

## Alternatives Analysis Requirements

10.58(4)(c): “There must be no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the interests identified in the Act.”

### **Alternatives provided must:**

1. **clearly state the project purpose** [10.58(4)(c)1] “(e.g., single-family home, residential subdivision, expansion of a commercial development),”
2. **address the following 4 factors to allow an evaluation of “practicability”**
  - a. “Costs, [10.58(4)(c)1.a.] and whether such costs are reasonable or prohibitive to the owner. ... In taking costs into account, the issuing authority shall be guided by these principles:
    - i. The cost of an alternative must be reasonable for the project purpose, and cannot be prohibitive.
    - ii. Higher or lower costs taken alone will not determine whether an alternative is practicable. An alternative for proposed work in the Riverfront area must be practicable and substantially equivalent economic alternative (i.e., will achieve the proposed use and project purpose from an economic perspective).
    - iii. In considering the costs to the owner, the evaluation should focus on the financial capability reasonably expected from the type of owner ... rather than the personal or corporate financial status of that particular owner. Applicants should not submit, nor should issuing authorities request, financial information of a confidential nature, such as income tax records or bank statements.
    - iv. Issuing authorities may require documentation of costs but may also base their determinations on descriptions of alternatives, knowledge of alternative sites, information provided by qualified professionals, comparisons to costs normally associated with similar projects, or other evidence. Any documentation of costs should be limited to that required for a determination of whether the costs are reasonable or prohibitive.
  - b. Existing technology, which includes best available measures (i.e., the most up-to-date technology or the best designs, measures, or engineering practices that have been developed and are commercially available).
  - c. The Proposed Use. This term is related to the concept of project purpose. ... Practicable and substantially equivalent economic alternatives include alternatives which are economically viable for the proposed use from the perspective of site location, project configuration within a site, and the scope of the project.
  - d. Logistics. Logistics refers to the presence or absence of physical or legal constraints. Physical characteristics of a site may influence its development. Legal barriers include circumstances where a project cannot meet other applicable requirements to obtain the necessary permits at an alternative site.”
3. **Scope of Alternatives.** [10.58(4)(c)2] “The scope of alternatives under consideration shall be commensurate with the type and size of the project. The issuing authority shall presume that alternatives beyond the scope described below are not practicable and therefore need not be considered.
  - a. The area under consideration for practicable alternatives is limited to the lot for activities associated with the construction or expansion of a single family house on a lot recorded on or before August 1, 1996.

- b. The area under consideration for practicable alternatives is limited to the lot, the subdivided lots and any adjacent lots formerly or presently owned by the same owner for:
  - i. activities associated with the construction or expansion of a single family house on a lot recorded after August 1, 1996;
  - ii. any expansion of an existing structure, including enlargement of the footprint of any structure or the addition of associated structures for single family homes (e.g., a garage) on lots recorded after August 1, 1996;
  - iii. any activity other than the construction or expansion of a single family house where the applicant owned the lot before August 7, 1996, including the creation of a real estate subdivision but excluding public projects, and the applicant will implement the project purpose;
  - vi. any lot shown on a definitive subdivision plan approved under M.G.L. c. 41, §§ 81K to 81GG, provided there is a recorded deed restriction limiting the total alteration to 5000 square feet or 10%, whichever is greater, of the riverfront area allocated to the lots within the entire subdivision.
- c. Except as allowed under 310 CMR 10.58(4)(c)2.b., the area under consideration for practicable alternatives extends to the original parcel and the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality for:
  - i. activities associated with residential subdivision or housing complexes, institutional, industrial, or commercial projects ...”

(Note: “For adjacent lots, reasonably be obtained means to purchase at market prices if otherwise practicable, as documented by offers (and any responses). For other land, reasonably be obtained means adequate in size to accommodate the project purpose and listed for sale within appropriately zoned areas, at the time of filing, . . . within the municipality.”)
- d. “Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state for:
  - i. residential, institutional, commercial, or industrial activities required to evaluate off-site alternatives in more than one municipality in an Environmental Impact Report under M.G.L. c. 30, §§ 61 through 62H ...”

**Evaluation of Alternatives [10.58(4)(c)3]**

- a. “The applicant shall submit information to describe sites and the work both for the proposed location and alternative site locations and configurations sufficient for a determination by the issuing authority ... .
- b. “Where an applicant identifies an alternative which can be summarily demonstrated to be not practicable, an evaluation is not required.
- c. The purpose of evaluating project alternatives is to locate activities so that impacts to the riverfront area are avoided to the extent practicable. Projects within the scope of alternatives must be evaluated to determine whether any are practicable.
- d. If there is a practicable and substantially equivalent economic alternative with less adverse effects, the proposed work shall be denied and the applicant may either withdraw the Notice of Intent or receive an Order ... for the alternative.”