

Possible Framework for A “Land Use Partnership Act”
(revised as of 3/4/08 from 1/15/08 version)

SUMMARY: Massachusetts municipalities would be encouraged, by the provision of technical resources and enhanced regulatory tools and powers, to develop a comprehensive plan for their community that is consistent with statewide land use objectives and to implement that plan through zoning and land use regulation.

1. The Commonwealth would make a substantial commitment to providing municipalities with: (a) ~~technical assistance from state agency staff,~~ (b) technical assistance from regional planning agencies ~~and, where appropriate, other quasi-public agencies]~~ (such assistance to be supported by state funding), **or** (b) ~~and (c)] direct state funding for local staff and/or outside consultants,~~ all in support of the planning and zoning commitments described below. An appropriate level of state funding for **this** ~~these three types of]~~ assistance would probably be in the range of \$50,000 to \$100,000 per municipality.

2. For municipalities electing to do so, a comprehensive plan would be prepared by a municipality (through its planning board) **and certified by** ~~, reviewed by]~~ the applicable regional planning agency ~~and certified by the Commonwealth].~~ The plan would be effective for ten years, at which point a renewal plan would be prepared ~~, reviewed]~~ and certified. ~~The required elements of the plan would be coordinated with those required by other former or current state planning initiatives so that municipalities can, to the maximum extent possible, use, incorporate and update other previously prepared plans (EO 418 plans, open space plans, etc.).]~~ **The comprehensive plan would have the basic form and content of plans previously prepared by municipalities under Executive Order 418, except that** the comprehensive plan would also contain: (a) with respect to each required element of the plan and with respect to the plan as a whole, a self-assessment of the plan’s overall consistency with the Commonwealth’s smart growth/smart energy principles, and (b) a self-assessment of the plan’s specific compliance with the items described in #6 below.

3. The comprehensive plan would be approved by majority vote of the municipal legislative body after **certification** ~~review]~~ by the regional planning agency ~~and certification by the Commonwealth],~~ as described below.

4. The applicable regional planning agency would review the comprehensive plan and within 90 days **of its submission** determine whether the plan is: (a) complete (that is, contains the items described in #2 above) and (b) consistent with statewide land use objectives (based on the items described in #6 below). If the regional planning agency determines that the plan is complete and consistent, then the agency would **certify the plan.** ~~forward the plan to the Commonwealth for certification with the designation “eligible for certification”.]~~ If the agency determines that the plan is not complete and consistent, then the agency would return the plan to the municipality with a statement of the reasons for its determination.

5. **Intentionally Omitted.** [delete: The Commonwealth, acting through the “inter-agency sustainable development team” that now handles the Commonwealth Capital process (or a similar inter-agency group), would review any plan designated as “eligible for certification” by a regional planning agency and within 90 days make an independent determination of whether the plan is: (a) complete (that is, contains the items described in #2 above) and (b) consistent with statewide land use objectives (based on the items described in #6 below). If the group determines that the plan is complete and consistent, the Commonwealth would certify the plan. If the group determines that the plan is not complete and consistent, then the group would return the plan to the municipality with a statement of the reasons for its determination.]

6. A determination of consistency with statewide land use objectives would be mandatory upon confirmation that the plan meets certain minimum requirements, established by regulation, in the following areas: economic development, housing, open space protection, water management and energy management. For plans submitted for certification within the first five years of the passage of zoning reform, a determination of consistency with statewide land use objectives would be mandatory upon confirmation that all of the following requirements are satisfied:

- A. The plan establishes “prompt and predictable permitting” of commercial or industrial development within at least one district that **would be eligible for designation under Chapter 43D** [delete: : (a) would qualify under the definition of “eligible location” under Chapter 40R (switching, for this purpose, the terms “commercial” and “residential” in that definition); (b) would support at least 50,000 square feet of new space (or of redeveloped space in a vacant or underutilized building); and (c) is located at least one mile from any municipal boundary (except with the approval of the adjoining municipality and of the regional planning agency(ies) for both municipalities).] “Prompt and predictable permitting” means that zoning and other local land use regulations allow development “as of right” without the need for a special permit or other discretionary approval (design standards and/or site plan review being allowable) and that procedures are in place to cause permit decision-making to occur with six months of permit application. **“Prompt and predictable permitting” would not require a formal designation under Chapter 43D.**
- B. The plan establishes “prompt and predictable permitting” of residential development within one or more districts that: (a) qualify as “eligible locations” under Chapter 40R; (b) allow housing at a density of not less than 4 units to the acre, without bedroom limitations or age restrictions, and (except to the extent that the regional planning agency determines that such limitations are consistent with the availability of reasonable housing choices in the municipality) without limitations on multi-family versus single-family or on rental versus ownership; and (c) collectively have the capacity to accommodate a number of new housing units equal to **five percent (5%)** [delete: an average of ½%] of the total existing housing stock of the municipality **over the ten-year duration of the plan**

(hereafter referred to as the “housing target number”)[delete: for each year of the plan].

- C. The plan establishes **mandatory open space residential design “as of right” within any zoning district having a minimum lot size requirement in excess of one acre.** [delete: that at least 50% of the developable land within the municipality that is identified by the Commonwealth, acting through EOEEA, as “environmentally sensitive”, will be governed by “low-impact development” regulations and by “resource protective” zoning (such as open space residential design, agricultural/rural zoning or TDR).]
- D. **The plan establishes “low-impact development” standards (that is, standardized best practices for preserving natural hydrology) with respect to the development of previously undeveloped land within the municipality.**
- E. The plan contains elements that qualify the municipality as a “green community” with respect to state energy goals.

Mixed-use districts, appropriately planned and zoned, could count towards meeting the requirements of Provision A and Provision B. **The requirements of Provision A could be reduced or eliminated upon a determination by the applicable regional planning agency that adequate alternatives for commercial or industrial development exist elsewhere in the region and are more appropriately located there. The requirements of Provision B could be reduced or eliminated upon a determination by the applicable regional planning agency that: (a) historic and projected trends in population and employment growth within the region more appropriately support a lower housing target number; or (b) the lack of adequate water supply and/or wastewater infrastructure within a municipality prevents full compliance with the requirements (provided that in the case of clause (b), the municipality must participate in any regional housing plan established by the regional planning agency). In densely developed municipalities, the requirements of Provision B could be met through the “as of right” allowance of accessory apartments or other similar means determined appropriate by regional planning agency.** [delete: The requirements of Provision A or Provision B, respectively, could be reduced or eliminated upon a determination by the applicable regional planning agency that compensatory capacity for such development exists within such districts in other municipalities in the region and that development within such other districts advances regional land use objectives to an equal or greater degree (in the case of Provision B, the Commonwealth, acting through DHCD, would also need to make a determination that residential development within such other districts advances statewide housing objectives to an equal or greater degree).]

7. Each municipality would have a period of two years, following the approval by majority vote of the municipal legislative body of a certified comprehensive plan, to adopt (also by majority vote) the zoning and other land use regulatory changes, if any, needed to implement the minimum consistency requirements described in #6 above.

Prior to the adoption of any zoning or other land use regulatory changes which the municipality intends to implement to satisfy the minimum consistency requirements described in #6 above, such proposed changes would be **certified** [~~delete~~: reviewed] by the applicable regional planning agency [~~delete~~: and certified by the Commonwealth] as “consistent”, in the manner described in #4 [~~delete~~: and #5] above. Such [~~delete~~: review and] certification would only address the issue of consistency **as described in #6 above.** [~~delete~~: with statewide land use objectives.] (Note: any issue of the consistency of zoning or other land use regulations with the municipality’s comprehensive plan would be left to judicial review, not administrative review)

8. Upon adoption of a certified comprehensive plan and of certified zoning and other land use regulatory changes, if needed (the “effective date”), the municipality would be entitled to various enhanced planning and zoning tools and powers, as described below. (Note: certain transition rules regarding zoning freezes and the like may be needed to ensure that these enhanced tools and powers can be effectively implemented.)

The enhanced zoning and planning tools and powers would be as follows:

- A. Ability to reduce or eliminate “approval not required” lots, provided that the municipality establishes a minor subdivision approval process that provides for limited review, within set timelines, of lot divisions creating a small number of lots (such minor subdivision approval process would apply to all lot divisions creating a small number of lots, whether or not such lot division was formerly “approval not required”)
- B. Alternative “zoning freeze” system under which development projects (but not the land itself) are, upon the occurrence of certain initial threshold actions, protected against subsequent changes in zoning and other land use regulations for an initial period of three years and, if certain construction or other further activities occur within that period of time, protected against subsequent changes for a further period of time, possibly until completion of the development project
- C. **Intentionally Omitted** [~~delete~~: An express authorization to impose “impact fees” (with respect to development that is allowed as of right) as a reasonable, consistent and predictable means of funding infrastructure and other community mitigation necessitated by development project impacts]
- D. Zoning enactments would be adopted by majority vote of the municipality’s legislative body, unless the municipality elected to use a two-thirds voting standard (which the municipality may elect to do by majority vote)
- E. The current prohibition on regulation of the maximum interior floor area of residential structures would be removed

F. Minimum lot size **requirements of any size** [~~delete: of up to five acres~~] would be expressly authorized **outside of the districts described in #6, Provision B** [~~delete: with respect to land identified as “environmentally sensitive”~~]

G. Rate-of-growth provisions limiting the number of new housing units constructed within the districts described in #6, Provision B, to no more than ½% of the total existing housing stock of the municipality per year would be expressly authorized

9. With respect to the minimum consistency requirements described in #6 above (other than Provision B), there would be no further permitting [~~delete: or “production”~~] benchmarks that would need to be met after the effective date. For the duration of the term of the certified comprehensive plan, however, any amendment to the municipality’s comprehensive plan, zoning or other land use regulations that (a) affected the municipality’s compliance with the minimum consistency requirements **described in #6 above** (including Provision B), and (b) was not itself [~~delete: reviewed and~~] certified as described above, would be conclusively presumed to be inconsistent with the certified comprehensive plan.

10. With respect to Provision B described in #6 above, if at any time (more than two years after the effective date) the total number of housing units for which building permits have been applied for within such districts since the effective date **is greater than the housing target number (pro rata for the number of years since the effective date)** [~~delete: exceeds the product of (a) ½% of the total existing housing stock of the municipality on the effective date and (b) the number of years since the effective date (such product being hereinafter referred to as the “housing production goal”)~~], but the total number of housing units for which building permits have been issued **is less than the housing target number** [~~delete: does not exceed the housing production goal~~], then (until the total number of housing units for which building permits have been issued does at least equal **the housing target number** [~~delete: housing production goal~~]), **any applications for building permits or other land use regulatory permits within such districts will be subject to the substantive and procedural requirements contained in Chapter 40R, Section 11 (including constructive approval and limited grounds for conditions or denial)**. [~~delete: : (i) any subsequent applications for building permits or other land use regulatory permits within such districts would be deemed constructively approved if not acted upon within 180 days; and (ii) the municipality may not condition (including by the imposition of impact fees or rate-of-growth provisions) or deny any such permit so as to cause construction and occupancy of such housing units to be rendered infeasible (except that this clause shall in no event require a municipality to approve a greater housing density than 4 units to the acre, or such greater density as is allowed by the municipality’s zoning for that district).~~]

11. **Any determination made by a regional planning agency hereunder would be subject to review and modification or reversal by the Commonwealth, with an appropriate standard of review to be determined. For municipalities electing to participate in this program, any judicial appeals of permit decisions for development within the districts described in #6, Provision A, within the districts**

described in #6, Provision B, or for any other commercial or industrial development allowed “as of right” elsewhere within the municipality will be governed by the provisions of Chapter 40R, Section 11 (including specificity of allegations, presumptions and bonding). Any litigation arising from matters relating to this program [delete: regarding comprehensive plans, the consistency of zoning and other land use regulations, or the issuance of building permits under #10] would be dealt with by the special session of the Land Court created by the expedited permitting act.

12. An affirmative statutory declaration would be made that for all municipalities, whether or not they chose to make the commitments described above, their “home rule” powers include, without limitation: [delete: The following planning and zoning changes would be effective for all municipalities, whether or not they chose to make the commitments described above:]

- A. The right to establish transfer of development rights provisions, including those involving “as of right” transfers and inter-municipal transfers [delete: Statutory transfer of development rights provisions would be expanded to include as-of-right transfers and inter-municipal transfers]**
- B. The general right and authority to establish “cluster” or “open space residential design” provisions upon the terms they see fit [delete: Broader and more flexible authorization would be given for “cluster” or “open space residential design” provisions]**
- C. The right to establish and use “site plan approval” as a regulatory tool [delete: Clear statutory authorization for site plan approval] and clarify that appeals of site plan approvals will be governed by the statutory provisions for the appeals of variances and special permits**
- D. The right to create and use “form based” zoning [delete: Clear statutory authorization for form-based zoning]**
- E. The right to establish and use “inclusionary zoning” provisions (with a model provision that would serve as a safe harbor against legal challenge) [delete: Clear statutory authorization for inclusionary zoning in locations where residential development is allowed as of right with appropriate density bonuses]**
- F. The right to create and impose “impact fees” (with a model provision that would serve as a safe harbor against legal challenge)**

Existing statutory provisions that create the implication that municipalities do not have such powers and authority would be modified or deleted.