SENATE DOCKET, NO. 317 FILED ON: 1/14/2015

SENATE . . . . . No. 122

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel A. Wolf

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act promoting the planning and development of sustainable communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Daniel A. Wolf	*Cape and Islands*
Stephen Kulik	*1st Franklin*
Chris Walsh	*6th Middlesex*
Louis L. Kafka	*8th Norfolk*
Denise Provost	*27th Middlesex*
Jason M. Lewis	*Fifth Middlesex*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Kenneth I. Gordon	*21st Middlesex*
Jay D. Livingstone	*8th Suffolk*
Robert M. Koczera	*11th Bristol*
Mary S. Keefe	*15th Worcester*
David Paul Linsky	*5th Middlesex*
Paul McMurtry	*11th Norfolk*
Michael J. Finn	*6th Hampden*
Josh S. Cutler	*6th Plymouth*
James M. Cantwell	*4th Plymouth*
Jeffrey N. Roy	*10th Norfolk*
Kay Khan	*11th Middlesex*

James B. Eldridge	*Middlesex and Worcester*
Carolyn C. Dykema	*8th Middlesex*
David M. Rogers	*24th Middlesex*
Peter V. Kocot	*1st Hampshire*
Frank A. Moran	*17th Essex*
Jay R. Kaufman	*15th Middlesex*
Stephen L. DiNatale	*3rd Worcester*
Benjamin B. Downing	*Berkshire, Hampshire, Franklin and Hampden*
Diana DiZoglio	*14th Essex*
Patricia D. Jehlen	*Second Middlesex*
Sal N. DiDomenico	*Middlesex and Suffolk*
Marcos A. Devers	*16th Essex*
James J. O'Day	*14th Worcester*
Paul W. Mark	*2nd Berkshire*
John W. Scibak	*2nd Hampshire*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*
Eileen M. Donoghue	*First Middlesex*
Evandro C. Carvalho	*5th Suffolk*
Michael J. Barrett	*Third Middlesex*
Tricia Farley-Bouvier	*3rd Berkshire*
Jonathan Hecht	*29th Middlesex*
Frank I. Smizik	*15th Norfolk*
Todd M. Smola	*1st Hampden*
William C. Galvin	*6th Norfolk*
William N. Brownsberger	*Second Suffolk and Middlesex*
Marc R. Pacheco	*First Plymouth and Bristol*
Thomas A. Golden, Jr.	*16th Middlesex*
Antonio F. D. Cabral	*13th Bristol*
Gailanne M. Cariddi	*1st Berkshire*
Rady Mom	*18th Middlesex*
Benjamin Swan	*11th Hampden*
Alice Hanlon Peisch	*14th Norfolk*
William Smitty Pignatelli	*4th Berkshire*
Paul A. Schmid, III	*8th Bristol*
Ellen Story	*3rd Hampshire*
Brian R. Mannal	*2nd Barnstable*
Daniel J. Ryan	*2nd Suffolk*

Joan B. Lovely	*Second Essex*
Lori A. Ehrlich	*8th Essex*
Sarah K. Peake	*4th Barnstable*
James Arciero	*2nd Middlesex*

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SENATE . . . . . No. 122

By Mr. Wolf, a petition (accompanied by bill, Senate, No. 122) of Daniel A. Wolf, Stephen Kulik, Chris Walsh, Louis L. Kafka and other members of the General Court for legislation to promote the planning and development of sustainable communities. Community Development and Small Businesses.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act promoting the planning and development of sustainable communities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

WHEREAS, Article 89 of the Amendments to the Massachusetts Constitution, which was ratified by the voters in 1966, empowers municipalities to "exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court";

WHEREAS, statutes governing municipal zoning, subdivision control, and planning in Massachusetts have not been updated in over thirty-five years;

WHEREAS, credible studies and reports have documented that Massachusetts' antiquated and confusing framework of municipal, zoning, subdivision control, and planning laws promotes inefficient land use practices that are contrary to smart growth;

10 WHEREAS, poorly planned residential, commercial, and industrial development
11 exacerbates the affordable housing shortage and threatens the natural and cultural heritage of
12 Massachusetts;

13 WHEREAS, the Massachusetts legislature provided in 2000 through the passage of the
14 Community Preservation Act a new funding tool for municipal open space protection, affordable
15 housing, and historic preservation;

16 NOW, THEREFORE, the time has arrived for the Massachusetts legislature to enhance
17 and modernize the planning regulatory tools for municipal zoning, subdivision control, and
18 master planning to guide local growth through the following bill.

19 SECTION 1. Section 1A of chapter 40A of the General Laws, as appearing in the 2012
20 Official Edition, is hereby amended by striking the definition of "permit granting authority" and
21 inserting the following definition:-

22 "Permit granting authority", means the board of appeals, zoning administrator, board of
23 selectmen, city council, or planning board as designated by zoning ordinance or by-law for the
24 issuance of permits, or as otherwise provided by charter.

25 SECTION 2. Said section 1A of chapter 40A, as so appearing, is hereby amended by
26 inserting the following definitions:-

27 "Affordable housing", means a dwelling unit restricted for purchase or rent by a
28 household with an income at or below 80 per cent of the area median income for the applicable
29 metropolitan or non-metropolitan area, as determined by the U.S. Department of Housing and
30 Urban Development (HUD). Affordable housing shall be subject to an affordable housing

31 restriction in accordance with sections 31-33 of chapter 184, or, if ineligible under said sections,
32 restricted by other means as required in an ordinance or by-law.

33 "By-right" or "as of right", means that development may proceed under a zoning
34 ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver,
35 or other discretionary zoning approval. As of right development may be subject to site plan
36 review under section 9D this chapter.

37 "Cluster development", means a class of residential development in which reduced
38 dimensional requirements allow the developed areas to be concentrated in order to permanently
39 preserve natural, agricultural, or cultural resources elsewhere on the plot. In any case where such
40 preserved land is not conveyed solely to the city, town, or other governmental agency as
41 dedicated open space, a restriction under sections 31-33 of chapter 184 shall be recorded. This
42 general class of development may also be referred to in local zoning by other names such as
43 open space design, open space residential design, conservation design/development, or flexible
44 development.

45 "Density divisor", means the number of net acres of land required to support a specified
46 unit of development, but does not necessarily mean a lot size.

47 "Development agreement", means a contract entered into between a municipality or
48 municipalities and a holder of property development rights, the principal purpose of which is to
49 establish the development regulations that will apply to the subject property during the term of
50 the agreement and to establish the conditions to which the development will be subject including,
51 without limitation, a schedule of development impact fees.

52 “Development impact fee”, means a fee imposed by city zoning ordinance or town
53 zoning by-law for the purpose of offsetting the impacts of a development, and in accordance with
54 the provisions of section 9E of this chapter.

55 “Form-based zoning”, means text and graphics in a zoning ordinance or by-law that
56 specify the built form of the community, general intensity of use, and the relationship between
57 buildings and the outdoor public spaces they shape. Notwithstanding any provision of any
58 general or special law, form-based codes may regulate building type, exterior building materials,
59 minimum and maximum building heights, frontage type, build-to lines, street type, street and
60 streetscape design, public open spaces, and any other parameter of the built or natural
61 environment which gives form to the exterior of buildings and the spaces between them. Form-
62 based codes may combine in a single document standards for new subdivision streets, existing
63 and new public streets and sidewalks, and use and dimensional standards. Such combined
64 standards may be in the form of a “regulating plan” that integrates building, dimensional, use,
65 street, sidewalk, and parking requirements. Form-based zoning may also specify lot-by-lot in a
66 detailed regulating plan, building forms and allowed use mixes, even if such specification is not
67 uniform throughout a zoning district, provided that it is based upon a plan for the area subject to
68 the code. Form-based codes may specify prescribed future lot division lines which will be
69 allowed as of right in any future division of land.

70 “Inclusionary housing ”, means an affordable housing unit or a housing unit restricted for
71 purchase or rent by a household with an income at or below 120 per cent of the median family
72 income determined by the U.S. Department of Housing and Urban Development for the
73 applicable metropolitan or non-metropolitan area.

74 “Inclusionary zoning”, means zoning ordinances or by-laws that require, or provide
75 incentives for, the creation of affordable housing or inclusionary housing .

76 “Natural resource protection zoning” (or “NRPZ”), means zoning ordinances or by-laws
77 enacted principally to protect natural resources by establishing higher underlying density divisors
78 relative to other areas, a formulaic method to calculate development rights, and compact patterns
79 of development so that a significant majority of the land remains permanently undeveloped and
80 available for agriculture, forestry, recreation, watershed management, carbon sequestration,
81 wildlife habitat, or other natural resource values. In any case where such preserved land is not
82 solely conveyed to the city, town, or other governmental agency as dedicated open space, a
83 restriction under section 31-33 of chapter 184 shall be recorded.

84 “Site plan”, means the submission made to a municipality that includes documents and
85 drawings required by an ordinance or by-law to determine whether a proposed use of land or
86 structures or development is in compliance with applicable local ordinances or by-laws, to
87 evaluate the impacts of the proposed use of land or structures on the neighborhood or
88 community, and to evaluate and propose site or structural design modifications or required
89 conditions that will lessen those impacts. Such site plan may be required independently of or as
90 a required component of a special permit, variance, or other discretionary zoning approval.

91 “Site plan review,” means the review and approval of a site plan by a designated
92 municipal board or local official pursuant to section 9D of this chapter. Site plan review may be
93 required independently for specified uses permitted by-right, or as a required component of a
94 special permit, variance, or other discretionary zoning approval.

95 “Transfer of development rights”, means the regulatory procedure whereby the owner of
96 a parcel may convey development rights to the owner of another parcel, and where the
97 development rights so conveyed are extinguished on the first parcel and may be exercised on the
98 second parcel in addition to the development rights already existing regarding that parcel.

99 “Unified development ordinance or by-law”, means an ordinance or bylaw that combines
100 in a single document standards and procedures for land use approvals that derive from different
101 chapters of the General Laws, including but not limited to chapters 40A, 40B, 40C, and 41,
102 combining procedures for subdivision, comprehensive permits, historic districts, streets and
103 sidewalks, as well as the use and dimensional standards typically found in zoning.

104 SECTION 3. Said chapter 40A, as so appearing, is hereby amended by inserting after
105 section 1A, the following section:-

106 40A:2. Authority

107 Section 2. The authority of cities and towns to act with respect to land use planning,
108 zoning, and regulation is grounded in Article 89 of the Articles of Amendment to the
109 Constitution of the Commonwealth, the “Home Rule Amendment.” This chapter shall be
110 construed to give full effect to the home rule authority of cities and towns. Nothing in this
111 chapter shall be construed as limiting the constitutional authority of cities and towns unless the
112 language in this chapter expressly so states. Wherever the language of this chapter purports to
113 authorize or enable, it shall be so construed only where such authority is not otherwise available
114 to cities and towns under the constitution or laws of the commonwealth, and in all other cases
115 such language shall be deemed illustrative only.

116 Powers Enumerated: To resolve uncertainty regarding the authority of cities and towns to
117 assert powers conferred by Article 89 of the Articles of Amendment to the Constitution of the
118 Commonwealth and by general or special laws, this chapter confers or confirms the following
119 zoning powers: (A) to impose development impact fees subject to the requirements set forth in
120 section 9E; (B) to use inclusionary zoning techniques, subject to the requirements set forth in
121 section 9F; (C) to enact unified development ordinances or by-laws and form-based zoning, as
122 defined herein, which are based upon multiple sources of statutory authority to regulate land use;
123 (D) to provide for the transfer of development rights, including the inter-municipal transfer of
124 development rights between or among municipalities with complementary ordinances or by-laws
125 by special permit or by other methods, including, but not limited to, the applicable provisions of
126 sections 81K-81GG, inclusive, of chapter 41, and in accordance with a planning board's rules
127 and regulations governing subdivision control, and provided that prior to adoption, any inter-
128 municipal transfer of development rights ordinance or by-law shall be submitted to the
129 Department of Housing and Community Development to assess whether it is consistent with
130 federal and state fair housing laws, and provided that such ordinance or bylaw shall be deemed
131 consistent unless the Department makes a written finding of inconsistency within 30 days of
132 submission; and (E) to provide for cluster development or natural resource protection zoning,
133 which may proceed by right or by other methods, including, but not limited to, the applicable
134 provisions of sections 81K-81GG, inclusive, of chapter 41, and in accordance with a planning
135 board's rules and regulations governing subdivision control.

136 Rule of Construction: To the extent that the powers enumerated in this section are
137 construed to be inherent in the constitutional and existing statutory authority of cities and towns

138 and not pre-empted by other state laws, such enumeration is hereby deemed to be merely
139 confirmatory or illustrative.

140 Special Acts: Nothing in this chapter shall be construed as limiting the authority of the
141 regional planning agencies under St. 1989, c. 716, as amended, entitled "An Act Establishing the
142 Cape Cod Commission," chapter 561 of the Acts of 1973, as amended, entitled "An Act
143 Establishing the Nantucket Planning and Economic Development Commission, and St. 1977, c.
144 831, as amended, entitled "An Act Further Regulating the Protection of the Land and Waters of
145 the Island of Martha's Vineyard," or any municipality within Barnstable, Nantucket, or Dukes
146 county acting pursuant to these special acts, including but not limited to the designation of
147 districts of critical planning concern, the adoption of regulations for such districts, the review of
148 developments of regional impact, and the imposition development impact fees. Where the
149 provisions of this chapter conflict with these special acts and any regulations, ordinances,
150 regional policy plans, or decisions issued or adopted thereunder, the latter shall control.

151 SECTION 4. Section 5 of said chapter 40A, as so appearing, is hereby amended by
152 inserting, at the beginning of the fifth paragraph, the following words:- Except where a different
153 majority vote has been prescribed in a zoning ordinance or by-law,

154 SECTION 5. Said section 5 of said chapter 40A, as so appearing, is hereby amended by
155 inserting, at the end of the fifth paragraph, the following sentence:- Any local change in the
156 majority vote required shall be limited to a range anywhere between a simple majority and a two-
157 thirds majority, shall be made by the vote majority then in effect, and shall not become effective
158 until six months have elapsed after such vote. Any majority vote of less than two-thirds shall not
159 be allowed for a specific zoning amendment unless the planning board, in its report required

160 above, includes its having voted that such amendment is not inconsistent with a master plan
161 under section 81D of chapter 41, if any in effect; and that such amendment is not the subject of a
162 landowner protest as hereinbefore provided.

163 SECTION 6. Section 6 of said chapter 40A, as so appearing, is hereby amended by
164 striking out, in the first sentence of the first paragraph, the words "or to a building or special
165 permit issued before the first publication of notice of the public hearing on such ordinance or by-
166 law required by section five,".

167 SECTION 7. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
168 striking out, in the first sentence of the first paragraph, the words "to a building or special permit
169 issued after the first notice of said public hearing,".

170 SECTION 8. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
171 striking out the second paragraph and inserting in place thereof the following paragraph:-

172 If a complete application for a building permit or special permit is duly submitted and
173 received, including receipt of payment for any applicable fees, and written notice of such
174 submission has been given to the city or town clerk before the first publication of notice of the
175 public hearing on such ordinance or by-law required by section five, the permit shall be governed
176 by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the
177 first such submission and receipt while such permit or permits are being processed, and, if such
178 permit or an amendment thereof is finally approved, for two years in the case of a building
179 permit and three years in the case of a special permit from the date of the granting of such
180 approval. Such period of two or three years shall be extended by a period equal to the time which

181 a city or town imposes or has imposed upon it by a state, a federal agency, or a court, a
182 moratorium on construction, the issuance of permits, or utility connections.

183 SECTION 9. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
184 striking out the second sentence in the fourth paragraph.

185 SECTION 10. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
186 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

187 If a complete application for a definitive plan is duly submitted to a planning board for
188 approval under the subdivision control law, and written notice of such submission has been given
189 to the city or town clerk before the first publication of notice of the public hearing on such
190 ordinance or by-law required by section five, the plan shall be governed by the applicable
191 provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such
192 submission while such plan or plans are being processed under the subdivision control law, and,
193 if such definitive plan or an amendment thereof is finally approved, for eight years from the date
194 of the endorsement of such approval. For the purposes of this section the term definitive
195 subdivision plan shall include a minor subdivision under section 81L and 81P of chapter 41,
196 provided the planning board has adopted rules and regulations for minor subdivisions under
197 section 81Q of said chapter. In such cases, the aforesaid provisions shall apply but the period of
198 time shall be four years from the date of the endorsement of such approval. Such period of eight
199 or four years shall be extended by a period equal to the time which a city or town imposes or has
200 imposed upon it by a state, a federal agency, or a court, a moratorium on construction, the
201 issuance of permits, or utility connections.

202 SECTION 11. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
203 striking out the sixth paragraph.

204 SECTION 12. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
205 striking out, in the second sentence of the seventh paragraph, the words “land shown on”.

206 SECTION 13. Section 9 of said chapter 40A, as so appearing, is hereby amended by
207 striking out the words “Special Permits” in the title and inserting in place thereof the following
208 words in the title:- Special Provisions

209 SECTION 14. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
210 striking out the third, fourth, fifth, sixth, seventh, eighth, and ninth paragraphs.

211 SECTION 15. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
212 striking out the last sentence in the twelfth paragraph and inserting in place thereof the following
213 sentence:- Unless a greater majority is specified in the zoning ordinance or by-law, issuance of a
214 special permit under this section shall require an affirmative vote of a simple majority of the
215 special permit granting authority. A greater majority vote requirement shall not exceed a vote of
216 two-thirds of the special permit granting authority in the case of a board with more than five
217 members, a vote of at least four members of a five member board, or a unanimous vote of a three
218 member board.

219 SECTION 16. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
220 striking out the fourteenth paragraph and inserting in place thereof the following paragraphs:-

221 A special permit granted under this section shall state that it will lapse within a period of
222 time specified by the special permit granting authority, not less than three years, if a substantial

223 use thereof has not sooner commenced except for good cause or, in the case of a permit for
224 construction, if construction has not begun by such date except for good cause. The aforesaid
225 minimum period of three years may, by ordinance or by-law, be increased to a longer minimum
226 period. The period of time before which a special permit shall lapse shall not include the time
227 required to pursue or await the determination of an appeal from the grant thereof referred to in
228 section seventeen.

229 Upon written application by the grantee of a special permit, the special permit granting
230 authority in its discretion after notice and a public hearing, unless under local ordinance or by-
231 law a public hearing is not required, may by the vote majority currently required to approve a
232 special permit, extend the time for the exercise of such special permit for a period of time not to
233 exceed the original duration of the special permit. Such application must be filed no later than
234 65 days prior to the lapse of the special permit. If the permit granting authority does not grant
235 the extension within 65 days of the date of application therefor, upon the lapse of the special
236 permit, the special permit may only be re-established pursuant to the requirements of this section.

237 SECTION 17. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
238 inserting after the word "zoned", in line 190, the following word:- principally

239 SECTION 18. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
240 inserting after the word "zoned", in line 204, the following word:- principally

241 SECTION 19. Said chapter 40A, as so appearing, is hereby amended by inserting after
242 section 9C, the following section:-

243 40A:9D. Site Plan Review

244 Section 9D. Requirements: This section shall apply to any zoning ordinance or by-law
245 that requires site plan review for uses allowed by-right. Such ordinance or by-law shall:
246 establish which uses of land or structures or development are subject to site plan review; specify
247 the local boards or officials charged with reviewing and approving site plans, which may differ
248 for different types, scales, or categories of uses of land or structures; set forth what constitutes a
249 complete application; establish the submission, review, and approval process, which may or may
250 not include a requirement for a public hearing under section 11; establish standards and criteria
251 by which the use of land or structures and its impact on the neighborhood shall be evaluated; and
252 contain provisions that make the terms, conditions, and content of the approved site plan
253 enforceable by the municipality, which may include the requirement of performance guarantees.

254 Approval: Approval of a site plan under this section, if reviewed by a board, shall require
255 no greater than a simple majority vote of the full board and shall be made within the time limits
256 prescribed by ordinance or by-law, not to exceed 95 days from the filing of a complete
257 application. Procedures for the review and approval of a site plan by staff or other municipal
258 official or officials shall be as specified in the ordinance or by-law, but the aforesaid 95 day time
259 limit for a decision may not be increased. If no decision is issued within the time limit
260 prescribed and no written extension of the time limit has been granted by the person seeking the
261 site plan review, the site plan shall be deemed constructively approved as provided in section 9
262 of this chapter.

263 Approval Criteria for Uses Allowed By-right: A site plan submitted for the use of specific
264 land or structures allowed by-right shall be approved unless the plan fails to meet one of the
265 following criteria: satisfies the procedural and submission requirements of the site plan review
266 process applicable to the specific land or structures; complies with the regulations applicable to

267 such land or structures in the local zoning ordinance or by-law; and meets such standards and
268 criteria as the local zoning ordinance or by-law provides by which the use of land or structures
269 and its impact on the neighborhood shall be evaluated, or may be conditioned to meet such
270 standards and criteria.

271 Conditions, Safeguards, and Limitations: A site plan approved hereunder may include
272 reasonable conditions, safeguards, and limitations to mitigate the impacts of a specific use of
273 land or structures on the neighborhood. The permit granting authority may adopt such conditions
274 which are directly related to standards and criteria described in the site plan review ordinance or
275 by-law, provided such conditions do not conflict with or waive any other applicable requirement
276 of the zoning ordinance or by-law. The permit granting authority, in the record of its decision,
277 shall state its reasons for any conditions it imposes. If the permit granting authority adopts
278 conditions pursuant to this paragraph, the site plan shall be revised to include such conditions
279 before the development permit is issued.

280 Mitigation: Site plan review may not require the payment for or performance of any off-
281 site mitigation, except to mitigate any directly attributable adverse impacts of the project on
282 properties or public infrastructure in the neighborhood, or when the site plan approval is subject
283 to development impact fees imposed in accordance with the provisions of section 9E of this
284 chapter, or when a site plan is required in connection with the issuance of a special permit or
285 variance.

286 Appeals: Except where site plan review is required in connection with the issuance of a
287 special permit or variance, decisions made under site plan review may be appealed by a civil
288 action in the nature of certiorari pursuant to section 4 of chapter 249, and not otherwise. Such

289 civil action may be brought in the superior court or in the land court and shall be commenced
290 within 20 days after the filing of the decision of the site plan review approving authority with the
291 city or town clerk, with notice of such appeal required to be given to such city or town clerk so
292 as to be received within such 20 days. A complaint by a plaintiff challenging a site plan
293 approval under this section shall allege the specific reasons why the project fails to satisfy the
294 requirements of this section, the zoning ordinance or by-law, or other applicable law, and shall
295 allege specific facts establishing how the plaintiff is aggrieved by such decision. A complaint by
296 an applicant for site plan review challenging the denial or conditioned approval of a site plan
297 shall similarly allege the specific reasons why the project properly satisfies the requirements of
298 this section, the zoning ordinance or by-law, or other applicable law. All issues in any
299 proceeding under this section shall have precedence over all other civil actions and proceedings.

300 Recordation of Site Plans: A site plan, or any extension, modification or renewal thereof,
301 shall not take effect until it is recorded in the registry of deeds for the county and district in
302 which the land is located and indexed in the grantor index under the name of the owner of record
303 or is recorded and noted on the owner's certificate of title.

304 Duration, Lapse, Extensions: Zoning ordinances or by-laws shall provide that a site plan
305 approval for a use allowed by-right shall lapse within a specified period of time, not less than
306 two years from the date of the filing of such approval with the city or town clerk, if a building
307 permit has not been obtained or substantial use or construction has not yet begun, except as
308 extended for good cause by the permit granting authority either with or without a public hearing
309 as provided in the zoning ordinance or bylaw. Such period of time shall not include time
310 required to pursue or await the determination of an appeal.

311 Discretionary Approvals: Where an ordinance or by-law provides that a variance, special
312 permit, or other discretionary zoning approval shall also require site plan review, the review of
313 the site plan shall be integrated into the processing of the variance, special permit, or other
314 discretionary zoning approval and not made the subject of a separate proceeding, hearing, or
315 decision. In such case, the content requirements and approval criteria for a site plan as specified
316 in the zoning ordinance or by-law shall be followed, but this section 9D shall not otherwise
317 apply.

318 Transition Provision: Any city or town that had adopted a zoning ordinance or by-law
319 requiring a form of site plan review prior to the effective date of this Act, shall within three years
320 of that effective date revise the provisions thereof to conform to this Act. After three years from
321 the effective date of this Act, any provision of such preexisting site plan review ordinance or
322 bylaw that does not conform to the provisions of this Act may only apply to the extent and
323 manner consistent with this Act.

324 SECTION 20. Said chapter 40A, as so appearing, is hereby amended by inserting after
325 section 9D, the following section:-

326 40A:9E. Development Impact Fees

327 Section 9E. Authority: Any city or town that adopts or has adopted a local ordinance or
328 by-law requiring the payment of a development impact fee as a requirement of any permit or
329 approval otherwise required for any proposed development having development impacts as
330 defined in the ordinance or by-law shall do so in accordance with this section or any authority
331 conferred by a special act. The development impact fee may be imposed only on construction,
332 enlargement, expansion, substantial rehabilitation, or change of use of a development that results

333 in a net increase of demand or service units. The development impact fee shall be used solely for
334 the purposes of defraying the costs of off-site public capital facilities to be provided or paid for
335 by the city or town and which are either caused by or necessary to support or compensate for the
336 proposed development, or, in the case of a city or town authorized to impose such fees under the
337 provisions of a special act, then such fees may be used for the purposes set forth in the special
338 act.

339 Such off-site public capital facilities may include the provision of or the payment of debt
340 service on infrastructure, facilities, land, or studies including master plans under section 81D of
341 chapter 41 and any impact fee studies as described herein, associated with the following: water
342 supply, treatment, and distribution, both potable and for suppression of fires; wastewater
343 treatment and sanitary sewerage; drainage, stormwater management and treatment; solid waste;
344 roads, intersections, traffic improvements, public transportation, pedestrian ways, and bicycle
345 paths; and parks, and recreational facilities.

346 Limitations: No development impact fee under this section shall be imposed for any
347 agricultural use or structure as defined by the provisions of section 1A of chapter 128, nor any
348 affordable housing dwelling unit, regardless of how created or permitted, which is subject to a
349 restriction on sale price or rent under the provisions of sections 31-33 of chapter 184 as amended
350 ensuring that the unit will remain affordable for a period of at least 30 years. The foregoing
351 limitation shall not apply to cities and towns with the authority to impose development impact
352 fees on such units under a special ac

353 The fee shall not be expended for personnel costs, normal operation and maintenance
354 costs, or to remedy deficiencies in existing facilities, except where such deficiencies are

355 exacerbated by the new development, in which case the fee may be assessed only in proportion
356 to the deficiency so exacerbated.

357 Nothing in this section shall prohibit a city or town from imposing other fees or
358 requirements for mitigation of development impacts which it may otherwise impose under state
359 or local law, provided however, that a fee imposed under this section 9E, or other fees or
360 requirements for mitigation of development impacts, may not be assessed more than once for the
361 same impact. If and to the extent that a city or town receives funds from state, federal, or other
362 grants or contributions, including from the applicant undertaking the development, for mitigation
363 of development impacts, those funds shall be accounted for in the development impact fee study.

364 Requirements: A development impact fee shall have a rational nexus to, and shall be
365 roughly proportionate to the impacts created by the development and it shall be applied to
366 affected development in a consistent manner. The purposes for which the fee is expended shall
367 reasonably benefit the proposed development. Notwithstanding the foregoing, a city or town
368 authorized to impose development impact fees pursuant to a special act shall comply with the
369 standards set forth in such special act.

370 Prior to the imposition of development impact fees under this section, a study shall be
371 completed that establishes the proportionate-share development impact fees authorized under this
372 section in accordance with a methodology described in the study. The scope of the study may be
373 jurisdiction-wide or limited to a geographic area or the category or categories of public capital
374 facilities that development impact fees may be intended to address. A municipality may rely
375 upon credible and professionally recognized methodologies for the study. The study shall be
376 updated periodically, at intervals of not greater than 10 years, to reflect actual development

377 activity, actual costs of infrastructure improvements completed or underway, plan changes, or
378 amendments to the zoning ordinance or by-law.

379 Administration: The ordinance or by-law may waive or reduce the development impact
380 fee for any category of development that furthers an overriding public purpose as determined in a
381 master plan adopted by the city or town under section 81D of chapter 41 or other plan designed
382 to set goals for the development of land within the city or town.

383 If the proposed development is located in more than one municipality, the impact fee
384 shall be apportioned among the municipalities in accordance with the service units or other
385 equitable measure of the impacts of the proposed development in each city or town.

386 Any development impact fee assessed under this section shall be due and payable upon
387 commencement of construction, which shall include site preparation work. The developer and
388 the city or town may agree to modify the payment schedule or provide for incremental payments
389 when construction or site preparation is proposed in phases. The fee shall be deposited to a
390 separate, interest-bearing account in the city or town in which the proposed development is
391 located. Unless a payment of debt service on an eligible capital facility or subject to the next
392 paragraph, no development impact fee shall be paid to the general treasury or used as general
393 revenues of the city or town subject to the provisions of section 53 of chapter 44.

394 Any funds not expended or encumbered by the end of the calendar quarter immediately
395 following 10 years from the date the development impact fee was paid shall, upon request of the
396 applicant or its assigns, be returned with interest provided that an application for a refund
397 prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to
398 the expiration of the 10 year period. If no application for refund is received by the city or town

399 within said period, any funds not expended or encumbered by the end of the calendar quarter
400 shall be deposited into an enterprise fund under section 53F1/2 of chapter 44 or other such
401 dedicated fund, the use of which is limited to defraying costs of the off-site public capital
402 facilities listed in the ordinance or by-law. In the event of any disagreement relative to who shall
403 receive the refund, the city or town may retain said development impact fee pending instructions
404 given in writing by the parties involved or by a court of competent jurisdiction. Notwithstanding
405 the foregoing, a city or town authorized to impose development impact fees pursuant to a special
406 act shall comply with the requirements set forth in such special act.

407 The applicant and the municipality may agree that the applicant shall construct the public
408 capital facility or a portion thereof for which the development impact fee was assessed in lieu of
409 paying, or in exchange for a refund of, the development impact fee to the municipality, provided
410 that the applicant shall not be required to construct such improvement if it chooses to pay the
411 assessed development impact fee.

412 Transition Provision: Any city or town that had adopted a zoning ordinance or by-law
413 requiring a form of development impact fee prior to the effective date of this Act, shall within
414 two years of that effective date revise the provisions thereof to conform to this Act. After two
415 years from the effective date of this Act, any provision of such preexisting development impact
416 fee ordinance or by-law that does not conform to the provisions of this Act may only apply to the
417 extent and in a manner consistent with this Act.

418 SECTION 21. Said chapter 40A, as so appearing, is hereby amended by inserting after
419 section 9E, the following section:-

420 40A:9F. Inclusionary Zoning

421 Section 9F. Authority: In furtherance of the purposes of zoning ordinances and by-laws
422 and in the exercise of their home rule powers, a city or town, by ordinance or by-law, is not
423 prohibited from requiring the applicant for a residential or mixed use development to provide
424 inclusionary housing units within such development. Such a requirement shall have a rational
425 nexus to, and shall be roughly proportionate to the impacts on the affordable housing assets of
426 the town created by the development and it shall be applied to affected development in a
427 consistent manner.

428 Off-Site Units, Land Dedications, Payment of Funds: In lieu of constructing the required
429 inclusionary housing units on-site, the ordinance or by-law may provide for the construction of
430 such units off-site, the dedication of land for such purpose, or the payment of funds to a separate
431 account created by the city or town sufficient for and dedicated to the provision of inclusionary
432 housing, provided the applicant demonstrates to the satisfaction of the local approving authority
433 that the units cannot be otherwise provided on-site or that an alternative proposal better meets the
434 needs of the city or town with respect to the provision of inclusionary housing. Off-site units,
435 land dedication, or payment in-lieu of units shall, in the opinion of the board or official
436 designated by ordinance or by-law to administer the provisions of this section, and in
437 consideration of local needs, provide inclusionary housing benefits substantially equivalent to the
438 provision of on-site units.

439 Dedicated Accounts: Cities and towns are authorized to establish a separate dedicated
440 account for the deposit of funds received under this section, including Municipal Housing Trust
441 Fund accounts under section 55C of chapter 44 or other dedicated accounts of similar purpose.
442 Said funds shall be deposited with the treasurer and disbursed for inclusionary housing purposes
443 in accordance with the ordinances, by-laws, or regulations of the city or town. Where the

444 application of this section results in less than a full dwelling unit, the board may accept a
445 prorated payment of funds in lieu of unit creation.

446 Price or Rent Restriction: The inclusionary housing units shall be subject to an affordable
447 housing restriction in accordance with sections 31-33 of chapter 184 or, if ineligible under said
448 sections, restricted by other means as required in an ordinance or by-law for a period of not less
449 than 30 years.

450 Eligibility for Subsidized Housing Inventory: The ordinance or by-law may further
451 require some or all of the inclusionary housing units to be low- or moderate-income housing as
452 defined in sections 20-23 of chapter 40B, and be eligible for inclusion on the local subsidized
453 housing inventory subject to and in accordance with applicable regulations and guidelines of the
454 Department of Housing and Community Development or successor agency. Nothing in this
455 section shall be construed to require said agency to include affordable units created hereunder on
456 the subsidized housing inventory.

457 Transition Provision: Any city or town that had adopted a zoning ordinance or by-law
458 requiring a form of inclusionary zoning prior to the effective date of this Act, shall within three
459 years of that effective date revise the provisions thereof to conform to this Act. After three years
460 from the effective date of this Act, any provision of such preexisting inclusionary zoning
461 ordinance or bylaw that does not conform to the provisions of this Act may only apply to the
462 extent and in a manner consistent with this Act.

463 SECTION 22. Said chapter 40A, as so appearing, is hereby amended by inserting after
464 section 9F, the following section:-

465 40A:9G. Land Use Dispute Avoidance

466 Section 9G. Applicability: As an optional means of avoiding or minimizing land use
467 disputes, the owner of land or structures who has applied or intends to apply for a building
468 permit, any permit or approval required under this chapter, an approval under sections 81K-GG
469 of chapter 41, or a comprehensive permit under sections 20-23 of chapter 40B, may request of
470 the public official or local board charged with acting on the application to undertake a land use
471 dispute avoidance process as hereinafter provided.

472 Initial Conflict Evaluation: The dispute avoidance process may include an initial conflict
473 evaluation to determine if a further resolution effort is advisable, and if so, whether there should
474 be subsequent resolution efforts to avoid or minimize disputes relating to the application.

475 Participation: Both the conflict evaluation and any later resolution effort shall be
476 voluntary for those participating requiring the joint written agreement of both the applicant and
477 public official or local board which shall be filed with the city or town clerk.

478 Neutral Mediator/Facilitator: The conflict evaluation and any later resolution effort may
479 be conducted by a neutral mediator as defined in section 23C of chapter 233 or by a neutral
480 facilitator, selected from a list prepared by the Massachusetts Office of Public Collaboration or
481 its successor agency or its designee, or as chosen jointly by the applicant and the public official
482 or local board. The mediator or facilitator and any associate assisting the facilitator shall comply
483 with the standards of conduct of the Association for Conflict Resolution or as promulgated by
484 the Massachusetts Office of Public Collaboration or its successor agency or its designee.

485 Costs: Funding for any conflict evaluation or resolution effort under this section may be
486 as the applicant and the public official or local board may agree, or the public official or local
487 board may provide for the imposition of reasonable fees for the employment of outside

488 consultants, including the mediator or facilitator, in the same manner as set forth in section 53G
489 of chapter 44.

490 Rules: Public officials or local boards may adopt, and from time to time amend, after a
491 public hearing, rules to implement the conflict evaluation or resolution efforts undertaken
492 pursuant to this section. For this rule-making, public officials and local boards may seek the
493 assistance of the Massachusetts Office of Public Collaboration or its successor agency or its
494 designee in developing best practices for land use dispute avoidance. Notice of the hearing on the
495 proposed rules, including the location, date, and time of the hearing shall be filed with the city or
496 town clerk and published once in a newspaper of general circulation in the city or town at least
497 14 days before the public hearing.

498 Process of Conflict Evaluation: As part of the conflict evaluation, the mediator or
499 facilitator may solicit information and opinions relating to the application, and may identify and
500 notify those members of the public likely to be interested in or affected by the application. The
501 mediator or facilitator may clarify the issues and investigate the willingness of all interested
502 parties to work together with the applicant to resolve those issues. The mediator or facilitator
503 may identify measures or community-enhancing features that would benefit the neighborhood,
504 the larger community, and the project itself. Based upon the evaluation, the mediator or
505 facilitator may determine whether further resolution efforts would be productive in reaching a
506 consensus of those participating, with the understanding that the outcome may be the withdrawal
507 or substantial modification of the application.

508 Special Provisions, Meetings: The mediator or facilitator may convene meetings or
509 conduct interviews that shall be confidential and privileged from discovery under section 23C of

510 chapter 233. The mediator or facilitator shall have the protections provided under section 23C of
511 chapter 233. To the extent that public agencies are participants, their deliberations shall be
512 subject to the provisions of section 21(a)(9) of chapter 30A.

513 Report on Conflict Evaluation: In preparing a report on conflict evaluation, or on a later
514 resolution effort, the mediator or facilitator shall not attribute statements, positions, ideas, or
515 interests to specific individuals, organizations, or persons interviewed, and shall distribute copies
516 of the report to those participating. The conflict evaluation report shall indicate whether and how
517 a subsequent resolution effort might be appropriate for the application involved, including
518 elaborating on how it might be undertaken and by whom.

519 Conflict Resolution: Based upon the conflict evaluation, the applicant and the public
520 official or local board may determine if a further resolution effort regarding an application is
521 worth undertaking in accordance with the procedures set out in this section, or as they may
522 otherwise in writing jointly agree. The applicant and the public official or local board may, by
523 an agreement in writing filed with the city or town clerk, stipulate and agree to extend any
524 otherwise applicable time requirements of state or local law.

525 Conclusion of Process: At the conclusion of any conflict evaluation or resolution efforts,
526 the application which initiated the conflict evaluation and resolution efforts may go forward in
527 the ordinary course in accordance with the applicable statute, ordinance, or by-law, reflecting if
528 possible the result of any resolution effort, including the opportunity for public hearing and
529 comment if so provided by the applicable statute, ordinance, or by-law. If the parties so agree,
530 any resolution may be incorporated into the action taken by the local board or official. Whether
531 or not a resolution results, the applicant may nevertheless proceed with the application without

532 prejudice for having participated in a conflict evaluation or resolution effort, and the application
533 process shall proceed in due course as otherwise provided by statute, ordinance, or by-law.

534 SECTION 23. Said chapter 40A, as so appearing, is hereby amended by striking out
535 section 10 and inserting in place thereof the following section:-

536 40A:10. Variances

537 Section 10. Authority: Where a literal enforcement of the provisions of the zoning
538 ordinance or by-law would cause substantial hardship, financial or otherwise, to the petitioner,
539 upon appeal or upon petition with respect to particular land or structures, the permit granting
540 authority shall have the discretionary authority to grant a variance from the terms of the
541 applicable zoning ordinance or by-law following a public hearing for which notice has been
542 given by publication and posting as provided in section 11 and by mailing to the planning board
543 and all parties in interest. Such hardship must relate to the physical characteristics or location of
544 the site or of the structures thereon.

545 Standards: In making its determination, the permit granting authority shall take into
546 consideration the benefit to the applicant if the variance is granted provided the grant will not
547 unduly derogate from the benefits to be derived from uniform application of the zoning
548 ordinance or bylaw, including avoiding detriments to the health, safety and welfare of the
549 neighborhood or community by such grant. The permit granting authority may also take into
550 consideration the extent to which the claimed hardship is self-created, and may base a denial
551 solely upon such a finding. In order to grant a variance the permit granting authority shall make
552 all of the following findings: (a) the benefit sought by the applicant cannot be achieved by some
553 method, feasible for the applicant to pursue, other than a variance; (b) the variance will not have

554 a disproportionately adverse effect on nearby properties, or the character of the neighborhood, or
555 on the environment; (c) the variance will not nullify or substantially derogate from the intent or
556 purpose of such ordinance or by-law or a master plan under section 81D of chapter 41, if any in
557 effect; and (d) the claimed hardship relating to the property in question is unique, and does not
558 also apply to a substantial portion of the district or neighborhood. In the granting of variances,
559 the permit granting authority shall grant the minimum variance that it shall deem necessary to
560 relieve the hardship.

561 Use Variances: Use variances are not allowed unless expressly so authorized by an
562 ordinance or by-law. If so authorized, use variances shall be subject to all the provisions of this
563 section and to any additional more stringent criteria contained in the ordinance or by-law.

564 Conditions, Safeguards, and Limitations: The permit granting authority may impose
565 conditions, safeguards and limitations both of time and of use, including the continued existence
566 of any particular structures.

567 Duration: Once exercised, variances shall run with the land, but a use variance may run
568 with the land only if so determined by the permit granting authority acting pursuant to an
569 ordinance or by-law enabling such a determination. Any variance granted prior to the effective
570 date of this Act shall be governed by the provisions of such variance and shall run with the land
571 unless a condition, safeguard, or limitation contained therein has prescribed otherwise.

572 Recording of Variance: No variance, or any extension, modification or renewal thereof,
573 shall take effect until a copy of the decision bearing the certification of the city or town clerk that
574 20 days have elapsed after the decision has been filed in the office of the city or town clerk is
575 recorded in the registry of deeds for the county and district in which the land is located and

576 indexed in the grantor index under the name of the owner of record or is recorded and noted on
577 the owner's certificate of title. The certification shall include either a statement that no appeal has
578 been filed or that if such appeal has been filed, that it has been dismissed or denied; or if it is a
579 variance which has been approved by reason of the failure of the permit granting authority to act
580 thereon within the time prescribed, a copy of the petition for the variance accompanied by the
581 statement of the city or town clerk stating the fact that the permit granting authority failed to act
582 within the time prescribed, and no appeal has been filed, and that the grant of the petition
583 resulting from such failure to act has become final or that if such appeal has been filed, that it has
584 been dismissed or denied. The fee for recording or registering shall be paid by the owner or
585 applicant.

586 Lapse, Extension: If the rights authorized by a variance are not exercised within two
587 years of the date of the grant of the variance such variance shall lapse; provided, however, that
588 upon written application by the grantee of such variance, the permit granting authority in its
589 discretion may extend, either with or without a public hearing as provided in the zoning
590 ordinance or bylaw, the time for exercise of such rights for a period not to exceed one year. Such
591 application must be filed no later than 65 days prior to the lapse of the variance. If the permit
592 granting authority does not grant the extension within 65 days of the date of application therefor,
593 upon the lapse of the variance, the variance may be re-established only after notice and a new
594 hearing pursuant to the provisions of this section.

595 Transition Provision: Any city or town that had adopted a zoning ordinance or by-law
596 relating to zoning variances prior to the effective date of this Act, shall within three years of that
597 effective date revise the provisions thereof to conform to this Act. After three years from the
598 effective date of this Act, any provision of such preexisting variance zoning ordinance or bylaw

599 that does not conform to the provisions of this Act may only apply to the extent and in a manner
600 consistent with this Act.

601 SECTION 24. Section 11 of said chapter 40A, as so appearing, is hereby amended by
602 inserting, in the third sentence of the first paragraph, after the words "the planning board of the
603 city or town," the following words:- the board of health of the city or town,

604 SECTION 25. The General Laws, as appearing in the 2012 Official Edition, are hereby
605 amended by inserting after Chapter 40W the following chapter: -- CHAPTER 40X
606 CONSOLIDATED PERMITTING

607 CHAPTER 40X

608 CONSOLIDATED PERMITTING

609 1. Definitions

610 2. Concurrent Applications

611 3. Consolidated Hearing and Notice

612 4. Decisions

613 40X:1. Definitions

614 Section 1. As used in this chapter, the following words shall have the following
615 meanings:

616 “Concurrent Application” means a complete consolidated application prepared by the
617 proponent of an Eligible Project for submission to all Local Boards requesting all required Local
618 Permits, together with payment of any applicable fees for such permits.

619 “Eligible Project” means a development project that consists of the construction,
620 reconstruction, or alteration of 25,000 square feet or more of gross floor area or the construction,
621 reconstruction, or alteration of 25 dwelling units or more, and that requires more than one Local
622 Permit from more than one Local Board.

623 “Hearing Officer” means the chair, or any one or more other members of a Local Board
624 collectively, designated to participate on behalf of such Local Board in a consolidated hearing
625 under this chapter. The Hearing Officer shall attend and participate as the board’s representative
626 at the consolidated hearing, and thereafter shall report to the Local Board represented together
627 with such summaries of testimony, copies of relevant exhibits, and preliminary
628 recommendations, if any, as the Hearing Officer and the relevant Local Board determine may be
629 helpful to reach a decision, or seek further information from the applicant and others as the Local
630 Board may deem appropriate.

631 “Local Board” means any agency, department, commission, or other instrumentality of a
632 municipal government that has the authority to issue a required Local Permit for an Eligible
633 Project that is the subject of a Concurrent Application.

634 “Local Permit” means any permit, site plan review, certificate, order (excluding
635 enforcement orders), license, certification, determination, exemption, variance, waiver, or other
636 approval or determination of rights by any Local Board concerning the use or development of
637 real property that is issued or made under chapter 40, chapter 40A to 40C, inclusive, chapter

638 40R, chapter 41, chapter 43D, chapter 131, chapter 131A, or any local by-law or ordinance,
639 regardless of whether a public hearing is required by law.

640 40X:2. Concurrent Applications

641 Section 2. Notwithstanding any general or special law to the contrary, the proponent of
642 an Eligible Project may elect to submit a Concurrent Application. The Concurrent Application
643 shall be filed with the city or town clerk, and a copy of said application, including the date and
644 time of filing, certified by the city or town clerk, shall be transmitted forthwith by the proponent
645 to each Local Board from which a Local Permit is being sought, and to the local board of health,
646 whether or not a Local Permit is being sought from said board. Cities and towns may accept
647 filing of a Concurrent Application electronically, with a return receipt by electronic mail being
648 an acceptable form of certification of receipt by the city or town clerk, including payment of
649 applicable fees.

650 The Concurrent Application shall contain an introductory section that contains general
651 project information that will be used by all of the Local Boards from which a Local Permit is
652 sought, as provided in the local ordinance or bylaw regarding concurrent applications, as well as
653 additional sections that contain the information required by individual Local Boards for review
654 of each applicable Local Permit required for the project. The general project information shall
655 include the following information: project name; address; assessors map/parcel information;
656 proponent name, mailing address, phone/fax/email; existing site description; project description,
657 including proposed use, dimensional attributes, and operational information; proposed
658 construction schedule, including details on any proposed phasing of the project; and a list of all
659 Local Permits being sought.

660 The proponent shall include any local forms required by the Local Board for review of
661 the Local Permit as part of the Concurrent Application.

662 40X:3. Consolidated Hearing and Notice

663 Section 3. A consolidated hearing shall be held jointly by the Local Boards from which a
664 Local Permit is sought within 65 days of the filing of a Concurrent Application. The notice
665 requirements for such hearing shall be as set forth in chapter 40A, section 11, but may be
666 consolidated to appear and be published as one notice representing all participating Local
667 Boards.

668 Unless represented by a Hearing Officer a quorum of each Local Board is required to
669 attend the consolidated hearing. The chairs of the Local Boards shall jointly open the hearing
670 and forthwith designate one of them to preside over the consolidated hearing. A Local Board
671 may elect to continue a public hearing, and said continued public hearing may be held as a
672 consolidated hearing with other consenting Local Boards or apart from the other Local Boards
673 from which a Local Permit is sought. Local Boards may also close a public hearing either as a
674 consolidated hearing with other consenting Local Boards or apart from the other Local Boards,
675 and not be required to attend continued sessions of a consolidated hearing.

676 Any Local Board represented by a Hearing Officer shall thereafter convene to receive the
677 Hearing Officer's report before deliberating and voting. The Hearing Officer's report may be
678 used by the board as an evidentiary basis for the board to act, in lieu of direct evidence and
679 testimony. The report may be accepted in whole or in part, or the Local Board may call for such
680 other evidence and testimony as it deems necessary or the applicant may wish to introduce.

681 To facilitate efficient review and use of resources, the Local Boards may consolidate staff
682 reviews and any required peer reviews. Any municipal department or board may provide
683 advisory comments to a Local Board from which a Local permit is being sought.

684 A Local Permit sought from a Local Board that does not attend the initial consolidated
685 hearing, or does not designate a Hearing Officer to attend, shall be deemed to be constructively
686 approved with respect to the Eligible Project which is the subject of the consolidated hearing.

687 40X:4. Decisions

688 Section 4. Each Local Board shall issue its Local Permit based on the substantive criteria
689 and procedural requirements established by the applicable statutes and bylaws or ordinances
690 pertaining to the Local Permit being sought. The timing of these decisions shall be issued
691 according to applicable requirements of the underlying statutes and bylaws or ordinances.

692 Prior to the issuance of its Local Permit, each Local Board must submit a draft decision
693 to each other Local Board from which a required Local Permit is sought.

694 To the extent feasible, Local Boards shall consolidate forms of approval and decisions,
695 with the goal of issuing coordinated decisions with consistent approval periods and without
696 overlapping or conflicting conditions.

697 SECTION 26. The General Laws, as appearing in the 2012 Official Edition, are hereby
698 amended by inserting after Chapter 40X the following chapter: -- CHAPTER 40Y PLANNING
699 AHEAD FOR GROWTH ACT

700 CHAPTER 40Y

701 PLANNING AHEAD FOR GROWTH ACT

702 1. Preamble

703 2. Definitions

704 3. Elements of implementing regulations

705 4. Certification and adoption of implementing regulations

706 5. Effect of certified community status on zoning and land use regulation

707 6. Review of certification by regional planning agency

708 7. Expiration and renewal of certified community status; amendments

709 8. Priorities for state investments; consistency of state investments

710 9. Regulations

711 40Y:1 Preamble

712 Section 1. The sections in this chapter shall be known and may be cited as the "Planning
713 Ahead for Growth Act". The purposes of the act shall be to advance the state's economic,
714 environmental, and social well-being through enhanced planning for economic growth,
715 workforce housing creation, land conservation, and public health, consistent with the state's
716 Sustainable Development Principles.

717 40Y:2 Definitions

718 Section 2. As used in this chapter, the following words shall, unless the context clearly
719 requires otherwise, have the following meanings:-

720 “By-right” or “As of right” means that development may proceed under zoning and other
721 local land use regulations without the need for a special permit, variance, amendment, waiver or
722 other discretionary approval. As of right development may be subject to site plan review under
723 section 9D chapter 40A.

724 “Certified community” means a community for which implementing regulations have
725 been certified by the applicable regional planning agency, adopted by the municipality, and
726 remain in effect.

727 “Constructively approved” means deemed approved by the failure of the approving
728 agency to issue a decision or determination within the time prescribed, as it may be extended by
729 written agreement between the applicant and the approving agency; provided that an applicant
730 who seeks approval by reason of the failure of the approving agency to act within such time
731 prescribed, shall so notify the city or town clerk, and parties in interest, in writing within 14 days
732 from the expiration of the time prescribed or extended time, if applicable, of such approval.

733 “Development agreement” means a contract entered into between a municipality or
734 municipalities and a holder of property development rights, the principal purpose of which is to
735 establish the development regulations that will apply to the subject property during the term of
736 the agreement and to establish the conditions to which the development will be subject including,
737 but not limited to, a schedule of development impact fees. Under a development agreement the
738 holder may agree to contribute public capital facilities to serve the proposed development and the
739 municipality or both, to build affordable housing either on site or off site, to dedicate or reserve
740 land for open space community facilities or recreational use, or to contribute funds for any of
741 these purposes. The development agreement shall function as a bona fide local land use

742 regulation, establishing the permitted uses and densities within the development, and any other
743 terms or conditions mutually agreed upon between the applicant and the municipality. A
744 development agreement shall vest land use and development rights in the property, and such
745 rights would not be subject to subsequent changes in development laws or regulations for the
746 duration of the agreement.

747 "Economic development district" means a zoning district that permits or allows
748 commercial or industrial use or permits or allows mixed use including commercial or residential
749 or industrial use, and is an eligible location.

750 "Eligible location" means an area that by virtue of its physical and regulatory suitability
751 for development, the adequacy of transportation and other infrastructure and the compatibility of
752 proximate land uses is, in the determination of the regional planning agency, a suitable location
753 for development of the type contemplated by the implementing regulations. Any area that would
754 qualify as an "eligible location" under chapter 40R shall automatically qualify as an "eligible
755 location" for a residential development district. Any area that has been designated as a priority
756 development site under chapter 43D shall automatically qualify as an "eligible location" for an
757 economic development district.

758 "Housing target number" means a number equal to five per cent of the total number of
759 year-round housing units enumerated for the municipality in the latest available United States
760 census as of the date on which the implementing regulations are submitted to the regional
761 planning agency. Where the housing target number is calculated on a region-wide or multi-
762 municipal basis pursuant to Section 3(E) of this chapter, it shall be equal to five per cent of the
763 total number of year-round housing units enumerated for all participating municipalities in the

764 latest decennial United States census as of the date on which certification is sought pursuant to
765 Section 4 of this chapter.

766 "Implementing regulations" means the local zoning or general ordinances or by-laws,
767 subdivision rules and regulations, and other local land use regulations, or amendments thereof,
768 necessary to effectuate the purposes of this chapter.

769 "Low impact development techniques" means stormwater management techniques
770 appropriate to the size, scale, and location of the development proposal that limit off-site
771 stormwater runoff (both peak and non-peak flows) to levels substantially similar to natural
772 hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing
773 conditions), by emphasizing decentralized management practices and the protection of on-site
774 natural features.

775 "Municipality's effective date" means the date upon which a municipality has adopted or
776 renewed certified implementing regulations pursuant to this chapter.

777 "Natural resource protection zoning" (or "NRPZ") shall have the meaning ascribed to it
778 in section 1A of chapter 40A and, for the purposes of this chapter, additionally means a form of
779 zoning that further protects natural resources by limiting development in areas designated by the
780 state, the regional planning agency, or the city or town as having significant natural or cultural
781 resource values by requiring density divisors of five or more acres per dwelling unit and
782 percentages of preserved land of eighty percent or greater.

783 "Open space residential design" means a process for the cluster development of land as
784 defined in section 1A of chapter 40A that, for the purposes of this chapter, additionally: requires
785 identification of the significant natural features of the land and concentrates development by use

786 of reduced dimensional requirements in order to preserve those natural features; preserves at
787 least 50 per cent of the land's developable area in a natural, scenic or open condition, or in
788 agricultural, farming or forestry use; and permits the development of a number of new housing
789 units at least equal to the quotient of the land's developable area divided by the minimum lot
790 area per housing unit required by the zoning ordinance or by-law. For the purposes of this
791 definition, the land's developable area shall be determined pursuant to applicable state and local
792 land use and environmental laws and regulations, and the zoning ordinance or by-law, without
793 regard in either case to the suitability of soils or groundwater for on-site wastewater disposal.

794 "Other local land use regulations" means all local legislative, regulatory, or other actions
795 or requirements which are more restrictive than those of the state, if any, including subdivision
796 and board of health regulations, local wetlands ordinances or by-laws, and other local
797 ordinances, by-laws, codes, and regulations.

798 "Planning board" means a municipal planning board established or authorized pursuant to
799 chapter 41, section 81A.

800 "Prompt and predictable permitting" means that zoning and other local land use
801 regulations allow development to proceed as of right by permitting processes that are designed to
802 result in final decisions on all local permits and approvals in less than 180 days. For commercial
803 and industrial development, local permitting pursuant to chapter 43D shall also be deemed
804 "prompt and predictable permitting." Where a development permit application is referred to the
805 Cape Cod Commission, the Nantucket Planning and Economic Development Commission, or the
806 Martha's Vineyard Commission under chapter 716 of the Acts of 1989, chapter 561 of the Acts
807 of 1973, or chapter 831 of the Act of 1977, respectively, as those acts may be amended, or the

808 review of a development permit application is suspended by the operation of those acts, the
809 zoning and other local land use regulations shall still be considered "prompt and predictable
810 permitting" if, but for such referral or suspension, they otherwise would meet the requirements of
811 this definition.

812 "Rate of development measures" means local legislative or regulatory measures adopted
813 by cities and towns under this chapter to regulate the number of permits for new construction or
814 approvals of new building lots issued in a defined period of time or otherwise in accordance with
815 defined standards and criteria. Rate of development measures shall not include otherwise
816 permissible building moratoria enacted for defined periods of time during which planning,
817 zoning, health, wetlands, or subdivision control studies are underway.

818 "Regional planning agency" means the regional or district planning commission
819 established pursuant to chapter 40B for the region within which a municipality is located. The
820 term shall also mean the Martha's Vineyard Commission, as described in chapter 831 of the Acts
821 of 1977, the Nantucket Planning and Economic Development Commission, as described in
822 chapter 561 of the Acts of 1973, the Cape Cod Commission, as described in chapter 716 of the
823 Acts of 1989, the Franklin Council of Governments, as described in chapter 151 of the Acts of
824 1996, and the Northern Middlesex Council of Governments, as described in chapter 420 of the
825 Acts of 1989.

826 "Residential development district" means a zoning district that: permits or allows through
827 prompt and predictable permitting residential use at a density of not less than four units per acre
828 of developable land for single-family residential use, not less than eight units per acre of
829 developable land for two- and three-family and attached townhouse residential use, or not less

830 than twelve units per acre of developable land for multi-family residential use, or permits or
831 allows mixed use including residential use at such density; is an eligible location; and does not
832 impose other requirements that add unreasonable costs or otherwise unreasonably impair the
833 economic feasibility of residential development at such density. A zoning district that permits or
834 allows mixed use may qualify as both an economic development district and a residential
835 development district, if the standards for both districts are met. The implementing regulations
836 for any residential development district that permits or allows mixed use shall contain adequate
837 provisions to ensure that any contemplated contribution towards the housing target number to be
838 provided by such district will be achieved. The foregoing minimum density for single-family
839 residential use may be reduced to not less than two units per acre of developable land upon a
840 determination by the regional planning agency that the lack of adequate water supply or
841 wastewater infrastructure within the municipality prevents full compliance with the minimum
842 density standard. If there is no public water supply or public wastewater infrastructure existing
843 anywhere within the municipality, then the minimum density for single-family residential use
844 may be reduced to not less than two units per acre of developable land without the need for a
845 determination by the regional planning agency.

846 "Secretary" means the secretary of the Executive Office of Housing and Economic
847 Development.

848 40Y:3 Elements of Implementing Regulations

849 Section 3. The municipality may prepare, and from time to time amend or renew,
850 implementing regulations for a municipality, to be submitted to the regional planning agency for
851 certification. The implementing regulations shall:

852 (A) Establish prompt and predictable permitting of commercial or industrial development
853 within one or more identified economic development districts. This standard may be waived or
854 modified upon a determination by the regional planning agency that adequate alternatives for
855 economic development exist elsewhere in the region and are more appropriately located there.

856 (B) Establish prompt and predictable permitting of residential development within one or
857 more identified residential development districts that can collectively accommodate, in the
858 determination of the regional planning agency, a number of new housing units (excluding new
859 housing units which are restricted, through zoning or other legal means, as to the number of
860 bedrooms or as to the age of their residents) equal to the housing target number. For the initial
861 certification of implementing regulations, a municipality's housing target number shall be
862 reduced by the number of new housing units for which building permits were issued within two
863 years prior to the municipality's effective date, to the extent such building permits were issued
864 within residential development districts for which there was prompt and predictable permitting at
865 the time of building permit issuance.

866 (C) Require that, for any zoning district that requires a minimum lot area of greater than
867 40,000 square feet for single-family residential development, development of five or more new
868 housing units utilize open space residential design, except upon a determination by the regional
869 planning agency that open space residential design is not feasible or the land and natural resource
870 conservation objectives of open space residential design are achieved through alternate means
871 such as the transfer of development rights or natural resource protection zoning. Open space
872 residential design may be found infeasible due to adoption of development limitations necessary
873 to qualify for zero rate of interest state revolving fund loans, or due to the requirements of an
874 area-wide plan, management program or other plan or program implemented pursuant to section

875 208 of the federal Clean Water Act, 33 United States Code section 1251, et seq. In districts
876 requiring minimum lot areas of between 40,000 and 80,000 square feet where Title 5 of the
877 Environmental Code is in effect, the minimum preservation requirement of 50 per cent set forth
878 in section 2, open space residential design, shall be modified to equal the percentage resulting
879 from the subtraction of 40,000 square feet from the lot size requirement, divided by the lot size
880 requirement, and multiplied by 100, except to the extent inconsistent with requirements adopted
881 by a regional planning agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts
882 of 1977, as those acts may be amended.

883 (D) Require, through zoning or general ordinances or by-laws, that all development that
884 disturbs more than one acre of land, including development by-right, utilize low impact
885 development techniques.

886 (E) Contiguous municipalities may also satisfy the requirements of this Section 3 on a
887 regional or multi-municipal basis under the following conditions: (i) the number of new housing
888 units (excluding new housing units which are restricted, through zoning or other legal means, as
889 to the number of bedrooms or as to the age of their residents) provided by these residential
890 development districts, in the aggregate, must equal the housing target number, as calculated by
891 summing the target numbers of all participating municipalities; and (ii) each municipality must
892 satisfy the requirements of subsections (A), (C), and (D). For municipalities within Barnstable
893 and Dukes counties, municipalities must also be consistent with any regional policy plans and
894 districts of critical planning concern adopted by, and local comprehensive plans certified by, the
895 regional planning agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts of
896 1977, respectively, as those acts may be amended.

897 40Y:4 Certification and adoption of implementing regulations

898 Section 4. The chief executive officer of the municipality may submit the implementing
899 regulations to the regional planning agency for certification. Within 90 days of receiving a
900 submission, the regional planning agency shall determine whether the implementing regulations
901 are consistent with the requirements of this chapter. The implementing regulations shall be
902 deemed consistent with this chapter if they effectuate the commitments established in section 3
903 herein. Implementing regulations shall have the benefit of a presumption of consistency with the
904 requirements for eligible locations of this chapter if the regulations are consistent with a process
905 of mapping priority development and preservation areas within the municipality, undertaken by
906 municipal planning officials in collaboration with the regional planning agency. If the regional
907 planning agency determines that the implementing regulations are consistent with this chapter,
908 then the agency shall issue a written certification to that effect. If the regional planning agency
909 determines that it is unable to issue such a certification, then the agency shall provide the
910 municipality with a written statement of the reasons for its determination. A municipality may
911 re-submit for certification at any time modified implementing regulations that address the issues
912 set forth in the agency's statement of reasons. If the regional planning agency does not issue a
913 certification or provide a statement of reasons within 90 days after receiving implementing
914 regulations (including re-submitted implementing regulations), then the implementing
915 regulations shall be deemed certified. Where implementing regulations are submitted for
916 certification on a regional or multi-municipal basis pursuant to Section 3(E) of this chapter, they
917 shall be submitted jointly by the chief executive officer of each municipality.

918 Following certification by the regional planning agency, the implementing regulations
919 may be adopted by the municipality or municipalities. On the date of receipt by the regional

920 planning agency of proof of adoption of the certified implementing regulations, a municipality
921 shall be deemed a "certified community." Such date shall be deemed the "municipality's
922 effective date."

923 40Y:5 Effect of certified community status on zoning and land use regulation

924 Section 5. (A) Following the municipality's effective date, local zoning or general
925 ordinances or by-laws, subdivision rules and regulations, and other local land use regulations
926 (other than certified implementing regulations) which are determined to be inconsistent with the
927 certified implementing regulations shall be invalid as applied within the areas subject to the
928 certified implementing regulations. Such a determination may be sought and obtained through
929 any means otherwise available by statute for the determination of the validity of such land use
930 regulations. Any material amendment to certified implementing regulations that has not been
931 prepared, certified and adopted in accordance with the provisions hereof shall be presumed to be
932 inconsistent with this chapter.

933 (B) If a municipality has issued, at the time of the municipality's effective date, a special
934 permit that in itself allows new housing units equal to one-half or more of the municipality's
935 housing target number, and if such special permit remains in effect for at least two years after the
936 municipality's effective date, then residential development under such special permit which
937 otherwise qualifies hereunder shall also be deemed as of right.

938 (C) If at any time more than two years after the municipality's effective date the total
939 number of housing units for which building permits have been applied for within the residential
940 development districts since the municipality's effective date is greater than the housing target
941 number (adjusted pro rata if the number of years since the municipality's effective date is less

942 than ten), but the total number of housing units for which building permits have been issued
943 within the residential development districts is less than the pro rata housing target number, then
944 the provisions of this subsection shall be in effect. During such time period, any applications for
945 building permits or other local land use permits for residential development within such
946 residential development districts shall be deemed constructively approved if not acted upon
947 within 180 days after receipt of permit applications. In addition, an application received under
948 this section shall be subject only to those conditions that are necessary to ensure substantial
949 compliance of the proposed development project with applicable laws and regulations; and it
950 may be denied only on the grounds that: the proposed development project does not substantially
951 comply with applicable laws and regulations; or the applicant failed to submit information and
952 fees required by applicable laws and regulations and necessary for an adequate and timely review
953 of the development project. The foregoing provisions shall no longer be in effect once the total
954 number of housing units for which building permits have been issued within such residential
955 development districts equals or exceed the pro rata housing target number. The provisions of
956 this subsection shall not apply where a development permit application is referred to the Cape
957 Cod Commission or the Martha's Vineyard Commission under chapter 716 of the Acts of 1989
958 or chapter 831 of the Act of 1977, respectively, as those acts may be amended, or the review of a
959 development permit application is suspended by the operation of those acts.

960 (D) Following the municipality's effective date, it may adopt rate of development
961 measures that limit the number of new housing units for which building permits may be issued in
962 any twelve month period to an amount equal to or greater than one-fifth of the housing target
963 number (but in no event less than ten new housing units).

964 (E) Following the municipality's effective date, it may adopt a zoning ordinance or by-
965 law that imposes natural resource protection zoning as defined in this chapter.

966 (F) Following the municipality's effective date, and notwithstanding section 6 of chapter
967 40A, the minimum vesting period for a definitive subdivision plan shall not be eight years, but
968 shall instead be five years. This provision shall not apply to the four-year minimum vesting
969 period for minor subdivisions in said section.

970 (G) Following the municipality's effective date, development impact fees imposed
971 pursuant to section 9E of chapter 40A may, in addition to the off-site public capital facilities
972 listed in said section, be used to defray the costs of the following additional off-site public capital
973 facilities: public elementary and secondary schools, libraries, municipal offices, affordable
974 housing, and public safety facilities.

975 (H) Following the municipality's effective date, the municipality shall have the power to
976 enter into development agreements as defined herein. Any such development agreement may be
977 entered into by the chief executive officer following a majority vote of the legislative body.

978 40Y:6 Review of certification by regional planning agency

979 Section 6. Any certification or determination of non-certification by a regional planning
980 agency with respect to implementing regulations or a material amendment of same is subject to
981 review by the secretary. The secretary may, upon the request of the subject municipality or in
982 his discretion, review any such decision in an informal, non-adjudicatory proceeding, may
983 request information from any third party and may, with the concurrence of the secretary of the
984 Executive Office of Energy and Environmental affairs, modify or reverse such decision if the
985 same does not comply with the provisions hereof.

986 If a municipality provides written notice to the secretary of the certification by a regional
987 planning agency of implementing regulations or a material amendment of same (including a
988 deemed certification resulting from a regional planning agency's failure to act), then the
989 secretary may only review such certification if such review is completed within 60 days of such
990 written notice.

991 The secretary may through regulation, with the concurrence of the secretary of the
992 Executive Office of Energy and Environmental affairs, establish a procedure for reviewing and
993 approving guidelines prepared by regional planning agencies to be used in the certification of
994 implementing regulations and material amendments thereto. If a certification or determination of
995 non-certification has been issued by the regional planning agency based upon an approved
996 guideline, then the secretary may only modify or reverse such decision for inconsistency with the
997 approved guideline.

998 Notwithstanding any other provision of this section, the secretary may not review a
999 determination under Section 3(E) of this chapter by the regional planning agency that
1000 implementing regulations are or are not consistent with regional policy plans and districts of
1001 critical planning concern adopted under, or local comprehensive plans certified under, chapter
1002 716 of the Acts of 1989 or chapter 831 of the Act of 1977, respectively, as those acts may be
1003 amended, nor may the secretary modify such a determination or any conditions found by the
1004 regional planning agency to be necessary to such a determination.

1005 40Y:7 Expiration and renewal of certified community status; amendments

1006 Section 7. A municipality's status as a certified community shall expire ten years after
1007 the municipality's effective date, unless renewal implementing regulations are prepared,

1008 certified, and to the extent necessary adopted in accordance with the provisions hereof prior to
1009 such date. Each such renewal implementing regulations shall also expire in ten years. Expiration
1010 of a municipality's status as a certified community shall cause section 5 herein to be inapplicable
1011 to such municipality.

1012 From and after a municipality's effective date, any material amendment to certified
1013 implementing regulations shall be prepared, certified, and adopted in accordance with the
1014 provisions hereof.

1015 40Y:8 Priorities for state investments; consistency of state investments

1016 Section 8. In furtherance of the purposes of this chapter to advance the state's economic,
1017 environmental, and social well-being through enhanced planning for economic growth,
1018 workforce housing creation, and land conservation, the commonwealth shall, when awarding
1019 discretionary funds for municipal infrastructure or other discretionary funds or grants
1020 administered through the executive office of housing and economic development, the executive
1021 office of energy and environmental affairs, the department of transportation, and the executive
1022 office of administration and finance, give priority consideration to certified communities and to
1023 communities with certified local comprehensive plans and with regulations deemed consistent
1024 with a local and regional plan as certified by the regional planning agency pursuant to chapter
1025 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, respectively, as those acts may be
1026 amended.

1027 When awarding discretionary funds for municipal infrastructure, the commonwealth shall
1028 give priority consideration to investments that support development within economic
1029 development districts and residential development districts in certified communities and similar

1030 districts established by local comprehensive plans certified by the regional planning agency
1031 pursuant to chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, respectively, as
1032 those acts may be amended.

1033 State agencies responsible for regulatory or capital spending programs that have a
1034 material effect on local land use and development shall take into account the land use goals,
1035 objectives, and policies as set forth in master plans adopted under section 81D of chapter 41 in
1036 administering such programs in certified communities.

1037 When awarding discretionary funds for municipal infrastructure and land preservation
1038 investments within communities for which there exists a regional plan under section 5 of chapter
1039 40B, under chapter 716 of the Acts of 1989, or under chapter 831 of the Acts of 1977,
1040 respectively, as these acts may be amended, the commonwealth shall cause such awards to be
1041 consistent with such plan, to the maximum extent feasible.

1042 40Y:9 Regulations

1043 Section 9. The secretary may issue such regulations as are necessary and appropriate for
1044 the implementation of this chapter.

1045 SECTION 27. Section 81D of chapter 41 of the General Laws, as appearing in the 2012
1046 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the
1047 following section 81D:-

1048 41:81D. Master Plan

1049 Section 81D. Option to Plan: A planning board established in any city or town that
1050 makes a master plan for such city or town shall do so in accordance with this section. The plan

1051 shall take effect upon adoption by the legislative body as provided herein. For a plan to remain
1052 in effect, from time to time, not to exceed 10 years from the date of adoption, the planning board
1053 shall conduct a comprehensive review of the plan and may extend, revise, or remake the plan,
1054 and the plan or amendment thereto shall thereafter be re-adopted as provided in this section. The
1055 plan, once adopted, shall be the official master plan of the city or town, replacing any previously
1056 adopted master plans. All plans for capital projects of another governmental agency on land
1057 included in a city or town master plan made and adopted pursuant to this section after the
1058 effective date of this act shall take such master plan into consideration.

1059 A master plan adopted in accordance with section 81D of chapter 41 in effect on the date
1060 of passage of this act may continue in full force and effect, including minor amendments to
1061 update or perfect such plans, and shall not be subject to this section until a date 10 years from the
1062 date of passage of this act.

1063 General Description of Plan: The plan shall be a comprehensive framework, through
1064 text, maps, and illustrations that provides a basis for decision making about land use and the long
1065 term physical development of the municipality. Other completed and current plans, reports, and
1066 studies may be incorporated by reference to fulfill in whole or in part the requirements of each
1067 subject listed below, provided that such material will then be considered part the plan, including
1068 its implementation. The master plan shall be internally consistent in its policies, forecasts and
1069 standards, and may support and provide a coherent rationale for the municipality's zoning
1070 ordinance or bylaws, subdivision regulations, and other land use laws, regulations, policies, and
1071 capital expenditures.

1072 The plan shall include the required subjects identified herein, any optional subjects at the
1073 discretion of the municipality, and the regional plan self assessment. The plan subjects may be
1074 written as separate elements or organized and integrated as deemed appropriate by the planning
1075 board. Due to the wide range of community types, characteristics, and planning needs in the
1076 commonwealth it is recognized that the subjects addressed with a particular city or town in mind
1077 may be expanded upon or contracted as appropriate, and may vary greatly among communities
1078 in the focus and depth of their analysis.

1079 Required Plan Subjects: Master plans need not include data collection or analysis in areas
1080 not related to land use and the long term physical development of the community. The plan shall
1081 address the following five required subjects, described below in a general manner:

1082 (1) Goals and Objectives: A statement that identifies the goals and objectives of the
1083 municipality for its future growth, development, redevelopment, conservation, and preservation.
1084 Each community shall conduct a public participation process to determine community values,
1085 establish goals, and identify patterns of development, redevelopment, conservation, and
1086 preservation consistent with these goals. The goals and objectives statement shall address the
1087 required and any additional selected optional plan subjects.

1088 (2) Housing: (a) An inventory of local demographic characteristics, an assessment and
1089 forecast of housing needs, and a statement of local housing policies. Where applicable, existing
1090 local housing plans and studies may be included by reference. (b) An analysis of housing units
1091 by type of structure (e.g., single-family, two-family, multi-family); affordable housing and
1092 subsidized housing; housing available for rental; special needs housing; and housing for the
1093 elderly, including assisted living residences. (c) An analysis of existing local policies, programs,

1094 laws, or regulations that encourage the preservation, improvement, and development of such
1095 housing, including an assessment of their adequacy. (d) An evaluation of zoning and other land
1096 use policies for the creation of a variety of housing that meets a broad range of housing needs,
1097 including but not limited to the affordable housing needs of low, moderate, and median income
1098 households and the accessible housing needs of people with disabilities and special needs. The
1099 evaluation shall examine specific measures to address these needs, including strategies,
1100 programs, and assistance for the preservation or rehabilitation of existing housing; the
1101 construction of new housing; and the adoption or amendment of local ordinances or bylaws and
1102 regulations permitting, encouraging, or requiring diversity in housing locations, types, designs,
1103 and area densities that offer alternatives to single family detached housing. A current housing
1104 production plan consistent with 760 CMR 56.03(4) may constitute the subject matter relative to
1105 this subsection (d).

1106 (3) Natural Resources and Energy Management: (a) A general overview of the
1107 significant natural and energy resources of the municipality. (b) Identification of protected and
1108 unprotected wetlands and water resources, lands critical to sustaining surface and groundwater
1109 quality and quantity, environmentally sensitive lands, critical wildlife habitat and biodiversity,
1110 agricultural lands and forests. Priorities for protection of wildlife habitat, water resources, vistas
1111 and key landscapes, outdoor recreation facilities, and farm and forestry land shall be identified.
1112 In cities or towns with agricultural commissions created by the legislative or executive body of
1113 the city or town, those elements of the plan dealing with agricultural topics shall be prepared
1114 jointly by the agricultural commission and the planning board. (c) An outline of local laws,
1115 regulations, policies, and strategies to address needs for the protection, restoration, and
1116 sustainable management of these resources and to promote development that respects and

1117 enhances the state's natural resources. (d) An energy component that explores locally feasible
1118 land use strategies to: maximize energy efficiency and renewable energy opportunities; support
1119 land, energy, water, and materials conservation strategies, local clean power generation,
1120 distributed generation technologies, and innovative industries; and address global climate change
1121 by reducing greenhouse gas emissions and the consumption of fossil fuels.

1122 (4) Land Use and Zoning: (a) An identification of historic settlement patterns and
1123 present land uses, and designation of the proposed distribution, location, and inter-relationship of
1124 public and private land uses in a general manner sufficient to guide the development of zoning
1125 ordinances or by-laws, zoning maps, and other land use regulations. (b) Land use policies and
1126 related maps, which shall be based upon a land use suitability analysis identifying areas most
1127 suitable for development and related transportation infrastructure and facilities. Growth and
1128 development areas, if identified, shall support the revitalization of city and town centers and
1129 neighborhoods by promoting development that is compact and walkable, conserves land, protects
1130 historic resources, integrates uses, and coordinates the provision of housing with the location of
1131 jobs, transit and services, and new infrastructure. The plan shall, if appropriate, identify areas for
1132 economic development and job creation, related public and private transportation and pedestrian
1133 connections, and encourage the creation or extension of pedestrian-accessible districts and
1134 neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with
1135 open space and housing. (c) A consideration of the relationship between proposed development
1136 intensity and the capacity of land and existing and planned public facilities and infrastructure.
1137 (d) A land use map illustrating the land use policies and desired future development patterns of
1138 the municipality and a proposed zoning map, both drawn in a general manner.

1139 (5) Implementation: An implementation program that defines and prioritizes the specific
1140 municipal actions necessary to achieve the goals and objectives of the master plan in accordance
1141 with the policies outlined therein. This program may be separately written or integrated into the
1142 required and selected subject matter. This implementation program shall specify the
1143 recommended course of action by which the municipality's regulatory structures, including
1144 zoning and subdivision control regulations, may need to be amended in order to be consistent
1145 with the master plan. This section may examine the current land use permitting process in a
1146 community and, if necessary, make recommendations for the development of clear, predictable,
1147 coordinated, and timely procedures thereunder, including an assessment of the adequacy and
1148 effectiveness of the existing structure of and roles and responsibilities of elected and appointed
1149 boards, officers, and personnel to implement the master plan through land use ordinances, by-
1150 laws, regulations, and procedures.

1151 Optional Subjects: The following seven subjects are optional depending upon community
1152 characteristics, and described below in a general manner:

1153 (6) Economic Development: (a) An inventory and analysis of the local economic base,
1154 including: employment; local industries and business clusters; labor force characteristics; land
1155 and buildings used for nonresidential purposes, including vacant space; and office, retail, and
1156 industrial market conditions. (b) An assessment of opportunities and barriers to economic
1157 development, including but not limited to identification of land use policies and available
1158 locations that: support the growth of jobs, the retention of existing businesses, and the provision
1159 of space for new businesses; encourage the reuse and rehabilitation of existing infrastructure,
1160 including brownfields, rather than the construction of new infrastructure in undeveloped areas;
1161 and facilitate larger-scale economic redevelopment or development in industry clusters

1162 consistent or compatible with the regional and local economy. (c) An assessment of
1163 opportunities and barriers to agriculture, including all branches of farming and forestry, where
1164 applicable. (d) An assessment of opportunities and barriers to self-employment and home-based
1165 occupations, including but not limited to consideration of land use policies, infrastructure and
1166 utilities, and communications technology.

1167 (7) Cultural Resources: (a) An inventory of the significant cultural, scenic, and historic
1168 structures, sites, and landscapes of the municipality, including archaeological resources. (b) An
1169 assessment of policies and strategies to protect and manage the community's cultural resources,
1170 including but not limited to a community-wide preservation plan, ordinances or bylaws and
1171 incentives for historic preservation, and land use policies to facilitate the reuse of historic
1172 structures, where appropriate.

1173 (8) Open Space Protection and Recreation: An inventory of recreational facilities and
1174 open space areas of the municipality, and policies and strategies for the management, protection,
1175 and enhancement of such facilities and areas as essential public health infrastructure. A current
1176 open space and recreational plan approved by the Division of Conservation Services shall
1177 constitute the subject matter relative to open space and recreation hereunder.

1178 (9) Infrastructure and Capital Facilities: An identification and analysis of existing and
1179 forecasted needs for infrastructure and facilities used by the public. Scheduled expansion or
1180 replacement of public facilities, infrastructure components such as water and sewer systems or
1181 circulation system components and the anticipated costs and revenues associated with
1182 accomplishment of such activities shall be detailed.

1183 (10) Transportation: (a) An inventory of existing and proposed circulation, parking, and
1184 transportation systems. (b) An assessment of opportunities and barriers to increasing access to
1185 available or feasible transportation options, including land and water-based public transit,
1186 bicycling, walking, and transportation services for populations with disabilities. (c)
1187 Identification of strategic investment options for transportation infrastructure to encourage smart
1188 growth, maximize mobility, conserve fuel, and improve air quality; and to facilitate the location
1189 of new development where a variety of transportation modes can be made available.

1190 (11) Water Management: (a) An inventory of current and potential municipal sources of
1191 water supply, including capacity and safe yield, and an assessment of water demand including
1192 types of water users, changes in water consumption over time, and water billing rate structure.
1193 (b) An assessment of the adequacy of existing and proposed water supplies to meet projected
1194 demands, water quality and treatment issues, existing measures for water supply protection,
1195 water conservation, drought management and emergency interconnections. (c) An assessment of
1196 the ability of stormwater regulations and practices to limit off-site stormwater runoff to levels
1197 substantially similar to natural hydrology through decentralized management practices and the
1198 protection of on-site natural features. (d) An analysis of municipal need and capacity for
1199 wastewater disposal, including the suitability of sites and water bodies for the discharge of
1200 treated wastewater. (e) Recommended strategies for water supply provision and protection,
1201 water conservation, wastewater disposal, stormwater management, drought management and
1202 emergency interconnections, and needed improvements to meet future water resource needs.

1203 (12) Public Health: (a) An inventory of conditions and assets in the natural and built
1204 environment which contribute to or constitute a barrier to health. These conditions may include
1205 parks and recreational facilities; local agriculture; walking, bicycling and public transit options,

1206 including the safety and walkability of streets and public spaces; access to affordable housing,
1207 economic opportunities, and medical and other services; environmental quality; and sustainable
1208 development. The inventory should describe conditions with a disproportionate impact on
1209 residents based on geography, ethnicity, income, immigration status, or other characteristics.
1210 Where applicable, this inventory may reference other sections of the master plan. (b) An
1211 assessment of opportunities and barriers to increasing access to conditions and assets in the
1212 natural or built environment that contribute to health. (c) Recommendations of available
1213 implementation policies and strategies, including zoning and other local laws and regulations,
1214 affecting health needs related to the natural or built environment.

1215 Regional Plan, Self Assessment: Any required or selected optional subjects above shall
1216 include a self assessment against similar subject matter in a regional plan adopted by the regional
1217 planning agency under section 5 of chapter 40B and in effect, if any, or under any special act.

1218 Proposal, Adoption, and Distribution of Plan: The plan shall only be made, extended,
1219 revised, or remade from time to time by a simple majority vote of the planning board after a
1220 public hearing, notice of which shall be posted and published in the manner prescribed for
1221 zoning amendments under section 5 of chapter 40A. Following any such action, the planning
1222 board shall transmit the plan to the chief executive officer of the city or town, and the plan shall
1223 be an agenda item or warrant article on a subsequent legislative session of the city or town.
1224 Adoption of the plan, or the extension, revision, or remake of the plan, shall be by a simple
1225 majority vote of the legislative body of the city or town; however, no vote of the legislative body
1226 to alter the plan or amendment as proposed by the planning board shall be other than by a two-
1227 thirds majority. The planning board shall, upon adoption by the legislative body of any plan or
1228 report, or any change or amendment to a plan or report produced under this section, furnish a

1229 copy of such plan or report or amendment thereto, to the Department of Housing and Community
1230 Development.

1231 Barnstable and Dukes Counties: Instead of adopting a master plan pursuant to the
1232 requirements of this section 81D, a municipality in Barnstable or Dukes county may adopt a
1233 local comprehensive plan pursuant to the special acts that protect those two regions, St. 1989, c.
1234 716, as amended, and St. 1977, c. 831, as amended, respectively, and the regulations and
1235 regional policy plans adopted thereunder. The regional planning agency shall review the local
1236 comprehensive plan solely for consistency with the governing special act (St. 1989, c. 716 or St.
1237 1977, c. 831, as these acts may be amended) and any regulations and regional policy plans
1238 adopted thereunder, rather than the requirements for master plans set forth in this section 81D.
1239 The time limits and requirements set forth in this section 81D shall not apply to the review of
1240 such local comprehensive plans. An adopted local comprehensive plan certified by the regional
1241 planning agency as consistent with this section 81D shall be deemed a master plan in compliance
1242 with this section 81D and shall entitle the municipality to any statutory benefits of having an
1243 adopted master plan.

1244 SECTION 28. Section 81L of said chapter 41 of the General Laws, as so appearing, is
1245 hereby amended by striking out the definition of "Subdivision" and inserting in place thereof the
1246 following definition:-

1247 "Subdivision" shall mean the division of a lot, tract, or parcel of land into two or more
1248 lots, tracts, or parcels of land and shall include re-subdivision. When appropriate to the context,
1249 subdivision shall include the process of subdivision or the land or territory subdivided. A change
1250 in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may

1251 be defined as a minor subdivision and, in such case, be governed by the provisions of section
1252 81P.

1253 SECTION 29. Said section 81L of said chapter 41, as so appearing, is hereby amended
1254 by inserting the following definition:-

1255 "Minor Subdivision" shall mean a residential subdivision created in accordance with
1256 section 81P, provided however that until rules and regulations are adopted by a planning board
1257 under 81P therefor, "minor subdivision" shall solely mean the division of a lot, tract, or parcel of
1258 land into two or more lots, tracts, or parcels where, at the time when it is made, every lot within
1259 the lot, tract or parcel so divided has frontage on: a) a public way or a way which the clerk of the
1260 city or town certifies is maintained and used as a public way; b) a way shown on a plan
1261 theretofore approved and endorsed in accordance with the subdivision control law; or c) a way in
1262 existence when the subdivision control law became effective in the city or town in which the
1263 land lies, having, in the opinion of the planning board, sufficient width, suitable grades and
1264 adequate construction to provide for the needs of vehicular traffic in relation to the proposed use
1265 of the land abutting thereon or served thereby, and for the installation of municipal services to
1266 serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at
1267 least such distance as is then required by the zoning ordinance or by-law, if any, of said city or
1268 town for erection of a building on such lot, and if no distance is so required, such frontage shall
1269 be of at least 20 feet.

1270 SECTION 30. Section 81O of said chapter 41, as so appearing, is hereby amended by
1271 striking out the second sentence in the first paragraph and inserting in place thereof the following
1272 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,

1273 and size of the lots shown thereon, may not be changed unless the plan is amended as provided
1274 in section 81W. In the alternative, a planning board may adopt rules and regulations under
1275 sections 81P and 81Q of this chapter defining and regulating such changes as minor
1276 subdivisions.

1277 SECTION 31. Said chapter 41, as so appearing, is hereby amended by striking out
1278 section 81P and inserting in place thereof the following section 81P:-

1279 41:81P. Minor Subdivisions

1280 Section 81P. Applicability: Minor subdivisions, as defined in this chapter, and as may be
1281 further defined in the local subdivision rules and regulations, shall be governed by this section.
1282 Section 81S and the public hearing requirements in section 81Tof this chapter shall not apply to
1283 minor subdivisions. Except as provided below, all other sections of the subdivision control law
1284 that apply to subdivisions shall apply to minor subdivisions in so far as apt.

1285 Rules and Regulations, Transition Provision: A planning board may adopt alternative
1286 rules and regulations under section 81Q of this chapter relative to minor subdivisions, but in no
1287 case may such rules and regulations impose a procedural or substantive requirement more
1288 stringent than those specified in this chapter, this section 81P, or contained in the local rules and
1289 regulations otherwise applicable to subdivisions. Until such rules and regulations are adopted,
1290 the procedures in the sixth paragraph below shall apply to minor subdivisions.

1291 Rules and Regulations, Required Provisions: The rules and regulations for minor
1292 subdivisions shall: specify that an application for a minor subdivision may create up to six
1293 additional residential lots within the meaning of the subdivision control law, either on ways
1294 described in the definition of minor subdivision or on new ways; set forth the reasonable

1295 requirements and standards of the board for those existing ways described in the definition of
1296 minor subdivision, provided that no requirements shall be made for the location of such ways
1297 and that requirements for total travelled lanes widths of greater than 22 feet in a residential minor
1298 subdivision shall be presumed to serve no valid purpose of the subdivision control law unless
1299 such widths already exceed 22 feet; set forth the reasonable requirements and standards of the
1300 board for the proposed ways shown on a plan, provided that requirements for total travelled lanes
1301 widths of greater than 22 feet in a residential minor subdivision shall be presumed to serve no
1302 valid purpose of the subdivision control law unless such ways are designed to be extended to
1303 later serve a greater number of residential lots; and establish a time period for the planning board
1304 to take final action and to file with the city or town clerk a certificate of such action within 65
1305 days or less in the case of an existing way, or 95 days or less in the case of a new way.

1306 Rules and Regulations, Optional Provisions: The rules and regulations for minor
1307 subdivisions may: notwithstanding the first paragraph above, require a public hearing under
1308 Section 81T of this chapter for minor subdivisions served by a new way; require that applications
1309 for minor subdivisions from the same lot, tract, or parcel from which the first minor subdivision
1310 was created not create more than the maximum number of additional lots in a set period of years;
1311 lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to
1312 subdivisions; lessen or eliminate any local rule or regulation adopted under section 81Q of this
1313 chapter otherwise applicable to subdivisions; and describe a means by which the planning board
1314 may, by agreement with the applicant, accept payments from the applicant in lieu of otherwise
1315 required improvements to an existing way, provided those improvements are completed by the
1316 city or town in a reasonable period of time.

1317 Rules and Regulations, Optional Provisions Requiring Ratification by Legislative Body:
1318 Subject to ratification by the local legislative body by a simple-majority vote, the rules and
1319 regulations for minor subdivisions may increase the maximum number of additional lots created
1320 in an application for a minor subdivision to a number greater than six and define "minor
1321 subdivision" more broadly than in section 81L of this chapter.

1322 Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted: Until
1323 such rules and regulations are adopted, any person wishing to cause to be recorded a plan of land
1324 situated in a city or town in which the subdivision control law is in effect, who believes that his
1325 plan does not require approval under the subdivision control law, may submit his plan to the
1326 planning board of such city or town in the manner prescribed in section 81T, and, if the board
1327 finds that the plan does not require such approval, it shall forthwith, without a public hearing,
1328 endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval
1329 under the subdivision control law not required" or words of similar import with appropriate name
1330 or names signed thereto, and such endorsement shall be conclusive on all persons. Such
1331 endorsement shall not be withheld unless such plan shows a subdivision. If the board shall
1332 determine that in its opinion the plan requires approval, it shall within 21 days of such submittal,
1333 give written notice of its determination to the clerk of the city or town and the person submitting
1334 the plan, and such person may submit his plan for approval as provided by law and the rules and
1335 regulations of the board, or he may appeal from the determination of the board in the manner
1336 provided in section 81BB. If the board fails to act upon a plan submitted under this section or
1337 fails to notify the clerk of the city or town and the person submitting the plan of its action within
1338 21 days after its submission, it shall be deemed to have determined that approval under the
1339 subdivision control law is not required, and it shall forthwith make such endorsement on said

1340 plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the
1341 same effect. The plan bearing such endorsement or the plan and such certificate, as the case may
1342 be, shall be delivered by the planning board, or in case of the certificate, by the city or town
1343 clerk, to the person submitting such plan. The planning board of a city or town which has
1344 authorized any person, other than a majority of the board, to endorse on a plan the approval of
1345 the board or to make any other certificate under the subdivision control law, shall transmit a
1346 written statement to the register of deeds and the recorder of the land court, signed by a majority
1347 of the board, giving the name of the person so authorized.

1348 SECTION 32. Section 81Q of said chapter 41, as so appearing, is hereby amended by
1349 inserting after the fourth sentence thereof the following sentence:- Without limiting the
1350 foregoing, there shall be a rebuttable presumption that such rules and regulations are unlawfully
1351 excessive, to the extent that the design and dimensional requirements thereof for the laying out,
1352 construction or alteration of ways exceed the standards and criteria commonly applied by that
1353 city or town to the reconstruction of its publicly financed ways located in similarly zoned
1354 districts within such city or town. Design and dimensional requirements for total travel lane
1355 widths no greater than 24 feet shall be presumed not to be excessive.

1356 SECTION 33. Said section 81Q of said chapter 41, as so appearing, is hereby amended
1357 by inserting after the word “thereof,” in line 69, the following words:- but the rules and
1358 regulations may require the plan to show a park or parks suitably located for playground,
1359 environmental conservation and education, or recreation purposes benefiting the lots in the
1360 subdivision or for providing light and air, and not exceeding five per cent of the land being
1361 subdivided.

1362 SECTION 34. Section 81T of said chapter 41, as so appearing, is hereby amended by
1363 striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is
1364 not required”.

1365 SECTION 35. Section 81U of said chapter 41, as so appearing, is hereby amended by
1366 striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

1367 SECTION 36. Section 81X of said chapter 41, as so appearing, is hereby amended by
1368 striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of
1369 the planning board that approval of such plan is not required, as provided in section eighty-one P,
1370 or (3)”.

1371 SECTION 37. Said section 81X of said chapter 41, as so appearing, is hereby amended
1372 by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted
1373 pursuant to section eighty-one P and that it has been determined by failure of the planning board
1374 to act thereon within the prescribed time that approval is not required,”.

1375 SECTION 38. Said section 81X of said chapter 41, as so appearing, is hereby amended
1376 by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

1377 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the register of
1378 deeds shall accept for recording, and the land court shall accept with a petition for registration or
1379 confirmation of title, any plan bearing a professional opinion by a registered professional land
1380 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of
1381 streets and ways shown are those of public or private streets or ways already established, and that
1382 no new lines for division of existing ownership or for new ways are shown.

1383 Lot Line Changes: The register of deeds and the land court shall accept for recording or
1384 registration any plan showing a change in the line of any lot, tract, or parcel bearing a
1385 professional opinion by a registered professional land surveyor and a certificate by the person or
1386 board charged with the enforcement of the zoning ordinance or by-law of the city or town that
1387 the property lines shown: do not create an additional building lot; do not create, add to, or alter
1388 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render
1389 an existing nonconforming lot or structure more nonconforming; and are not subject to
1390 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.
1391 All such plans, if approved and as recorded, shall forthwith be filed with the planning board and
1392 board of assessors of the city or town. The recording of such plan shall not relieve any owner
1393 from compliance with the provisions of the Subdivision Control Law or of any other applicable
1394 law.

1395 SECTION 39. Section 81BB of said chapter 41, as so appearing, is hereby amended by
1396 striking out the first paragraph, and inserting in place thereof the following paragraph:-

1397 Section 81BB. Any person, whether or not previously a party to the proceedings, or any
1398 municipal officer or board, aggrieved by a decision of a board of appeals under section 81Y, or
1399 by any decision of a planning board concerning a plan of a subdivision of land, or by the failure
1400 of such a board to take final action concerning such a plan within the required time, may appeal
1401 to the superior court for the county in which said land is situated or to the land court; provided,
1402 that such appeal is entered within twenty days after such decision has been recorded in the office
1403 of the city or town clerk or within twenty days after the expiration of the required time as
1404 aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as
1405 to be received within such twenty days. Such civil action shall be in the nature of certiorari

1406 pursuant to section 4 of chapter 249. A complaint by a plaintiff challenging a subdivision or
1407 minor subdivision approval under this section shall allege the specific reasons why the
1408 subdivision or minor subdivision fails to satisfy the requirements of the board's rules and
1409 regulations or other applicable law and allege specific facts establishing how the plaintiff is
1410 aggrieved by such decision. A complaint by an applicant challenging a subdivision or minor
1411 subdivision denial or conditioned approval under this section shall similarly allege the specific
1412 reasons why the subdivision or minor subdivision properly satisfies the requirements of the
1413 board's rules and regulations or other applicable law.

1414 SECTION 40. Section 53G of chapter 44 of the General Laws, as appearing in the 2012
1415 Official Edition, is hereby amended by inserting after the letter and number "40B", in line 2, the
1416 following numbers and letters:- 40X

1417 SECTION 41. Section 3A of chapter 185 of the General Laws, as appearing in the 2012
1418 Official Edition, is hereby amended by striking out the third paragraph in its entirety and
1419 inserting in place thereof the following paragraph:-

1420 The permit session shall have original jurisdiction, concurrently with the superior court
1421 department, over civil actions in whole or part: (1) based on or arising out of the appeal of any
1422 municipal, regional, or state permit, order, certificate or approval, or the denial thereof,
1423 concerning the use or development of real property for residential, commercial, or industrial
1424 purposes (or any combination thereof), including without limitation appeals of such permits,
1425 orders, certificates or approvals, or denials thereof, arising under or based on or relating to
1426 chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive,
1427 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of

1428 1956; or any local bylaw or ordinance; (2) seeking equitable or declaratory relief designed to
1429 secure or protect the issuance of any municipal, regional, or state permit or approval concerning
1430 the use or development of real property, or challenging the interpretation or application of any
1431 municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any
1432 permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution,
1433 abuse of process, intentional or negligent interference with advantageous relations, or intentional
1434 or negligent interference with contractual relations arising out of, based upon, or relating to the
1435 appeal of any municipal, regional, state permit or approval concerning the use or development of
1436 real property; and (4) any other claims between persons holding any right, title, or interest in land
1437 and any municipal, regional or state board, authority, commission, or public official based on or
1438 arising out of any action taken with respect to any permit or approval concerning the use or
1439 development of real property but in all such cases of claims (1) to (4), inclusive, only if the
1440 underlying project or development, in the case of a development that is residential or a mix of
1441 residential and commercial components, involves either 25 or more dwelling units or the
1442 construction or alteration of 25,000 square feet or more of gross floor area or both or, in the case
1443 of a commercial development, involves the construction or alteration of 25,000 square feet or
1444 more of gross floor area. Industrial development projects and any project in which an industrial
1445 use is a component of a mixed-use project shall not be subject to any such minimum thresholds.

1446 SECTION 42. Said section 3A of said chapter 185, as so appearing, is hereby further
1447 amended by striking out the fourth paragraph in its entirety and inserting in place thereof the
1448 following paragraph:-

1449 Notwithstanding any other general or special law to the contrary, any action not
1450 commenced in the permit session, but within the jurisdiction of the permit session as provided in

1451 this section, shall be transferred to the permit session, upon the filing by any party of a notice
1452 demonstrating compliance with the jurisdictional requirements of this section filed with the court
1453 where the action was originally commenced with a copy to the permit session. Unless the court
1454 where the action was originally commenced receives notice within 10 days from the permit
1455 session that the case to be transferred does not meet the jurisdictional requirements of this
1456 section, the original court shall transfer the case file to the permit session within 20 days of its
1457 receipt of the notice of transfer from the party. In the event the court receives notice of
1458 noncompliance with jurisdictional requirements, the court where the action was originally
1459 commenced shall decide the matter on motion filed by the party claiming noncompliance. If a
1460 party to an action commenced in or transferred to the permit session claims a valid right to a jury
1461 trial, then the action shall be transferred to the superior court for a jury trial.

1462 SECTION 43. Section 14A of chapter 240 of the General Laws, as appearing in the 2012
1463 Official Edition, is hereby amended by inserting after the first paragraph the following
1464 paragraph:-

1465 In any claim challenging the validity of any provision of a zoning ordinance or by-law,
1466 the court shall first determine if the provision challenged is not inconsistent with the city's or
1467 town's master plan if any, provided such plan has been certified by the applicable regional
1468 planning agency to have been prepared and adopted in accordance with section 81D of chapter
1469 41 as such section appears after the effective date of this Act. The court shall also determine
1470 whether the zoning ordinance or by-law is not inconsistent with a local comprehensive plan
1471 certified by the regional planning agency, or was adopted as a regulation to implement a district
1472 of critical planning concern, pursuant to chapter 716 of the Acts of 1989 or chapter 831 of the
1473 Acts of 1977, respectively, as those acts may be amended. If the court determines that the

1474 challenged provision is not inconsistent with the master plan or the local comprehensive plan or
1475 was adopted as a regulation to implement a district of critical planning concern under afore-
1476 mentioned special acts, then such provision shall be deemed to serve a public purpose. A failure
1477 by the court to determine that a provision is not inconsistent or the absence of an adopted master
1478 plan shall not for that reason alone be determinative of whether the challenged provision serves a
1479 public purpose.

1480 SECTION 44. Section 4 of chapter 249 of the General Laws is hereby amended by
1481 striking the second sentence and inserting in its place thereof the following words:-

1482 Except as otherwise provided in section 81BB of Chapter 41, such action shall be
1483 commenced within sixty days next after the proceeding complained of.