Director that the Submission conforms with the Plan Form and Contents and the Submission Requirements of the applicable 974 CMR and includes a Statement of Consistency with the Reuse Plan and By-laws.

Developer. See Applicant.

Development Permit. (See Unified Permits)

Development Plan. The set of plans submitted for Unified Permitting, consisting of detailed plans, lotting or subdivision, wetlands notice of intent or any of the components delineated in 974 CMR 1.00. Building plans and architectural drawings are separate from development plans.

Devens Enterprise Commission (DEC). The Commission established by St. 1993, c. 498, § 11 and authorized to review and approve Submissions for Unified Permits, other approvals and certain licensing responsibilities at Devens.

Devens Enterprise Zone (Devens). The zone created by St. 1993, c. 498 and designated for redevelopment of the Main and North Posts of the former Fort Devens.

Director. The Land Use Administrator or any person or company that s/he designates to assist him/her.

Drain. A channel or pipe that carries drainage water.

Easement. A right in land acquired by public authority or other entity or person to use or control property for a utility or other purpose.

Engineer. A person registered to practice engineering in the Commonwealth of Massachusetts.

Erosion. Removal and loss of soil by wind and water due to the scarification and devegetation of the land.

Front. Any side of a building facing a public way. There may be more than one front when a building is located on more than one public way.

Gross Floor Area. The total floor area contained within the outermost walls, roof and lowest floor level of any building.

Home Business. A business which is carried on entirely within a dwelling unit by the occupants and with no more than one full-time equivalent non-resident employee, which is incidental and subordinate to the dwelling use, does not alter the exterior of the property, or affect the residential character of or have unreasonable impacts on the surrounding neighborhood.

Home Occupation. An occupation, profession, activity, or use which is carried on entirely within and only by the occupants of a dwelling unit, which is incidental and subordinate to the dwelling use, does not have customers and/or clients regularly coming to the premises, and does not alter the exterior of the property or affect the residential character of the neighborhood.

Improvements. Public and privately-owned facilities that can exist on their own or in conjunction with utilities or services. Includes any drainage facility, street, sidewalk, tree, landscaping, parking and loading areas, or other facility and the public infrastructure. (See Public Infrastructure)

Institutional Controls. Engineering and non-engineering measures – usually, but not always legal controls – intended to affect human activities in such a way as to prevent or reduce exposure to hazardous substances. Examples include; land and resource (e.g. water) use and deed restrictions, well-drilling prohibitions, building permits and well use advisories and deed notices.

1.02: continued

Lane. A street designed to access 12 or fewer residential dwellings units and accommodates traffic generated by those units only.

Levels of Review. The level or threshold that is applicable to a specific land use action or endorsement, as prescribed within the Devens By-laws. Level One reviews are conducted by the Director or designated and qualified staff.

Limit of Work. Boundary beyond which no development work may take place.

Local Street. A street that provides direct access to abutting properties only; includes cul-de-sacs and loop streets.

Lot. A parcel of land intended to be a unit for development created by lease, conveyance, option or for transfer of ownership, whether immediate or future, and capable of being shown on a Plan that can be recorded at the Registry of Deeds.

Lot, Corner. A parcel of land at the junction of and fronting on two or more intersecting streets.

Major Collector Street. Principal boulevard or other primary street, designed to carry the highest levels of traffic.

MassDevelopment. The State agency that is the designated owner, marketer, developer and overseer of the public infrastructure and the provider of municipal-type services within the Devens Enterprise Zone, under St. 1993, c. 498.

Minor Collector Street. A secondary street often connecting to a major collector street.

Non Critical Edges. Those lot edges which are not visible from a public way or a Residential or Open Space & Recreation Zoning District and contain no parking, loading or open storage.

Nonsignificance. Resource Areas and Bordering Vegetated Wetlands are presumed to be significant (for example, play a role to protect) to the interests of St. 1993, c. 498, the By-laws, and 974 CMR 3.00. Owner: The record owner, including any person, firm, corporation or any other legal entity having legal title to or sufficient proprietary interest in the land for which permitting is sought from the DEC.

Public Infrastructure. Publicly owned facilities, utilities and services maintained and operated by MassDevelopment, including structures necessary to provide water, gas or electric power service, lighting, wastewater disposal, stormwater runoff, and fire protection.

Record of Decision (ROD). The written decision of the DEC or the Director regarding a permit Submission.

Resource Areas. Areas Subject to Protection under the wetlands provisions of the By-laws and 974 CMR. Definitions of specific Resource Areas are contained in 974 CMR 3.00, M.G.L. c. 131 and 310 CMR 10.00.

Right-of-way. The total area of a street in public ownership; may encompass the travelway, shoulder, sidewalks, planting strips and unimproved areas beyond.

Screening. A visually impermeable year-round barrier.

Setback. The required minimum horizontal distance between the building line and the related front, side, or rear property line measured from the property line to the nearest edge of the structure.

Subdivision. The division of a tract of land into two or more lots for the purpose of sale or development (whether immediate or future) and including all divisions of land involving the dedication of a new street or a change in existing streets.

1.02: continued

Subdivision Control Law. M.G.L. c. 41, §§ 81K through 81GG.

Submission. The application to the DEC for a permit.

Surveyor. A person registered to practice land surveying in the Commonwealth of Massachusetts.

Towns. The Selectmen and Planning Boards of Ayer, Harvard and Shirley.

Travelway. The portion of a right-of-way that carries vehicular traffic and is constructed and paved to accommodate such vehicular flow.

Unified Development Permit (Unified Permit/Permit). The Unified Permit is the mechanism by which the DEC may authorize development to proceed and is a consolidation of components (site plan approval, wetlands protection, zoning variances, subdivision with a new road, and so forth).

Utilities. Private and Municipal services, which include sanitary sewers, storm water drainage systems, water supply piping, fire alarm conduits, natural gas, electric, telephone and cable television lines and all appurtenances to these systems.

Vote. A majority of a quorum of the DEC, unless otherwise stipulated in the By-laws.

Waiver. A modification to a Submission Requirement or a Design Standard.

Way, Public. Any street that has been accepted or declared to be a public way by MassDevelopment or is accepted as a public way pursuant to St. 1993, c. 498 or any way established by Court Decree to be a public way by dedication, prescription or otherwise.

Yard, Front. A space extending the full width of the lot between any building and the front lot line, and measured perpendicular to the building at the closest point to the front lot line. Such front yard is unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in the By-laws or 974 CMR.

Yard, Rear. A space extending the full width of the lot between the principal building and the rear lot line, and measured perpendicular to the building at the closest point to the rear lot line. Such rear yard is unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in the By-laws or 974 CMR.

Yard, Side. A space extending from the front yard to the rear yard between the principal building and the side lot line measured perpendicular from the side lot to the closest point to the rear lot line of the principal building. Such side yard is unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in the By-laws or 974 CMR.

1.03: Unified Development Permit System: Purpose, Overview, and General Requirements

(1) Unified Development Permit System. The process for reviewing Submissions in Devens is called Unified Permitting.

The purpose of Unified Permitting is to provide for expeditious permitting of land development to promote the orderly conversion and redevelopment of Devens. The DEC administers this system.

The major components of this system are zoning, site plan review and lotting or subdivision of land. Also included are variances, building permits, historic district certificates, board of health permits, wetlands approvals and water resources protection review, sign permits, and various licenses.

(2) Levels of Development Review. Submissions shall be processed pursuant to Level One or Level Two reviews.

1.03: continued

Level One reviews are conducted by the Director and typically include minor modifications to building and site plans, building permits (without site development), and Certificates of Compliance under a Wetlands Order of Conditions, as well as Level One Lotting plans.

A Submission that is not deemed Level One will be subject to Level Two review. Level Two reviews are conducted by the DEC.

A Unified Permit (Permit), may be approved, approved with conditions, or disapproved by the DEC.

(3) Principal Components of the Unified Development Permit System. Among the most important components are site plan review and division of land.

(a) Site Plan Review involves the siting of buildings on lots and the creation of facilities and services designed to accommodate the needs of the site, including, but not limited to, vehicular parking and loading facilities, stormwater management, provision of utilities on-site, landscaping and screening, and other improvements.

(b) Division of Land may be accomplished by submission of a Subdivision or a Level One Lotting Plan. In a Level One Lotting Plan, two or more lots are created, provided that frontage and lot area comply with the By-law requirements and the frontage is located along a way the DEC determines is maintained by MassDevelopment and used as a public way.

(4) Application and Submission Procedures for All Applications.

(a) Submission. Applications for Permits shall be submitted at the DEC's offices.

Devens Enterprise Commission  
c/o Devens Commerce Center  
43 Buena Vista Street  
Devens, Massachusetts 01432

Consent of the property owner is required for all Submissions. If land has not yet passed title from MassDevelopment to the new user seeking to locate a facility at Devens, the Submission shall be filed by MassDevelopment alone or in conjunction with the new user.

(b) Time Periods. Time periods are expressed in calendar days. If the last day of a time period falls on a federal or state holiday or on a weekend, the time period ends the next weekday. When calculating public hearing dates, the date of the hearing is in addition to the required time periods.

(c) Statement of Consistency with Reuse Plan and By-laws. Certain Submissions require the Applicant to submit a Statement of Consistency with the Reuse Plan and By-laws. The Statement of Consistency includes:

1. A description of the proposed development, including type of business, type of operation, process or activities and other information needed to clarify what will happen on the site once developed.

2. A statement detailing how the project complies with the following sections of the Reuse Plan:

a. Goals: including a discussion of how the proposed development is "sustainable" (how it meets the needs of future generations) and how it materially contributes to a sustainable economy. How does the proposed development contribute to the diversity of uses at Devens? How does it provide employment opportunities for persons with a range of skills and experience levels?

b. Objectives: including a discussion of how the proposed development will create jobs and benefit the regional workforce, those features of the proposal which build on Devens' unique characteristics, how the proposed development will protect and enhance quality of life, how the Applicant proposes to participate in some or all of the DEC's sustainability programs, and how the proposal protects and enhances Devens' ecological resources. Discussion should include specific measures to mitigate its impacts on the environment and surrounding communities.

c. A statement of how the proposed use and development comply with Zoning district goals and objectives of the By-laws and the Patterns (the Reuse Plan, section 4) for the zoning district in which the site is located.

d. Any other relevant portions of the Reuse Plan.

e. A narrative demonstrating compliance with other applicable sections of the By-laws.

1.03: continued

(d) Industrial Performance Standards. During the Pre-permitting Conferences, the Director shall determine whether the Applicant shall provide data pertaining to some or all of the Industrial Performance Standards (974 CMR 4.01 through 4.05) along with the type and extent of the data to be required. The burden of proof shall be on the Applicant to demonstrate compliance with the Industrial Performance Standards.

(e) Waivers of Requirements and Design Standards. If the Applicant requests a Waiver (elimination or modification) of a Submission or Plan Form and Contents requirement or a Design Standard, the request shall be made in writing specifying the provisions to be waived, as part of the Submission.

1. Requirements Waivers. The Director shall determine whether to grant waivers from Submission and Plan Form and Contents requirements. Requests for these Waivers shall be made and the Director's responses shall be provided prior to the deadline for the DOC. In determining whether to grant a Waiver, the Director shall consider whether the Waiver:

- a. Has minimal or no applicability to the Submission; or
- b. Does not impair the ability of the Director and the DEC to evaluate the nature and effects of the proposed project; or
- c. Is already provided in an alternative form acceptable to the Director.

2. Design Waivers. The DEC shall determine whether to grant, grant with conditions, or deny Waivers from Design Standards. These requests shall be made prior to expiration of the appropriate time limits set forth in 974 CMR 1.08.

In determining whether to grant a Waiver, the DEC shall consider whether the Waiver:

- a. Is consistent with the intent and purpose of the By-laws and the applicable 974 CMR; or
- b. Does not impair the ability of the DEC to evaluate the nature and effects of the proposed project; or
- c. Results in a standard that functions as effectively or better than the required Design Standards.

(f) Provision of Additional Information. The DEC may require the Applicant to provide reasonable additional technical data in response to concerns of the DEC or people who have submitted comments for the record. In doing so, the DEC shall establish reasonable time limits for the submission and review of the data, in order that the review process will not be unnecessarily delayed.

(g) Withdrawals of Permit Submissions. At any time prior to a decision of the DEC or Director, the Applicant may withdraw a Submission provided the request is made in writing to the DEC or Director. The withdrawal shall be acknowledged in writing, with a copy delivered to the Applicant.

1.04: Level One Review

(1) Level One review is an administrative approval process conducted by the Director. The following are subject to Level One Review:

- (a) Issuance of a Building or Occupancy Permit wherein no other DEC action or site plan review is required.
- (b) Alteration or creation of a lot for any of the following purposes: revision of lot lines, division of a lot containing two buildings into two lots with separate buildings and division of a single lot unimproved by a building into two or more smaller lots with frontage; provided in any event, all resultant lots comply with the frontage requirements in Article VIII of the By-laws and frontage shall be on a way the DEC determines is maintained by MassDevelopment and used as a public way.
- (c) Minor architectural modifications of a structure within a historic district consistent in scope with the following examples: movement of less than six inches in an approved window or door opening; modifications of less than two total inches on an approved shutter or removable facade feature; shifts of less than one foot of a staircase or existing canopy; modifications to approved signs involving less than 10% of the sign area; or reasonable modifications to sign placement for practical reasons.

1.04: continued

(d) Engineering adjustments to an already approved site plan consistent in scope with the following examples: a change to more desirable landscape material; a shift of less than eight feet in building placement on a lot; a shift in site utility connections, in order to provide improved hookup to the public system or to avoid a natural constraint; an adjustment of not more than three feet in the width or location of a driveway entrance, in order to improve sight distance or to avoid a natural constraint; similar adjustments required to facilitate a more functional site plan.

(e) Issuance of a Certificate of Compliance under a Wetlands Order of Conditions.

(2) Level One Review and Decision. The Director shall determine whether a Submission is subject to Level One review. Within 14 days of the receipt by the Director of a Level One Submission the Director shall determine whether it is complete. Within the time periods shown in 974 CMR 1.08 the Director shall approve, approve with conditions, or deny the Submission. No public hearing or meeting is required.

(3) Level One Lotting Plan.

(a) Purpose and Process. An Applicant who seeks to create or alter a lot in accordance with 974 CMR 1.04(1)(b) shall apply to the Director for a determination that the plan does not require Definitive Plan endorsement and does not require Level Two review. The review process will provide an appropriate and expeditious review of plans that relocate lot lines and create lots with frontage on a public way.

(b) Level One Lotting Plan Submission Requirements. A Level One Plan shall include the following:

1. A completed Permit application form.
2. The required fees.
3. A copy of the approved plan, and any revisions submitted after approval, shall be provided in electronic format per the submission requirements listed in 974 CMR 1.05.
4. Three copies of the plan and a mylar plan acceptable to the Registry for recording.
5. A narrative explaining why the plan should be deemed a Level One Plan.
6. A metes and Bounds description of each parcel created.

(c) Plan Form and Contents. The plan submitted for endorsement as a Level One Plan shall show the following:

1. Plan title, north arrow, date, and scale.
2. Locus at a scale of one inch = 2000 feet measuring at least four inches on a side showing an area extending at least 2500 feet beyond the proposed lot(s)
3. Name and address of Owner, the Applicant (if different from the Owner), and the Engineer or Surveyor.
4. Seal and signature of the Engineer and/or Surveyor.
5. A list of any Institutional Controls imposed on the parcel or a note indicating that no known Institutional Controls have been imposed on the parcel.
6. Abutting properties labeled with the names of all abutting property owners as they appear in the most recent tax list, Assessor Parcel numbers, or the equivalent, if assigned, and a Plan Book and page reference.
7. Location and type of all existing monuments on the lot being created or revised and within 100 feet of the lot with bearing and distance to the nearest permanent monument. The location and type of all proposed monuments clearly differentiated from the existing.
8. Boundaries of the land being divided or the new or revised lots. All adjacent parcels held by the Owner or Applicant shall be shown in their entirety.
9. The name of the street and width of the right-of-way providing frontage to the lot(s) shown on the plan and the extent of paved improvements within the right-of-way and proposed curb cut location or alternative means of access to the lot.
10. All existing lot lines, lot areas, and easements.
11. All proposed lot lines, total square footage of proposed lot(s), lot frontages, and proposed easements. Proposed lots shall be numbered for identification.
12. Location of all existing structures, rights-of-way, easements, lots, and roadways. Setbacks to lot lines for all structures shall be shown (see 974 CMR 3.04(2) for setbacks).

1.04: continued

13. Datum reference used in the preparation of the plan and sufficient data to determine location, width, direction, and length of every street and way line, lot line, and boundary line and to establish these lines on the ground.
  14. Suitable signature space for endorsement of plan by the Director.
  15. Zoning classification and location of any zoning district or overlay district boundaries that lie within the locus of the plan.
  16. Notation of any variance issued as to the land or structures within the parcel giving the Devens case number, date granted, and description of the variance.
- (d) Review Criteria for a Level One Lotting Plan. The Director shall approve or approve with conditions a Level One Lotting Plan if all of the following criteria are met:
1. The lot meets all the dimensional requirements of the Devens By-Laws and 974 CMR.
  2. The proposed lot is on an accepted public way or sufficient access easements have been secured to provide access from the lot to an accepted public way.
  3. All Submission requirements of 974 CMR 1.03(3)(b) have been met or appropriate waivers have been granted.
  4. All plan form and content requirements of 974 CMR 1.04 have been met or appropriate waivers have been granted.
- (4) Level One Development Plan.
- (a) Minor additions to existing buildings or parking lots that do not require Level Two Site Plan review shall require approval by the Director of a “Level One Development Plan”. To obtain approval of a Level One Development Plan the Applicant shall submit six copies of a plan complying with the Plan Form and Contents requirements for a Level One Lotting Plan and the following:
1. Topography with contour lines at five feet intervals or less.
  2. Surface water drainage for the entire parcel at a conceptual engineering level, indication of flow direction, interim and permanent surface catchments and channels (depicted at a general plan view level), the location and general type of manmade drainage structures, and similar information shall be reflected.
- (b) In addition to the plans, the following shall be submitted:
1. A completed Permit application form.
  2. The required fees.
  3. A record copy of the plan shall be submitted for DEC records in an acceptable electronic format. In the absence of digital capability, mylar reproducible sheets and hard copies will suffice.
  4. A narrative explaining why the plan should be deemed a Level One Plan.
  5. A narrative demonstrating consistency with the Reuse Plan and By-laws meeting the specifications of 974 CMR 1.03(4)(c).
  6. A list of Waivers (if any).
  7. Information on traffic levels on abutting street(s), including ADT and peak hour (A.M. and P.M.) levels and estimated traffic generation for proposed lot based on build-out allowed under zoning. The most recent traffic counts and corresponding LOS as measured by and for MassDevelopment may be substituted for required traffic studies and estimates.
  8. At the proposed curb cut location, sight distances shall be provided in accordance with current AASHTO guidelines for prevailing (85th percentile) speeds on adjacent ways to ensure adequate safety.
  9. Any other information the Director deems necessary in order to determine compliance with Review Criteria in 974 CMR 1.03(4)(d).
- (c) If a Level One Lotting Plan has been previously approved or is submitted simultaneously with a Level One Development Plan, information on the Lotting Plan need not be duplicated on the Level One Development Plan.
- (d) Review Criteria for a Level One Development Plan. The Director shall approve, or approve with conditions a Level One Development Plan if all of the following criteria are met:
1. the lot on which the development is located has or will be recorded at the Registry of Deeds;
  2. the proposed action does not require Level Two review;

## 1.04: continued

3. an adequate stormwater management system services the lot;
4. access and site circulation enables prompt fire, police, and emergency response;
5. connections with utility, power and communication systems available in the abutting infrastructure have been made;
6. any Institutional Controls applicable to the lot have been located and noted on the plan; and
7. adequate sight distances exist at the proposed curb cut location and the travelway and paved width of the abutting way can reasonably accommodate anticipated peak traffic flows without producing level of service failures or safety problems at adjacent intersections.

1.05: Level Two Review

(1) Scoping Session. A preliminary meeting between the Applicant and the Director is strongly recommended. The purpose of the meeting is to determine the appropriate level of Permit, the components of the Permit, the timing of the Submission and permitting process, and a general scope of the project submittal items.

(2) Determination of Zoning Compliance. An Applicant may seek Determination from the DEC that the proposed uses and activities are permitted within the zoning district in which the development site is located and the proposed uses comply with the development goals applicable to that zoning district. Such determination is made by the Commission at a public meeting following submission of a statement of how the proposed use and development comply with Zoning district goals and objectives of the By-laws and the Patterns (the Reuse Plan, section 4) for the zoning district in which the site is located.

(3) Pre-permitting and Final Conferences. For any Submission that will be subjected to Level Two review, the Applicant shall participate in as many Pre-permitting Conferences as necessary with the Director. The discussion topics shall include a determination of which development issues are critical, Submission and Plan Form and Contents requirements, Waivers of Design Standards and preliminary time schedules. Where similar information is required by any two or more chapters of 974 CMR, such as 974 CMR 2.00 and 5.00 (one example being a large new campus-type office park with public roads) or 974 CMR 3.00 and 7.00 (new construction requiring site plan approval in the historic district), the Director will recommend elimination of duplication whenever possible. The Pre-permitting Conference shall be scheduled, at which time the Submission and any remaining issues shall be discussed by the Applicant and Director. Upon completion of the Final Pre-permitting Conference, the Director shall render a written DOC within 14 calendar days of the final Pre-permitting Conference (974 CMR 1.08).

(4) Determination of Completeness (DOC).

(a) "Complete" means that a Submission complies with the Plan Form and Contents and Submission requirements of all applicable sections 974 CMR and includes the Statement of Consistency (974 CMR 1.03(4)(c)).

(b) The Director may determine that a Submission is complete, conditionally (or partially) complete, or incomplete. If the Director determines the Submission is incomplete, the Applicant shall be notified in writing of the deficiencies in the Submission.

(c) The Director shall forward to the DEC Submissions requiring Level Two review after a DOC has been issued. For Submissions determined conditionally complete, a schedule for the submission of deficient or additional items shall be attached to the DOC. The Director may forward an incomplete or conditionally complete Submission if the Applicant agrees in writing to submit the missing information by a date acceptable to the Director.

(d) If the Director does not issue a DOC within the required time limit, the Submission shall be deemed Complete. The date of the DOC is the date the time periods for review (974 CMR 1.08) are commenced.

(5) Town Comment Period. The DEC shall provide the Towns with copies of complete Level Two Submissions. The Towns shall have 30 days to render comments to the DEC on the Submission. The public hearing shall not be closed until the 30-day town comment period is concluded.

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- (6) Public Hearing Requirement and Abutter Notices. A public hearing shall be held for Level Two reviews. The DEC shall provide notice of public hearings to the general public and to abutters in the manner set forth in the By-laws. The Applicant shall submit a certified list of abutters prepared by the MassDevelopment Division of Engineering (Devens) including the names and addresses of all property owners within 300 feet of the boundaries of the development site for which a permit is sought. If these properties are located outside Devens, the names and addresses of the owners shall be as shown on the most recent tax records of the town.
- (7) Public Hearing Continuances. The DEC may, with the consent of the Applicant, agree to one or more continuances of public hearings of up to 30 days each. Substantive changes made to a plan as a result of review comments and deficient items which the Applicant must provide as a condition of the DOC shall be sent by the Applicant to the Towns at least five days prior to the date of the public hearing. Failure to do so shall result in continuation of the public hearing.
- (8) The Voting Process. The Applicant and the DEC may agree to an extension of the time periods set forth in 974 CMR 1.08 to provide sufficient time for the DEC to render its decision. Unless otherwise stated, all DEC votes are by a majority of a quorum (a quorum is seven DEC members). Seven votes are required for a Variance and Reconsideration. Eight votes are required to adopt or amend Regulations.
- (9) Record of Decision (ROD). The ROD shall be rendered within ten days from the date of the DEC's vote. The ROD shall be sent by Certified Mail to the town clerks of Harvard, Ayer and Shirley, and the Applicant. Receipt of the ROD by the last town clerk to certify its receipt shall be the commencement of the appeal period under St. 1993, c. 498, § 11. The Applicant shall record the ROD with the Registry of Deeds for both Worcester and Middlesex Counties and provide proof thereof to the DEC prior to the issuance of a building permit.
- (10) Endorsement. After the appeal period has expired, the Applicant shall submit plans for endorsement. The signatures of seven members of the DEC on the first sheet of the Development Plans and that of the Chairman or his designee on the remaining sheets shall constitute Plan Endorsement. Plans shall be recorded with the Registry of Deeds for both Worcester and Middlesex Counties and proof of recordation submitted to the DEC prior to the issuance of a building permit.
- (11) Public Health. When the DEC must conduct a public hearing as a local Board of Health (defined as a Level Two action), the hearing must be convened within 30 days of the date that the Director renders a DOC. In instances of Facility Site Permitting, the procedures set forth in M.G.L. c. 111, take precedence over 974 CMR.

1.06: Surveying and Monumentation

- (1) Surveys.
- (a) All survey work performed as part of a lotting plan, site plan or subdivision plan shall, at a minimum, adhere to 250 CMR 6.00: *Procedural and Technical Standards for the Practice of Land Surveying*. Where applicable, the MassDevelopment Engineering Department may establish additional standards of practice, apply more stringent requirements and/or require additional submission requirements.
- (b) All surveys shall relate to the North American Datum of 1983 (NAD 83) and the National Geodetic Vertical Datum of 1929 (NGVD 1929). All data shall be referenced to the Massachusetts State Plane Coordinate System (Mainland Zone). The standard unit of measure shall be the U.S. Survey Foot.
- (c) All surveys for the establishment of property lines, right of way lines and permanent easements shall tie into at least two points in the Devens Survey Control Network. For traverse/level adjustments the published values of these existing control points shall be held fixed.
- (d) All information submitted in digital format shall adhere to the standards of the MassDevelopment Engineering office.

1.06: continued

(2) Monumentation.

- (a) Monuments shall be installed on way lines and property lines at all points of curvature and at all points of change in direction.
- (b) Monuments shall be a standard permanent granite bound of not less than four feet in length and not less than six inches in width and breadth and shall have a 1/2 inch diameter hole 1 1/2 inches deep, drilled in the center of the top surface. Iron rods not less than 3/4 inch diameter and four feet in length may be substituted in locations approved by the MassDevelopment Engineering office.
- (c) No permanent monuments shall be installed until all construction that could destroy or disturb them is completed. The tops of monuments shall be set flush with the final graded surface. Any existing monument destroyed or disturbed by any activities related to the development or use of a parcel shall be reset or replaced at it's original location. The same standards will be held for the resetting or replacement of monuments as for the placement of new monuments.
- (d) Coordinates and elevations shall be published for new monumentation at a rate of not less than one per four monuments set.

1.07: Fees

(1) Unified Permit Fees.

- (a) The Unified Permit fees cover all DEC activities from the Pre-permitting Conference through the Building Permit. The fee is based on the total value of all construction and improvements, including site preparation, construction, engineering and site testing, roads, paving, parking lots, landscaping, and other improvements. Such value shall be based on an estimate prepared and certified by an Engineer or other professional licensed and qualified to prepare such an estimate such as a "cost estimator." The cost of the building shall be included in the total value of all construction for the purposes of calculating the fee. Should the actual building construction cost exceed the estimate, the difference between the fee as calculated including the actual building costs and the fee paid shall be submitted before a building permit can be issued.
- (b) Unified Permit Fee Calculation. The Unified Permit fee is comprised of a base fee and value increment based on building costs and lot improvements plus a value related to the size of the lot. In calculating the Unified Permit fee, the total gross value of the development shall be rounded up to the next \$100,000. See 974 CMR 1.07: *Table 1* for the how the fee is to be calculated.

TABLE 1: UNIFIED PERMIT FEE

Gross value of project (inclusive of the buildings and all site development work and infrastructure improvements)	Base fee	Plus value increment (if any)
\$1,000,000 or less	\$1,300	Plus \$13 per \$1000 of work above \$100,000
\$1,000,000 and above	\$13,000	\$11.00 for each additional \$1000 in work above \$1,000,000

- (c) An Applicant shall pay at least 75% of the total fee (payable by certified or bank check) by the day of the final Pre-permitting Conference. The Director shall not issue a DOC until the 75% fee is paid. The remainder is due (payable by certified or bank check) prior to the issuance of the Unified Permit.
- (d) Unified Permit fees are non-refundable after a Building Permit has been issued.

1.07: continued

(2) Peer Review Fees.

- (a) The DEC may seek review and analysis from outside consultants (peer review). Applicants shall pay a peer review fee covering 100% of the consultants' fees. Outside consultants employed by the DEC for plan review routinely include civil engineers, landscape architects, wetlands scientists, and attorneys and may, depending on level of complexities of a Submission or "special environmental conditions" (By-laws, Article III Section E.3.d), include additional professionals with specialized expertise.
- (b) The hiring of peer review professionals shall be accomplished in accordance with the DEC's procurement provisions, including those for expedited hiring.
- (c) The DEC may only use Peer Review fees paid by a particular Applicant for the project proposed by that Applicant. The DEC shall keep funds paid by an Applicant in a separate account. At the completion of the DEC's review of a project, the DEC shall reimburse the Applicant any excess amount in the account, including interest if any, and render a final accounting.
- (d) The initial peer review fee deposit is calculated on the basis of \$1000 per \$10,000 of the Unified Permit fee. If the actual costs of the peer review exceed the peer review fee deposit, the additional costs shall be paid by the Applicant prior to the endorsement of plans or the issuance of a building permit.
- (e) Peer review deposits shall be retained until the project is completed. The costs of construction monitoring subsequent to approval shall be charged to an Applicant's peer review fee deposit. If the actual costs exceed the deposit, the remainder shall be paid before the certificate of occupancy is issued.

(3) Individual Permit Fees. Component or individual permit fees are set forth in 974 CMR 1.07: *Table 2*. These fees apply when an Applicant is only seeking one permit as opposed to a Unified Permit.

TABLE 2: INDIVIDUAL PERMIT FEE SCHEDULE:

Level One Components	Fee	Notes or special Considerations
Level One Lotting Plan	\$500 for the first lot plus \$100 for each additional lot	
Level One Development Plan	\$500 plus peer review fees	
Level One Building Permit (building permit only, no Level Two hearing required)	\$13/\$1000 of value up to \$1,000,000, with a minimum fee of \$50	
Wetlands Certificate of Compliance	\$50	
Certificate of Occupancy	\$50 per occupied premises or building	Not included in the Unified Permit fee
Temporary Certificate of Occupancy	\$500 per occupied premises or building	
Extension of a Temporary Certificate of Occupancy	\$1000 per occupied premises or building	
Sign Permit (no waivers)	\$50	May be waived if included within a Unified Permit Submission
Tent Permit	\$50/tent	
Level One Wireless Facilities	\$500 plus review fees	
Wetlands Request for Determination of Applicability (RFD)	\$100 for RFD	May be waived if included within a Unified Permit Submission

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1.07: continued

<b>Level Two Components</b>	<b>Fee</b>	<b>Notes or special Considerations</b>
Wetlands Notice of Intent/Order of Conditions	Per DEP Schedule	DEC's portion of fee waived if included within a Unified Permit Submission
Historic District Certificate of Appropriateness	\$500, plus peer review fees for any specialized consultants required for review	May be waived if included within a Unified Permit Submission
Sign Permit (requires Public Hearing)	\$250	May be waived if included within a Unified Permit Submission
Zoning Variance or Reconsideration	\$500 for variance and \$1000 for reconsideration	
Board of Health action requiring a public hearing (e.g. DEC sitting as a Board of Health for a solid waste facility siting hearing)	\$500, plus peer review fees for any specialized consultants required for review	
Level Two Wireless Facilities	\$2000 plus review fees and \$200 processing fee	
<b>Other Fees:</b>	<b>Fee</b>	<b>Notes or special Considerations</b>
Food Vendor Permit, mobile or fixed, temporary or permanent	As per Nashoba Associated Boards of Health fee schedule, directly charged to Applicant, see 3 <sup>rd</sup> column as well	DEC reserves the right to levy fees for time and expenses, for cases requiring effort above the norm on the part of DEC staff and/or consultants
Other Board of Health Services and Inspections	As per Nashoba Associated Boards of Health fee schedule, directly charged to Applicant, see 3 <sup>rd</sup> column as well, plus peer review fees for any specialized consultants required for review	DEC reserves the right to levy fees for time and expenses, for cases requiring effort above the norm on the part of DEC staff and/or consultants
Septic hauler/disposal license	\$100/truck per annum	
Liquor License	\$2250 per annum, based on the calendar year, with prorated discount by month	
Common Victualers License	\$50 per annum, based on calendar year	
<b>Plumbing Permits*</b>	<b>Fee</b>	
Residential		
Routine repairs	\$50 per inspection	
Base fee	\$100	
Additional, per fixture or unit	\$10 each (in addition to base fee)	
Industrial – Commercial – Institutional		
Base fee	\$250	
Additional, per fixture or unit	\$10 each (in addition to base fee)	
High Pressure Gas: Base fee	\$400	
Additional, per fixture or unit	\$10 each (in addition to base fee)	
<i>Routine repairs</i> (too minor for base fee as determined by the Inspector)	\$100 per inspection	

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1.07: continued

<b>Electrical Permits*</b>	<b>Fee</b>	
Residential		In mixed residential and nonresidential areas, Industrial fees apply
Routine repairs	\$50 per inspection	
Base fee	\$100	
<b>Industrial – Commercial – Institutional</b>		
Projects with electrical work totaling less than \$50,000 - Base fee	\$200	
Service Upgrade or Capacity Rating per 100 AMP	Base fee of \$200 plus	
100 AMP	\$100	
200 AMP	\$150	
400 AMP	\$250	
600 AMP	\$350	
1000 AMP	\$550	
2000 AMP	\$1050	
<b>Electrical Permits*</b>	<b>Fee</b>	
Routine repairs (too minor for base fee)	\$100 per inspection	
Electrical work between \$50,001 and \$100,000	base fee + \$1000 = \$1200	
Electrical work between \$100,001 and \$200,000	\$1700	
Electrical work between \$200,001 and \$300,000	\$2200	
Electrical work between \$301,000 and \$400,000	\$2700	
Electrical work between \$401,000 and \$500,000	\$3200	
Temporary service	\$50	
Telephone/voice/data	\$50 minimum	
Alarm/Fire Circuit	\$50 minimum	

\*In the event plumbing or electrical work is performed without a permit, the fee shall be triple that shown on the table. Charges for additional inspections and other work will be determined by the inspector.

(4) General.

(a) For permits or actions not listed in 974 CMR 1.07: *Table 1* or *2*, the Applicant shall make a written request to the Director for a determination of the amount of the required fee. The Director shall respond within seven days.

(b) Public Hearing Processing Fee. When a Public Hearing is required, the Applicant shall pay a processing fee to reimburse the DEC for the costs of advertising and postage which is the greater of \$200 or 1% of the total Unified Permit fee.

(c) Refund Requests. All Level One fees are non-refundable. Withdrawal of a Level Two Submission prior to the public hearing shall be 50% refundable. After the public hearing has been held, 25% shall be refundable. In the event a Submission is withdrawn, the re-application requires a new fee, unless the DEC finds compelling reasons to waive it.

(d) When MassDevelopment or one or more of the Towns undertake projects of a municipal nature there will no fee incurred except the costs of peer review consultants required by the DEC and the processing fee.

1.08: Time Limits for Review

Each Submission for a Permit (or component thereof) is subject to a deadline by which the DEC must make a decision *i.e.*, take a final vote. Listed are the applicable time periods, measured from the date of the DOC. The time limits for Level One reviews may be extended by mutual written agreement of the Applicant and the Director. The time limits for Level Two reviews also may be extended by a written agreement of the Applicant and the DEC. In a Submission with more than one component, the longest time limit associated with one component shall apply to the entire Submission.

TABLE 3: TIME LIMITS FOR REVIEW

	Time Limit in Days
<b>Level One Review</b>	
Lotting Plan	14
Development Plan	21
Engineering Adjustment	14
Building or Occupancy Permit	30
Other reviews authorized in the By-laws, Article III, Section D	21
<b>Level Two Review</b>	(inclusive of the date of the DEC's vote)
Site Plan Review	75
Subdivision Approval	75
Wetlands	63
Variances	90
Reconsiderations (measured from the date of the request)	45
Historic District Certificates of Appropriateness	45

1.09: Project Duration and Project Completion

(1) Permit Duration. Unified Permits shall remain in effect so long as the approved development activities are commenced within the time periods prescribed below. These time periods commence from the date that the DEC or the Director renders a written decision. These periods shall be tolled during litigation.

TABLE 4: TIME LIMITS FOR COMMENCING AND COMPLETING DEVELOPMENT ACTIVITIES

Permit type	Commencement	Completion
Building Permits (construction of a building or structure)	Within six months	Two years or as approved by the DEC approved by the DEC
Subdivision Road	Within six months	One year
Approved Site Plan	Within six months	Two years
Other Components	Six to 12 months depending on project	Expediently

(2) A permit is completed upon application for a Certificate of Occupancy, Wetlands Certificate of Compliance, submission of an as-built plan.

(3) Extensions to the above time limits may be granted by the Commission in the instance of Level Two permits or the Director for Level One permits, providing written request for the extension is received prior to the expiration of the time limit and the Applicant explains the need for an extension.

(4) Failure to complete within the proscribed time limits shall result in withholding of any outstanding permits and/or revocation of performance guarantees.

## 1.09: continued

(5) Phased Construction. An Applicant may request that the DEC allow phasing. The Applicant shall specify the phases requested, detailing the work to be accomplished in each phase and the locations of the work. The Applicant shall also propose dates of commencement and completion for each phase. In its approval of a phased Permit, the DEC shall establish reasonable time periods to commence and complete the phases of the entire project.

1.10: Vesting

(1) Purpose. To promote more predictable and equitable vesting of rights for development and to establish specific guidelines for determining the vested rights of properties affected by new or changed regulations.

(2) Rights Vested in Applicable 974 CMR.

(a) A building, structure, sign, parking space, landscaping amenities, loading dock, or other site improvement which complies with the provisions of 974 CMR 1.00 at the time at which a building permit is issued but would not comply with any proposed amendments to 974 CMR 1.00 may be completed, continued or maintained provided the following three conditions have been met:

1. The commencement of construction must be pursuant to a validly issued building permit.
2. There must be actual physical commencement of some significant and visible construction; and
3. The commencement must be undertaken in good faith, to wit, with the intention to continue with the construction and carry it through to completion.

(b) A building, structure, sign, parking space, landscaping, loading dock, or other site improvement constructed in compliance with duly issued building permits may be continued despite changes in 974 CMR, however, the construction of a new building, construction or expansion of a parking lot, structure, or loading dock, construction of an ancillary building greater than 800 square feet of gross floor area, or the construction of a project that will result in changes to the existing land surface area of 10% or more of the lot size shall be in accordance with the updated or amended 974 CMR, if any.

(3) There shall be no vesting with regard to 974 CMR 8.00: *Public Health*.

1.11: Variances

(1) Applicants may seek relief from specific dimensional requirements of the By-laws. A variance Submission may stand as a separate component or as a component within a Unified Permit. In either case, the DEC must consider and vote on the variance separately and must do so before voting on the Submission. A Permit shall not be granted if a required variance has not been approved.

The grounds for granting a variance are as follows:

- (a) circumstances inherent in the individual property in question would render literal enforcement of the By-laws as causing substantial hardship;
- (b) the granting of the variance will not cause substantial detriment to the public good; and
- (c) the granting of the variance will not substantially negate the purposes of the By-laws or 974 CMR. Use variances are prohibited.

(2) A Majority Vote of the Full Membership. Seven votes is required for the granting of a variance. A variance must be exercised within one year of its granting, unless an extension for one six month period is allowed by the DEC for good cause and upon receipt of a written extension request from the Applicant. If authorized by the DEC, such extensions may be granted by the Director. See By-laws, Article IV, Section A for additional requirements for variances

1.12: Amendments and Reconsiderations

(1) Reconsiderations. An Applicant, a Town or any aggrieved person who is not an Applicant, may submit a request to the DEC to reconsider a vote taken by the DEC or a decision of the Director. A Reconsideration is a prerequisite to taking an appeal by the DEC to Superior Court pursuant to St. 1993, c. 498, § 11.

## 1.12: continued

(a) The grounds for the Reconsideration are:

1. Mistake or misrepresentation on the plans or Submission;
2. Fraud;

3. Significant changes in site conditions (including flood, fire, earthquake or other acts of God or unauthorized earth removal);
  4. Decision of the DEC or the Director was outside the scope of its authority;
- (b) All requests for Reconsideration of the DEC's or Director's determinations must be made in writing to the DEC within 30 days of the DEC's vote or Director's decision. Such request must include the following:
1. A precise statement of issue on which reconsideration has been requested, including the grounds for reconsideration;
  2. A narrative statement, including technical information where appropriate, in support of the reconsideration request; and
  3. Narrative statement containing references to the Reuse Plan, By-laws or that shall provide a reasonable basis for the DEC to reconsider an action taken.
  4. Payment of required fee.
- (c) The DEC will act on a request for Reconsideration within 45 days of receipt of such request. It will act at a public hearing. The time period to act on a request for Reconsideration may be extended as provided in 974 CMR 1.08.
- (d) Limit on Reconsideration. Unless voted by a supermajority of the DEC, petitioners are limited to one request for reconsideration per Submission.

(2) Changes to Approved Plans. The determination of whether a proposed change to an approved Unified Permit constitutes an engineering adjustment or an Amendment is made by the Director within 14 days of the request for a plan change. The Applicant shall submit a written description and explanation of the proposed change, a plan showing its location and extent and any other information requested by the Director.

(3) Engineering Adjustment (Level One Review). Engineering Adjustments are typically minor corrections or alterations to an approved Unified Permit. They frequently result from conditions in the field. Changes include minor corrections to lot lines, small shifts in street rights-of-way (for example, a relocation due to ledge) or in the location of a drainage basin (due to soil constraints, for example) or other insignificant adjustments. The Applicant may request an Engineering Adjustment that shall be reviewed by the Director in accordance with the Level One review process. The Director shall then determine if it complies with the applicable 974 CMR. The Director shall approve or deny in writing the Engineering Adjustment within 14 days of the submission of the proposed change.

(4) Amendment (Level Two Review).

- (a) The Applicant may request an Amendment during the time period the Unified Permit remains in effect. The DEC shall review the request in accordance with the level of review conducted for the original. The DEC shall render its decision on the Amendment within the time periods specified in 974 CMR 1.08.
- (b) Any plan prepared or submitted subsequent to the approval of an Amendment shall include appropriate references to the Amendment. An Amendment to the Permit may require commensurate revisions to the performance guarantee.
- (c) The DEC shall not approve the Amendment unless the Review Criteria for the component are satisfied.

### 1.13: Performance Guarantees

(1) Applicability. The DEC shall require a performance guarantee for any or all of the following Unified Permits components:

- (a) Plans For a New Subdivision Road. The creation of roadways to provide frontage and access for lots, involving construction or substantial grading of any of the following improvements: streets and rights-of-way and all improvements therein (signs, monuments, street trees and planting strips, sidewalks); construction of utility system segment(s); earth removal and site alteration; drainage systems; and other features associated with opening the area for development.

1.13: continued

- (b) Site Plans. Site preparation, including grading and earth removal; driveways and internal access roads; landscaping; lighting; site drainage improvements; and other features associated with the site plan.
- (c) Wetlands. Construction of any alterations and/or required mitigation measures pursuant to a Wetlands Permit (Orders of Conditions).
- (d) Historic. Major Architectural Alteration of Buildings (and/or designated settings) within Devens Historic Districts, and subject to Massachusetts Historical Commission approval.
- (e) Innovative or Residential Development.

(2) General Requirements.

- (a) Form of Performance Guarantees. The DEC may require a performance guarantee as a single, inclusive instrument involving all components of a Unified Permit or, at the Director's discretion, may accept more than one type of instrument.

The following irrevocable Performance Guarantee instruments may be used by Applicants:

1. A performance insurance bond
2. A properly pledged passbook or other surety document or instrument that has been secured by the applicant in a recognized, State chartered, savings or lending institution
3. Other negotiable surety acceptable to the DEC, inclusive of a properly pledged and executed lenders agreement or letter of credit

- (b) Agreement. The DEC shall enter into a written agreement with the Applicant whenever a Performance Guarantee is required. This document shall describe all pertinent terms and conditions, including the physical improvements being secured, the amount of money involved, and the obligations and rights of the parties under the agreement.

(3) Guarantee Amount and Value.

- (a) The Director shall determine the amount of the guarantee, considering the scale of the proposed project and the potential risk.
- (b) The Applicant shall submit to the Director an estimate of the cost of construction related to implementing the Permits(s). The estimate shall be prepared by an engineer or other suitably qualified professional, and shall include general quantities of materials and costs associated with construction (all calculated by linear foot, cubic yard, square foot, and other appropriate itemizations of quantities).
- (c) For a Unified Permit, the estimated construction costs should include the full range of improvements starting with the earliest earth removal (associated with improvements) from the subdivision of land, and proceeding to improvements associated with the construction of a building. For Partial Permits, the estimated construction costs should only include the improvements associated with the Permits being sought.
- (d) For phased construction, the DEC may allow Performance Guarantees for individual phases with the amounts calculated for a specific phase, particularly in situations when the phases in and of themselves result in the complete construction of a portion of the entire project. The Director may also allow the Performance Guarantee instrument to be used for each phase successively on the completion of the preceding phase.

(4) Release.

- (a) Based on a written request by an applicant that includes an estimation of the remaining site completion costs, and based on an inspection conducted by DEC staff, the Director shall determine whether a release of a performance guarantee is warranted.
- (b) The Director shall, within 14 days of receipt of such request render a decision to either reduce, release, or maintain the value of the performance guarantee posted by an applicant. In the event the Director determines the original guarantee amount should continue to be held or elects to retain a greater amount than that requested to be released by the applicant, the Director shall list the reasons for its decision and the improvements that still need to be completed.
- (c) Resolution of disputes related to a partial or full surety release shall be by means of the Reconsideration process described in 974 CMR 1.11. Partial release points are permissible at distinct construction milestones, at the discretion of the Director.

1.13: continued

(5) Certificates of Occupancy and Performance Guarantees. A Certificate of Occupancy shall not be issued if any work items, whether in the building or site improvements associated with the Permit, remain incomplete. A temporary Certificate of Occupancy may be issued by the Building Official provided sufficient surety has been posted with the Director for any outstanding site improvements.

(6) Conversion to Another Form of Performance Guarantee.

(a) The Director may allow the form of a performance guarantee to be revised or substituted with an alternative form of security. If the alternate performance guarantees are deemed by the Director to be equally as protective of the public interest as the preceding form of security, they will be granted. Where an Applicant proposes to change a performance guarantee instrument, a written request shall be given to the Director, that sets forth and includes:

1. The extent and scope of remaining work to implement a Unified Permit to satisfy DEC requirements and/or conditions;
2. An estimate, as provided above, that reflects all remaining construction; and
3. The form and alternative type of guarantee being proposed to secure all remaining improvements.

(b) The Director shall make a determination on the sufficiency of the submitted estimate and the suitability of the alternate form of security. If the estimate and alternative form of security is deemed adequate, the new performance guarantee shall be appropriately pledged and secured. An amended or new agreement may be required. On acceptance by the Director of the new performance guarantee, the prior guarantee or security provided shall be released.

1.14: Enforcement

(1) Right to Inspect. The DEC, its staff, and consultants shall have the right to enter all properties at Devens at reasonable times, for the purpose of observing and investigating construction and/or operations on the site in regard to enforcement of 974 CMR or the By-laws.

(2) Enforcement Powers. The DEC's enforcement powers include:

- (a) withholding of building and occupancy permits;
- (b) power to assess penalties for violations of the Reuse Plan, By-laws, or 974 CMR in amounts no more than \$300 per day per violation, provided that each day such violation continues shall constitute a separate offense;
- (c) power to institute actions in Court to compel the removal, alteration, or relocation of any structure that violates the Reuse Plan, By-laws, or 974 CMR;
- (d) zoning enforcement powers;
- (e) enforcement powers available to a zoning board of appeals;
- (f) power to require security for the construction of ways and municipal services to a subdivision that was approved by the DEC;
- (g) powers available to enforce the subdivision control and lotting sections of the By-laws and 974 CMR;
- (h) powers available to the DEC to enforce the Historic District Acts;
- (i) powers provided to the DEC to make and enforce reasonable public health regulations including, but not limited to, the issuance of permits and the assessment of fines related to the violation of the By-laws and 974 CMR including the removal and transport of garbage or other offensive substances, atmospheric pollution, disposal of cesspool and septic-tank waste, and the construction, maintenance, and alteration of certain sewage disposal systems; and
- (j) other powers expressly and implicitly conferred on the DEC pursuant to St. 1993, c. 498.

(3) Complaint Process.

(a) Within 14 days of receipt of a written complaint, the Director or Building Official shall investigate, inspect the location, and determine if a violation exists. If no violation is found, the Director or Building Official shall make a written response to the complainant within 14 days explaining the finding.

1.14: continued

(b) If a violation exists, the property owner and offending party shall be notified in writing of the violation and given a specified period of time to correct or eliminate the violation. The complainant shall receive a copy of the notice. At the end of the specified time, the Director or Building Official shall re-inspect and determine whether the violation has been corrected or eliminated. If not, the Director or Building Official shall notify the property owner and offending party in writing that the violation still exists and may commence the assessment of fines. After continued violation and with the consent of the DEC, Court action may be taken.

(c) If the public health or safety is endangered, the Director shall seek immediate correction and may, with the consent of the DEC, cause a complaint to be filed in Superior Court or in District Court in accord with M.G.L. c. 40, § 21D, Noncriminal Disposition. Alternatively, the DEC may correct the problem and file a complaint in Superior Court to recover the costs of repairs.

(4) Wetlands Enforcement Orders.

(a) Process. Enforcement Orders for work in the wetlands conducted without an Order of Conditions or done improperly after the issuance of an Order of Conditions may be issued by the DEC. The goal of enforcement is to secure prompt and continued compliance with 974 CMR 4.06 and the Order of Conditions. The DEC oversees work under Superseding and Final Orders issued by DEP and can issue enforcement orders under them.

(b) Ratification of Enforcement Orders. The policy of the DEC is to issue Enforcement Orders after a vote at a regularly-scheduled meeting of the DEC, unless the violation is of a very serious or emergency nature. If the Order is issued prior to a vote of the DEC, to remain in effect, said Order must be ratified by the DEC at its next meeting. The Order shall be delivered to the applicant by hand or by certified mail, and shall contain specifics of the violations, required actions, and deadlines for response. Further, it is the role of the DEC to enforce DEP Orders as well as local orders. The DEC shall promptly notify the DEP of all enforcement action taken.

1.15: Nonconforming Uses and Structures

(1) As of the effective date of the By-laws, Devens contains numerous existing buildings and structures and existing uses of land. To the extent those existing buildings, structures, and uses do not conform to the By-laws and 974 CMR applicable to the zoning district in which a parcel is located, such parcel and the building and structures thereon, or the use thereof, shall be considered nonconforming under Article VII of the By-laws.

(2) Within two years of September 30, 1995, MassDevelopment shall compile and submit to the DEC a list of nonconforming buildings and structures which, by virtue of their inclusion on such list, shall retain the status of a nonconforming building or structure for a two year period beginning on September 30, 1997. Every two years thereafter, MassDevelopment shall compile and submit to the DEC revised list of nonconforming buildings and structures which shall likewise retain the status of the nonconforming buildings or structures included on such lists as a nonconforming building or structure during the two year period covered by such revised lists. In the event that an existing building or structure is not included on the original list or subsequent revisions thereof, it shall no longer be entitled to the protections afforded to a nonconforming building or structure pursuant to Article VII of the By-law. In order to receive a Unified Permit, the building shall be made conforming or the Applicant must obtain a variance from the DEC. Once a Unified Permit has been approved for a project involving a building existing at Devens as of the effective date of the By-laws, it shall no longer be included on the list to be compiled and submitted to the DEC under 974 CMR 1.15(2).

(3) The use of a nonconforming building or structure, or land without site modifications, shall be subject only to granting of an occupancy permit, or, in the case of interior reconstruction, a building permit, and to the restrictions set forth in the By-laws and 974 CMR. Expansion, alteration, or change of a nonconforming building or structure, or to the use thereof, or the performance of required site modifications (other than the installation of signage), shall require a Level Two Unified Permit Submission demonstrating that the Applicant will bring the building or structure into conformity with the By-laws and 974 CMR.

1.15: continued

- (4) Minor repairs to and routine maintenance of nonconforming buildings or structures shall be permitted
- (5) A nonconforming building or structure which has been damaged or destroyed by fire or other casualty may be repaired or rebuilt, provided, however, that the repaired or rebuilt building or structure shall be no less conforming than the building or structure that was damaged or destroyed.
- (6) A nonconforming use and/or structure is terminated if it is abandoned. Abandonment is the voluntary discontinuance of a nonconforming use or the discontinuance of the occupancy of a nonconforming structure, when accompanied by an intent not to re-establish such use or occupancy. Any one of the following shall constitute *prima facie* evidence of intent to abandon:
  - (a) Any positive act indicating such intent; or
  - (b) Any conscious failure to take all necessary steps to resume the nonconforming use or occupancy with reasonable dispatch in the circumstances, including advertising of the property for sale or lease; or
  - (c) In the case of a structure or of a structure and land in combination, discontinuance of the occupancy or nonconforming use for 12 consecutive months; or
  - (d) In the case of land only, discontinuance of the occupancy or nonconforming use for 90 consecutive days, or for a total of six months during any one year period; or
  - (e) In the case of a nonconforming structure that is damaged by means beyond the control of the owner, failure to commence restoration within six months, or to conclude restoration within two years from the time restoration construction is initiated.

1.16: Severability

If any provision of 974 CMR 1.00 or the administration thereof shall be held unconstitutional, invalid or void, it shall not affect any other provision of 974 CMR 1.00 or the administration thereof.

REGULATORY AUTHORITY

974 CMR 1.00: St. 1993, c. 498.