SENATE DOCKET, NO. 1552 FILED ON: 1/14/2009

SENATE . . . . . No. 765

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to land use..

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

SECTION Section 1A of chapter 40A of the General Laws, as so appearing, is hereby amended by inserting after the first paragraph the following 2 paragraphs:-

"Declaration of development intent" shall mean a written notice that describes the land on which proposed development will be located, states whether the proposed development is residential, commercial/industrial or institutional, and sets forth the total gross square footage of proposed buildings (or the number of proposed housing units, in the case of residential development).

"Development impact fee" shall mean a fee imposed by city zoning ordinance or town zoning by-law for the purpose of offsetting the impacts of a development, and in accordance with the provisions of section 9D of this chapter.

SECTION Section 1A of said chapter 40A, as so appearing, is hereby amended by inserting after the fourth paragraph the following paragraph:-

"Site plan review" shall have the meaning set forth in Section 7A of this chapter.

SECTION Section 3 of said chapter 40A, as so appearing, is hereby amended in the second paragraph by inserting after the words “No zoning ordinance or by-law shall regulate or restrict the”, in line 36, as so appearing, the following word:- minimum.

SECTION Section 3 of said chapter 40A, as so appearing, is hereby amended by inserting after the tenth paragraph the following paragraph:-

The text and diagrams in a zoning ordinance or by-law that address the location and extent of land uses, may also express community intentions regarding urban form and design. These expressions may differentiate neighborhoods, districts, and corridors, provide for a mixture of land uses and housing types within each, and provide specific measures for regulating relationships between buildings, and between buildings and outdoor public areas, including streets.

SECTION Section 5 of said chapter 40A, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a majority vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a majority vote of a town meeting; except in each case if a two-thirds vote has been prescribed in an ordinance or by-law adopted by a two-thirds vote of the local legislative body.

SECTION The second paragraph of section 6 of said chapter 40A, as so appearing, is hereby amended by adding the following 2 sentences:-

Construction or operations under a special permit or site plan approval shall conform to any subsequent amendment of the zoning ordinance or by-law or of any other local land use regulations unless the use or construction is commenced within a period of two years after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. For the purpose of the prior sentence, construction involving the redevelopment of previously disturbed land shall be deemed to have commenced upon substantial investment in site preparation and/or infrastructure construction, and construction of development intended to proceed in phases shall proceed expeditiously, but not continuously, among phases.

SECTION Section 6 of said chapter 40A, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraphs:-

Subject to the transition rules set forth below, within a municipality that is not a certified plan community, if a declaration of development intent is submitted to a planning board, and written notice of such submission has been given to the city or town clerk, the development described in such declaration shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of such declaration, for a vesting period that ends eight years from the date of such written notice of submission; provided that: (i) the development described in such declaration shall be subject to subsequent amendment of the zoning ordinance or by-law, if the first notice thereof was posted prior to such written notice of submission, and (ii) the development described in such declaration shall be subject to subsequent amendment of the zoning ordinance or by-law, unless a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law prior to such amendment, and, if such definitive plan or an

amendment thereof is thereafter finally approved. The length of such vesting period shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections. The provisions of this paragraph shall not apply to development substantially different in use or substantially greater in extent from the development described in the declaration of development intent.

The provisions of the foregoing paragraph are subject to the following transition rules:

(A) If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law and written notice of such submission has been given to the city or town clerk on or before December 1, 2008 and before the effective date of the zoning ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval. Such period shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

(B) If a definitive plan, or preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law after December 1, 2008 and on or before the date six months after the effective date of this act, then: (i) a declaration of development intent must be submitted to a planning board, and written notice

of such submission be given to the city or town clerk, on or before the date six months after the effective date in order to obtain the benefit of the foregoing paragraph; (ii) the vesting period ends eight years from the date of the submission of the plan first submitted; (iii) the development described in such declaration shall not be subject to subsequent amendment of the zoning ordinance or by-law for the duration of the vesting period, so long as such definitive plan or an amendment thereof is thereafter finally approved; and (iv) the benefits of the foregoing paragraph may be obtained whether or not the declaration of development intent is consistent with the contents of the plans submitted for approval.

(C) If the municipality thereafter becomes a certified plan community, the vesting periods otherwise provided in the foregoing paragraph and in clause (B) above shall not be eight years, but shall instead be the latest of: (a) three years; or (b) to the extent the land shown on the plan has been previously been disturbed, and if there has been substantial investment in site preparation and/or infrastructure construction within such three years, five years; or (c) until the municipality's effective date, as that term is defined in Section [2] of Chapter 41, if and only if the latest of such dates is less than eight years. Whatever the length of such vesting period, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

Within a municipality that is a certified plan community, if a declaration of development intent is submitted to a planning board on or after the municipality's effective date, and written notice of such submission has been given to the city or town clerk, the development described in such declaration shall be governed by the applicable provisions of the zoning ordinance or by-law and all other local land use regulations, if any, in effect at the time of such written notice of

submission, for a vesting period that ends either: (a) three years from the date of such written notice of submission, or (b) to the extent the land shown on the plan has been previously been disturbed, and if there has been substantial investment in site preparation and/or infrastructure construction within such three years, five years from the date of such written notice of submission; provided that (i) the development described in such declaration shall be subject to subsequent amendment of the zoning ordinance or by-law or of any other local land use regulations, if the first notice thereof was posted prior to the date of such written notice of submission, and (ii) the development described in such declaration shall be subject to subsequent amendment of the zoning ordinance or by-law or of any other local land use regulations, unless a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law prior to such amendment, and, if such definitive plan or an amendment thereof is thereafter finally approved. Whatever the length of such vesting period, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections. The provisions of this paragraph shall not apply to development substantially different in use or substantially greater in extent from the development described in the declaration of development intent.

SECTION Said chapter 40A is hereby amended by inserting after section 7 the following section:-

Section 7A. Site Plan Review

(a) As used in this section, "site plan review" shall mean review and approval under a municipality’s zoning ordinance or by-law, by an authority other than the zoning administrator,

of a proposed use of land or structures that does not require a special permit or a variance, whether to determine whether a proposed use of land or structures is in compliance with the ordinance or by-law, to evaluate the proposed use of land or structures, to consider site design alternatives or otherwise.

(b) In addition to the home rule authority of cities and towns to require site plan review, a municipality may adopt a local ordinance or by-law under this section requiring site plan review and approval by a designated authority before authorization is granted for the use of land or structures governed by a zoning ordinance or by-law. The approving authority may adopt, and from time to time amend, rules and regulations to implement the local site plan review ordinance or by-law, including provisions for the imposition of reasonable fees for the employment of outside consultants in the same manner as set forth in section 53G of chapter 44.

(c) An ordinance or by-law requiring site plan review, whether adopted under this section or under the municipality's home rule authority, shall comply with the provisions of this and all following subsections of Section 7A. The ordinance or by-law shall establish the submission, review, and approval process for applications, which may include the requirement of a public hearing held pursuant to the provisions in section eleven of this chapter. Approval of a site plan shall require a simple majority vote of the designated authority and shall be made within the time limits prescribed by ordinance or by-law, not to exceed 90 days from the date of filing of the application. If no decision is issued within the time limit prescribed, the site plan shall be deemed constructively approved as provided in section 9, paragraph 11 of this chapter. The submission and review process for a site plan submitted in connection with an application for a special permit or variance shall be conducted with the review of such application in a coordinated process.

(d) Site plan review may include only those conditions that are necessary: (i) to ensure substantial compliance of the proposed use of land or structures with the requirements of the zoning ordinance or by-law; or (ii) to mitigate any extraordinary adverse impacts of the project on adjacent properties or public infrastructure. Site plan approval may not require the payment or performance of any off-site mitigation, except that site plan approval may be subject to development impact fees imposed in accordance with the provisions of Section 9D of this chapter. A site plan application may be denied only on the grounds that: (i) the proposed use of land or structures project does not meet the conditions and requirements set forth in the zoning ordinance or by-law; (ii) the applicant failed to submit information and fees required by the zoning ordinance or by-law and necessary for an adequate and timely review of the design of the proposed land or structures; or (iii) it is not possible to adequately mitigate extraordinary adverse project impacts on adjacent properties or public infrastructure by means of suitable site design conditions.

(e) Zoning ordinances or by-laws shall provide that a site plan approval granted under this section shall lapse within a specified period of time, not less than two years from the date of the filing of such approval with the city or town clerk, if substantial use or construction has not yet begun, except as extended for good cause by the approving authority. Such extension shall not include time required to pursue or await the determination of an appeal under subsection (f) or Section 17. The aforesaid minimum period of two years may, by ordinance or by-law, be increased to a longer period.

(f) Except where site plan review is required in connection with the issuance of a special permit or variance, decisions made under site plan review, whether made pursuant to statutory or home rule authority, may be appealed by a civil action in the nature of certiorari

pursuant to Chapter 249, Section 4 of the General Laws, and not otherwise. Such civil action may be brought in the superior court or in the land court and shall be commenced within twenty days after the filing of decision of the site plan review approving authority with the city or town clerk. All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings. A complaint by a plaintiff challenging a site plan approval under this section shall allege the specific reasons why the project fails to satisfy the requirements of this section or the zoning ordinance or by-law or other applicable law and allege specific facts establishing how the plaintiff is aggrieved by such decision. The approving authority's decision in such a case shall be affirmed unless the court concludes the approving authority abused its discretion under subsection (d) in approving the project.

(g) In municipalities that adopted a zoning ordinance or by-law requiring some form of site plan review prior to the effective date of this act, the provisions of this Section 7A shall not be effective with respect to such zoning ordinance or by-law until the date one year after the effective date of this act.

SECTION Section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

Zoning ordinances or by-laws may authorize the transfer of development rights of land within a city or town, or within two or more cities and towns that have adopted complementary ordinances or by-laws. Such authorization may be by special permit or by other methods, including, but not limited to, the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41, and in accordance with a planning board's rules and regulations governing subdivision control. Zoning ordinances or by-laws may include incentives such as increases in

density of population, intensity of use, amount of floor space or percentage of lot coverage, that encourage the transfer of development rights in a manner that protect open space, preserve farmland, promote housing for persons of low and moderate income or further other community interests.

SECTION Section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the seventh paragraph and inserting in place thereof the following paragraph:-

"Cluster development" means residential development in which reduced dimensional requirements allow the developed areas to be concentrated in order to preserve open land elsewhere on the plot. Zoning ordinances or by-laws may authorize cluster development for development proceeding as-of-right or otherwise. Unless such open land is subject to a conservation restriction or agricultural preservation restriction, such open land shall be required to either be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, agricultural land, historic resources, or watersheds, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the city or town or a non-profit organization as described above, a restriction shall be recorded providing that such land shall be preserved accordingly and not be built for residential use or developed for accessory uses such as parking or roadway.

SECTION Section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the fourteenth paragraph and inserting in place thereof the following paragraph:-

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not less than two years from the date of the filing of such approval with the city or town clerk, or construction has not yet begun by such date, except as extended for good cause by the permit granting authority. Such extension shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen. The aforesaid minimum period of two years may, by ordinance or by-law, be increased to a longer period.

SECTION Said chapter 40A of the General Laws is hereby amended by inserting after section 9C the following section:-

Section 9D. Development Impact Fee

(a) Authority

(1) In addition to its home rule authority to impose a development impact fee, a city or town may adopt a local ordinance or by-law under this section that requires the payment of a development impact fee as a condition of any permit or approval otherwise required for any proposed development within the scope of this section, and having development impacts as defined in the ordinance or by-law. The development impact fee may be imposed only on construction, enlargement, expansion, substantial rehabilitation, or change of use of a development. The development impact fee shall be used solely for the purposes of defraying the costs of capital infrastructure facilities to be provided or paid for by the city or town and which are caused by and necessary to support or compensate for the proposed development. Such capital infrastructure facilities may include the costs related to the provision of equipment, facilities, or studies associated with the following: water supply; sewers; storm water

management and treatment; pollution abatement; solid waste processing and disposal; traffic mitigation; roadways, transit, bicycle and pedestrian facilities, and other public transportation facilities; and affordable housing; costs related to facilities such as schools, public safety facilities, and municipal offices shall be excluded.

(2) Nothing in this section shall prohibit a city or town from imposing other fees or requirements for mitigation of development impacts which it may otherwise impose under state or local law and that are consistent with the constitution and laws of the Commonwealth; except that the imposition of a development impact fee as provided in this Section 9D shall be the exclusive means by which a municipality may require the payment or performance of off-site mitigation for development impacts of the proposed use of land or structures permitted or allowed as of right under its zoning ordinance.

(b) Limitations

(1) No development impact fee under this section shall be imposed upon any dwelling unit, regardless of how created or permitted, which is subject to a restriction on sale price or rent under the provisions of G.L. c. 184 as amended ensuring that the unit will remain affordable for a period of at least 30 years to households at or below the area median income as most recently defined by the United States Department of Housing and Urban Development or successor agency, or any other dwelling unit permitted under G.L. c. 40B.

(2) The fee shall not be expended for personnel costs, normal operation and maintenance costs, or to remedy deficiencies in existing facilities, except where such deficiencies are exacerbated by the new development, in which case the fee may be assessed only in proportion to the deficiency so exacerbated.

(c) Requirements

(1) Prior to the imposition of development impact fees under this section, a city or town shall complete a study that: (i) analyzes existing capital improvement plans, or the facilities element of a plan adopted under section 81D of chapter 41, or the infrastructure improvements element of a community land use plan adopted under Section [4] of Chapter 41; (ii) estimates future development based on the then current zoning ordinance or by-law; (iii) assesses the impacts related to such development; (iv) determines the need for capital infrastructure facilities required to address the impacts of the estimated development including excess facility capacity, if any, currently planned to accommodate future development; (v) develops cost projections for the needed capital infrastructure facilities and documents costs of existing facilities with planned excess capacity; and (vi) establishes the amount of any development impact fee authorized under this section in accordance with a methodology determined pursuant to the study. The study shall be updated periodically to reflect actual development activity, actual costs of infrastructure improvements completed or underway, plan changes, or amendments to the zoning ordinance or by-law.

(2) A development impact fee shall have a rational nexus to, and shall be roughly proportionate to, the impacts created by the development as determined by the study described in (c)(1) above evaluating said impacts, and it shall be applied to affected development projects in a consistent manner.

(3) The purposes for which the fee is expended shall reasonably benefit the proposed development.

(4) The fee may not be assessed more than once for the same impact, nor may the fee be assessed for impacts, or portions thereof, offset by other dedicated means, including state or federal grants or contributions or other mitigation commitments made by the applicant undertaking the development.

(d) Administration

(1) The ordinance or by-law may provide for a waiver or reduction of the development impact fee for any development that furthers an overriding public purpose as set forth in a plan adopted by the city or town under section 81D of chapter 41.

(2) If the proposed development is located in more than one municipality, the impact fee shall be apportioned among the municipalities in accordance with the land area or other equitable measure of the impacts of the proposed development in each city or town.

(3) Any development impact fee assessed under this section shall be deposited to a separate, interest bearing account in the city or town in which the proposed development is located. Unless subject to section (d)(4) below, no development impact fee shall be paid to the general treasury or used as general revenues of the city or town subject to the provisions of section 53 of chapter 44 of the General Laws.

Any funds not expended or encumbered by the end of the calendar quarter immediately following 5 years from the date the development impact fee was paid shall, upon request of the applicant or its assigns, be returned with interest provided that an application for a refund prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to the expiration of the 5 year period. If no application for refund is received by the city or town within said period, any funds not expended or encumbered by the end of the calendar quarter

shall then revert to and become part of the general fund under section 53 of chapter 44. In the event of any disagreement relative to who shall receive the refund, the city or town may retain said development impact fee pending instructions given in writing by the parties involved or by a court of competent jurisdiction.

SECTION Section 81L of chapter 41 of the General Laws, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

"Certified plan community" shall have the meaning set forth in Section [2] of Chapter 41.

SECTION Section 81L of said chapter 41, as so appearing, is hereby amended by inserting after the fourth paragraph the following paragraph:-

"Minor subdivision review " shall mean an alternative method of approval under the subdivision control law, applicable to any proposed division of a tract of land into four or fewer lots, under which: (a) no preliminary plan is required; (b) approval is granted by a simple majority of the planning board; (c) decisions are made within 60 days, or else deemed constructively approved, as defined in Section [2] of Chapter 41; (c) approval shall be based solely on the compliance of the lots shown with reasonable rules and regulations regarding the adequacy of access, utilities and stormwater drainage controls and on the compliance of the lots shown with the zoning ordinance or by-law; and (d) such rules and regulations may include a requirement that two or more of the lots have shared access to an existing public way, but may not impose design or construction requirements on such shared access other than those minimally necessary to provide for public safety. Lots approved under minor subdivision review may not be re-subdivided so as to create additional lots under minor subdivision review for a period of ten years after initial approval.

SECTION Section 81L of said chapter 41, as so appearing, is hereby amended by striking out the twelfth paragraph and inserting in place thereof the following paragraph:-

"Subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, unless a municipality is a certified plan community and has in effect minor subdivision review procedures, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. If a municipality is a certified plan community and has in effect minor subdivision review procedures, then any division of a tract of land into two or more lots, including resubdivision, shall be deemed to constitute a subdivision within the meaning of the subdivision control law, except as provided in the following sentence. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to

leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision. Within a certified plan community that has adopted minor subdivision review procedures as of the municipality's effective date, a tract of land that was divided into two or more lots pursuant to Chapter 41, Section 81P of the General Laws prior to the municipality's effective date, but after December 1, 2008, shall be deemed a subdivision within the meaning of the subdivision control law with respect to the lots so created for which a building permit has not been issued by the municipality prior to the municipality's effective date.

SECTION Chapter 41 of the General Laws is hereby amended by striking out section 81Q, as so appearing, and inserting in place thereof the following section:-

Section 81Q. After a public hearing, notice of the time and place of which, and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, a planning board shall adopt, and, in the same manner, may, from time to time, amend, reasonable rules and regulations relative to subdivision control not inconsistent with the subdivision control law or with any other provisions of a statute or of any valid ordinance or by-law of the city or town. Such rules and regulations may prescribe the size, form, contents, style and number of copies of plans and the procedure for the submission and approval thereof, and shall be such as to enable the person

submitting the plan to comply with the requirements of the register of deeds for the recording of the same, and to assure the board of a copy for its files; and shall set forth the requirements of the board with respect to the location, construction, width and grades of the proposed ways shown on a plan and the installation of municipal services therein, which requirements shall be established in such manner as to carry out the purposes of the subdivision control law as set forth in section eighty-one M. Such rules and regulations shall not require referral of a subdivision plan to any other board or person prior to its submission to the planning board. In establishing such requirements regarding ways, due regard shall be paid to the prospective character of different subdivisions, whether open residence, dense residence, business or industrial, and the prospective amount of travel upon the various ways therein, and to adjustment of the requirements accordingly; provided, however, that in no case shall a city or town establish rules or regulations regarding the laying out, construction, alteration, or maintenance of ways within a particular subdivision which exceed the standards and criteria commonly applied by that city or town to the laying out, construction, alteration, or maintenance of its publicly financed ways located in similarly zoned districts within such city or town. Without limiting the foregoing, there shall be a rebuttable presumption that such requirements are unlawfully excessive, to the extent that the requirements for subdivisions within zoning districts having a minimum lot size of 40,000 square feet exceed the standards and criteria previously applied by that city or town to the laying out, construction, alteration, or maintenance of ways within previously approved subdivisions within zoning districts having a minimum lot size of 20,000 square feet or less. Such rules and regulations may set forth a requirement that a turnaround be provided at the end of the approved portion of a way which does not connect with another way. Any easement in any turnaround shown on a plan approved under the subdivision control law which arises after

January first, nineteen hundred and sixty, other than an easement appurtenant to a lot abutting the turnaround, shall terminate upon the approval and recording of a plan showing extension of said way, except in such portion of said turnaround as is included in said extension, and the recording of a certificate by the planning board of the construction of such extension. Such rules and regulations may set forth a requirement that underground distribution systems be provided for any and all utility services, including electrical and telephone services, as may be specified in such rules and regulations, and may set forth a requirement that poles and any associated overhead structures, of a design approved by the planning board, be provided for use for police and fire alarm boxes and any similar municipal equipment and for use for street lighting. The rules and regulations may encourage the use of solar energy systems and protect to the extent feasible the access to direct sunlight of solar energy systems. Such rules and regulations may include standards for the orientation of new streets, lots and buildings; building set back requirements from property lines; limitations on the type, height and placement, of vegetation; and restrictive covenants protecting solar access not inconsistent with existing local ordinances or by-laws. Except in so far as it may require compliance with the requirements of existing ordinances or by-laws, no rule or regulation shall relate to the size, shape, width, frontage or use of lots within a subdivision, or to the buildings which may be constructed thereon, or other subject matters addressed thereby, or shall be inconsistent with the regulations and requirements of any other municipal board acting within its jurisdiction. No rule or regulation shall require, and no planning board shall impose, as a condition for the approval of a plan of a subdivision, that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just

compensation to the owner thereof. The rules and regulations may, however, provide that not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the city or town, without the consent of the planning board, and that such consent may be conditional upon the providing of adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision. No rule or regulation shall require, and no planning board shall impose, as a condition for the approval of a plan of a subdivision, the payment or performance of off-site mitigation, except for the imposition of a development impact fee under Chapter 40A, Section 9D. A true copy of the rules and regulations, with their most recent amendments, shall be kept on file available for inspection in the office of the planning board of the city or town by which they were adopted, and in the office of the clerk of such city or town. A copy certified by such clerk of any such rules and regulations, or any amendment thereof, adopted after the first day of January, nineteen hundred and fifty-four shall be transmitted forthwith by such planning board to the register of deeds and recorder of the land court. Once a definitive plan has been submitted to a planning board, and written notice has been given to the city or town clerk pursuant to section eighty-one T and until final action has been taken thereon by the planning board or the time for such action prescribed by section eighty-one U has elapsed, the rules and regulations governing such plan shall be those in effect relative to subdivision control at the time of the submission of such plan. When a preliminary plan referred to in section eighty-one S has been submitted to a planning board, and written notice of the submission of such plan has been given to the city or town clerk, such preliminary plan and the definitive plan evolved therefrom shall be governed by the rules and regulations relative to subdivision control in effect at the time of the submission of the preliminary plan, provided that

the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted.

SECTION Said chapter 41 is hereby amended by striking out the first paragraph of section 81BB, as so appearing, and inserting in place thereof the following paragraph:-

Section 81BB. Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by a decision of a board of appeals under section eighty-one Y, or by any decision of a planning board concerning a plan of a subdivision of land, or by the failure of such a board to take final action concerning such a plan within the required time, may appeal to the superior court for the county in which said land is situated or to the land court; provided, that such appeal is entered within twenty days after such decision has been recorded in the office of the city or town clerk or within twenty days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as to be received within such twenty days. A complaint by a plaintiff challenging a subdivision approval under this section shall allege the specific reasons why the subdivision fails to satisfy the requirements of the board's rules and regulations or other applicable law and allege specific facts establishing how the plaintiff is aggrieved by such decision. The board's decision in such a case shall be affirmed unless the court concludes the board abused its discretion in approving the subdivision.

SECTION The General Laws are hereby amended by inserting after Chapter 40S the following chapter: -- CHAPTER 40T LAND USE PARTNERSHIP ACT

Section 1. Preamble; statement of the Commonwealth's land use objectives

The sections herein this chapter shall be known and may be cited as the “Land Use Partnership Act”. The purposes of the act shall be to advance the following land use objectives:

a) Support the revitalization of city and town centers and neighborhoods by promoting development that is compact, conserves land and integrates uses;

b) Support the construction and rehabilitation of homes near jobs, infrastructure and transportation options to meet the needs of people of all abilities, income levels, and household types;

c) Attract businesses and jobs to locations near housing, infrastructure, and transportation options;

d) Protect environmentally sensitive lands, natural resources, agricultural lands, critical habitats, wetlands and water resources, and cultural and historic landscapes;

e) Construct and promote developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy and water;

f) Support transportation options that maximize mobility, reduce congestion, conserve fuel and improve air quality;

g) Maximize energy efficiency and renewable energy opportunities to reduce greenhouse gas emissions and consumption of fossil fuels;

h) Promote equitable sharing of the benefits and burdens of development;

i) Make regulatory and permitting processes for development clear, predictable, coordinated, and timely in accordance with smart growth and environmental stewardship; and

j) Support the development and implementation of local and regional plans that have broad public support and are consistent with these purposes.

Section 2. Definitions

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"As of right" shall mean that development may proceed under zoning and other local land use regulations without the need for a special permit, variance, amendment, waiver or other discretionary approval. As of right development may be subject to site plan review, as defined in Section 7A of Chapter 40A. If a municipality has issued, at the time of the municipality's effective date, a special permit that in itself allows new housing units equal to one-half or more of the municipality's housing target number, and if such special permit remains in effect for at least two years after the municipality's effective date, then residential development under such special permit which otherwise qualifies hereunder shall also be deemed as of right.

"Certified plan community" shall mean a community for which a community land use plan and implementing regulations have been certified by the applicable regional planning agency, adopted by the municipality, and remain in effect.

"Constructively approved" means deemed approved by the failure of the approving agency to issue a decision or determination within the time prescribed, as it may be extended by written agreement between the applicant and the approving agency; provided that an applicant

who seeks approval by reason of the failure of the approving agency to act within such time prescribed, shall so notify the city or town clerk, and parties in interest, in writing within 14 days from the expiration of the time prescribed or extended time, if applicable, of such approval.

"Economic development district" shall mean a zoning district that: (i) permits or allows commercial and/or industrial use, or permits or allows mixed use including commercial and/or industrial use, and (ii) is an eligible location.

"Eligible location" shall mean an area that by virtue of its physical and regulatory suitability for development, the adequacy of transportation and other infrastructure and the compatibility of proximate land uses is, in the determination of the regional planning agency, a suitable location for development of the type contemplated by a community land use plan. Any area that would qualify as an "eligible location" under Chapter 40R of the General Laws shall automatically qualify as an "eligible location" for a residential development district.

"Housing target number" shall mean a number equal to five percent (5%) of the total number of year-round housing units enumerated for the municipality in the latest available United States census as of the date on which the plan was submitted to the regional planning agency.

"Implementing regulations" shall mean the local zoning ordinances or by-laws, subdivision rules and regulations, and other local land use regulations, or amendments thereof, necessary to effectuate the minimum standards for consistency with the Commonwealth's land use objectives established or required by a certified plan.

"Interagency Planning Board" shall mean a board comprised of the secretary of housing and economic development, the secretary of energy and environmental affairs, and the state

permit ombudsman, or their designees, together with a representative designated by the Massachusetts Association of Regional Planning Agencies (the "regional representative") and a representative designated by the Massachusetts Association of Planning Directors (the "municipal representative"). The state permit ombudsman shall serve as the chair of the board. The board, acting without the participation of the regional representative and the municipal representative, shall have the power to promulgate regulations to effect the purposes of this act.

"Low impact development techniques" shall mean stormwater management techniques that limit off-site stormwater runoff (both peak and non-peak flows) to levels substantially similar to natural hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing conditions), by emphasizing decentralized management practices and the protection of on-site natural features.

"Municipality's effective date" shall mean the date upon which a municipality has adopted certified implementing regulations pursuant to a certified community land use plan.

"Open space residential design" shall mean a process for the cluster development of land, as that term is defined in Section 9 of Chapter 40A, that in addition: (a) requires identification of the significant natural features of the land and concentrates development, by use of reduced dimensional requirements, in order to preserve those natural features; (b) preserves at least fifty percent of the land's developable area in a natural, scenic or open condition or in agricultural, farming or forest use; and (c) permits the development of a number of new housing units at least equal to the quotient of the land's developable area divided by the minimum lot area per housing unit required by the zoning ordinance or by-law. For the purposes of this definition, the land's developable area shall be determined pursuant to: (i) state land use laws and regulations, and (ii)

the zoning ordinance or by-law, without regard in either case to the suitability of soils or groundwater for on-site wastewater disposal.

"Other local land use regulations" shall mean all local legislative, regulatory, or other actions which are more restrictive than state requirements, if any, including subdivision and board of health rules, local wetlands ordinances or by-laws, and other local ordinances, by-laws, codes, and regulations.

"Plan" shall mean a community land use plan prepared by the planning board in accordance with Section 3.

"Planning board" shall mean a municipal planning board established or authorized pursuant to Chapter 41, Section 81A of the General Laws.

"Prompt and predictable permitting" shall mean that zoning and other local land use regulations allow development to proceed as of right by means of permitting processes that are designed to result in final decisions on all local permits and approvals in less than 180 days. For commercial and industrial development, local permitting pursuant to Chapter 43D of the General Laws shall also be deemed "prompt and predictable permitting".

"Regional planning agency" shall mean the regional or district planning commission established pursuant to Chapter 40B of the General Laws for the region within which a municipality is located. The term shall also mean the Martha's Vineyard Commission, as described in Chapter 831 of the Acts of 1977, and the Cape Cod Commission, as described in Chapter 716 of the Acts of 1989, the Franklin Council of Governments, as described in Chapter 151 of the Acts of 1996, and the Northern Middlesex Council of Governments, as described in Chapter 420 of the Acts of 1989.

"Residential development district" shall mean a zoning district that: (i) permits or allows residential use at a density of not less than four (4) units per acre of developable land for single-family residential use and not less than twelve (12) units per acre of developable land for multi-family residential use, or permits or allows mixed use including residential use at such density, (ii) is in an eligible location, and (iii) does not impose other requirements that add unreasonable costs or otherwise unreasonably impair the economic feasibility of residential development at such density. A zoning district that permits or allows mixed use may qualify as both an economic development district and a residential development district, if the standards for both districts are met. The implementing regulations for any residential development district that permits or allows mixed use shall contain adequate provisions to ensure that any contemplated contribution towards the housing target number to be provided by such district will be achieved.

Section 3. Elements of community land use plan

A planning board may prepare, and from time to time amend or renew, a community land use plan for a municipality, to be submitted to the regional planning agency for certification. The plan shall address at least the following five areas: economic development, housing, open space protection, water management, and energy management.

The plan shall contain:

(a) an overall statement of the land use goals and objectives of the municipality for its future growth and development, including specific reference to each of the five areas;

(b) a description of the zoning and other land use regulation policies that will be used to implement those goals and objectives, including with respect to each of the five areas;

(c) an assessment of the infrastructure improvements needed to support the implementation policies and strategies identified in (b);

(d) an assessment of the plan's consistency with any applicable existing regional plan or planning guidance;

(e) an overall assessment of the plan's consistency with the Commonwealth's land use objectives set forth in Section 1;

(f) an assessment of the plan's specific compliance with the minimum standards for consistency set forth in Section 5 below; and

(g) a description of the manner and degree of public participation and involvement in the preparation of the plan.

The plan may include materials prepared within the past five years as part of a local planning document, including a master plan prepared pursuant to Chapter 41, Section 81D of the General Laws.

The planning board shall hold at least one public hearing, with two weeks prior notice, for public review of and comment upon the plan, before the plan is submitted to the regional planning agency for certification. After the public hearing, the planning board may recommend to the chief executive officer of the municipality that the plan be submitted to the regional planning agency for certification.

Section 4. Regional planning agency certification and municipal adoption of plan

The chief executive officer of the municipality may, if such action is recommended by the planning board, submit the plan to the regional planning agency for certification. Within 90

days after receiving a submission, the regional planning agency shall determine whether the plan is (a) complete and (b) consistent with the Commonwealth's land use objectives. A plan shall be determined to be complete if it contains all the elements required in Section 3. A plan shall be determined to be consistent with the Commonwealth's land use objectives if it satisfies the minimum standards for consistency in accordance with Section 5. If the regional planning agency determines that the plan is complete and consistent with the Commonwealth's land use objectives, then the agency shall issue a written certification to that effect. If the regional planning agency determines that it is unable to issue such a certification, then the agency shall provide the municipality with a written statement of the reasons for its determination. A municipality may re-submit for certification at any time a modified plan that addresses the issues set forth in the agency's statement of reasons. If the regional planning agency does not issue a certification or provide a statement of reasons within 90 days after receiving a plan (including a re-submitted plan), then the plan shall be deemed certified.

Following certification by the regional planning agency, the plan may be adopted by the municipality by a simple majority vote of its legislative body.

Section 5. Minimum standards for consistency of plan with the Commonwealth's land use objectives

A regional planning agency shall determine that a plan is consistent with the Commonwealth's land use objectives if the plan meets certain minimum standards in the following five areas: economic development, housing, open space protection, water management, and energy management. The minimum standards for consistency shall be set forth in regulations duly promulgated by the Interagency Planning Board. Notwithstanding the

foregoing, for plans submitted for certification within the first five years of the effective date of passage of this act, a determination of consistency with the Commonwealth's land use objectives shall be mandatory if the following minimum standards have been satisfied:

A. The plan establishes prompt and predictable permitting of commercial and/or industrial development within one or more economic development districts. This standard may be waived or modified upon a determination by the regional planning agency that adequate alternatives for economic development exist elsewhere in the region and are more appropriately located there.

B. The plan establishes prompt and predictable permitting of residential development within one or more residential development districts that can collectively accommodate, in the determination of the regional planning agency, a number of new housing units (excluding new housing units which are restricted, through zoning or other legal means, as to the number of bedrooms or as to the age of their residents) equal to the housing target number. For the initial certification of a plan, a municipality's housing target number shall be reduced by the number of new housing units for which building permits were issued within two years prior to the municipality's effective date, to the extent such building permits were issued within residential development districts for which there was prompt and predictable permitting at the time of building permit issuance. This standard may be waived or modified upon a determination by the regional planning agency that the lack of adequate water supply and/or wastewater infrastructure within the municipality prevents full compliance with this standard, provided that the municipality may be required to instead participate in any regional housing plan established by the regional planning agency.

C. The plan requires that, for any zoning district that requires a minimum lot area of forty thousand square feet or more for single-family residential development, development of five or more new housing units utilize open space residential design, except upon a determination that open space residential design is not feasible.

D. The plan requires (through zoning ordinances or by-laws) all development that disturbs more than one acre of land, including as of right development, utilize low impact development techniques.

E. The plan establishes prompt and predictable permitting of (i) renewable or alternative energy generating facilities, (ii) renewable or alternative energy research and development facilities, or (iii) renewable or alternative energy manufacturing facilities, within one or more zoning districts that are eligible locations.

Section 6. Certification and adoption of implementing regulations

(a) Prior to or following municipal adoption of a certified plan, the municipality may prepare implementing regulations. To assist municipalities in this effort, the regulations to be promulgated by the Interagency Planning Board hereunder shall include at least one model provision for implementing regulations for open space residential design, low impact development, and clean energy generation/cogeneration facilities that would satisfy the standards hereof.

(b) The chief executive officer of the municipality may submit the implementing regulations to the regional planning agency for certification. Within 90 days of receiving a submission, the regional planning agency shall determine whether the implementing regulations are consistent with the certified plan. The implementing regulations shall be deemed consistent

with the certified plan if they effectuate the minimum standards for consistency with the Commonwealth's land use objectives established or required by the certified plan. If the regional planning agency determines that the implementing regulations are consistent with the certified plan, then the agency shall issue a written certification to that effect. If the regional planning agency determines that it is unable to issue such a certification, then the agency shall provide the municipality with a written statement of the reasons for its determination. A municipality may re-submit for certification at any time modified implementing regulations that address the issues set forth in the agency's statement of reasons. If the regional planning agency does not issue a certification or provide a statement of reasons within 90 days after receiving implementing regulations (including re-submitted implementing regulations), then the implementing regulations shall be deemed certified. The municipality shall have the option of submitting its implementing regulations together with its submission of its community land use plan pursuant to Section 4, in which case the regional planning agency shall review both the plan and the implementing regulations within the same 90 day period.

(c) Following certification by the regional planning agency, the implementing regulations may be adopted by the municipality by a simple majority vote of its legislative body. On the date of receipt by the regional planning agency of proof of adoption of the certified implementing regulations pursuant to a certified plan, a municipality shall be deemed a "certified plan community". Such date shall be deemed the "municipality's effective date".

Section 7. Effect of certified plan status on zoning and land use regulation

(a) Following the municipality's effective date, local zoning ordinances or by-laws, subdivision rules and regulations, and other local land use regulations (other than certified

implementing regulations) which are determined to be inconsistent with the certified plan or the certified implementing regulations shall be deemed invalid. Such a determination may be sought and obtained through any means otherwise available by statute for the determination of the validity of such land use regulations. Any material amendment to a certified plan or certified implementing regulations that has not been prepared, certified and adopted in accordance with the provisions hereof shall be presumed to be inconsistent with the certified plan.

(b) Following the municipality's effective date, a zoning ordinance or by-law that limits the number of new housing units within residential development districts for which building permits may be issued in any twelve month period to an amount equal to or greater than one-fifth of the housing target number (but in no event less than ten new housing units) shall not be declared exclusionary or otherwise against public policy.

(c) Following the municipality's effective date, a zoning ordinance or by-law that requires a minimum lot area of two acres or more for single-family residential development upon farmland, forest land or other land of environmental resource value shall not be declared exclusionary or otherwise against public policy.

(d) If at any time more than two years after the municipality's effective date the total number of housing units for which building permits have been applied for within the residential development districts since the municipality's effective date is greater than the housing target number (adjusted pro rata for the number of years since the municipality's effective date), but the total number of housing units for which building permits have been issued within the residential development districts is less than the pro rata housing target number, then the provisions of this subsection shall be in effect. During such time period, any applications for building permits or

other local land use permits for residential development within such residential development districts shall deemed constructively approved if not acted upon within 180 days after receipt of permit applications. In addition, an application received under this section shall be subject only to those conditions that are necessary to ensure substantial compliance of the proposed development project with applicable laws and regulations; and it may be denied only on the grounds that: (i) the proposed development project does not substantially comply with applicable laws and regulations, or (ii) the applicant failed to submit information and fees required by applicable laws and regulations and necessary for an adequate and timely review of the development project. The foregoing provisions shall no longer be in effect once the total number of housing units for which building permits have been issued within such residential development districts equals or exceed the pro rata housing target number.

Section 8. Review of certification by regional planning agency

Any certification or determination of non-certification by a regional planning agency with respect to a plan or implementing regulations or a material amendment of either is subject to review by the Interagency Planning Board. The Interagency Planning Board may, upon the request of the subject municipality or upon its own motion, review any such decision in an informal, non-adjudicatory proceeding, may request information from any third party and may modify or reverse such decision if the same does not comply with the provisions hereof.

If a municipality provides written notice to the Interagency Planning Board of the certification by a regional planning agency of a plan or implementing regulations or a material amendment of either (including a deemed certification resulting from a regional planning

agency's failure to act), then the board may only review such certification if it commences such review with 60 days of such certification.

The Interagency Planning Board may through regulation establish a procedure for reviewing and approving guidelines prepared by regional planning agencies to be used in the certification of plans, implementing regulations and material amendments. If a certification or determination of non-certification under review by the Interagency Planning Board has been issued by the regional planning agency based upon an approved guideline, then the board may only modify or reverse such decision for inconsistency with the approved guideline.

Section 9. Expiration and renewal of certified plan community status; amendments.

(a) A municipality's status as a certified plan community shall expire ten years after the municipality's effective date, unless a renewal plan, together with any necessary implementing regulations, is prepared, certified, and adopted in accordance with the provisions hereof prior to such date. Each such renewal plan shall also expire in ten years.

(b) From and after a municipality's effective date, any material amendment to a certified plan or to any certified implementing regulations shall be prepared, certified and adopted in accordance with the provisions hereof. The Interagency Planning Board may by regulation define categories of amendments that shall be deemed non-material.

Section 10. Priority for Infrastructure Funding

The executive office of housing and economic development, the executive office of energy and environmental affairs, the executive office of transportation, and the executive office of administration and finance shall, when awarding discretionary funds for local infrastructure

improvements, give priority consideration to infrastructure improvements identified in the certified plans of certified plan communities.

Section 11. Consideration under State Programs

State agencies responsible for regulatory and/or capital spending programs that have a material effect on land use and development within certified plan communities shall take into account the land use goals, objectives and policies of such communities, as set forth in their certified community land use plans, in administering such programs.

SECTION Item 7002-0013 in chapter 182 of the Acts of 2008, as so appearing, is hereby amended by adding the following:- "provided, that not more than $1,000,000 shall be expended for technical assistance grants to municipalities for the preparation of plans and implementing regulations, and grants are to be administered by the Interagency Planning Board; provided further, that not more than $500,000 shall be expended for technical assistance grants to regional planning agencies for the certification of plans and implementing regulations and the preparation of guidelines, and such grants are to be administered by the Interagency Planning Board; and provided further, priority for the municipal grants administered by the Interagency Planning Board shall be given to those municipalities identified by the applicable regional planning agencies as being most likely to prepare and adopt certified plans and implementing regulations, if provided with financial assistance"