

**BERKSHIRE REGIONAL PLANNING COMMISSION**  
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201  
TELEPHONE (413) 442-1521 · FAX (413) 442-1523  
[www.berkshireplanning.org](http://www.berkshireplanning.org)

SHEILA IRVIN, Chair  
RENE WOOD, Vice-Chair  
GALE LABELLE, Clerk  
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.  
Executive Director

**MEETING NOTICE**

A meeting of the Berkshire Regional Planning Commission  
will be held on:

Thursday, July 11, 2013 at **5:00 p.m.**

Berkshire Regional Planning Commission Offices  
Pittsfield, Massachusetts

**Meeting Material:** All written materials for the meeting are posted on BRPC's website:  
[www.berkshireplanning.org](http://www.berkshireplanning.org). Click on the calendar date for the meeting and materials available  
will be listed.

**AGENDA**

**I. Opening (5:00-5:05)**

- A. Call to Order
- B. Roll Call
- C. Approval of Minutes of May 16, 2013 Meeting

**II. Comments from the Public (5:05-5:10)**

*Members of the public may offer comments regarding topics which are on the agenda or other matters which they wish to bring to the Commission's attention. Comments are limited to no more than three minutes and are to be directed to the Commission.*

**III. Delegates' Issues (5:10-5:15)**

*Delegates and Alternates may bring up any issue not on the agenda.*

**IV. Election of BRPC Officers for FY 2014 (5:15-5:25)**

*The Nominating Committee proposed the following slate of officers for FY 2014:*

*Chair: Sheila Irvin, Pittsfield Delegate  
Vice Chair: Kyle Hanlon, North Adams Delegate  
Clerk: Gail LaBelle, Becket Delegate  
Treasurer: Charles Ogden, Egremont Alternate*

*Nominations will be taken from the floor.*

**V. Endorsement of Committee Chair and At-Large Executive Committee Member Appointments (5:25-5:30)**

*Every few years there is a renewed effort to get comprehensive zoning, subdivision and comprehensive planning legislation passed. H.1859 is the latest version of this and appears to be receiving considerable discussion in the Joint Committee on Municipalities and Regional*

*Government, with some expectation that a bill will be reported out favorably. The BRPC Regional Issues Committee has spent its last three meetings thoroughly reviewing the bill and has drafted a proposed letter to be shared with our legislative delegation, the House and Senate Committee Chairs, the Speaker of the House and the Senate President. A copy of the draft letter is attached and further information is available on the BRPC website with Commission meeting materials.*

**VI. Consideration of Draft Comments on Environmental Remediation Of 100 Bridge Street (former New England Log Homes Site) (Great Barrington) Environmental Notification Form (5:30-5:40)**

*An ENF has been filed for remediation of the contamination in the soil at the New England Log Homes site in Great Barrington. The Clearinghouse Review Committee met on July 1<sup>st</sup> and endorsed proposed comments on this innovative approach to cleaning up a severely contaminated site. Commission consideration of the comments is requested.*

**VII. Consideration of Comments on H.1859 – An Act Promoting the Planning and Development of Sustainable Communities (5:40-6:40)**

*Every few years there is a renewed effort to get comprehensive zoning, subdivision and comprehensive planning legislation passed. H.1859 is the latest version of this and appears to be receiving considerable discussion in the Joint Committee on Municipalities and Regional Government, with some expectation that a bill will be reported out favorably. The BRPC Regional Issues Committee has spent its last three meetings thoroughly reviewing the bill and has drafted a proposed letter to be shared with our legislative delegation, the House and Senate Committee Chairs, the Speaker of the House and the Senate President. A copy of the draft letter is attached and further information is available on the BRPC website with Commission meeting materials.*

**VIII. Approval of Executive Committee Actions between March 21 and May 16, 2013 (6:40-6:45)**

**IX. Executive Director's Report (6:45-6:50)**

- A. Resignation of Planner Mackenzie Greer (BRPC's loss is North Adam's gain)
- B. Transition of Berkshire Health Alliance/Berkshire County Boards of Health Association Staff to BRPC Employees
- C. 2014 District Local Technical Assistance & Community Innovation Challenge Grant Funding
- D. Nominations for 2013 Charles Kusik Award for Outstanding Contributions to Planning in Berkshire County
- E. Passenger Rail Stations Public Meeting – Wednesday, July 10<sup>th</sup>, Monument Mountain Regional High School
- F. Launch of Western Massachusetts Scenic Byways Marketing Campaign and Website
- G. Launch of "Economic Resiliency in the Northern Tier" Project in Partnership with Franklin County Community Development Corporation and Franklin Regional Council of Governments
- H. Initiation of Cheshire Road Management Assessment
- I. Other

**X. Adjournment (6:50)**

Other interested citizens and officials are invited to attend.

City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B

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NATHANIEL W. Karns  
Executive Director

**DRAFT MINUTES OF THE BERKSHIRE REGIONAL PLANNING COMMISSION MEETING**

**Thursday, May 17, 2013**  
**At the Berkshire Regional Planning Commission Office**  
**1 Fenn Street, Suite 201, Pittsfield, MA 01201**

**I. Call to Order**

**A. The meeting is called to order at: 7:00 PM**

Sheila Irvin reminded all per the open meeting law, BRPC records all meetings. Others may record the meeting after informing the chair. Any documents presented must be left with the chair at the meeting.

**B. Roll Call**

The following Commission members are present:

Gale LaBelle – Becket Delegate  
Steve LaBelle – Becket Alternate  
Chris Rembold – Gt. Barrington Alternate  
Tom Wickham – Lee Delegate  
Mark Smith – Lenox Delegate  
Robert Bott – Mt. Washington Delegate  
James Lovejoy – Mt. Washington Alternate  
James Mullen – New Marlborough Delegate  
Kyle Hanlon – North Adams Delegate  
Sheila Irvin – Pittsfield Delegate  
Rene Wood – Sheffield Alternate  
Marie Raftery – Stockbridge Alternate  
Ed Nardi – Tyringham Delegate  
Sarah Hudson – Tyringham Alternate  
Marilyn Wiley – Washington Delegate

Staff Present:

Nat Karns - Executive Director  
Tom Matuszko – Assistant Director  
Clete Kus – Transportation Manager  
Marianne Sniezek - Office Manager  
Pat Mullin – Senior Planner

Others Present:

Rita Farrell – Massachusetts Housing Partnership  
Ed Gibson – Becket Town Administrator

**C. Approval of Minutes of Commission Committee Meeting of January 17, 2013**

Jamie Mullen moved to approve the minutes, seconded by Kyle Hanlon. Unanimously approved with 2 abstentions

Gale LaBelle introduced the new Becket Town Administrator, Edward Gibson.

**II. Public Comments – none**

**III. Delegate Issues** – Tom Wickham from Lee informed the group about an issue involving the rewiring of solar panels. Western Mass Electric charges double the price of National Grid. Jim Lovejoy commented “What is the impact on economic development?” For businesses going to solar this could be a big issue. Nat suggested this issue could be a topic for the Regional Issues committee to look into. Jamie also stressed towns should have solar bylaws. Contact Brian Domina [bdomina@berkshireplanning.org](mailto:bdomina@berkshireplanning.org) or 413-442-1521 ext 14 for sample solar bylaws.

#### **IV. Mass Housing Partnership**

Rita Farrell from Mass Housing Partnership explained they are a lender for affordable housing. They offer fixed rate mortgages and only lend for multi-family housing. Mass Housing Partnership has a billion dollar line of credit.

##### **What’s going on?**

- Planning and land use policies in Massachusetts don’t effectively serve population’s housing needs
- We’re not building enough housing to sustain our economy
- Much of the housing that does get built is the wrong type in the wrong places
- Limited housing choices mean long commutes and large-lot sprawl is consuming vast quantities of open space
- Our housing costs are too high to attract new employers

##### **Mass Housing Partnership is recommending**

PLANNING: State office of planning

MEASUREMENT: Housing & growth goals for all communities

LOCAL REALIGNMENT: Zoning and land use reform

STATE COORDINATION: Align state policy with growth and housing goals (Link Economic Development, Transportation, Education and Housing together)

EQUITY: Share fiscal benefits of growth

ACCOUNTABILITY: Back-up zoning and land use code

Community Preservation Act (CPA) – Even though the state match is smaller a CPA can raise money for a smaller community.

Municipally owned land is another resource. Mass Housing Partnership will look to see if the land can be used for affordable housing.

##### **Tools incorporated into Zoning**

- Multi-family zoning districts
- Accessory Dwelling Units
- Small lot size/dimensional requirements
- Density bonus for affordable units
- Cluster
- Open Space Residential Development (OSRD)
- “Friendly” 40B; Local Initiative Program (LIP)

Rita explained there are no programs designed for rural communities. Rita reviewed a chart comparing Chapter 40R Smart Growth, Compact Neighborhoods, Chapter 40B Local Initiative Program, and Chapter 43D for Housing. An example of 40R is the Rice Silk Mill in the Morningside area of Pittsfield. Adams is considering Chapter 40R. Under Chapter 40R bus routes must be available.

##### **Some Issues Discussed:**

###### **Lee**

Fix old housing instead of building new. What incentives are available?

Sources of financing are:

Small Scale Development – Community Development Block Grants, funds are limited.

Large Scale Development – 4% low income housing tax credits. The process is very complex.

###### **Mt. Washington**

Limited Public Transportation is a big issue.

###### **Becket**

Affordable Senior Housing is needed.

Pat Mullins, Senior Planner explained BRPC has been working on a feasibility study and a market study to identify the best pieces of property for small development.

The obstacles are:

1. Developers are stating they cannot break even on a project smaller than 30 units.
2. There is little available funding for senior housing when we have an aging population.

Becket has also considered mixed housing because of the limited funding for senior housing.

Rita Farrell can be contacted at [rfarrell@mhp.net](mailto:rfarrell@mhp.net) or 413-253-7379. She encouraged all to send her information on the needs and the challenges in your community.

#### **V. Consideration of Draft Transportation Improvement Program for FY 2014-2017**

Clete Kus, Transportation Manager, explained the differences between scenarios 1 and 2. The biggest difference is the Tyringham Road project would start in FY2014 in scenario 1 instead of in FY2017 in scenario 2 which has Housatonic Street (Dalton) starting in FY2014 while Tyringham Road would be delayed to FY2017.

Jamie Mullen moved to have the Chair support scenario #1 at the MPO meeting, seconded by Tom Wickham. Unanimously approved.

Bob Bott moved to have the commission support Bash Bish Rd in Mt. Washington if money becomes available in the TIP for FY2014-2017, seconded by Chris Rembold. Unanimously approved.

#### **VI. Consideration of Draft Unified Planning Work Program for FY 2014-2017**

Clete Kus, Transportation Manager reviewed the UPWP for 2014-2014 totaling \$481,086 that had an increase in funding from the previous budget of \$464,616.

Under climate change Jamie asked the language on the first bullet to be changed to be clearer.

Chris Rembold asked if bridge inspections could be looked at in the UPWP. Clete said yes under Local Technical Assistance (LTA) which has limited funds various local studies can be done. In 2013, Sheffield had an intersection safety evaluation done under LTA. However there is not sufficient funding for engineering inspections of bridges.

Bob Bott moved to approve the draft UPWP for FY2014 with changes in the language as discussed, seconded by Rene Wood. Unanimously approved.

#### **VII. Consideration of Draft Comments on Lenox Sanitary Landfill Photovoltaic Project Environmental Notification Form – No comments submitted.**

#### **VIII. Consideration of BRPC Budget for FY 2014**

Nat informed the group the following:

- Since the budget was prepared the gap in unsecured revenue has been closed due to BRPC receiving new grants.
- The subcontractors reduction is due to on July 1<sup>st</sup>, BRPC will be hiring four Offsite Flexible Employees to avoid potential problems with employee vs. contractor issues instead of “employing” these people as contractors.
- Health Insurance rates increased 5% and the new Offsite Employees over 20 hours can obtain Health Insurance from BRPC.
- In FY2014, BRPC’s target overhead rate will be 145%

Bob Bott asked if the Governor’s proposed changes to Retirees Health Benefits would affect the FY2014 budget. Nat explained it would not change BRPC’s FY2014 budget.

Rene Wood moved to approve the FY2014 Budget, seconded by Gale LaBelle. Unanimously approved

#### **IX. BRPC Does What? – skipped this agenda item as the meeting running behind**

#### **X. Approval of Executive Committee Actions between March 21 and May 18, 2013**

Rene Wood moved to approve the Executive Committee Actions excluding the approved letter to DEP on Proposed Amendments to Various Regulations, seconded by Kyle Hanlon. Unanimously approved

Jamie Mullen moved to cancel the previous approved draft letter to on Proposed Amendments to Various Regulations, Rene Wood seconded. Unanimously approved

Rene Wood moved to approve the revised draft letter with changes discussed on the Proposed Amendments to Various Regulations, Sarah Hudson seconded. Unanimously approved

**XI. Executive Director's Report**

- A. Approval of EPA Area-Wide Planning Grant for Town of Lee**
- B. Approval of EPA Brownfields Petroleum & Hazardous Waste Assessment Grant**
- C. 2014 District Local Technical Assistance & Community Innovation Challenge Grant Funding**  
Nat encouraged all to contact Senator Downing to support DLTA.
- D. Sustainable Berkshires – 1<sup>st</sup> Annual Historic Preservation Summit – May 20<sup>th</sup>, Hancock Shaker Village**
- E. 5<sup>th</sup> Thursday Dinner for Planning & Zoning Boards – Regulating Medical Marijuana - May 30<sup>th</sup>, Cork & Hearth, Lee**
- F. Improving Stream Crossings Workshop – Monday, June 17<sup>th</sup>, Berkshire Community College**
- G. Other**

**XII. Adjournment**

Jamie Mullen made a motion to adjourn, seconded by Kyle Hanlon. Unanimously approved. Adjourned at 9:05 pm.

Materials distributed or presented during this meeting:

Meeting Agenda  
Draft Meeting Minutes  
Approval of Executive Committee Actions Memo  
Executive Director's Report  
Technical Assistance Activities  
Memo – Consideration of Proposed TIP FY2014-2017  
Memo – Consideration of Draft Comments Lenox Sanitary Landfill  
FY2014 BRPC Budget  
Draft Letter Proposed Changes to Wetland/Waterway/Water Quality & Wastewater Regulations  
Revised Draft Letter Proposed Changes to Wetland/Waterway/Water Quality & Wastewater Regulations  
5<sup>th</sup> Thursday Flyer  
Berkshire Historic Preservation Summit Flyer  
Mass Housing Partnership Annual Report  
Mass Housing Partnership power point  
Chart chapter 40R, compact neighborhoods, chapter 43D and 40B/LIP

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**MEMORANDUM**

**TO:** Delegates and Alternates, Berkshire Regional Planning Commission  
**FROM:** Nathaniel W. Karns, AICP, Executive Director  
**DATE:** June 13, 2013  
**SUBJ:** Report of the Nominating Committee

As required by the Bylaws, "Each year at the first meeting after July 1, but no later than August 31<sup>st</sup>, the Commission shall elect from among its membership a Chair, Vice Chair, Clerk, and Treasurer."

Further, the Bylaws state: "A nominating subcommittee of the Committee, comprised only of delegates and alternates and consisting of at least three members, shall recommend a slate of officer candidates for the next fiscal year. Such slate of candidates shall reflect the Commission's desire to rotate officers and be representative of all areas of the region. Such slate shall be provided to delegates and alternates at least 14 days prior to the first meeting after July 1 of each year."

This year's Nominating Subcommittee consisted of Chair Rene Wood (Sheffield), Jim Lovejoy (Mt. Washington), Jamie Mullen (New Marlborough) and Sarah Hudson (Tyringham). They have proposed the following slate of officers to serve BRPC for FY 2014:

Chair: Sheila Irvin, Pittsfield Delegate  
Vice Chair; Kyle Hanlon, North Adams Delegate  
Clerk: Gale Labelle, Becket Delegate  
Treasurer: Charles Ogden, Egremont Alternate

The Commission will have the Nominating Committee recommendation as to the slate on its agenda for the meeting scheduled for Thursday, July 11, 2013 at 5:00 p.m. at the Berkshire Regional Planning Commission office, 1 Fenn Street, Ste. 201, Pittsfield, Massachusetts. At that meeting other names can be nominated for consideration.

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**Executive Director**

**MEMORANDUM**

**TO:** Delegates and Alternates, Berkshire Regional Planning Commission  
**FROM:** Nathaniel W. Karns, AICP, Executive Director  
**DATE:** July 2, 2013  
**SUBJ:** Authorization for Executive Committee to Act on Behalf of the Commission

The bylaws for BRPC stipulate that the Delegates (or in the absence of a delegate, the Alternate) must vote annually whether to authorize the Executive Committee to act on the Commission's behalf. Such authorization requires approval by a two-thirds ballot vote of the delegates (22 affirmative votes must be received). The authorization for the Executive Committee to act on the Commission's behalf is limited to the following:

1. Disbursement of Commission funds based on a warrant;
2. Borrowing funds in anticipation of revenue;
3. Hearing and resolving personnel grievances;
4. Making applications for federal, state, and local aid;
5. Seeking contributions;
6. Entering into contracts;
7. Preparing reviews and comments on proposals of a regional or inter-community nature;
8. Establishing policy regarding requests for planning-related advice;
9. Authorization for planning services; and
10. Acting on routine transportation matters (excepting adoption of plans, programs, or endorsement of specific projects).

All actions of the Executive Committee are subject to review and endorsement, modification or change at the next Commission meeting and this authorization may be revoked at any Commission meeting by simple majority vote. The Commission retains sole authority to act on the following:

1. Adoption of regional plans or policies;
2. Adoption of BRPC annual assessment and budgets;
3. Election of officers and approval of At-Large Executive Committee members and all committee chairs;
4. Confirmation of appointments to all committees;
5. Approval of Transportation Improvement Program;
6. Endorsement of specific transportation projects;
7. Modification of the duties of the Executive Director; and
8. Adoption or amendment to the bylaws.

Please return a completed ballot at Thursday's Commission meeting or by mail. Alternatively, you can send me an email stating that you either vote in favor of or oppose authorizing the Executive Committee to act on behalf of the Commission.

Thank you.

The Executive Committee of the Berkshire Regional Planning Commission

\_\_\_\_\_ should be authorized

\_\_\_\_\_ should not be authorized

to act on behalf of the Commission for the remainder of Fiscal Year 2014.

\_\_\_\_\_  
Delegate's signature

\_\_\_\_\_  
Community represented

# Berkshire Regional Planning Commission Clearinghouse Review Report

July 2, 2013

**SUBJECT:** Environmental Remediation of 100 Bridge Street (Former New England Log Homes)  
**EOEEA#:** 15059  
**LOCATION:** Great Barrington  
**ESTIMATED COST:** Unknown  
**REVIEW TYPE:** ENF  
**PROPONENT:** Community Development Corp. of South Berkshire  
**COMMENTS DUE:** July 2, 2013

## PROJECT DESCRIPTION:

### *Site Description*

The former New England Log Homes property consists of 8.0 acres bounded northerly by Bridge St, easterly by Bentley Ave, southerly by the Great Barrington Wastewater Treatment Plant and westerly by the Housatonic River.

This "brownfield" site was used industrially for most of the 20<sup>th</sup> century but has been vacant for approximately 20 years. A fire in March 2001 destroyed approximately half of the vacant New England Log Homes buildings; the remaining buildings were demolished in 2012. The historical industrial activities performed at the site released dioxins, pentachlorophenol (PCP), metals, and/or petroleum hydrocarbons to the upper layer of the soil and/or to groundwater. The site is subject to the Massachusetts Contingency Plan (RTN 1-0682). The currently proposed project is intended to remediate the contamination on the site and allow it to be redeveloped in the future for a Mixed Use Development.

Most of the site is a flat compacted gravel industrial yard which was used by New England Log Homes for storage and laydown area; some young second growth trees have grown up since the site was abandoned. A line of mature trees encircles the site.

### *Required Permits & MEPA Thresholds*

The project requires an Order of Conditions from the Great Barrington Conservation Commission (already issued), MESA Review for Rare and Endangered Species (No Take Letter already issued), US Army Corps of Engineers Section 404 Category II General Permit, Massachusetts Department of Environmental Protection (MassDEP) Section 401 Water Quality Certification, Massachusetts Historical Commission Project Notification Form, US Environmental Protection Agency NPDES Construction Permit, MassDEP Bureau of Waste Site Cleanup Tier I Permit and compliance with the Massachusetts Contingency Plan. The project has reached the MEPA review threshold for an ENF through alteration of greater than 5,000SF of bordering vegetated wetlands.

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

### *Description for Bio-Remediation*

The Remediation of the Former New England Log Homes Site is proposed to be accomplished primarily through an innovative *in-situ* bio-remediation process - essentially a farming operation -which will stimulate the indigenous bacteria in the soils to break down the contaminants (which are generally concentrated in the upper 12" of the soils). The shallow soils across the entire site area are required to be remediated, including the two wetland areas. The river bank is not required to be remediated. As noted above, the Great Barrington Conservation Commission has issued an Order of Conditions for the project and the restoration/replication of the wetlands. Any future redevelopment on the site will be subject to a new Notice of Intent.

The site will be prepared for the Bio-Remediation process by installing erosion and sedimentation controls, decommissioning existing monitor wells, capping catch basins, and removing trees and stumps within the Work Limits. Trees and other vegetation and stumps will be cleaned, chipped, and disposed of off-site. Trees along the river bank will remain with the exception of some dead trees, hazard trees or invasives, which will be flush cut and carefully removed leaving the stumps in place. Low earthen berms will be installed at low points along the top of the river bank to retain surface water runoff on the site. Several existing stockpiles of bricks, concrete and wood chips will either be relocated to a section of the property that which can be remediated in a later phase of the work, or cleaned, crushed, and removed from the site for proper off-site disposal. The brick, concrete and wood chip stockpiles have been tested and are not considered to be remediation waste; residual soil on the stockpiled material will be cleaned off before crushing and off-site disposal. The soils surrounding the old main building will be tested to confirm that residual asbestos does not remain from the demolition. If any asbestos is found, the soil in the affected area will be segregated for proper handling.

A temporary "farm-type" irrigation system will be installed around the perimeter of the property, drawing water from a temporary intake float in the Housatonic River. The irrigation system will be used for dust control and to maintain adequate soil moisture content. It is expected that an average of 30,000 gallons per day will be withdrawn during the 10-12 week bio-remediation process in 2013. The withdrawal is expected to be much less in 2014 due to the anticipated smaller surface area requiring bio-remediation treatment. An irrigation monitoring and operation plan has been developed in consultation with NHESP and the Great Barrington Conservation Commission.

The soils on the site will be broken up with a 'ripper' to a depth of about 18". Large rocks and any remaining concrete foundations will be removed, cleaned of soil, crushed and properly disposed of as construction debris at an off-site location. Upon completion of the site preparation, the area within the Work Limits - including the two wetland areas on the site - will be tilled/plowed by a tractor making multiple passes. When needed, the irrigation system will be periodically cycled to control dust and to optimize the moisture content of the soil.

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

Soil amendments in the form of compost, manure, urea nitrogen and lime will be surface applied across the site and tilled into the soil to increase total organic carbon (TDC) and promote rapid reproduction of the indigenous soil bacteria and facilitate effective biodegradation of the contaminants. Then an enzymic "Factor" will be applied. This is a proprietary formulated product designed and prepared by BioTech Restorations LLC to separate the chlorine bonds of the contaminants in the soil and allow the natural bacteria to digest the organic material and break down the chemical compounds. The Factor will be incorporated into the soil by multiple passes of the cultivator/tiller and the site irrigated to maintain levels that are optimum for the soil bacteria. At 7 to 10 day intervals following the initial treatment, the site will be tilled/plowed to maintain aerobic conditions. Monitoring and testing will occur prior to and during the treatment period which is estimated to run for about 10 to 12 weeks from August through mid-October of 2013.

At the end of the growing season the treated soil will be sampled to determine concentrations of dioxin, PCP, etc., remaining in the treated soils. Should the concentrations remain above the risk-based cleanup goal, a determination will be made about which follow-up alternative(s) to implement during 2014. Follow-up alternatives include: continue bio-remediation during a second growing season; move affected soils to the southern portion of the site where redevelopment is expected to be several years in the future and continue bio-remediation there; or move soils with concentrations exceeding the cleanup goal to location(s) on site where future permanent structures (pavement and/or building slabs) or clean soil cover will prevent contact or exposure.

Biotech restorations LLC has recently completed a "bench study" of the bio-remediation process on a sample of the soil from the site to verify the formulation and volumes of Factor compost, manure, nitrogen, lime and water, and the estimated duration of treatment that is likely to be required. Ransom Consulting, Inc., the project's LSP, is in the process of updating the previously submitted Phase III Remedial Action Plan and Phase IV Remedy implementation Plan for resubmittal to MassDEP. These documents provide the detailed analysis of applicable remedial approaches, the results of the feasibility study, the results of the bench study and design details for the full-scale implementation of the proposed Bio-Remediation process and potential follow-up alternatives.

### **CONSIDERATIONS AND POTENTIAL ISSUES:**

#### Environmental Impacts

##### *Rare Species Habitat*

A portion of the property along the Housatonic River is mapped as Priority Habitat for Rare Species and Estimated Habitat for Rare Wildlife. Species known to occur include Clubtail Dragonfly, Zebra Clubtail, Spine-Crowned Clubtail, Longnose Sucker, Creeper, and Triangle

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

Floater. The proponents have consulted with NHESP about the project. NHESP has issued a No Take Determination for the site remediation work.

### *Riverfront*

The site is bounded on the west by the Housatonic River and includes a total of 3.56 acres of Riverfront area. The buildings removed in 2012 from the site within the historic mill complex occupied a total of 43,929 sf within the Riverfront area: 14,671 sf in the inner 100 foot zone and 29,258 sf in the outer 100 foot zone. Several other structures, driveways, and other impervious surfaces were also removed, some within the riverfront area, others outside the riverfront. The proposed bio-remediation does not include adverse impacts to Riverfront.

### *Wetlands*

There are two wetland areas on the project site: a bordering vegetated wet meadow wetland in the southeast quadrant of the site with an area of 12,996 s.f.; a manmade ditch forms an intermittent stream outlet to the river. A second linear ditch wetland measuring 4,432 s.f. carries runoff from Bentley Avenue and its uphill drainage area to a culvert the runs beneath the site and discharges to the river. Testing on the site indicates that the soils in both of the wetlands are contaminated with dioxins and must be remediated. An Order of Conditions has been issued by the Great Barrington Conservation Commission for the proposed remediation project including the alteration of the wetland and restoration/replication of the wetlands. The proponent is proposing to create a single 18,000 s.f. restoration/replication area to compensate for the alteration of the two existing wetlands. The larger 13,000 s.f. wetland will be restored in place as a wet meadow. The smaller 4,400 s.f. linear wetland is proposed to be replicated adjacent to the larger wetland and planted with a mix of shrubs and trees. BRPC acknowledges the challenges with regard to successful wetland restoration/replication and trusts that the Order of Conditions adequately addresses any concerns we might have.

### Alternatives Analysis

The remediation of the contaminated soils on the site is mandated by the Massachusetts Contingency Plan (MCP). Studies and analyses have been conducted on the site for over 10 years, and many alternatives have been studied and reported to MassDEP. As recently as the fall of 2012, DEP agreed that no permanent on-site treatment was feasible and the only feasible alternative for a temporary solution was to install a 2-foot thick cap on the site to prevent exposure. Phase III and Phase IV Plans for the full capping were submitted to MassDEP in 2011. Since the capped site includes wetlands and floodplains, the capping alternative would require wetland replication and compensatory flood storage at another off-site location.

The Proponent is proposing an innovative process for bio-remediation of the dioxins, PCP, and other contaminants as described above. Recent bench studies of the process are reported to be favorable. This methodology is expected to allow the contaminated soils in the wetlands to be remediated and ultimately restored and replicated on site. The floodplain filling that would

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

have been required by the 2-foot thick cap will also be significantly reduced. It is expected that a cap (building pad, pavement, soil cover, etc.) will still be required to prevent exposure to any residual contamination, but that the cap thickness can be reduced by lowering the residual concentrations and incorporating the cap elements into the proposed redevelopment.

The design of the future redevelopment project will have to take special account of grading within the floodplain. Some on-site compensatory flood storage is available near the southeast corner of the site, and some was reserved from the previous demolition. It is expected that the final cover would be constructed at a later date as part of the future mixed use redevelopment on the site. In the interim, the site will be fenced and vegetated to prevent exposure. The bioremediation process will not address contaminated groundwater but a Permanent Solution is anticipated for soil at the Site. A Temporary Solution is anticipated for groundwater at this time. An Activity and Use Limitation (AUL) will be placed on the completed site.

### **COMMENTS AND RECOMMENDATIONS:**

This project does not exceed any mandatory EIR thresholds, and BRPC does not believe that it warrants an EIR. We believe that conditions placed on the project during the local, state and federal permitting processes will protect the natural resources of the area to the extent possible. BRPC offers the following comments as the Secretary issues a certificate on this Environmental Notification Form.

#### Segmentation

The MEPA Regulations include an explicit provision with regard to segmentation.

“(T)he Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review.”

It is our understanding that MEPA does not have a written policy with regard to Brownfields, but has determined that this project does not fall under their definition of segmentation. It is further understood that it is fairly typical to submit an ENF for remediation alone when the full impacts from the future redevelopment of the site are unknown. As a note, not specific to this project, if it is a fairly common occurrence for brownfields remediation to be dealt with separately from future redevelopment on brownfields sites, it would be helpful for MEPA to develop written policy in this regard.

Work which has already been done on the site to remove the contaminated buildings was funded by two federal and one state quasi-public agencies, as well as from the BRPC Brownfields Revolving Loan Fund Program based on a redevelopment plan which was provided to those agencies. Thus we are concerned that the ENF and discussions with the proponent now indicate that no redevelopment plan is in place. It has also been difficult to determine net

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

impacts as, in some ways, the proponent is claiming credit within the remediation for building removal which apparently is then to be applied against future impacts of an unknown redevelopment plan.

Therefore, BRPC respectfully requests that this interpretation of segmentation be addressed by the Secretary requiring a Notice of Project Change (NPC) for any future work related to remediation or redevelopment of the site. We further request that a NPC be required once the redevelopment plan is finalized and advanced, regardless of whether the redevelopment plan itself triggers MEPA thresholds, to include the redevelopment of the site and provide an opportunity to review the project in its entirety. This is of particular importance if capping will be used as a part of the remediation and the redevelopment becomes integral to the remediation of the site. We believe in any case that an NPC should be required when the redevelopment plan is clearer in order to be more certain of the net impacts of all the work done on the site over the various phases.

### Off-site Disposal

We acknowledge that removal and off-site disposal of all contaminated soils on this 8 acre site may be financially infeasible. However, if contaminated soils are to be moved from one portion of the site to another portion of the site we suggest that the proponent consider off-site disposal of small amounts of contaminated soils in a manner appropriate for hazardous waste as allowable under the Massachusetts Contingency Plan. If possible and feasible, it would appear to be preferable for hazardous materials to be disposed of in a permanent fashion at a licensed facility rather than remaining on the site under an Activity Use Limitation.

### Compensatory Flood Storage

Although the bio-remediation does not in itself require compensatory flood storage, it is expected that the project in its entirety will require compensatory flood storage upon completion of the redevelopment of the site. At this time, it is expected that the project in its entirety will require less compensatory flood storage in comparison with alternative remediation scenarios; however, this cannot be quantified. It is unknown whether off-site compensatory flood storage will be needed. Prior to any redevelopment of the site, a NPC should be filed that clearly describes and quantifies the necessary compensatory flood storage. At that time, the proponent should develop a compensatory flood storage plan that documents that off-site flood storage is available if needed.

### Water Withdrawals

BRPC is uncertain of how water withdrawals from the Housatonic River will be regulated/permitted. An Order of Conditions has been issued by the Great Barrington Conservation Commission and the Natural Heritage and Endangered Species Program have determined that the project will not result in a take. However, it is of concern that the stretch of the Housatonic River in question is known to have had low flows and negative impacts could reasonably be expected under those conditions from a 30,000 gal/day withdrawal. It is

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

important to note that withdrawals from the river will be used to control dust and maintain a minimum moisture level in the soil. Presumably, these actions would be required under dry conditions and potentially when water levels are low and the River is most vulnerable. A minimum flow should be established and the proponent should develop an alternative plan to provide the necessary water if flows within the Housatonic River are not adequate.

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CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.  
Executive Director

July \*\*, 2013

<<Recipients>

**Re: Qualified Support for “An Act Promoting the Planning and Development of Sustainable Communities”, H. 1859**

Dear \*\*,

The Berkshire Regional Planning Commission (BRPC) is pleased to lend its qualified support for “An Act Promoting the Planning and Development of Sustainable Communities.” BRPC represents the 32 municipalities in Berkshire County. The efforts of the legislature to address the very outdated Chapter 40A (the Zoning Act) and Chapter 41 (the Subdivision Control Law) are very much appreciated. The existing statutes are among the most outdated land use management laws in the country. The statutes do not provide adequate tools for communities to plan for and facilitate appropriate land development in our communities. In fact, the existing statutes hinder communities from utilizing important land use tools that they could otherwise use in accordance with their Home Rule Authority. It is critical that the legislature act to provide municipalities with a better legislative framework for planning and zoning than currently exists.

BRPC views favorably the inclusion of modern and widely utilized planning tools such as site plan review, development impact fees, natural resource protection zoning, form-based codes and inclusionary zoning for affordable housing into the legislative framework. The ability of a municipality to replace the approval not required process for subdivisions with a minor subdivision process is essential and long overdue. However, the legislation should include funding assistance for municipalities and regional planning agencies to prepare plans and to adopt implementing regulations in order to comply with the proposed legislation.

A committee of BRPC delegates spent a considerable amount of time reviewing the legislation and debating the significant changes, most of which is viewed with complete approval. While BRPC supports much of the legislation proposed, it does have concerns regarding some of the particulars of the legislation, discussed in further detail below. Therefore, BRPC lends its qualified support to “An Act Promoting the Planning and Development of Sustainable Communities” provided the issues discussed below are addressed.

## Concerns to be Addressed

Section #	Discussion
15	Does not support the requirement that multi-family use in non-residentially zoned areas <u>shall</u> require certain factors to be met. This appears to be contrary to the Home Rule Authority of municipalities and contrary to the well-documented need to make multi-family development easier, not harder, in the Commonwealth.
16	The default vote for a special permit should remain at a supermajority, with the local option to reduce the vote to a simple majority, in a similar fashion as for zoning amendments contained in Section 4
17	Support a minimum three year duration for a special permit; however a public hearing should be required prior to the grant of an extension of a special permit.
21	Support the use of impact fees after carefully crafted studies; clarification is needed as to who pays for the initial study to determine the impact of a proposed project on the municipal infrastructure.
26	<b>The use of a consolidated permitting process should be at local option or removed from the legislation.</b> Use of the consolidated permit process should not be solely at the discretion of the applicant. The length of time to hold a public hearing should remain at 65 days and not reduced to 45 days. The power of a board to continue a public hearing should be retained.
27	<p>The Commission appreciates that this section is at local option; however, it believes that many of the county's communities (and most rural communities) will not have the resources to adopt and implement these provisions and thus will be negatively impacted.</p> <p>One important concern is that "certified" communities will have a preference over "non-certified" communities when competing for state discretionary funding. A second concern is that this section of the legislation implies that natural resources protection zoning (NRPZ) is only allowed in "certified" communities, although that is not entirely clear and would be contrary to the Home Rule statement in Section 3. NRPZ is most applicable and useful in more rural settings and yet rural communities have the least resources to work to become certified communities. In fact, given their very rural nature, promoting more housing development within rural certified communities is contrary to "smart growth" principles. <b>This section should be removed from the legislation.</b></p> <p>The Commission appreciates the need to incentivize communities to act, but the incentives provided should not negatively impact other communities who have not received "certified" status.</p> <p>As a practical matter, if regional planning agencies are to certify</p>

	<p>implementing regulations, new financial resources must be provided to them to carry out this new mandate. The proposed language requires a considerable amount of analysis, a formal review procedure and guidelines are required; none of this is minor or inconsequential.</p> <p>The Budget language is contradictory, first stating that grants are for the preparation and review of implementing regulations, and then stating that priority for grants will be given to municipalities that have adopted implementing regulations. The latter clause should be removed in its entirety. The funding is presumably to assist communities (and regions) to prepare the regulations, not as a reward for having done so.</p>
28	<p><b>The proposed language of this section is overly detailed and too directive.</b> The proposed language is essentially a restatement of the current state priorities that may or may not be appropriate for all communities. The overly prescriptive nature of the extensive language will actually be a disincentive for communities to develop master plans, especially since master plans are no longer required. We believe that the current extent of language in Chapter 41 regarding master plans is appropriate but that new elements such as planning for energy, climate change, water management and public health should be added as useful elements for communities to consider. Even with the new elements, the language should be brief and general, not specific as it is drafted.</p> <p>The Commission does not agree with the proposed legislative approval requirement for master plans because of the likelihood that master plans will be stripped down, politicized, and generalized in order to receive city council or town meeting approval.</p> <p>Our net conclusion is that if this section remains in the legislation and is adopted as drafted, fewer, not more, municipalities in Massachusetts will develop master plans. We do not believe this is what the Administration, legislators, or the bill’s proponents desire but it will be the affect.</p> <p>(Please see attached sheet for additional concerns.)</p>
41-42	<p>The Committee does not support any change in the rights of appeal. This language is overly complex and difficult to understand. Clarification is requested as to why this proposed change is even necessary.</p>
43	<p>The Commission requests that language be added to make clear that if a proposed project or action is not consistent with the approved master plan that reason alone may be sufficient to deny the project or action</p>

An outline of the Committee's entire comments for each section of the Act is attached for your review. BRPC believes that many, if not all of these concerns are fairly easily addressed and look forward to working with you, the bill sponsors, the Zoning Reform Working Group members and the Berkshire legislative delegation to address these concerns as the bill proceeds through the legislative process.

Please do not hesitate to contact me by email at [nkarns@berkshireplanning.org](mailto:nkarns@berkshireplanning.org) or phone (413-442-1521, ext 26) if you have any questions or concerns about our comments or if we can provide assistance.

Thank you for consideration of our comments.

Sincerely,

Nathaniel W. Karns, AICP  
Executive Director

DRAFT

**BRPC Regional Issue Committee's Comments on H. 1859 "An Act Promoting the Planning and Development of Sustainable Communities"**  
**Last Updated 6/25/13**

<b>Section #</b>	<b>Comments</b>
<b>1</b>	supports expanding the definition of "Permit Granting Authority"
<b>2</b>	supports the new definitions
<b>3</b>	supports the inclusion of language acknowledging the Home Rule Authority of municipalities and explicitly acknowledging certain land use techniques
<b>4</b>	supports the ability to reduce the supermajority vote requirement for zoning adoption/amendments
<b>5</b>	supports the delay in the effective date of a change in the vote requirement for zoning adoption/amendments.
<b>6</b>	supports changes to the vested rights language
<b>7</b>	same as above
<b>8</b>	supports changes in vested rights to two years for a building permit and three years for a special permit after submittal and notice of submission prior to the publication of notice for a public hearing
<b>9</b>	supports the five year dimensional vested rights protection
<b>10</b>	supports 8 year vested rights for definitive subdivision plans and 4 year vested rights for minor subdivision plans.
<b>11</b>	supports elimination of 3 year vested rights protection for ANR lots
<b>12</b>	supports striking "land shown on" plans vesting (which protects from any zoning change) to vest only the plan as submitted and approved
<b>13</b>	supports change from "Special Permits" to "Special Provisions"
<b>14</b>	supports the elimination of the limiting language as being out of date given the 1966 Home Rule Amendment
<b>15</b>	<b>does not support the text change</b> , given the previously stated Home Rule Amendment, which would require that multi-family use in non-residentially zoned areas shall require certain factors to be met. Given home rule authority, this language seems unnecessary and, in fact, contrary to home rule authority.
<b>16</b>	<b>does not support this change.</b> The supermajority for special permits should be retained, with provision for a local option to allow special permits by simple majority, with such change requiring a supermajority vote (similar to provision of Sections 4 and 5 above)
<b>17</b>	supports a minimum 3 year duration for a special permit. A public hearing should be required prior to the grant of an extension of a special permit.
<b>18</b>	supports the amendment requiring that hazardous waste facility exemption be limited to hazardous waste facilities which are principal (not accessory) uses
<b>19</b>	same as above
<b>20</b>	supports the Site Plan Review section including the two year grace period to bring existing bylaws with site plan review into conformity

21	supports the Impact Fee section, <b>requesting that it be clarified as to who pays for the required study and that the cost of the study should be part of the development impact fee</b>
22	supports the Inclusionary Zoning section
23	supports the Voluntary Land Use Dispute Avoidance section; it is non-binding and optional for both parties
24	supports the change of the standard for the issuance of a variance. The Committee felt the new language is a big improvement over the existing language. The Committee agreed with dropping financial hardship as an explicit determination, although it still can be considered due to the "feasible to pursue" language.
25	supports adding the local board of health as a "party of interest" for zoning matters
26	<b>does not support this change. The use of a consolidated permitting process should be at local option or removed from the legislation.</b> Use of the consolidated permit process should not be solely at the discretion of the applicant. The length of time to hold a public hearing should remain at 65 days and not reduced to 45 days. The power of a board to continue a public hearing should be retained.
27	<b>does not support this change.</b> The Committee discussed the Planning Ahead for Growth Act at some length. It essentially makes it a lot easier to build housing but is at local option. There are added incentives for communities to use this provision, such as they can establish rate of development measures, adopt natural resource protection zoning, and will receive priorities for some State investment, including the current MassWorks programs, State transportation investment, and CDBG. There is no requirement for master plans.
	The Commission appreciates that this section is at local option; however, it believes that many of the county's communities (and most rural communities) will not have the resources to adopt and implement these provisions and thus will be negatively impacted. One important concern is that "certified" communities will have a preference over "non-certified" communities when competing for state discretionary funding. A second concern is that natural resources protection zoning is most applicable and useful in more rural settings and yet rural communities have the least resources and inclination to work to become certified communities. In fact, given their very rural nature, promoting more housing development within rural certified communities is contrary to "smart growth" principles. <b>This section should be removed from the legislation. The Commission appreciates the need to incentivize communities to act, but the incentives provided should not negatively impact other communities who have not received "certified" status.</b>
	<b>qualified support (if issues discussed herein are addressed).</b> In reviewing the proposed bill, the Committee believes the new language is overly detailed and too directive, with the language on sections in all cases expanding from a simple statement to an entire, often lengthy, paragraph that was essentially current state priorities. The overly prescriptive nature of the extensive language would actually be a disincentive for communities to develop master plans, especially since they are no longer mandated.
	The Committee agreed with the ten-year grandfathering of master plans already adopted.

28	<p>There is an overlap between 3) Natural Resources and Energy Management and 8) Open Space Protection and Recreation. It was felt that 3) would be more appropriately entitled "Natural Resources and Climate Change" rather than "Energy Management" and that more consideration of Climate Change should be given.</p> <p>The requirement for legislative body approval of a master plan will lead to a stripped down and generalized plan since that would be all that could get approved by city councils or town meetings. What is the problem with the existing adoption process?</p> <p>The Committee felt that communities must have flexibility to reduce or modify the requirements and the prescriptive approach in order to meet their circumstances and to be able to utilize pieces as they see fit.</p> <p>The Committee likes the three additional categories to be considered in master plans: Water Management, Public Health, and Climate Change [Energy Management in bill]; but not in the overly prescriptive manner presented in the bill.</p> <p>In (9) Infrastructure and Capital Facilities, "Scheduled" should be "planned or needed" expansion. Also, the discussion of circulation system components is redundant with what should be included in (10) Transportation.</p> <p>Where is the funding for the assessment against a regional plan or, for that matter, funding for regional plans?</p>
29	supports the new definition of Subdivision
30	supports the Minor Subdivision language
31	supports the change eliminating ability to alter lot layout in approved subdivisions through the ANR process
32	supports the new language for minor subdivisions
33	supports the presumption that roadway widths no greater than 24 feet are not excessive
34	generally supports allowing the dedication of open space as part of developments, but the Committee felt that the potential uses of the open space should include environmentally sensitive or natural resource protection areas.
35	supports elimination of the ANR language
36	supports, with clarification included in Section 34
37	supports elimination of the ANR language
38	supports elimination of the ANR language
39	supports language creating a process for recording perimeter plans and lot line change
40	supports change of judicial review from de novo review to ceriorari review
41-42	<p><b>does not support.</b> The Committee feels that much clearer language is needed in these sections. It is not clear what is broken that needs fixing. There is a lack of clarity in the language and it appears that it would impose serious questions that we really don't understand. <b>The Committee is comfortable with the rights of appeal as they currently stand</b></p>
43	supports the proposed changes, plus the Committee would like to see language added that makes it clear that if a proposed project or action is not consistent with the approved master plan that reason alone may be sufficient to deny the project or action

## Bill Section Descriptions

“AN ACT PROMOTING THE PLANNING AND  
DEVELOPMENT OF SUSTAINABLE COMMUNITIES”  
House Bill #1859

Principal Sponsors:  
Representative Stephen Kulik  
Senator Daniel Wolf

<u>BILL SECTION</u>	<u>STATUTE SECTION</u>	<u>DESCRIPTION</u>
1.	40A:1A	Expands existing definition of “permit granting authority” to include planning boards and others as locally designated.
2.	40A:1A	Adds definitions for 12 new terms in the Zoning Act. Redefines “cluster development” in a more general manner.
3.	40A:2	Statement that the Zoning Act shall be construed to give full effect to the 1966 Home Rule Amendment to the Massachusetts Constitution. Enumerates certain powers of cities and towns, whether under home rule or as specifically authorized in the Zoning Act. States that the Zoning Act shall not be construed to limit certain special acts of the legislature, in particular the Cape Cod or Martha’s Vineyard Commission Acts.
4.	40A:5	Retains the default of a two-thirds majority required to adopt or amend zoning, but allows for cities and towns to vote in a lesser vote majority.
5.	40A:5	Stipulates that the zoning vote majority may be anywhere between a simple and a two-thirds majority, any change must be made by the vote majority then in effect, and such a change does not become effective for 6 months after the vote.
6.	40A:6	This section strikes out the old vested rights language for building and special permits. In a later section the bill makes a fundamental change in the vested rights protections accorded to these permits.
7.	40A:6	Same as above.
8.	40A:6	States the new vested rights protections accorded to building and special permits, and the duration of the protections, two and three

years, respectively. Extends the protections equal to any period where a moratorium upon construction is imposed.

9. 40A:6 Eliminates the five-year dimensional vested rights protection for up to three adjacent lots in common ownership.
10. 40A:6 States the new vested rights protection accorded to definitive subdivision plans, and the duration of the protection – for eight years after approval. The same vested rights protection applies to minor subdivision plans, but for four years. Extends both protections equal to any period where a moratorium upon construction is imposed.
11. 40A:6 Eliminates the three-year use vested rights protection for so-called ANR lots.
12. 40A:6 Strikes reference to “land shown on” a definitive subdivision plan, which brings the language into conformance with new vested rights protections for such plans (protection is for the plan, not the “land shown on” the plan).
13. 40A:9 Section 9 of the Zoning Act is re-named “Special Provisions” because the section deals with more than just special permits.
14. 40A:9 Eliminates outdated (in view of 1966 Home Rule Amendment) and limiting language relative to: special permits for increased density, special permits for multi-family residential uses in non-residentially zoned areas, transfer of development rights, cluster development, planned unit development, and shared elderly housing. Striking these paragraphs enhances rather than inhibits the use of these techniques.
15. 40A:9 Restates the previously stricken third paragraph relative to multi-family residential uses in non-residentially zoned areas. Requires a special permit and same safeguards, but phrased in post-Home-Rule-Amendment language.
16. 40A:9 Resets the default vote majority to approve special permits to a simple-majority, but allows for an increased majority by ordinance or bylaw (not to exceed today’s requirements).
17. 40A:9 Sets the minimum duration of a special permit at 3 years before it lapses (if not used), which may be increased by ordinance or bylaw. Such period shall not include the time required to pursue or await the determination of an appeal. Establishes a process

whereby the duration of a special permit may be extended before it lapses.

18. 40A:9 Amends the exemption provided for hazardous waste facilities in industrial use zones such that if the area is zoned as mixed-use with an industrial component, the industrial use must be the principal use in order to secure the exemption for such facilities.
19. 40A:9 Amends the exemption provided for solid waste facilities in industrial use zones such that if the area is zoned as mixed-use with an industrial component, the industrial use must be the principal use in order to secure the exemption for such facilities.
20. 40A:9D Inserts a new section into the Zoning Act, 9D, which standardizes the statutory requirements for site plan review, including a two-year grace period to bring existing ordinances or bylaws into compliance.
21. 40A:9E Inserts a new section into the Zoning Act, 9E, which sets out the statutory requirements for development impact fees.
22. 40A:9F Inserts a new section into the Zoning Act, 9F, which sets out the statutory requirements for inclusionary zoning (to require affordable housing). Written in a manner general enough to encompass most existing ordinances or bylaws of this type.
23. 40A:9G Inserts a new section into the Zoning Act, 9G, which sets out the statutory requirements for a local voluntary land use dispute avoidance process.
24. 40A:10 Strikes out the existing section on zoning variances and inserts a new section that allows greater local discretion.
25. 40A:11 Adds the local board of health as a “party in interest” for the purposes of providing written notice of a public hearing on a zoning matter.
26. 40X Adds a new chapter to the General Laws, 40X, which sets out the statutory requirements for consolidated permitting, which is an option for applicants wishing to coordinating the review of certain larger projects.
27. 40Y Adds a new chapter to the General Laws, 40Y, the Planning Ahead for Growth Act, which sets out the statutory requirements and benefits for communities that “opts-in” to the program. A budget line of \$2,000,000 is provided to fund a technical assistance

program in the form of grants to municipalities and regional planning agencies for the preparation and review of implementing regulations. This is the only budget item in H.1859.

28. 41:81D Strikes the existing section on master plans and inserts an entire new section that, among other things, reduces the number of required elements to 5 (7 more are optional). Communities in Barnstable or Dukes Counties may instead adopt a local comprehensive plan pursuant to the special acts that apply there; such plans if approved by the RPA shall be deemed a master plan for the purposes of this section.
29. 41:81L Strikes the existing definition of the term “subdivision” and rewrites it to eliminate the so-called ANR exemption.
30. 41:81L Adds a definition for “minor subdivision” while retaining references to the so-called ANR standards applicable to communities that do not adopt regulations for minor subdivisions (effect is to keep ANR in place until regulations for minor subdivisions are adopted by the planning board).
31. 41:81O Eliminates the ability to alter the lot layout of an approved subdivision via the so-called ANR process; instead requires that either the modification process in 41:81W be used or such modifications be defined and regulated as minor subdivisions.
32. 41:81P Strikes out the existing section 81P pertaining to procedures for so-called ANR divisions and replaces it with a section describing the statutory requirements for minor subdivisions. Existing ANR procedures apply until regulations of minor subdivisions are adopted by planning board.
33. 41:81Q Establishes a presumption that subdivision roadway standards in excess of those applied to the reconstruction of public ways are unlawfully excessive. Width requirements for total travel lanes not exceeding 24 feet shall not be presumed excessive.
34. 41:81Q Allows subdivision regulations to require parks within subdivisions for the benefit of the residents, but not exceeding 5 percent of the total project area.
35. 41:81T Eliminates remnant ANR language.
36. 41:81U Allows subdivision regulations to require permanent parks within subdivisions, as above.

37. 41:81X Eliminates remnant ANR language.
38. 41:81X Eliminates remnant ANR language.
39. 41:81X Establishes streamlined procedures for the approval and recordation of perimeter plans for existing lots and, under certain conditions, plans showing lot line changes.
40. 41:81BB Establishes that a court's review of an appeal of an approved subdivision plan shall be on the existing record of the planning board (*certiorari* review), not on new evidence (*de novo* review). Imposes additional burdens of proof and aggrievement on appellants, including appellants who are the applicant.
41. 185:3A Gives the permit session of the Land Court original jurisdiction over appeals relating to the development of real property.
42. 185:3A Requires that upon petition qualified cases shall be transferred to the permit session of the Land Court.
43. 240:14A Provides that cities and towns may use consistency with an adopted master plan to defend their zoning ordinances and bylaws against challenge. Inconsistency shall not count against a city or town in this regard.

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CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNs, A.I.C.P.  
Executive Director

**MEMORANDUM**

**TO:** Delegates and Alternates, Berkshire Regional Planning Commission  
**FROM:** Nathaniel W. Karns, AICP, Executive Director  
**DATE:** July 2, 2013  
**SUBJ:** Approval of Executive Committee Actions

In accordance with the bylaws, all actions taken by the Executive Committee on the Commission's behalf must be endorsed at the next Commission meeting.

The Executive Committee took the following actions at its June 7th meeting:

Approval of exceeds expectations rating on Nat Karns' FY2013 performance review. Additional 5 days (1 week) of vacation accrued will continue in FY 2014 and indefinitely into future years. Cost of Living increase of 1.44% and a bonus prorated at 2/3 of 1 week's pay due to Nat being at the top his pay scale range.

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Executive Director

**MEMORANDUM**

**TO:** Delegates and Alternates, Berkshire Regional Planning Commission  
**FROM:** Nathaniel W. Karns, AICP, Executive Director  
**DATE:** July 2, 2013  
**SUBJ:** Executive Director's Report

A number of items deserve mention.

A. Resignation of Planner Mackenzie Greer (BRPC's loss is North Adam's gain)

We will be losing Planner Mackenzie Greer to the City of North Adams as that city's first City Planner in at least twenty years. Mackenzie has been working heavily with the City on their master plan, on planning for the Hoosic River Revival, on walkability planning, and on several community development projects. She also has worked with other communities on downtown planning, village center zoning, and worked on several regional services projects, along with a number of other plans and programs in the four years she has been with us. We wish Mackenzie all the best and look forward to working with her in her new position.

B. Transition of Berkshire Health Alliance/Berkshire County Boards of Health Association Staff to BRPC Employees

Effective with the start of the new fiscal year, we have employed four individuals who were previously employed as consultants for the Berkshire Health Alliance work. Laura Kittross is BRPC's Public Health Program Manager, Sandra Martin is Senior Planner, and Diane Persson and Jennifer Kimball are both Associate Planners. They will be dealing with the provision of public health services, public health emergency response planning, and a variety of other public health related programs which various formal and informal public health entities had been running in the region.

C. 2014 District Local Technical Assistance & Community Innovation Challenge Grant Funding

I am very pleased to report that the FY 2014 budget which was approved by the General Court on July 1 contains \$2.8 million for District Local Technical Assistance (an increase of \$800,000 from previous budgets) and \$4.0 million for Community Innovation Challenge Grants (same amount as last year, which then suffered a "9C" cut mid-year). The Governor has ten days to review the budget and make any vetoes or request modifications. Given the funding included, we don't expect that there will be problems but will let you know if there are any. We do appreciate the support that various Commission members provided in making their interest in these programs known to our legislative delegation, all of whom have been very supportive.

D. Nominations for 2013 Charles Kusik Award for Outstanding Contributions to Planning in Berkshire County

Nominations are opened for this year's Charles Kusik Award, to be presented at BRPC's Annual Meeting which is scheduled for Thursday, October 17<sup>th</sup>. A copy of the nomination form is included in the packet and posted on the BRPC website ([www.berkshireplanning.org](http://www.berkshireplanning.org)). The deadline for nominations to be submitted is August 31<sup>st</sup>.

E. Passenger Rail Stations Public Meeting – Wednesday, July 10<sup>th</sup>, Monument Mountain Regional High School

The second of the initial public kick-off meetings will be held on Wednesday, July 10<sup>th</sup>, starting at 6:30 p.m. at Monument Mountain Regional High School. This will provide stakeholders and the broader public along the rail line and within the region an overview of the project and a preliminary analysis of the rail corridor. Next steps in the study will also be discussed, and there will be an opportunity for public input regarding amenities and transportation needs at stations and impact on the economy and housing. For more information, contact Senior Planner Brian Domina (442-1521, ext 14, [bdomina@berkshireplanning.org](mailto:bdomina@berkshireplanning.org)) or Planner Gwen Miller (ext. 19, [gmliller@berkshireplanning.org](mailto:gmliller@berkshireplanning.org)).

F. Launch of Western Massachusetts Scenic Byways Marketing Campaign and Website

At a ceremony at the Deerfield Town Hall (relocated due to the recent monsoons), the major marketing campaign and website for the seven scenic byways in the western half of Massachusetts was launched on Friday, June 28<sup>th</sup>. A very comprehensive website was developed ([www.bywayswestmass.com](http://www.bywayswestmass.com)), attractive brochure printed, and significant advertising aimed at the Boston, Albany, metro New York, and Hartford markets was launched. This was all paid for by national scenic byways funding provided by the Federal Highway Administration. It is unfortunate that the national scenic byways program has now ended with the passage of the newest federal transportation authorization last year. In the Berkshires, this program had funded various physical improvements on Jacobs Ladder Trail (Rte. 20), along the parkway over Mt. Greylock, and on the Mohawk Trail (Rte. 2), as well as providing the planning and design funding for the bike path in Williamstown and North Adams. For further information, contact Lauren Gaherty at [lgaherty@berkshireplanning.org](mailto:lgaherty@berkshireplanning.org) or 442-1521, ext. 35 or Melissa Provencher at [mprovencher@berkshireplanning.org](mailto:mprovencher@berkshireplanning.org) or ext. 22.

G. Launch of “*Economic Resiliency in the Northern Tier*” Project in Partnership with Franklin County Community Development Corporation and Franklin Regional Council of Governments

The Franklin County Community Development Corporation in partnership with the Berkshire Planning Commission and the Franklin Regional Council of Governments were awarded a Federal Economic Development Administration grant for 18 months to support economic resiliency in the Northern Tier of western Massachusetts, which encompasses 42 towns located in Franklin and northern Berkshire counties. This project is focused on small businesses starting and growing, businesses who were affected by Tropical Storm Irene and to build resiliency to help businesses get through future disasters. An emphasis of the business technical assistance will be to help businesses secure financing to help them grow. This project will cross promote organizations to inform business owners of available resources to enhance how collectively small businesses are served. For further information contact Executive Director Nat Karns at [nkarns@berkshireplanning.org](mailto:nkarns@berkshireplanning.org) or 442-1521, ext. 22, or Senior Planner Brian Domina at [bdomina@berkshireplanning.org](mailto:bdomina@berkshireplanning.org), ext. 14.

H. Initiation of Cheshire Road Management Assessment

We are initiating work on a complete assessment of roads in Cheshire, under a contract from the town. Road management assessments are a useful tool in obtaining comprehensive information on the condition of all local roads, which then helps inform decisions about where best to spend scarce road maintenance funds. Last year BRPC prepared complete assessments for Otis and Sandisfield; thus far this year work has been done in Adams and Lanesborough. For information on road management assessments, contact Senior Planner Doug Plachcinski at [dplachcinski@berkshireplanning.org](mailto:dplachcinski@berkshireplanning.org) or 442-1521, ext. 16.

Attachment:

Nomination form for the Charles Kusik Award

**BERKSHIRE REGIONAL PLANNING COMMISSION**  
**1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201**  
**TELEPHONE (413) 442-1521 · FAX (413) 442-1523**  
[www.berkshireplanning.org](http://www.berkshireplanning.org)

SHEILA IRVIN, Chair  
RENE WOOD, Vice-Chair  
GALE LABELLE, Clerk  
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.  
Executive Director

**NOMINATION FORM**

**Charles Kusik Award for Outstanding Contributions  
to Planning in Berkshire County**

The Charles Kusik Award was instituted to recognize projects, groups, or individuals who have made outstanding contributions to planning in Berkshire County. Employees, Delegates and Alternates to the Berkshire Regional Planning Commission are not eligible for the award.

I nominate the following for the Charles Kusik Award:

I believe that this project, group, or individual deserves the award because:

Please return to: Executive Committee, BRPC, 1 Fenn Street, Ste. 201, Pittsfield, MA 01201  
Fax Number: 413-442-1523  
E-mail: [nkarns@berkshireplanning.org](mailto:nkarns@berkshireplanning.org)

Nominations must be received no later than August 31, 2013.