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HOUSE . . . . . No. 4065

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

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;

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

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

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

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

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

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

"Affordable housing", means a dwelling unit restricted for purchase or rent by a household with an income at or below 80 per cent of the area median income for the applicable metropolitan or non-metropolitan area, as determined by the U.S. Department of Housing and Urban Development (HUD). Affordable housing shall be subject to an affordable housing restriction in accordance with sections 31-33 of chapter 184, or, if ineligible under said sections, restricted by other means as required in an ordinance or by-law.

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

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

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

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

"Development impact fee", means 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 9E of this chapter.

"Form-based zoning", means text and graphics in a zoning ordinance or by-law that specify the built form of the community, general intensity of use, and the relationship between buildings and the outdoor public spaces they shape. Notwithstanding any provision of any

general or special law, form-based codes may regulate building type, exterior building materials, minimum and maximum building heights, frontage type, build-to lines, street type, street and streetscape design, public open spaces, and any other parameter of the built or natural environment which gives form to the exterior of buildings and the spaces between them. Form-based codes may combine in a single document standards for new subdivision streets, existing and new public streets and sidewalks, and use and dimensional standards. Such combined standards may be in the form of a "regulating plan" that integrates building, dimensional, use, street, sidewalk, and parking requirements. Form-based zoning may also specify lot-by-lot in a detailed regulating plan, building forms and allowed use mixes, even if such specification is not uniform throughout a zoning district, provided that it is based upon a plan for the area subject to the code. Form-based codes may specify prescribed future lot division lines which will be allowed as of right in any future division of land.

"Inclusionary housing units", means affordable housing units or housing units restricted for purchase or rent by a household with an income at or below 120 per cent of the median family income for the applicable metropolitan or non-metropolitan area, as determined by the U.S. Department of Housing and Urban Development.

"Inclusionary zoning", means zoning ordinances or by-laws that require, or provide incentives for, the creation of affordable housing units or housing units restricted for purchase or rent by a household with an income at or below 120 per cent of the median family income for the applicable metropolitan or non-metropolitan area, as determined by the U.S. Department of Housing and Urban Development, or the payment of funds dedicated to the provision of such housing as a condition of approval of a development and in accordance with the provisions of section 9F of this chapter.

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

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

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

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

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

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

40A:2. Authority

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

Powers Enumerated: To resolve uncertainty regarding the authority of cities and towns to assert powers conferred by Article 89 of the Articles of Amendment to the Constitution of the Commonwealth and by general or special laws, this chapter confers or confirms the following zoning powers: (A) to impose development impact fees subject to the requirements set forth in section 9E; (B) to use inclusionary zoning techniques, subject to the requirements set forth in section 9F; (C) to enact unified development ordinances or by-laws and form-based zoning, as defined herein, which are based upon multiple sources of statutory authority to regulate land use; (D) to provide for the transfer of development rights, including the inter-municipal transfer of development rights between or among municipalities with complementary ordinances or by-laws by special permit or by other methods, including, but not limited to, the applicable provisions of sections 81K-81GG, inclusive, of chapter 41, and in accordance with a planning board's rules and regulations governing subdivision control, and provided that prior to adoption, any inter-

municipal transfer of development rights ordinance or by-law shall be submitted to the Department of Housing and Community Development to assess whether it is consistent with federal and state fair housing laws, and provided that such ordinance or bylaw shall be deemed consistent unless the Department makes a written finding of inconsistency within 30 days of submission; and (E) to provide for cluster development or natural resource protection zoning, which may proceed by right or by other methods, including, but not limited to, the applicable provisions of sections 81K-81GG, inclusive, of chapter 41, and in accordance with a planning board's rules and regulations governing subdivision control.

Rule of Construction: To the extent that the powers enumerated in this section are construed to be inherent in the constitutional and existing statutory authority of cities and towns and not pre-empted by other state laws, such enumeration is hereby deemed to be merely confirmatory or illustrative.

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

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

SECTION 5. Said section 5 of said chapter 40A, as so appearing, is hereby amended by inserting, at the end of the fifth paragraph, the following sentence:- Any local change in the majority vote required shall be limited to a range anywhere between a simple majority and a two-thirds majority, shall be made by the vote majority then in effect, and shall not become effective until six months have elapsed after such vote. Any majority vote of less than two-thirds shall not be allowed for a specific zoning amendment unless the planning board, in its report required above, includes its having voted that such amendment is not inconsistent with a master plan under section 81D of chapter 41, if any in effect; and that such amendment is not the subject of a landowner protest as hereinbefore provided.

SECTION 6. Section 6 of said chapter 40A, as so appearing, is hereby amended by striking out, in the first sentence of the first paragraph, the words "or to a building or special

permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five,".

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

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

If a complete application for a building permit or special permit is duly submitted, and written notice of such submission has been given to the city or town clerk before the first publication of notice of the public hearing on such ordinance or by-law required by section five, the permit 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 permit or permits are being processed, and, if such permit or an amendment thereof is finally approved, for two years in the case of a building permit and three years in the case of a special permit from the date of the granting of such approval. Such period of two or three years 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.

SECTION 9. Said section 6 of said chapter 40A, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

Except for lots zoned for single and two family residential use, a zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

SECTION 10. Said section 6 of said chapter 40A, as so appearing, is hereby amended by adding at the beginning of the first line of paragraph 4 the words:- "Nonwithstanding the previous existence of any building or structure thereon,".

SECTION 11. Said section 6 of said chapter 40A, as so appearing, is hereby amended by striking out the second sentence in the fourth paragraph.

SECTION 12. Said 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 paragraph:-

If a complete application for a definitive plan is duly 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 before the first publication of notice of the public hearing on such ordinance or by-law required by section five, the 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. For the purposes of this section the term definitive subdivision plan shall include a minor subdivision under section 81L and 81P of chapter 41, provided the planning board has adopted rules and regulations for minor subdivisions under section 81Q of said chapter. In such cases, the aforesaid provisions shall apply but the period of time shall be four years from the date of the endorsement of such approval. Such period of eight or four years 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.

SECTION 13. Said section 6 of said chapter 40A, as so appearing, is hereby amended by striking out the sixth paragraph.

SECTION 14. Said section 6 of said chapter 40A, as so appearing, is hereby amended by striking out, in the second sentence of the seventh paragraph, the words “land shown on”.

SECTION 15. Section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the words “Special Permits” in the title and inserting in place thereof the following words in the title:- Special Provisions

SECTION 16. Said section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the third, fourth, fifth, sixth, seventh, eighth, and ninth paragraphs.

SECTION 17. Said section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the last sentence in the twelfth paragraph and inserting in place thereof the following sentence:- Unless a majority less than two-thirds but no less than a simple majority is specified in the zoning ordinance or by-law, issuance of a special permit under this section shall require an affirmative vote of a two-thirds majority of the special permit granting authority in the case of a board with more than five members, a vote of at least four members of a five member board, or a unanimous vote of a three member board.

SECTION 18. Said 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 paragraphs:-

A special permit granted under this section shall state that it will lapse within a period of time specified by the special permit granting authority, not less than three years, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. The aforesaid minimum period of three years may, by ordinance or by-law, be increased to a longer minimum period. The period of time before which a special permit shall lapse shall not include the time required to pursue or await the determination of an appeal from the grant thereof referred to in section seventeen.

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

SECTION 19. Said section 9 of said chapter 40A, as so appearing, is hereby amended by inserting after the word “zoned”, in line 190, the following word:- principally

SECTION 20. Said section 9 of said chapter 40A, as so appearing, is hereby amended by inserting after the word “zoned”, in line 204, the following word:- principally

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

40A:9D. Site Plan Review

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

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

Approval Criteria for Uses Allowed By-right: A site plan submitted for the use of specific land or structures allowed by-right shall be approved unless the plan fails to meet one of the following criteria: satisfies the procedural and submission requirements of the site plan review

process applicable to the specific land or structures; complies with the regulations applicable to such land or structures in the local zoning ordinance or by-law; and meets such standards and criteria as the local zoning ordinance or by-law provides by which the use of land or structures and its impact on the neighborhood shall be evaluated, or may be conditioned to meet such standards and criteria.

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

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

Appeals: Except where site plan review is required in connection with the issuance of a special permit or variance, decisions made under site plan review may be appealed by a civil action in the nature of certiorari pursuant to section 4 of chapter 249, and not otherwise. Such civil action may be brought in the superior court or in the land court and shall be commenced within 20 days after the filing of the decision of the site plan review approving authority with the city or town clerk, with notice of such appeal required to be given to such city or town clerk so as to be received within such 20 days. 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, the zoning ordinance or by-law, or other applicable law, and shall allege specific facts establishing how the plaintiff is aggrieved by such decision. A complaint by an applicant for site plan review challenging the denial or conditioned approval of a site plan shall similarly allege the specific reasons why the project properly satisfies the requirements of this section, the zoning ordinance or by-law, or other applicable law. All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

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

Duration, Lapse, Extensions: Zoning ordinances or by-laws shall provide that a site plan approval for a use allowed by-right 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 a building permit has not been obtained or substantial use or construction has not yet begun, except as extended for good cause by the permit granting authority either with or without a public hearing as provided in the zoning ordinance or bylaw. Such period of time shall not include time required to pursue or await the determination of an appeal.

Consultant Fees: The board designated by ordinance or by-law to review site plans under this section may, by rules and regulations adopted by such board, provide 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.

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

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

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

40A:9E. Development Impact Fees

Section 9E. Authority: Any city or town that adopts or has adopted a local ordinance or by-law requiring the payment of a development impact fee as a requirement of any permit or approval otherwise required for any proposed development having development impacts as defined in the ordinance or by-law shall do so in accordance with this section or any authority conferred by a special act. The development impact fee may be imposed only on construction, enlargement, expansion, substantial rehabilitation, or change of use of a development that results in a net increase of demand or service units. The development impact fee shall be used solely for the purposes of defraying the costs of off-site public capital facilities to be provided or paid for by the city or town and which are either caused by or necessary to support or compensate for the proposed development, or, in the case of a city or town authorized to impose such fees under the

provisions of a special act, then such fees may be used for the purposes set forth in the special act.

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

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.

Limitations: No development impact fee under this section shall be imposed upon any affordable housing dwelling unit, regardless of how created or permitted, which is subject to a restriction on sale price or rent under the provisions of sections 31-33 of chapter 184 as amended ensuring that the unit will remain affordable for a period of at least 30 years. The foregoing limitation shall not apply to cities and towns with the authority to impose development impact fees on such units under a special act.

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.

The fee, or other fees or requirements for mitigation of development impacts, 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 made by the applicant undertaking the development.

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

Prior to the imposition of development impact fees under this section, a study shall be completed that establishes the proportionate-share development impact fees authorized under this section in accordance with a methodology described in the study. The scope of the study may be jurisdiction-wide or limited to a geographic area or the category or categories of public capital

facilities that development impact fees may be intended to address. A municipality may rely upon credible and professionally recognized methodologies for the study. The study shall be updated periodically, at intervals of not greater than 10 years, to reflect actual development activity, actual costs of infrastructure improvements completed or underway, plan changes, or amendments to the zoning ordinance or by-law.

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

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

Any development impact fee assessed under this section shall be due and payable upon commencement of construction, which shall include site preparation work. The developer and the city or town may agree to modify the payment schedule or provide for incremental payments when construction or site preparation is proposed in phases. The fee shall be deposited to a separate, interest-bearing account in the city or town in which the proposed development is located. Unless a payment of debt service on an eligible capital facility or subject to the next paragraph, 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.

Any funds not expended or encumbered by the end of the calendar quarter immediately following 10 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 10 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 be deposited into an enterprise fund under section 53F1/2 of chapter 44 or other such dedicated fund, the use of which is limited to defraying costs of the off-site public capital facilities listed in the ordinance or by-law. 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. Notwithstanding the foregoing, a city or town authorized to impose development impact fees pursuant to a special act shall comply with the requirements set forth in such special act.

The applicant and the municipality may agree that the applicant shall construct the public capital facility or a portion thereof for which the development impact fee was assessed in lieu of paying, or in exchange for a refund of, the development impact fee to the municipality, provided

that the applicant shall not be required to construct such improvement if it chooses to pay the assessed development impact fee.

Consultant Fees: The board or official designated by ordinance or by-law to review development impact fees under this section may, by rules and regulations adopted by such board or official, provide 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.

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

SECTION 23. Said chapter 40A, as so appearing, is hereby amended by inserting after section 9E, the following section:-

40A:9F. Inclusionary Zoning

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

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

Dedicated Accounts: Cities and towns are authorized to establish a separate dedicated account for the deposit of funds received under this section, including Municipal Housing Trust Fund accounts under section 55C of chapter 44 or other dedicated accounts of similar purpose. Said funds shall be deposited with the treasurer and disbursed for inclusionary housing purposes

in accordance with the ordinances, by-laws, or regulations of the city or town. Where the application of this section results in less than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.

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

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

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

SECTION 24. Said chapter 40A, as so appearing, is hereby amended by inserting after section 9F, the following section:-

40A:9G. Land Use Dispute Avoidance

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

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

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

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

Costs: Funding for any conflict evaluation or resolution effort under this section may be as the applicant and the public official or local board may agree, or the public official or local board may provide for the imposition of reasonable fees for the employment of outside consultants, including the mediator or facilitator, in the same manner as set forth in section 53G of chapter 44.

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

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

Special Provisions, Meetings: The mediator or facilitator may convene meetings or conduct interviews that shall be confidential and privileged from discovery under section 23C of chapter 233. The mediator or facilitator shall have the protections provided under section 23C of chapter 233. To the extent that public agencies are participants, their deliberations shall be subject to the provisions of section 21(a)(9) of chapter 30A.

Report on Conflict Evaluation: In preparing a report on conflict evaluation, or on a later resolution effort, the mediator or facilitator shall not attribute statements, positions, ideas, or

interests to specific individuals, organizations, or persons interviewed, and shall distribute copies of the report to those participating. The conflict evaluation report shall indicate whether and how a subsequent resolution effort might be appropriate for the application involved, including elaborating on how it might be undertaken and by whom.

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

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

SECTION 25. Said chapter 40A, as so appearing, is hereby amended by striking out section 10 and inserting in place thereof the following section:-

40A:10. Variances

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

Standards: In making its determination, the permit granting authority shall take into consideration the benefit to the applicant if the variance is granted provided the grant will not unduly derogate from the benefits to be derived from uniform application of the zoning ordinance or bylaw, including avoiding detriments to the health, safety and welfare of the neighborhood or community by such grant. The permit granting authority may also take into consideration the extent to which the claimed hardship is self-created, and may base a denial solely upon such a finding. In order to grant a variance the permit granting authority shall make

all of the following findings: (a) the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than a variance; (b) the variance will not have a disproportionate effect on nearby properties, or the character of the neighborhood, or on the environment; (c) the variance will not nullify or substantially derogate from the intent or purpose of such ordinance or by-law or a master plan under section 81D of chapter 41, if any in effect; and (d) the claimed hardship relating to the property in question is unique, and does not also apply to a substantial portion of the district or neighborhood. In the granting of variances, the permit granting authority shall grant the minimum variance that it shall deem necessary to relieve the hardship.

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

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

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

Recordation of Variance: No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The certification shall include either a statement that no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied; or if it is a variance which has been approved by reason of the failure of the permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the statement of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final or that if such appeal has been filed, that it has been dismissed or denied. The fee for recording or registering shall be paid by the owner or applicant.

Lapse, Extension: If the rights authorized by a variance are not exercised within two years of the date of the grant of the variance such variance shall lapse; provided, however, that upon written application by the grantee of such variance, the permit granting authority in its

discretion may extend, either with or without a public hearing as provided in the zoning ordinance or bylaw, the time for exercise of such rights for a period not to exceed one year. Such application must be filed no later than 65 days prior to the lapse of the variance. If the permit granting authority does not grant the extension within 65 days of the date of application therefor, upon the lapse of the variance, the variance may be re-established only after notice and a new hearing pursuant to the provisions of this section.

Transition Provision: Any city or town that had adopted a zoning ordinance or by-law relating to zoning variances prior to the effective date of this Act, shall within two years of that effective date revise the provisions thereof to conform to this Act. After two years from the effective date of this Act, any provision of such preexisting variance zoning ordinance or bylaw that does not conform to the provisions of this Act may only apply to the extent and in a manner consistent with this Act.

SECTION 26. Section 11 of said chapter 40A, as so appearing, is hereby amended by inserting, in the third sentence of the first paragraph, after the words “the planning board of the city or town,” the following words:- the board of health of the city or town,

SECTION 27. The General Laws, as appearing in the 2012 Official Edition, are hereby amended by inserting after Chapter 40W the following chapter: -- CHAPTER 40X CONSOLIDATED PERMITTING

CHAPTER 40X

CONSOLIDATED PERMITTING

1. Definitions

2. Concurrent Applications

3. Consolidated Hearing and Notice

4. Decisions

40X:1. Definitions

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

“Concurrent Application” means a consolidated application prepared by the proponent of an Eligible Project for submission to all Local Boards requesting all required Local Permits.

“Eligible Project” means a development project that consists of the construction, reconstruction, or alteration of 25,000 square feet or more of gross floor area or the construction,

reconstruction, or alteration of 25 dwelling units or more, and that requires more than one Local Permit from more than one Local Board.

"Hearing Officer" means the chair, or any one or more other members of a Local Board collectively, designated to participate on behalf of such Local Board in a consolidated hearing under this chapter. The Hearing Officer's responsibility is to attend and participate as the board's representative at the consolidated hearing, and thereafter to submit to the board a Hearing Officer's report with summaries of testimony, copies of relevant exhibits, and preliminary recommendations, if any.

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

"Local Permit" means any permit, site plan review, certificate, order (excluding enforcement orders), license, certification, determination, exemption, variance, waiver, or other approval or determination of rights by any Local Board concerning the use or development of real property that is issued or made under chapter 40, chapter 40A to 40C, inclusive, chapter 40R, chapter 41, chapter 43D, chapter 131, chapter 131A, or any local by-law or ordinance, regardless of whether a public hearing is required by law.

40X:2. Concurrent Applications

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

The Concurrent Application shall contain an introductory section that contains general project information that will be used by all of the Local Boards from which a Local Permit is sought, as well as additional sections that contain the information required by individual Local Boards for review of each applicable Local Permit required for the project. The general project information shall include the following information: project name; address; assessors map/parcel information; proponent name, mailing address, phone/fax/email; existing site description; project description, including proposed use, dimensions attributes, and operational information; proposed construction schedule, including details on any proposed phasing of the project; and a list of all Local Permits being sought.

The proponent shall include any local forms required by the Local Board for review of the Local Permit as part of the Concurrent Application, only to the extent that such forms require information that is not otherwise provided in the general project information.

40X:3. Consolidated Hearing and Notice

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

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

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

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

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

40X:4. Decisions

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

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

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

SECTION 28. The General Laws, as appearing in the 2012 Official Edition, are hereby amended by inserting after Chapter 40X the following chapter: -- CHAPTER 40Y PLANNING AHEAD FOR GROWTH ACT

CHAPTER 40Y

PLANNING AHEAD FOR GROWTH ACT

1. Preamble

2. Definitions

3. Elements of implementing regulations

4. Certification and adoption of implementing regulations

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

6. Review of certification by regional planning agency

7. Expiration and renewal of certified community status; amendments

8. Priorities for state investments; consistency of state investments

9. Regulations

40Y:1 Preamble

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

40Y:2 Definitions

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

"By-right" or "As of right" means 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 under section 9D chapter 40A.

"Certified community" means a community for which 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.

"Development agreement" means a contract entered into between a municipality or municipalities and a holder of property development rights, the principal purpose of which is to establish the development regulations that will apply to the subject property during the term of the agreement and to establish the conditions to which the development will be subject including, but not limited to, a schedule of development impact fees. Under a development agreement the holder may agree to contribute public capital facilities to serve the proposed development and the municipality or both, to build affordable housing either on site or off site, to dedicate or reserve land for open space community facilities or recreational use, or to contribute funds for any of these purposes. The development agreement shall function as a bona fide local land use regulation, establishing the permitted uses and densities within the development, and any other terms or conditions mutually agreed upon between the applicant and the municipality. A development agreement shall vest land use and development rights in the property, and such rights would not be subject to subsequent changes in development laws or regulations for the duration of the agreement.

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

"Eligible location" means 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 the implementing regulations. Any area that would qualify as an "eligible location" under chapter 40R shall automatically qualify as an "eligible location" for a residential development district. Any area that has been designated as a priority development site under chapter 43D shall automatically qualify as an "eligible location" for an economic development district.

"Housing target number" means a number equal to five per cent 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 implementing regulations are submitted to the regional

planning agency. Where the housing target number is calculated on a region-wide or multi-municipal basis pursuant to Section 3(E) of this chapter, it shall be equal to five per cent of the total number of year-round housing units enumerated for all participating municipalities in the latest decennial United States census as of the date on which certification is sought pursuant to Section 4 of this chapter.

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

"Low impact development techniques" means stormwater management techniques appropriate to the size, scale, and location of the development proposal 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" means the date upon which a municipality has adopted or renewed certified implementing regulations pursuant to this chapter.

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

"Open space residential design" means a process for the cluster development of land as defined in section 1A of chapter 40A that, for the purposes of this chapter, additionally: 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; preserves at least 50 per cent of the land's developable area in a natural, scenic or open condition, or in agricultural, farming or forestry use; and 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 applicable state and local land use and environmental laws and regulations, and 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" means all local legislative, regulatory, or other actions or requirements which are more restrictive than those of the state, if any, including subdivision and board of health regulations, local wetlands ordinances or by-laws, and other local ordinances, by-laws, codes, and regulations.

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

"Prompt and predictable permitting" means that zoning and other local land use regulations allow development to proceed as of right by 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 shall also be deemed "prompt and predictable permitting." Where a development permit application is referred to the Cape Cod Commission, the Nantucket Planning and Economic Development Commission, or the Martha's Vineyard Commission under chapter 716 of the Acts of 1989, chapter 561 of the Acts of 1973, or chapter 831 of the Act of 1977, respectively, as those acts may be amended, or the review of a development permit application is suspended by the operation of those acts, the zoning and other local land use regulations shall still be considered "prompt and predictable permitting" if, but for such referral or suspension, they otherwise would meet the requirements of this definition.

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

"Regional planning agency" means the regional or district planning commission established pursuant to chapter 40B 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, the Nantucket Planning and Economic Development Commission, as described in chapter 561 of the Acts of 1973, 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" means a zoning district that: permits or allows through prompt and predictable permitting residential use at a density of not less than four units per acre of developable land for single-family residential use, not less than eight units per acre of developable land for two- and three-family and attached townhouse residential use, or not less than twelve units per acre of developable land for multi-family residential use, or permits or allows mixed use including residential use at such density; is an eligible location; and 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. The foregoing minimum density for single-family residential use may be reduced to not less than two units per acre of developable land upon a determination by the regional planning agency that the lack of adequate water supply or wastewater infrastructure within the municipality prevents full compliance with the minimum density standard. If there is no public water supply or public wastewater infrastructure existing anywhere within the municipality, then the minimum density for single-family residential use may be reduced to not less than two units per acre of developable land without the need for a determination by the regional planning agency.

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

40Y:3 Elements of Implementing Regulations

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

(A) Establish prompt and predictable permitting of commercial or industrial development within one or more identified 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) Establish prompt and predictable permitting of residential development within one or more identified 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 implementing regulations, 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.

(C) Require that, for any zoning district that requires a minimum lot area of greater than 40,000 square feet for single-family residential development, development of five or more new housing units utilize open space residential design, except upon a determination by the regional planning agency that open space residential design is not feasible or the land and natural resource conservation objectives of open space residential design are achieved through alternate means such as the transfer of development rights or natural resource protection zoning. Open space residential design may be found infeasible due to adoption of development limitations necessary

to qualify for zero rate of interest state revolving fund loans, or due to the requirements of an area-wide plan, management program or other plan or program implemented pursuant to section 208 of the federal Clean Water Act, 33 United States Code section 1251, et seq. In districts requiring minimum lot areas of between 40,000 and 80,000 square feet where Title 5 of the Environmental Code is in effect, the minimum preservation requirement of 50 per cent set forth in section 2, open space residential design, shall be modified to equal the percentage resulting from the subtraction of 40,000 square feet from the lot size requirement, divided by the lot size requirement, and multiplied by 100, except to the extent inconsistent with requirements adopted by a regional planning agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, as those acts may be amended.

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

(E) Contiguous municipalities may also satisfy the requirements of this Section 3 on a regional or multi-municipal basis under the following conditions: (i) the 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) provided by these residential development districts, in the aggregate, must equal the housing target number, as calculated by summing the target numbers of all participating municipalities; and (ii) each municipality must satisfy the requirements of subsections (A), (C), and (D). For municipalities within Barnstable and Dukes counties, municipalities must also be consistent with any regional policy plans and districts of critical planning concern adopted by, and local comprehensive plans certified by, the regional planning agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, respectively, as those acts may be amended.

40Y:4 Certification and adoption of implementing regulations

Section 4. 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 requirements of this chapter. The implementing regulations shall be deemed consistent with this chapter if they effectuate the commitments established in section 3 herein. Implementing regulations shall have the benefit of a presumption of consistency with the requirements for eligible locations of this chapter if the regulations are consistent with a process of mapping priority development and preservation areas within the municipality, undertaken by municipal planning officials in collaboration with the regional planning agency. If the regional planning agency determines that the implementing regulations are consistent with this chapter, 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. Where implementing regulations are submitted for certification on a regional or multi-municipal basis pursuant to Section 3(E) of this chapter, they shall be submitted jointly by the chief executive officer of each municipality.

Following certification by the regional planning agency, the implementing regulations may be adopted by the municipality or municipalities. On the date of receipt by the regional planning agency of proof of adoption of the certified implementing regulations, a municipality shall be deemed a "certified community." Such date shall be deemed the "municipality's effective date."

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

Section 5. (A) Following the municipality's effective date, local zoning or general 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 implementing regulations shall be invalid as applied within the areas subject to the certified implementing regulations. 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 certified implementing regulations that has not been prepared, certified and adopted in accordance with the provisions hereof shall be presumed to be inconsistent with this chapter.

(B) 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.

(C) 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 if the number of years since the municipality's effective date is less than ten), 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 be 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: the proposed development project does not substantially comply with applicable laws and regulations; or 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. The provisions of this subsection shall not apply where a development permit application is referred to the Cape Cod Commission or the Martha's Vineyard Commission under chapter 716 of the Acts of 1989 or chapter 831 of the Act of 1977, respectively, as those acts may be amended, or the review of a development permit application is suspended by the operation of those acts.

(D) Following the municipality's effective date, it may adopt rate of development measures that limit the number of new housing units 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).

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

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

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

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

40Y:6 Review of certification by regional planning agency

Section 6. Any certification or determination of non-certification by a regional planning agency with respect to implementing regulations or a material amendment of same is subject to review by the secretary. The secretary may, upon the request of the subject municipality or in his discretion, review any such decision in an informal, non-adjudicatory proceeding, may request information from any third party and may, with the concurrence of the secretary of the

Executive Office of Energy and Environmental affairs, modify or reverse such decision if the same does not comply with the provisions hereof.

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

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

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

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

Section 7. A municipality's status as a certified community shall expire ten years after the municipality's effective date, unless renewal implementing regulations are prepared, certified, and to the extent necessary adopted in accordance with the provisions hereof prior to such date. Each such renewal implementing regulations shall also expire in ten years. Expiration of a municipality's status as a certified community shall cause section 5 herein to be inapplicable to such municipality.

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

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

Section 8. In furtherance of the purposes of this chapter to advance the state's economic, environmental, and social well-being through enhanced planning for economic growth, workforce housing creation, and land conservation, the commonwealth shall, when awarding

discretionary funds for municipal infrastructure or other discretionary funds or grants administered through the executive office of housing and economic development, the executive office of energy and environmental affairs, the department of transportation, and the executive office of administration and finance, give priority consideration to certified communities and to communities with certified local comprehensive plans and with regulations deemed consistent with a local and regional plan as certified by the regional planning agency pursuant to chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, respectively, as those acts may be amended.

When awarding discretionary funds for municipal infrastructure, the commonwealth shall give priority consideration to investments that support development within economic development districts and residential development districts in certified communities and similar districts established by local comprehensive plans certified by the regional planning agency pursuant to chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, respectively, as those acts may be amended.

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

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

40Y:9 Regulations

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

SECTION 29. Section 81D of chapter 41 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the following section 81D:-

41:81D. Master Plan

Section 81D. Option to Plan: A planning board established in any city or town that makes a master plan for such city or town shall do so in accordance with this section. The plan shall take effect upon adoption by the legislative body as provided herein. For a plan to remain in effect, from time to time not to exceed 10 years from the date of adoption, the planning board shall conduct a comprehensive review of the plan and may extend, revise, or remake the plan,

and the plan or amendment thereto shall thereafter be re-adopted as provided in this section. The plan, once adopted, shall be the official master plan of the city or town, replacing any previously adopted master plans. All plans for capital projects of another governmental agency on land included in a city or town master plan made and adopted pursuant to this section after the effective date of this act shall take such master plan into consideration.

A master plan adopted in accordance with section 81D of chapter 41 in effect on the date of passage of this act may continue in full force and effect and shall not be subject to this section until a date 10 years from the date of passage of this act, provided such plan is not extended, revised, or remade during the period.

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

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

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

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

(2) Housing: (a) An inventory of local demographic characteristics, an assessment and forecast of housing needs, and a statement of local housing policies. Where applicable, existing local housing plans and studies may be included by reference. (b) An analysis of housing units

by type of structure (e.g., single-family, two-family, multi-family); affordable housing and subsidized housing; housing available for rental; special needs housing; and housing for the elderly, including assisted living residences. (c) An analysis of existing local policies, programs, laws, or regulations that encourage the preservation, improvement, and development of such housing, including an assessment of their adequacy. (d) An evaluation of zoning and other land use policies for the creation of a variety of housing that meets a broad range of housing needs, including but not limited to the affordable housing needs of low, moderate, and median income households and the accessible housing needs of people with disabilities and special needs. The evaluation shall examine specific measures to address these needs, including strategies, programs, and assistance for the preservation or rehabilitation of existing housing; the construction of new housing; and the adoption or amendment of local ordinances or bylaws and regulations permitting, encouraging, or requiring diversity in housing locations, types, designs, and area densities that offer alternatives to single family detached housing. A current housing production plan consistent with 760 CMR 56.03(4) may constitute the subject matter relative to this subsection (d).

(3) Natural Resources and Energy Management: (a) A general overview of the significant natural and energy resources of the municipality. (b) Identification of protected and unprotected wetlands and water resources, lands critical to sustaining surface and groundwater quality and quantity, environmentally sensitive lands, critical wildlife habitat and biodiversity, agricultural lands and forests. Priorities for protection of wildlife habitat, water resources, vistas and key landscapes, outdoor recreation facilities, and farm and forestry land shall be identified. (c) An outline of local laws, regulations, policies, and strategies to address needs for the protection, restoration, and sustainable management of these resources and to promote development that respects and enhances the state's natural resources. (d) An energy component that explores locally feasible land use strategies to: maximize energy efficiency and renewable energy opportunities; support land, energy, water, and materials conservation strategies, local clean power generation, distributed generation technologies, and innovative industries; and address global climate change by reducing greenhouse gas emissions and the consumption of fossil fuels.

(4) Land Use and Zoning: (a) An identification of historic settlement patterns and present land uses, and designation of the proposed distribution, location, and inter-relationship of public and private land uses in a general manner sufficient to guide the development of zoning ordinances or by-laws, zoning maps, and other land use regulations. (b) Land use policies and related maps, which shall be based upon a land use suitability analysis identifying areas most suitable for development and related transportation infrastructure and facilities. Growth and development areas, if identified, shall support the revitalization of city and town centers and neighborhoods by promoting development that is compact and walkable, conserves land, protects historic resources, integrates uses, and coordinates the provision of housing with the location of jobs, transit and services, and new infrastructure. The plan shall, if appropriate, identify areas for

economic development and job creation, related public and private transportation and pedestrian connections, and encourage the creation or extension of pedestrian-accessible districts and neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with open space and housing. (c) A consideration of the relationship between proposed development intensity and the capacity of land and existing and planned public facilities and infrastructure. (d) A land use map illustrating the land use policies and desired future development patterns of the municipality and a proposed zoning map, both drawn in a general manner.

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

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

(6) Economic Development: (a) An inventory and analysis of the local economic base, including: employment; local industries and business clusters; labor force characteristics; land and buildings used for nonresidential purposes, including vacant space; and office, retail, and industrial market conditions. (b) An assessment of opportunities and barriers to economic development, including but not limited to identification of land use policies and available locations that: support the growth of jobs, the retention of existing businesses, and the provision of space for new businesses; encourage the reuse and rehabilitation of existing infrastructure, including brownfields, rather than the construction of new infrastructure in undeveloped areas; and facilitate larger-scale economic redevelopment or development in industry clusters consistent or compatible with the regional and local economy. (c) An assessment of opportunities and barriers to agriculture, including all branches of farming and forestry, where applicable. (d) An assessment of opportunities and barriers to self-employment and home-based occupations, including but not limited to consideration of land use policies, infrastructure and utilities, and communications technology.

(7) Cultural Resources: (a) An inventory of the significant cultural, scenic, and historic structures, sites, and landscapes of the municipality, including archaeological resources. (b) An assessment of policies and strategies to protect and manage the community's cultural resources,

including but not limited to a community-wide preservation plan, ordinances or bylaws and incentives for historic preservation, and land use policies to facilitate the reuse of historic structures, where appropriate.

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

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

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

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

(12) Public Health: (a) An inventory of conditions and assets in the natural and built environment which contribute to or constitute a barrier to health. These conditions may include parks and recreational facilities; local agriculture; walking, bicycling and public transit options, including the safety and walkability of streets and public spaces; access to affordable housing,

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

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

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

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

SECTION 30. Section 81L of said chapter 41 of the General Laws, as so appearing, is hereby amended by striking out the definition of "Subdivision" and inserting in place thereof the following definition:-

"Subdivision" shall mean the division of a lot, tract, or parcel of land into two or more lots, tracts, or parcels of land and shall include re-subdivision. When appropriate to the context, subdivision shall include the process of subdivision or the land or territory subdivided. A change in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may be defined as a minor subdivision and, in such case, be governed by the provisions of section 81P.

SECTION 31. Said section 81L of said chapter 41, as so appearing, is hereby amended by inserting the following definition:-

"Minor Subdivision" shall mean a residential subdivision created in accordance with section 81P, provided however that until rules and regulations are adopted by a planning board under 81P therefor, "minor subdivision" shall solely mean the division of a lot, tract, or parcel of land into two or more lots, tracts, or parcels where, at the time when it is made, every lot within the lot, tract or parcel 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; 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 the zoning 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 20 feet.

SECTION 32. Section 81O of said chapter 41, as so appearing, is hereby amended by striking out the second sentence in the first paragraph and inserting in place thereof the following sentences:- After the approval of a plan, the location and width of ways, and the number, shape, and size of the lots shown thereon, may not be changed unless the plan is amended as provided in section 81W. In the alternative, a planning board may adopt rules and regulations under sections 81P and 81Q of this chapter defining and regulating such changes as minor subdivisions.

SECTION 33. Said chapter 41, as so appearing, is hereby amended by striking out section 81P and inserting in place thereof the following section 81P:-

41:81P. Minor Subdivisions

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

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

Rules and Regulations, Required Provisions: The rules and regulations for minor subdivisions shall: specify that an application for a minor subdivision may create up to six additional residential lots within the meaning of the subdivision control law, either on ways described in the definition of minor subdivision or on new ways; set forth the reasonable requirements and standards of the board for those existing ways described in the definition of minor subdivision, provided that no requirements shall be made for the location of such ways and that requirements for total travelled lanes widths of greater than 22 feet in a residential minor subdivision shall be presumed to serve no valid purpose of the subdivision control law unless such widths already exceed 22 feet; set forth the reasonable requirements and standards of the board for the proposed ways shown on a plan, provided that requirements for total travelled lanes widths of greater than 22 feet in a residential minor subdivision shall be presumed to serve no valid purpose of the subdivision control law unless such ways are designed to be extended to later serve a greater number of residential lots; and establish a time period for the planning board to take final action and to file with the city or town clerk a certificate of such action within 65 days or less in the case of an existing way, or 95 days or less in the case of a new way.

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

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

Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted: Until such rules and regulations are adopted, any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section 81T, and, if the board finds that the plan does not require such approval, it shall immediately, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words “approval under the subdivision control law not required” or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision. If the board shall determine that in its opinion the plan requires approval, it shall within 21 days of such submittal, give written notice of its determination to the clerk of the city or town and the person submitting the plan, and such person may submit his plan for approval as provided by law and the rules and regulations of the board, or he may appeal from the determination of the board in the manner provided in section 81BB. If the board fails to act upon a plan submitted under this section or fails to notify the clerk of the city or town and the person submitting the plan of its action within 21 days after its submission, it shall be deemed to have determined that approval under the subdivision control law is not required, and it shall immediately make such endorsement on said plan, and on its failure to do so immediately the city or town clerk shall issue a certificate to the same effect. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or in case of the certificate, by the city or town clerk, to the person submitting such plan. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

SECTION 34. Section 81Q of said chapter 41, as so appearing, is hereby amended by inserting after the fourth sentence thereof the following sentence:- Without limiting the foregoing, there shall be a rebuttable presumption that such rules and regulations are unlawfully excessive, to the extent that the design and dimensional requirements thereof for the laying out, construction or alteration of ways exceed the standards and criteria commonly applied by that city or town to the reconstruction of its publicly financed ways located in similarly zoned districts within such city or town. Design and dimensional requirements for total travel lane widths no greater than 24 feet shall be presumed not to be excessive.

SECTION 35. Said section 81Q of said chapter 41, as so appearing, is hereby amended by inserting after the word “thereof,” in line 69, the following words:- but the rules and regulations may require the plan to show a park or parks suitably located for playground, environmental conservation and education, or recreation purposes benefiting the lots in the subdivision or for providing light and air, and not exceeding five per cent of the land being subdivided.

SECTION 36. Section 81T of said chapter 41, as so appearing, is hereby amended by striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is not required”.

SECTION 37. Section 81U of said chapter 41, as so appearing, is hereby amended by striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

SECTION 38. Section 81X of said chapter 41, as so appearing, is hereby amended by striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of the planning board that approval of such plan is not required, as provided in section eighty-one P, or (3)”.

SECTION 39. Said section 81X of said chapter 41, as so appearing, is hereby amended by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted pursuant to section eighty-one P and that it has been determined by failure of the planning board to act thereon within the prescribed time that approval is not required,”.

SECTION 40. Said section 81X of said chapter 41, as so appearing, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

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

Lot Line Changes: The register of deeds and the land court shall accept for recording or registration any plan showing a change in the line of any lot, tract, or parcel bearing a professional opinion by a registered professional land surveyor and a certificate by the person or board charged with the enforcement of the zoning ordinance or by-law of the city or town that the property lines shown: do not create an additional building lot; do not create, add to, or alter the lines of a street or way; do not render an existing legal lot or structure illegal; do not render an existing nonconforming lot or structure more nonconforming; and are not subject to alternative local rules and regulations for minor subdivisions under section 81P of this chapter. All such plans, if approved and as recorded, shall immediately be filed with the planning board

and board of assessors of the city or town. The recording of such plan shall not relieve any owner from compliance with the provisions of the Subdivision Control Law or of any other applicable law.

SECTION 41. Section 81BB of said chapter 41, as so appearing, is hereby amended by striking out the first paragraph, 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 81Y, 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. Such civil action shall be in the nature of certiorari pursuant to section 4 of chapter 249. A complaint by a plaintiff challenging a subdivision or minor subdivision approval under this section shall allege the specific reasons why the subdivision or minor 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. A complaint by an applicant challenging a subdivision or minor subdivision denial or conditioned approval under this section shall similarly allege the specific reasons why the subdivision or minor subdivision properly satisfies the requirements of the board's rules and regulations or other applicable law.

SECTION 42. Section 3A of chapter 185 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out the third paragraph in its entirety and inserting in place thereof the following paragraph:-

The permit session shall have original jurisdiction, concurrently with the superior court department, over civil actions in whole or part: (1) based on or arising out of the appeal of any municipal, regional, or state permit, order, certificate or approval, or the denial thereof, concerning the use or development of real property for residential, commercial, or industrial purposes (or any combination thereof), including without limitation appeals of such permits, orders, certificates or approvals, or denials thereof, arising under or based on or relating to chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive, 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of 1956; or any local bylaw or ordinance; (2) seeking equitable or declaratory relief designed to secure or protect the issuance of any municipal, regional, or state permit or approval concerning the use or development of real property, or challenging the interpretation or application of any municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution,

abuse of process, intentional or negligent interference with advantageous relations, or intentional or negligent interference with contractual relations arising out of, based upon, or relating to the appeal of any municipal, regional, state permit or approval concerning the use or development of real property; and (4) any other claims between persons holding any right, title, or interest in land and any municipal, regional or state board, authority, commission, or public official based on or arising out of any action taken with respect to any permit or approval concerning the use or development of real property but in all such cases of claims (1) to (4), inclusive, only if the underlying project or development, in the case of a development that is residential or a mix of residential and commercial components, involves either 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area or both or, in the case of a commercial development, involves the construction or alteration of 25,000 square feet or more of gross floor area. Industrial development projects and any project in which an industrial use is a component of a mixed-use project shall not be subject to any such minimum thresholds.

SECTION 43. Said section 3A of said chapter 185, as so appearing, is hereby further amended by striking out the fourth paragraph in its entirety and inserting in place thereof the following paragraph:-

Notwithstanding any other general or special law to the contrary, any action not commenced in the permit session, but within the jurisdiction of the permit session as provided in this section, shall be transferred to the permit session, upon the filing by any party of a notice demonstrating compliance with the jurisdictional requirements of this section filed with the court where the action was originally commenced with a copy to the permit session. Unless the court where the action was originally commenced receives notice within 10 days from the permit session that the case to be transferred does not meet the jurisdictional requirements of this section, the original court shall transfer the case file to the permit session within 20 days of its receipt of the notice of transfer from the party. In the event the court receives notice of noncompliance with jurisdictional requirements, the court where the action was originally commenced shall decide the matter on motion filed by the party claiming noncompliance. If a party to an action commenced in or transferred to the permit session claims a valid right to a jury trial, then the action shall be transferred to the superior court for a jury trial.

SECTION 44. Section 14A of chapter 240 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the first paragraph the following paragraph:-

In any claim challenging the validity of any provision of a zoning ordinance or by-law, the court shall first determine if the provision challenged is not inconsistent with the city's or town's master plan if any, provided such plan has been certified by the applicable regional planning agency to have been prepared and adopted in accordance with section 81D of chapter 41 as such section appears after the effective date of this Act. The court shall also determine whether the zoning ordinance or by-law is not inconsistent with a local comprehensive plan

certified by the regional planning agency, or was adopted as a regulation to implement a district of critical planning concern, pursuant to chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, respectively, as those acts may be amended. If the court determines that the challenged provision is not inconsistent with the master plan or the local comprehensive plan or was adopted as a regulation to implement a district of critical planning concern under aforementioned special acts, then such provision shall be deemed to serve a public purpose. A failure by the court to determine that a provision is not inconsistent or the absence of an adopted master plan shall not for that reason alone be determinative of whether the challenged provision serves a public purpose.