

HOUSE No. 1859

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik and Daniel A. Wolf

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

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

An Act promoting the planning and development of sustainable communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Michael Barrett</i>	<i>Third Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>John J. Binienda</i>	<i>17th Worcester</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>

<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Kevin J. Murphy</i>	<i>18th Middlesex</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>

Kay Khan

11th Middlesex

HOUSE No. 1859

By Representative Kulik of Worthington and Senator Wolf, a joint petition (accompanied by bill, House, No. 1859) of Stephen Kulik, Daniel A. Wolf and others relative to municipal zoning, subdivision control, and master planning. Municipalities and Regional Government.

The Commonwealth of Massachusetts

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:

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

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

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

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

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

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

19 SECTION 1. Section 1A of chapter 40A of the General Laws, as appearing in the 2010
20 Official Edition, is hereby amended by striking the definition of “permit granting authority” and
21 inserting the following definition:-

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

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

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

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

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

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

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

52 “Form-based zoning”, means text and graphics in a zoning ordinance or by-law that
53 specify the built form of the community, general intensity of use, and the relationship between
54 buildings and the outdoor public spaces they shape. Notwithstanding any provision of any
55 general or special law, form-based codes may regulate building type, exterior building materials,
56 minimum and maximum building heights, frontage type, build-to lines, street type, street and
57 streetscape design, public open spaces, and any other parameter of the built or natural

58 environment which gives form to the exterior of buildings and the spaces between them. Form-
59 based codes may combine in a single document standards for new subdivision streets, existing
60 and new public streets and sidewalks, and use and dimensional standards. Such combined
61 standards may be in the form of a “regulating plan” that integrates building, dimensional, use,
62 street, sidewalk, and parking requirements. Form-based codes may also specify lot-by-lot in a
63 detailed regulating plan, building forms and allowed use mixes, even if such specification is not
64 uniform throughout a zoning district, provided that it is based upon a plan for the area subject to
65 the code. Form-based codes may specify prescribed future lot division lines which will be
66 allowed as of right in any future division of land.

67 “Inclusionary housing units”, means affordable housing units or housing units restricted
68 for purchase or rent by a household with an income at or below 120 percent of the median family
69 income for the applicable metropolitan or non-metropolitan area, as determined by the U.S.
70 Department of Housing and Urban Development.

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

78 “Natural resource protection zoning” (or “NRPZ”), means zoning ordinances or by-laws
79 enacted principally to protect natural resources by establishing very low underlying densities, a
80 formulaic method to calculate development rights, and compact patterns of development so that a
81 significant majority of the land remains permanently undeveloped and available for agriculture,
82 forestry, recreation, watershed management, carbon sequestration, wildlife habitat, or other
83 natural resource values. In any case where such preserved land is not solely conveyed to the
84 city, town, or other governmental agency as dedicated open space, a restriction under section 31-
85 33 of chapter 184 shall be recorded.

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

93 “Site plan review,” means the review and approval of a site plan by a designated
94 municipal board or local official pursuant to section 9D of this chapter. Site plan review may be

95 required independently for specified uses permitted by-right, or as a required component of a
96 special permit, variance, or other discretionary zoning approval.

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

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

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

108 40A:2. Authority

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

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

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

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

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

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

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

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

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

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

169 If a complete application for a building permit or special permit is duly submitted, and
170 written notice of such submission has been given to the city or town clerk before the first
171 publication of notice of the public hearing on such ordinance or by-law required by section five,
172 the permit shall be governed by the applicable provisions of the zoning ordinance or by-law, if
173 any, in effect at the time of the first such submission while such permit or permits are being
174 processed, and, if such permit or an amendment thereof is finally approved, for two years in the
175 case of a building permit and three years in the case of a special permit from the date of the
176 granting of such approval. Such period of two or three years shall be extended by a period equal
177 to the time which a city or town imposes or has imposed upon it by a state, a federal agency, or a
178 court, a moratorium on construction, the issuance of permits, or utility connections.

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

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

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

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

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

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

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

207 SECTION 15. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
208 inserting, after the second paragraph, the following paragraph:-

209 Zoning ordinances or by-laws providing for multi-family residential use in non-
210 residentially zoned areas shall require a special permit and findings by the special permit
211 granting authority that the public good would be served, that such non-residentially zoned area
212 would not be adversely affected by such a residential use, and that permitted uses in such a zone
213 are not noxious to a multi-family use.

214 SECTION 16. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
215 striking out the last sentence in the twelfth paragraph and inserting in place thereof the following
216 sentence:- Unless a greater majority is specified in the zoning ordinance or by-law, issuance of a
217 special permit under this section shall require an affirmative vote of a simple majority of the
218 special permit granting authority. A greater majority vote requirement shall not exceed a vote of
219 two-thirds of the special permit granting authority in the case of a board with more than five
220 members, a vote of at least four members of a five member board, or a unanimous vote of a three
221 member board.

222 SECTION 17. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
223 striking out the fourteenth paragraph and inserting in place thereof the following paragraphs:-

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

232 Upon written application by the grantee of a special permit, the special permit granting
233 authority in its discretion and without a public hearing may, by the same vote majority originally
234 required to approve the special permit, extend the time for the exercise of such special permit for
235 a period of time not to exceed the original duration of the special permit. Such application must
236 be filed no later than 65 days prior to the lapse of the special permit. If the permit granting
237 authority does not grant the extension within 65 days of the date of application therefor, upon the

238 lapse of the special permit, the special permit may be re-established only after notice and a new
239 hearing pursuant to the provisions of this section.

240 SECTION 18. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
241 inserting after the word “zoned”, in line 190, the following word:- principally

242 SECTION 19. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
243 inserting after the word “zoned”, in line 204, the following word:- principally

244 SECTION 20. Said chapter 40A, as so appearing, is hereby amended by inserting after
245 section 9C, the following section:-

246 40A:9D. Site Plan Review

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

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

266 Approval Criteria for Uses Allowed By-right: This section does not allow a designated
267 local board or official, in a decision on a site plan, to use its discretion to effectively prohibit a
268 use that is permitted by-right in the applicable zoning district. A site plan submitted for the use of
269 specific land or structures allowed by-right shall be approved unless the plan fails to meet one of
270 the following criteria: satisfies the procedural and submission requirements of the site plan
271 review process applicable to the specific land or structures; complies with the regulations
272 applicable to such land or structures in the local zoning ordinance or by-law; and meets such
273 standards and criteria as the local zoning ordinance or by-law provides by which the use of land

274 or structures and its impact on the neighborhood shall be evaluated, or may be conditioned to
275 meet such standards and criteria.

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

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

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

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

309 Duration, Lapse, Extensions: Zoning ordinances or by-laws shall provide that a site plan
310 approval for a use allowed by-right shall lapse within a specified period of time, not less than

311 two years from the date of the filing of such approval with the city or town clerk, if a building
312 permit has not been obtained or substantial use or construction has not yet begun, except as
313 extended for good cause by the permit granting authority either with or without a public hearing
314 as provided in the zoning ordinance or bylaw. Such period of time shall not include time
315 required to pursue or await the determination of an appeal.

316 Consultant Fees: The board designated by ordinance or by-law to review site plans under
317 this section may, by rules and regulations adopted by such board, provide for the imposition of
318 reasonable fees for the employment of outside consultants in the same manner as set forth in
319 section 53G of chapter 44.

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

327 Transition Provision: In cities or towns that have adopted a zoning ordinance or by-law
328 requiring a form of site plan review or site plan approval prior to the effective date of this act, the
329 provisions of this section 9D shall not be effective with respect to such zoning ordinance or by-
330 law until a site plan review ordinance or by-law is adopted under this section 9D or the date two
331 years after the effective date of this act, whichever occurs first.

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

334 40A:9E. Development Impact Fees

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

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

354 Nothing in this section shall prohibit a city or town from imposing other fees or
355 requirements for mitigation of development impacts which it may otherwise impose under state
356 or local law.

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

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

367 The fee, or other fees or requirements for mitigation of development impacts, may not be
368 assessed more than once for the same impact, nor may the fee be assessed for impacts, or
369 portions thereof, offset by other dedicated means, including state or federal grants or
370 contributions made by the applicant undertaking the development.

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

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

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

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

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

393 Any development impact fee assessed under this section shall be payable no sooner than
394 the issuance of a building permit, or in the case of a phased development, for a building permit
395 for any phase thereof. The fee shall be deposited to a separate, interest-bearing account in the
396 city or town in which the proposed development is located. Unless a payment of debt service on
397 an eligible capital facility or subject to the next paragraph, no development impact fee shall be
398 paid to the general treasury or used as general revenues of the city or town subject to the
399 provisions of section 53 of chapter 44.

400 Any funds not expended or encumbered by the end of the calendar quarter immediately
401 following 10 years from the date the development impact fee was paid shall, upon request of the
402 applicant or its assigns, be returned with interest provided that an application for a refund
403 prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to
404 the expiration of the 10 year period. If no application for refund is received by the city or town
405 within said period, any funds not expended or encumbered by the end of the calendar quarter
406 shall then revert to and become part of the general fund under section 53 of chapter 44. In the
407 event of any disagreement relative to who shall receive the refund, the city or town may retain
408 said development impact fee pending instructions given in writing by the parties involved or by a
409 court of competent jurisdiction. Notwithstanding the foregoing, a city or town authorized to
410 impose development impact fees pursuant to a special act shall comply with the requirements set
411 forth in such special act.

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

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

419 40A:9F. Inclusionary Zoning

420 Section 9F. Authority: In furtherance of the purposes of zoning ordinances and by-laws
421 and in the exercise of their home rule powers, a city or town, by ordinance or by-law, is not
422 prohibited from requiring the applicant for a residential or mixed use development to provide
423 inclusionary housing units within such development.

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

435 Dedicated Accounts: Cities and towns are authorized to establish a separate dedicated
436 account for the deposit of funds received under this section, including Municipal Housing Trust
437 Fund accounts under section 55C of chapter 44 or other dedicated accounts of similar purpose.
438 Said funds shall be deposited with the treasurer and disbursed for inclusionary housing purposes
439 in accordance with the ordinances, by-laws, or regulations of the city or town. Where the
440 application of this section results in less than a full dwelling unit, the board may accept a
441 prorated payment of funds in lieu of unit creation.

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

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

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

455 40A:9G. Land Use Dispute Avoidance

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

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

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

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

475 Costs: Funding for any conflict evaluation or resolution effort under this section may be
476 as the applicant and the public official or local board may agree, or the public official or local
477 board may provide for the imposition of reasonable fees for the employment of outside
478 consultants, including the facilitator, in the same manner as set forth in section 53G of chapter
479 44.

480 Rules: Public officials or local boards may adopt, and from time to time amend, after a
481 public hearing, rules to implement the conflict evaluation or resolution efforts undertaken
482 pursuant to this section. Notice of the hearing on the proposed rules, including the location, date,
483 and time of the hearing shall be filed with the city or town clerk and published once in a
484 newspaper of general circulation in the city or town at least 14 days before the public hearing.

485 Process of Conflict Evaluation: As part of the conflict evaluation, the facilitator may
486 solicit information and opinions relating to the application, and may identify and notify those
487 members of the public likely to be interested in or affected by the application. The facilitator
488 may clarify the issues and investigate the willingness of all interested parties to work together
489 with the applicant to resolve those issues. The facilitator may identify measures or community-
490 enhancing features that would benefit the neighborhood, the larger community, and the project
491 itself. Based upon the evaluation, the facilitator may determine whether further resolution effort

492 would be productive in reaching a consensus of those participating, with the understanding that
493 the outcome may be the withdrawal or substantial modification of the application.

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

499 Report on Conflict Evaluation: In preparing a report on conflict evaluation, or on a later
500 resolution effort, the facilitator shall not attribute statements, positions, ideas, or interests to
501 specific individuals, organizations, or persons interviewed, and shall distribute copies of the
502 report to those participating without prior review or approval of any participant. The conflict
503 evaluation report shall indicate whether and how a subsequent resolution effort might be
504 appropriate for the application involved, including elaborating on how it might be undertaken
505 and by whom.

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

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

521 SECTION 24. Said chapter 40A, as so appearing, is hereby amended by striking out
522 section 10 and inserting in place thereof the following section:-

523 40A:10. Variances

524 Section 10. Authority: Where a literal enforcement of the provisions of the zoning
525 ordinance or by-law would cause substantial hardship to the petitioner, upon appeal or upon
526 petition with respect to particular land or structures, the permit granting authority shall have the
527 discretionary authority to grant a variance from the terms of the applicable zoning ordinance or

528 by-law following a public hearing for which notice has been given by publication and posting as
529 provided in section 11 and by mailing to the planning board and all parties in interest.

530 Standards: In making its determination, the permit granting authority shall take into
531 consideration the benefit to the applicant if the variance is granted, as weighed against the
532 detriment to the health, safety and welfare of the neighborhood or community by such grant.
533 The permit granting authority may also take into consideration the extent to which the claimed
534 hardship is self-created, and may base a denial solely upon such a finding. In order to grant a
535 variance the permit granting authority shall make all of the following findings: (a) the benefit
536 sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue,
537 other than a variance; (b) the variance will not have a substantial undesirable effect on nearby
538 properties, or the character of the neighborhood, or on the environment; (c) the variance will not
539 nullify or substantially derogate from the intent or purpose of such ordinance or by-law or a
540 master plan under section 81D of chapter 41, if any in effect; and (d) the claimed hardship
541 relating to the property in question is unique, and does not apply to a substantial portion of the
542 district or neighborhood. In the granting of variances, the permit granting authority shall grant
543 the minimum variance that it shall deem necessary to relieve the hardship.

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

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

550 Duration: Once exercised, variances shall run with the land, except that a use variance
551 may run with land only if so determined by the permit granting authority acting pursuant to an
552 ordinance or by-law enabling such a determination.

553 Recordation of Variance: No variance, or any extension, modification or renewal thereof,
554 shall take effect until a copy of the decision bearing the certification of the city or town clerk that
555 20 days have elapsed after the decision has been filed in the office of the city or town clerk is
556 recorded in the registry of deeds for the county and district in which the land is located and
557 indexed in the grantor index under the name of the owner of record or is recorded and noted on
558 the owner's certificate of title. The certification shall include either a statement that no appeal has
559 been filed or that if such appeal has been filed, that it has been dismissed or denied; or if it is a
560 variance which has been approved by reason of the failure of the permit granting authority to act
561 thereon within the time prescribed, a copy of the petition for the variance accompanied by the
562 statement of the city or town clerk stating the fact that the permit granting authority failed to act
563 within the time prescribed, and no appeal has been filed, and that the grant of the petition
564 resulting from such failure to act has become final or that if such appeal has been filed, that it has

565 been dismissed or denied. The fee for recording or registering shall be paid by the owner or
566 applicant.

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

576 Transition Provision: In cities or towns that have adopted a zoning ordinance or by-law
577 relative to zoning variances prior to the effective date of this act, the provisions of this section 10
578 shall not be effective with respect to such zoning ordinances or by-laws until the earlier of the
579 date when either the local ordinance or by-law is amended to conform to this section 10 or two
580 years after the effective date of this act.

581 SECTION 25. Section 11 of said chapter 40A, as so appearing, is hereby amended by
582 inserting, in the third sentence of the first paragraph, after the words “the planning board of the
583 city or town,” the following words:- the board of health of the city or town,

584 SECTION 26. The General Laws, as appearing in the 2010 Official Edition, are hereby
585 amended by inserting after Chapter 40W the following chapter: -- CHAPTER 40X
586 CONSOLIDATED PERMITTING

587 CHAPTER 40X

588 CONSOLIDATED PERMITTING

589 1. Definitions

590 2. Concurrent Applications

591 3. Consolidated Hearing and Notice

592 4. Decisions

593 40X:1. Definitions

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

596 “Concurrent Application” means a consolidated application prepared by the proponent of
597 an Eligible Project for submission to two or more Local Boards requesting two or more Local
598 Permits.

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

603 “Local Board” means any agency, department, commission, or other instrumentality of a
604 municipal government that has the authority to issue a Local Permit.

605 “Local Permit” means any permit, certificate, order (excluding enforcement orders),
606 license, certification, determination, exemption, variance, waiver, or other approval or
607 determination of rights by any Local Board concerning the use or development of real property
608 that is issued or made under chapter 40, chapter 40A to 40C, inclusive, chapter 40R, chapter 41,
609 chapter 43D, chapter 131, chapter 131A, or chapter 143, or any local by-law or ordinance.

610 40X:2. Concurrent Applications

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

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

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

631 40X:3. Consolidated Hearing and Notice

632 Section 3. A consolidated hearing shall be held jointly by the Local Boards from which a
633 Local Permit is sought within 45 days of the filing of a Concurrent Application. The notice
634 requirements for such hearing shall be as set forth in chapter 40A, section 11. The chairs of the
635 Local Boards shall jointly designate one of them to conduct the consolidated hearing. With the
636 approval of the proponent, a Local Board may elect to continue a public hearing, and said
637 continued public hearing may be held apart from the other Local Boards from which a Local
638 Permit is sought. Local Boards may also close a public hearing apart from the other Local
639 Boards, and not be required to attend continued sessions of a consolidated hearing. To facilitate
640 efficient review and use of resources, the Local Boards may consolidate staff reviews and any
641 required peer reviews. Any municipal department or board may provide advisory comments to a
642 Local Board from which a Local permit is being sought.

643 40X:4. Decisions

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

648 Prior to the issuance of its local permit, each Local Board must submit a draft decision to
649 each other Local Board from which a Local Permit is being sought.

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

653 SECTION 27. The General Laws, as appearing in the 2010 Official Edition, are hereby
654 amended by inserting after Chapter 40X the following chapter: -- CHAPTER 40Y PLANNING
655 AHEAD FOR GROWTH ACT

656 CHAPTER 40Y

657 PLANNING AHEAD FOR GROWTH ACT

658 1. Preamble

659 2. Definitions

660 3. Elements of implementing regulations

661 4. Certification and adoption of implementing regulations

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

- 663 6. Review of certification by regional planning agency
- 664 7. Expiration and renewal of certified community status; amendments
- 665 8. Priorities for state investments; consistency of state investments
- 666 9. Regulations

667 40Y:1 Preamble

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

673 40Y:2 Definitions

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

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

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

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

689 “Development agreement” means a contract entered into between a municipality or
690 municipalities and a holder of property development rights, the principal purpose of which is to
691 establish the development regulations that will apply to the subject property during the term of
692 the agreement and to establish the conditions to which the development will be subject including,
693 but not limited to, a schedule of development impact fees. Under a development agreement the
694 holder may agree to contribute public capital facilities to serve the proposed development and the
695 municipality or both, to build affordable housing either on site or off site, to dedicate or reserve
696 land for open space community facilities or recreational use, or to contribute funds for any of

697 these purposes. The development agreement shall function as a bona fide local land use
698 regulation, establishing the permitted uses and densities within the development, and any other
699 terms or conditions mutually agreed upon between the applicant and the municipality. A
700 development agreement shall vest land use and development rights in the property, and such
701 rights would not be subject to subsequent changes in development laws or regulations for the
702 duration of the agreement.

703 “Economic development district” means a zoning district that permits or allows
704 commercial and/or industrial use or permits or allows mixed use including commercial and/or
705 industrial use, and is an eligible location.

706 “Eligible location” means an area that by virtue of its physical and regulatory suitability
707 for development, the adequacy of transportation and other infrastructure and the compatibility of
708 proximate land uses is, in the determination of the regional planning agency, a suitable location
709 for development of the type contemplated by the implementing regulations. Any area that would
710 qualify as an “eligible location” under chapter 40R shall automatically qualify as an “eligible
711 location” for a residential development district. Any area that has been designated as a priority
712 development site under chapter 43D shall automatically qualify as an “eligible location” for an
713 economic development district.

714 “Housing target number” means a number equal to five percent (5%) of the total number
715 of year-round housing units enumerated for the municipality in the latest available United States
716 census as of the date on which a community growth plan was submitted to the regional planning
717 agency.

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

721 “Low impact development techniques” means stormwater management techniques
722 appropriate to the size, scale, and location of the development proposal that limit off-site
723 stormwater runoff (both peak and non-peak flows) to levels substantially similar to natural
724 hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing
725 conditions), by emphasizing decentralized management practices and the protection of on-site
726 natural features.

727 “Municipality’s effective date” means the date upon which a municipality has adopted or
728 renewed certified implementing regulations pursuant to this chapter.

729 “Natural resource protection zoning” (or “NRPZ”) shall have the meaning ascribed to it
730 in section 1A of chapter 40A and, for the purposes of this chapter, additionally means a form of
731 zoning that further protects natural resources by limiting development in areas designated by the

732 state, a regional planning agency, or by a city or town as having significant natural or cultural
733 resource values by requiring minimum area densities of one dwelling unit per ten or more acres.

734 “Open space residential design” means a process for the cluster development of land as
735 defined in section 1A of chapter 40A that, for the purposes of this chapter, additionally: requires
736 identification of the significant natural features of the land and concentrates development by use
737 of reduced dimensional requirements in order to preserve those natural features; preserves at
738 least 50 percent of the land’s developable area in a natural, scenic or open condition, or in
739 agricultural, farming or forestry use; and permits the development of a number of new housing
740 units at least equal to the quotient of the land’s developable area divided by the minimum lot
741 area per housing unit required by the zoning ordinance or by-law. For the purposes of this
742 definition, the land’s developable area shall be determined pursuant to applicable state and local
743 land use and environmental laws and regulations, and the zoning ordinance or by-law, without
744 regard in either case to the suitability of soils or groundwater for on-site wastewater disposal.

745 “Other local land use regulations” means all local legislative, regulatory, or other actions
746 or requirements which are more restrictive than those of the state, if any, including subdivision
747 and board of health regulations, local wetlands ordinances or by-laws, and other local
748 ordinances, by-laws, codes, and regulations.

749 “Planning board” means a municipal planning board established or authorized pursuant to
750 chapter 41, section 81A.

751 “Prompt and predictable permitting” means that zoning and other local land use
752 regulations allow development to proceed as of right by means of permitting processes that are
753 designed to result in final decisions on all local permits and approvals in less than 180 days. For
754 commercial and industrial development, local permitting pursuant to chapter 43D shall also be
755 deemed “prompt and predictable permitting.” Where a development permit application is
756 referred to the Cape Cod Commission or the Martha’s Vineyard Commission under chapter 716
757 of the Acts of 1989 or chapter 831 of the Act of 1977, respectively, as those acts may be
758 amended, or the review of a development permit application is suspended by the operation of
759 those acts, the zoning and other local land use regulations shall still be considered “prompt and
760 predictable permitting” if, but for such referral or suspension, they otherwise would meet the
761 requirements of this definition.

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

768 “Regional planning agency” means the regional or district planning commission
769 established pursuant to chapter 40B for the region within which a municipality is located. The
770 term shall also mean the Martha’s Vineyard Commission, as described in chapter 831 of the Acts
771 of 1977, and the Cape Cod Commission, as described in chapter 716 of the Acts of 1989, the
772 Franklin Council of Governments, as described in chapter 151 of the Acts of 1996, and the
773 Northern Middlesex Council of Governments, as described in chapter 420 of the Acts of 1989.

774 “Residential development district” means a zoning district that: permits or allows
775 residential use at a density of not less than four units per acre of developable land for single-
776 family residential use, not less than eight units per acre of developable land for two- and three-
777 family and attached townhouse residential use, or not less than twelve units per acre of
778 developable land for multi-family residential use, or permits or allows mixed use including
779 residential use at such density; is an eligible location; and does not impose other requirements
780 that add unreasonable costs or otherwise unreasonably impair the economic feasibility of
781 residential development at such density. A zoning district that permits or allows mixed use may
782 qualify as both an economic development district and a residential development district, if the
783 standards for both districts are met. The implementing regulations for any residential
784 development district that permits or allows mixed use shall contain adequate provisions to ensure
785 that any contemplated contribution towards the housing target number to be provided by such
786 district will be achieved. The foregoing minimum density for single-family residential use may
787 be reduced to not less than two units per acre of developable land upon a determination by the
788 regional planning agency that the lack of adequate water supply and/or wastewater infrastructure
789 within the municipality prevents full compliance with the minimum density standard. If there is
790 no public water supply or public wastewater infrastructure existing anywhere within the
791 municipality, then the minimum density for single-family residential use may be reduced to not
792 less than two units per acre of developable land without the need for a determination by the
793 regional planning agency.

794 “Secretary” means the secretary of the Executive Office of Housing and Economic
795 Development.

796 40Y:3 Elements of Implementing Regulations

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

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

805 (B) Establish prompt and predictable permitting of residential development within one or
806 more identified residential development districts that can collectively accommodate, in the
807 determination of the regional planning agency, a number of new housing units (excluding new
808 housing units which are restricted, through zoning or other legal means, as to the number of
809 bedrooms or as to the age of their residents) equal to the housing target number. For the initial
810 certification of a plan, a municipality's housing target number shall be reduced by the number of
811 new housing units for which building permits were issued within two years prior to the
812 municipality's effective date, to the extent such building permits were issued within residential
813 development districts for which there was prompt and predictable permitting at the time of
814 building permit issuance.

815 (C) Require that, for any zoning district that requires a minimum lot area of 40,000
816 square feet or more for single-family residential development, development of five or more new
817 housing units utilize open space residential design, except upon a determination by the regional
818 planning agency that open space residential design is not feasible or the land and natural resource
819 conservation objectives of open space residential design are achieved through alternate means
820 such as the transfer of development rights. Open space residential design may be found
821 infeasible due to adoption of development limitations necessary to qualify for zero rate of
822 interest state revolving fund loans. In districts requiring minimum lot areas of between 40,000
823 and 80,000 square feet in nitrogen sensitive areas as defined under title 5 of the Environmental
824 Code, the minimum preservation requirement of 50 percent set forth in section 2, open space
825 residential design, shall be modified to equal the percentage resulting from the subtraction of
826 40,000 square feet from the lot size requirement, divided by the lot size requirement, and
827 multiplied by 100.

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

831 (E) For municipalities within Barnstable and Dukes counties, be consistent with any
832 regional policy plans and districts of critical planning concern adopted by the Cape Cod
833 Commission or the Martha's Vineyard Commission under chapter 716 of the Acts of 1989 or
834 Chapter 831 of the Act of 1977, respectively, as those acts may be amended.

835 40Y:4 Certification and adoption of implementing regulations

836 Section 4. The chief executive officer of the municipality may submit the implementing
837 regulations to the regional planning agency for certification. Within 90 days of receiving a
838 submission, the regional planning agency shall determine whether the implementing regulations
839 are consistent with the requirements of this chapter. The implementing regulations shall be
840 deemed consistent with this chapter if they effectuate the commitments established in section 3
841 herein. Implementing regulations shall have the benefit of a presumption of consistency with the

842 requirements for eligible locations of this chapter if the regulations are consistent with a process
843 of mapping priority development and preservation areas within the municipality, undertaken by
844 municipal planning officials in collaboration with the regional planning agency. If the regional
845 planning agency determines that the implementing regulations are consistent with this chapter,
846 then the agency shall issue a written certification to that effect. If the regional planning agency
847 determines that it is unable to issue such a certification, then the agency shall provide the
848 municipality with a written statement of the reasons for its determination. A municipality may
849 re-submit for certification at any time modified implementing regulations that address the issues
850 set forth in the agency's statement of reasons. If the regional planning agency does not issue a
851 certification or provide a statement of reasons within 90 days after receiving implementing
852 regulations (including re-submitted implementing regulations), then the implementing
853 regulations shall be deemed certified.

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

858 40Y:5 Effect of certified community status on zoning and land use regulation

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

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

873 (C) If at any time more than two years after the municipality's effective date the total
874 number of housing units for which building permits have been applied for within the residential
875 development districts since the municipality's effective date is greater than the housing target
876 number (adjusted pro rata if the number of years since the municipality's effective date is less
877 than ten), but the total number of housing units for which building permits have been issued
878 within the residential development districts is less than the pro rata housing target number, then

879 the provisions of this subsection shall be in effect. During such time period, any applications for
880 building permits or other local land use permits for residential development within such
881 residential development districts shall be deemed constructively approved if not acted upon within
882 180 days after receipt of permit applications. In addition, an application received under this
883 section shall be subject only to those conditions that are necessary to ensure substantial
884 compliance of the proposed development project with applicable laws and regulations; and it
885 may be denied only on the grounds that: the proposed development project does not substantially
886 comply with applicable laws and regulations; or the applicant failed to submit information and
887 fees required by applicable laws and regulations and necessary for an adequate and timely review
888 of the development project. The foregoing provisions shall no longer be in effect once the total
889 number of housing units for which building permits have been issued within such residential
890 development districts equals or exceeds the pro rata housing target number. The provisions of
891 this subsection shall not apply where a development permit application is referred to the Cape
892 Cod Commission or the Martha's Vineyard Commission under chapter 716 of the Acts of 1989
893 or chapter 831 of the Act of 1977, respectively, as those acts may be amended, or the review of a
894 development permit application is suspended by the operation of those acts.

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

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

901 (F) Following the municipality's effective date, and notwithstanding section 6 of chapter
902 40A, the minimum vesting period for a definitive subdivision plan shall not be eight years, but
903 shall instead be five years. This provision shall not apply to the four-year minimum vesting
904 period for minor subdivisions in said section.

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

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

913 40Y:6 Review of certification by regional planning agency

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

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

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

933 Notwithstanding any other provision of this section, the secretary may not review a
934 determination under Section 3(E) of this chapter by the Cape Cod Commission or the Martha's
935 Vineyard Commission that implementing regulations are or are not consistent with Regional
936 Policy Plans and Districts of Critical Planning Concern adopted under chapter 716 of the Acts of
937 1989 or chapter 831 of the Act of 1977, respectively, as those acts may be amended, nor may the
938 secretary modify such a determination or any conditions found by the commissions to be
939 necessary to such a determination.

940 40Y:7 Expiration and renewal of certified community status; amendments

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

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

950 40Y:8 Priorities for state investments; consistency of state investments

951 Section 8. In furtherance of the purposes of this chapter to advance the state’s economic,
952 environmental, and social well-being through enhanced planning for economic growth,
953 workforce housing creation, and land conservation, the commonwealth shall, when awarding
954 discretionary funds for municipal infrastructure or other discretionary funds or grants
955 administered through the executive office of housing and economic development, the executive
956 office of energy and environmental affairs, the executive office of transportation, and the
957 executive office of administration and finance, give priority consideration to certified
958 communities.

959 When awarding discretionary funds for municipal infrastructure, the commonwealth shall
960 give priority consideration to investments that support development within economic
961 development districts and residential development districts in certified communities.

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

966 When awarding discretionary funds for municipal infrastructure and land preservation
967 investments within communities for which there exists a regional plan under section 5 of chapter
968 40B the commonwealth shall cause such awards to be consistent with such plan, to the maximum
969 extent feasible.

970 40Y:9 Regulations

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

973 BUDGET

974 7006-xxxx For a technical assistance program in the form of grants to municipalities or
975 regional planning agencies for the preparation and review of implementing regulations under
976 sections 3-56 of chapter 40; provided that the grants are to be administered by the Executive
977 Office of Housing and Economic Development; and that such grants shall be in the form of
978 reimbursements; and that priority for the municipal grants shall be given to those municipalities
979 that have adopted implementing regulations under this chapter; and that no expenditure shall be
980 made from this item without the prior approval of the secretary for administration and
981 finance..... \$2,000,000.

982 SECTION 28. Section 81D of chapter 41 of the General Laws, as appearing in the 2010
983 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the
984 following section 81D:-

986 Section 81D. Option to Plan: A planning board established in any city or town that
987 makes a master plan for such city or town shall do so in accordance with this section. The plan
988 shall take effect upon adoption by the legislative body as provided herein. For a plan to remain
989 in effect, from time to time not to exceed 10 years from the date of adoption, the planning board
990 shall conduct a comprehensive review of the plan and may extend, revise, or remake the plan,
991 and the plan or amendment thereto shall thereafter be re-adopted as provided in this section. The
992 plan, once adopted, shall be the official master plan of the city or town, replacing any previously
993 adopted master plans. All plans for capital projects of another governmental agency on land
994 included in a city or town master plan made and adopted pursuant to this section after the
995 effective date of this act shall take such master plan into consideration.

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

1000 General Description of Plan: The plan shall be a comprehensive framework, through
1001 text, maps, and illustrations that provides a basis for decision making about land use and the long
1002 term physical development of the municipality. Other completed and current plans, reports, and
1003 studies may be incorporated by reference to fulfill in whole or in part the requirements of each
1004 subject listed below, provided that such material will then be considered part the plan, including
1005 its implementation. The master plan shall be internally consistent in its policies, forecasts and
1006 standards, and may support and provide a coherent rationale for the municipality's zoning
1007 ordinance or bylaws, subdivision regulations, and other land use laws, regulations, policies, and
1008 capital expenditures.

1009 The plan shall include the required subjects identified herein, any optional subjects at the
1010 discretion of the municipality, and the regional plan self assessment. The plan subjects may be
1011 written as separate elements or organized and integrated as deemed appropriate by the planning
1012 board. Due to the wide range of community types, characteristics, and planning needs in the
1013 commonwealth it is recognized that the subjects addressed with a particular city or town in mind
1014 may be expanded upon or contracted as appropriate, and may vary greatly among communities
1015 in the focus and depth of their analysis.

1016 Required Plan Subjects: Master plans need not include data collection or analysis in areas
1017 not related to land use and the long term physical development of the community. The plan shall
1018 address the following five required subjects, described below in a general manner:

1019 (1) Goals and Objectives: A statement that identifies the goals and objectives of the
1020 municipality for its future growth, development, redevelopment, conservation, and preservation.
1021 Each community shall conduct a public participation process to determine community values,

1022 establish goals, and identify patterns of development, redevelopment, conservation, and
1023 preservation consistent with these goals. The goals and objectives statement shall address the
1024 required and any additional selected optional plan subjects.

1025 (2) Housing: (a) An inventory of local demographic characteristics, an assessment and
1026 forecast of housing needs, and a statement of local housing policies. Where applicable, existing
1027 local housing plans and studies may be included by reference. (b) An analysis of housing units
1028 by type of structure (e.g., single-family, two-family, multi-family); affordable housing and
1029 subsidized housing; housing available for rental; special needs housing; and housing for the
1030 elderly, including assisted living residences. (c) An analysis of existing local policies, programs,
1031 laws, or regulations that encourage the preservation, improvement, and development of such
1032 housing, including an assessment of their adequacy. (d) An evaluation of zoning and other land
1033 use policies for the creation of a variety of housing that meets a broad range of housing needs,
1034 including but not limited to the affordable housing needs of low, moderate, and median income
1035 households and the accessible housing needs of people with disabilities and special needs. The
1036 evaluation shall examine specific measures to address these needs, including strategies,
1037 programs, and assistance for the preservation or rehabilitation of existing housing; the
1038 construction of new housing; and the adoption or amendment of local ordinances or bylaws and
1039 regulations permitting, encouraging, or requiring diversity in housing locations, types, designs,
1040 and area densities that offer alternatives to single family detached housing. A current housing
1041 production plan consistent with 760 CMR 56.03(4) may constitute the subject matter relative to
1042 this subsection (d).

1043 (3) Natural Resources and Energy Management: (a) A general overview of the
1044 significant natural and energy resources of the municipality. (b) Identification of protected and
1045 unprotected wetlands and water resources, lands critical to sustaining surface and groundwater
1046 quality and quantity, environmentally sensitive lands, critical wildlife habitat and biodiversity,
1047 agricultural lands and forests. Priorities for protection of wildlife habitat, water resources, vistas
1048 and key landscapes, outdoor recreation facilities, and farm and forestry land shall be identified.
1049 (c) An outline of local laws, regulations, policies, and strategies to address needs for the
1050 protection, restoration, and sustainable management of these resources and to promote
1051 development that respects and enhances the state's natural resources. (d) An energy component
1052 that explores locally feasible land use strategies to: maximize energy efficiency and renewable
1053 energy opportunities; support land, energy, water, and materials conservation strategies, local
1054 clean power generation, distributed generation technologies, and innovative industries; and
1055 address global climate change by reducing greenhouse gas emissions and the consumption of
1056 fossil fuels.

1057 (4) Land Use and Zoning: (a) An identification of historic settlement patterns and
1058 present land uses, and designation of the proposed distribution, location, and inter-relationship of
1059 public and private land uses in a general manner sufficient to guide the development of zoning
1060 ordinances or by-laws, zoning maps, and other land use regulations. (b) Land use policies and

1061 related maps, which shall be based upon a land use suitability analysis identifying areas most
1062 suitable for development and related transportation infrastructure and facilities. Growth and
1063 development areas, if identified, shall support the revitalization of city and town centers and
1064 neighborhoods by promoting development that is compact and walkable, conserves land, protects
1065 historic resources, integrates uses, and coordinates the provision of housing with the location of
1066 jobs, transit and services, and new infrastructure. The plan shall, if appropriate, identify areas for
1067 economic development and job creation, related public and private transportation and pedestrian
1068 connections, and encourage the creation or extension of pedestrian-accessible districts and
1069 neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with
1070 open space and housing. (c) A consideration of the relationship between proposed development
1071 intensity and the capacity of land and existing and planned public facilities and infrastructure.
1072 (d) A land use map illustrating the land use policies and desired future development patterns of
1073 the municipality and a proposed zoning map, both drawn in a general manner.

1074 (5) Implementation: An implementation program that defines and prioritizes the specific
1075 municipal actions necessary to achieve the goals and objectives of the master plan in accordance
1076 with the policies outlined therein. This program may be separately written or integrated into the
1077 required and selected subject matter. This implementation program shall specify the
1078 recommended course of action by which the municipality's regulatory structures, including
1079 zoning and subdivision control regulations, may need to be amended in order to be consistent
1080 with the master plan. This section may examine the current land use permitting process in a
1081 community and, if necessary, make recommendations for the development of clear, predictable,
1082 coordinated, and timely procedures thereunder, including an assessment of the adequacy and
1083 effectiveness of the existing structure of and roles and responsibilities of elected and appointed
1084 boards, officers, and personnel to implement the master plan through land use ordinances, by-
1085 laws, regulations, and procedures.

1086 Optional Subjects: The following seven subjects are optional depending upon community
1087 characteristics, and described below in a general manner:

1088 (6) Economic Development: (a) An inventory and analysis of the local economic base,
1089 including: employment; local industries and business clusters; labor force characteristics; land
1090 and buildings used for nonresidential purposes, including vacant space; and office, retail, and
1091 industrial market conditions. (b) An assessment of opportunities and barriers to economic
1092 development, including but not limited to identification of land use policies and available
1093 locations that: support the growth of jobs, the retention of existing businesses, and the provision
1094 of space for new businesses; encourage the reuse and rehabilitation of existing infrastructure,
1095 including brownfields, rather than the construction of new infrastructure in undeveloped areas;
1096 and facilitate larger-scale economic redevelopment or development in industry clusters
1097 consistent or compatible with the regional and local economy. (c) An assessment of
1098 opportunities and barriers to agriculture, including all branches of farming and forestry, where
1099 applicable. (d) An assessment of opportunities and barriers to self-employment and home-based

1100 occupations, including but not limited to consideration of land use policies, infrastructure and
1101 utilities, and communications technology.

1102 (7) Cultural Resources: (a) An inventory of the significant cultural, scenic, and historic
1103 structures, sites, and landscapes of the municipality, including archaeological resources. (b) An
1104 assessment of policies and strategies to protect and manage the community's cultural resources,
1105 including but not limited to a community-wide preservation plan, ordinances or bylaws and
1106 incentives for historic preservation, and land use policies to facilitate the reuse of historic
1107 structures, where appropriate.

1108 (8) Open Space Protection and Recreation: An inventory of recreational facilities and
1109 open space areas of the municipality, and policies and strategies for the management, protection,
1110 and enhancement of such facilities and areas as essential public health infrastructure. A current
1111 open space and recreational plan approved by the Division of Conservation Services shall
1112 constitute the subject matter relative to open space and recreation hereunder.

1113 (9) Infrastructure and Capital Facilities: An identification and analysis of existing and
1114 forecasted needs for infrastructure and facilities used by the public. Scheduled expansion or
1115 replacement of public facilities, infrastructure components such as water and sewer systems or
1116 circulation system components and the anticipated costs and revenues associated with
1117 accomplishment of such activities shall be detailed.

1118 (10) Transportation: (a) An inventory of existing and proposed circulation, parking, and
1119 transportation systems. (b) An assessment of opportunities and barriers to increasing access to
1120 available or feasible transportation options, including land and water-based public transit,
1121 bicycling, walking, and transportation services for populations with disabilities. (c)
1122 Identification of strategic investment options for transportation infrastructure to encourage smart
1123 growth, maximize mobility, conserve fuel, and improve air quality; and to facilitate the location
1124 of new development where a variety of transportation modes can be made available.

1125 (11) Water Management: (a) An inventory of current and potential municipal sources of
1126 water supply, including capacity and safe yield, and an assessment of water demand including
1127 types of water users, changes in water consumption over time, and water billing rate structure.
1128 (b) An assessment of the adequacy of existing and proposed water supplies to meet projected
1129 demands, water quality and treatment issues, existing measures for water supply protection,
1130 water conservation, drought management and emergency interconnections. (c) An assessment of
1131 the ability of stormwater regulations and practices to limit off-site stormwater runoff to levels
1132 substantially similar to natural hydrology through decentralized management practices and the
1133 protection of on-site natural features. (d) An analysis of municipal need and capacity for
1134 wastewater disposal, including the suitability of sites and water bodies for the discharge of
1135 treated wastewater. (e) Recommended strategies for water supply provision and protection,

1136 water conservation, wastewater disposal, stormwater management, drought management and
1137 emergency interconnections, and needed improvements to meet future water resource needs.

1138 (12) Public Health: (a) An inventory of conditions and assets in the natural and built
1139 environment which contribute to or constitute a barrier to health. These conditions may include
1140 parks and recreational facilities; local agriculture; walking, bicycling and public transit options,
1141 including the safety and walkability of streets and public spaces; access to affordable housing,
1142 economic opportunities, and medical and other services; environmental quality; and sustainable
1143 development. The inventory should describe conditions with a disproportionate impact on
1144 residents based on geography, ethnicity, income, immigration status, or other characteristics.
1145 Where applicable, this inventory may reference other sections of the master plan. (b) An
1146 assessment of opportunities and barriers to increasing access to conditions and assets in the
1147 natural or built environment that contribute to health. (c) Recommendations of available
1148 implementation policies and strategies, including zoning and other local laws and regulations,
1149 affecting health needs related to the natural or built environment.

1150 Regional Plan, Self Assessment: Any required or selected optional subjects above shall
1151 include a self assessment against similar subject matter in a regional plan adopted by the regional
1152 planning agency under section 5 of chapter 40B and in effect, if any, or under any special act.

1153 Proposal, Adoption, and Distribution of Plan: The plan shall only be made, extended,
1154 revised, or remade from time to time by a simple majority vote of the planning board after a
1155 public hearing, notice of which shall be posted and published in the manner prescribed for
1156 zoning amendments under section 5 of chapter 40A. Following any such action, the planning
1157 board shall transmit the plan to the chief executive officer of the city or town, and the plan shall
1158 be an agenda item or warrant article on a subsequent legislative session of the city or town.
1159 Adoption of the plan, or the extension, revision, or remake of the plan, shall be by a simple
1160 majority vote of the legislative body of the city or town; however, no vote of the legislative body
1161 to alter the plan or amendment as proposed by the planning board shall be other than by a two-
1162 thirds majority. The planning board shall, upon adoption by the legislative body of any plan or
1163 report, or any change or amendment to a plan or report produced under this section, furnish a
1164 copy of such plan or report or amendment thereto, to the Department of Housing and Community
1165 Development.

1166 Barnstable and Dukes Counties: Instead of adopting a master plan pursuant to the
1167 requirements of this section 81D, a municipality in Barnstable or Dukes county may adopt a
1168 local comprehensive plan pursuant to the special acts that protect those two regions, St. 1989, c.
1169 716, as amended, and St. 1977, c. 831, as amended, respectively, and the regulations and
1170 regional policy plans adopted thereunder. The regional planning agency shall review the local
1171 comprehensive plan solely for consistency with the governing special act (St. 1989, c. 716 or St.
1172 1977, c. 831, as these acts may be amended) and any regulations and regional policy plans
1173 adopted thereunder, rather than the requirements for master plans set forth in this section 81D.

1174 The time limits and requirements set forth in this section 81D shall not apply to the review of
1175 such local comprehensive plans. An adopted local comprehensive plan certified by the regional
1176 planning agency as consistent with this section 81D shall be deemed a master plan in compliance
1177 with this section 81D and shall entitle the municipality to any statutory benefits of having an
1178 adopted master plan.

1179 SECTION 29. Section 81L of said chapter 41 of the General Laws, as so appearing, is
1180 hereby amended by striking out the definition of “Subdivision” and inserting in place thereof the
1181 following definition:-

1182 “Subdivision” shall mean the division of a lot, tract, or parcel of land into two or more
1183 lots, tracts, or parcels of land and shall include re-subdivision. When appropriate to the context,
1184 subdivision shall include the process of subdivision or the land or territory subdivided. A change
1185 in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may
1186 be defined as a minor subdivision and, in such case, be governed by the provisions of section
1187 81P.

1188 SECTION 30. Said section 81L of said chapter 41, as so appearing, is hereby amended
1189 by inserting the following definition:-

1190 “Minor Subdivision” shall mean a residential subdivision created in accordance with
1191 section 81P, provided however that until rules and regulations are adopted by a planning board
1192 under 81P therefor, “minor subdivision” shall solely mean the division of a lot, tract, or parcel of
1193 land into two or more lots, tracts, or parcels where, at the time when it is made, every lot within
1194 the lot, tract or parcel so divided has frontage on: a) a public way or a way which the clerk of the
1195 city or town certifies is maintained and used as a public way; b) a way shown on a plan
1196 theretofore approved and endorsed in accordance with the subdivision control law; or c) a way in
1197 existence when the subdivision control law became effective in the city or town in which the
1198 land lies, having, in the opinion of the planning board, sufficient width, suitable grades and
1199 adequate construction to provide for the needs of vehicular traffic in relation to the proposed use
1200 of the land abutting thereon or served thereby, and for the installation of municipal services to
1201 serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at
1202 least such distance as is then required by the zoning ordinance or by-law, if any, of said city or
1203 town for erection of a building on such lot, and if no distance is so required, such frontage shall
1204 be of at least 20 feet.

1205 SECTION 31. Section 81O of said chapter 41, as so appearing, is hereby amended by
1206 striking out the second sentence in the first paragraph and inserting in place thereof the following
1207 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,
1208 and size of the lots shown thereon, may not be changed unless the plan is amended as provided
1209 in section 81W. In the alternative, a planning board may adopt rules and regulations under

1210 sections 81P and 81Q of this chapter defining and regulating such changes as minor
1211 subdivisions.

1212 SECTION 32. Said chapter 41, as so appearing, is hereby amended by striking out
1213 section 81P and inserting in place thereof the following section 81P:-

1214 41:81P. Minor Subdivisions

1215 Section 81P. Applicability: Minor subdivisions, as defined in this chapter, and as may be
1216 further defined in the local subdivision rules and regulations, shall be governed by this section.
1217 Section 81S and the public hearing requirements in section 81T of this chapter shall not apply to
1218 minor subdivisions. Except as provided below, all other sections of the subdivision control law
1219 that apply to subdivisions shall apply to minor subdivisions in so far as apt.

1220 Rules and Regulations, Transition Provision: A planning board may adopt alternative
1221 rules and regulations under section 81Q of this chapter relative to minor subdivisions, but in no
1222 case may such rules and regulations impose a procedural or substantive requirement more
1223 stringent than those specified in this chapter, this section 81P, or contained in the local rules and
1224 regulations otherwise applicable to subdivisions. Until such rules and regulations are adopted,
1225 the procedures in the sixth paragraph below shall apply to minor subdivisions.

1226 Rules and Regulations, Required Provisions: The rules and regulations for minor
1227 subdivisions shall: specify that an application for a minor subdivision may create up to six
1228 additional residential lots within the meaning of the subdivision control law, either on ways
1229 described in the definition of minor subdivision or on new ways; set forth the reasonable
1230 requirements and standards of the board for those existing ways described in the definition of
1231 minor subdivision, provided that no requirements shall be made for the location of such ways
1232 and that requirements for total travelled lanes widths of greater than 22 feet in a residential minor
1233 subdivision shall be presumed to serve no valid purpose of the subdivision control law unless
1234 such widths already exceed 22 feet; set forth the reasonable requirements and standards of the
1235 board for the proposed ways shown on a plan, provided that requirements for total travelled lanes
1236 widths of greater than 22 feet in a residential minor subdivision shall be presumed to serve no
1237 valid purpose of the subdivision control law unless such ways are designed to be extended to
1238 later serve a greater number of residential lots; and establish a time period for the planning board
1239 to take final action and to file with the city or town clerk a certificate of such action within 65
1240 days or less in the case of an existing way, or 95 days or less in the case of a new way.

1241 Rules and Regulations, Optional Provisions: The rules and regulations for minor
1242 subdivisions may: notwithstanding the first paragraph above, require a public hearing under
1243 Section 81T of this chapter for minor subdivisions served by a new way; require that applications
1244 for minor subdivisions from the same lot, tract, or parcel from which the first minor subdivision
1245 was created not create more than the maximum number of additional lots in a set period of years;
1246 lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to

1247 subdivisions; lessen or eliminate any local rule or regulation adopted under section 81Q of this
1248 chapter otherwise applicable to subdivisions; and describe a means by which the planning board
1249 may, by agreement with the applicant, accept payments from the applicant in lieu of otherwise
1250 required improvements to an existing way, provided those improvements are completed by the
1251 city or town in a reasonable period of time.

1252 Rules and Regulations, Optional Provisions Requiring Ratification by Legislative Body:
1253 Subject to ratification by the local legislative body by a simple-majority vote, the rules and
1254 regulations for minor subdivisions may increase the maximum number of additional lots created
1255 in an application for a minor subdivision to a number greater than six and define “minor
1256 subdivision” more broadly than in section 81L of this chapter.

1257 Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted: Until
1258 such rules and regulations are adopted, any person wishing to cause to be recorded a plan of land
1259 situated in a city or town in which the subdivision control law is in effect, who believes that his
1260 plan does not require approval under the subdivision control law, may submit his plan to the
1261 planning board of such city or town in the manner prescribed in section 81T, and, if the board
1262 finds that the plan does not require such approval, it shall forthwith, without a public hearing,
1263 endorse thereon or cause to be endorsed thereon by a person authorized by it the words “approval
1264 under the subdivision control law not required” or words of similar import with appropriate name
1265 or names signed thereto, and such endorsement shall be conclusive on all persons. Such
1266 endorsement shall not be withheld unless such plan shows a subdivision. If the board shall
1267 determine that in its opinion the plan requires approval, it shall within 21 days of such submittal,
1268 give written notice of its determination to the clerk of the city or town and the person submitting
1269 the plan, and such person may submit his plan for approval as provided by law and the rules and
1270 regulations of the board, or he may appeal from the determination of the board in the manner
1271 provided in section 81BB. If the board fails to act upon a plan submitted under this section or
1272 fails to notify the clerk of the city or town and the person submitting the plan of its action within
1273 21 days after its submission, it shall be deemed to have determined that approval under the
1274 subdivision control law is not required, and it shall forthwith make such endorsement on said
1275 plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the
1276 same effect. The plan bearing such endorsement or the plan and such certificate, as the case may
1277 be, shall be delivered by the planning board, or in case of the certificate, by the city or town
1278 clerk, to the person submitting such plan. The planning board of a city or town which has
1279 authorized any person, other than a majority of the board, to endorse on a plan the approval of
1280 the board or to make any other certificate under the subdivision control law, shall transmit a
1281 written statement to the register of deeds and the recorder of the land court, signed by a majority
1282 of the board, giving the name of the person so authorized.

1283 SECTION 33. Section 81Q of said chapter 41, as so appearing, is hereby amended by
1284 inserting after the fourth sentence thereof the following sentence:- Without limiting the
1285 foregoing, there shall be a rebuttable presumption that such rules and regulations are unlawfully

1286 excessive, to the extent that the design and dimensional requirements thereof for the laying out,
1287 construction or alteration of ways exceed the standards and criteria commonly applied by that
1288 city or town to the reconstruction of its publicly financed ways located in similarly zoned
1289 districts within such city or town. Design and dimensional requirements for total travel lane
1290 widths no greater than 24 feet shall be presumed not to be excessive.

1291 SECTION 34. Said section 81Q of said chapter 41, as so appearing, is hereby amended
1292 by inserting after the word “thereof,” in line 69, the following words:- except that the rules and
1293 regulations may require the plan to show a park or parks suitably located for playground or
1294 recreation purposes benefiting the lots in the subdivision or for providing light and air, and not
1295 exceeding five percent of the land being subdivided.

1296 SECTION 35. Section 81T of said chapter 41, as so appearing, is hereby amended by
1297 striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is
1298 not required”.

1299 SECTION 36. Section 81U of said chapter 41, as so appearing, is hereby amended by
1300 striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

1301 SECTION 37. Section 81X of said chapter 41, as so appearing, is hereby amended by
1302 striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of
1303 the planning board that approval of such plan is not required, as provided in section eighty-one P,
1304 or (3)”.

1305 SECTION 38. Said section 81X of said chapter 41, as so appearing, is hereby amended
1306 by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted
1307 pursuant to section eighty-one P and that it has been determined by failure of the planning board
1308 to act thereon within the prescribed time that approval is not required,”.

1309 SECTION 39. Said section 81X of said chapter 41, as so appearing, is hereby amended
1310 by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

1311 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the register of
1312 deeds shall accept for recording, and the land court shall accept with a petition for registration or
1313 confirmation of title, any plan bearing a professional opinion by a registered professional land
1314 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of
1315 streets and ways shown are those of public or private streets or ways already established, and that
1316 no new lines for division of existing ownership or for new ways are shown.

1317 Lot Line Changes: The register of deeds and the land court shall accept for recording or
1318 registration any plan showing a change in the line of any lot, tract, or parcel bearing a
1319 professional opinion by a registered professional land surveyor and a certificate by the person or
1320 board charged with the enforcement of the zoning ordinance or by-law of the city or town that

1321 the property lines shown: do not create an additional building lot; do not create, add to, or alter
1322 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render
1323 an existing nonconforming lot or structure more nonconforming; and are not subject to
1324 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.
1325 The recording of such plan shall not relieve any owner from compliance with the provisions of
1326 the Subdivision Control Law or of any other applicable provision of law.

1327 SECTION 40. Section 81BB of said chapter 41, as so appearing, is hereby amended by
1328 striking out the first paragraph, and inserting in place thereof the following paragraph:-

1329 Section 81BB. Any person, whether or not previously a party to the proceedings, or any
1330 municipal officer or board, aggrieved by a decision of a board of appeals under section 81Y, or
1331 by any decision of a planning board concerning a plan of a subdivision of land, or by the failure
1332 of such a board to take final action concerning such a plan within the required time, may appeal
1333 to the superior court for the county in which said land is situated or to the land court; provided,
1334 that such appeal is entered within twenty days after such decision has been recorded in the office
1335 of the city or town clerk or within twenty days after the expiration of the required time as
1336 aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as
1337 to be received within such twenty days. Such civil action shall be in the nature of certiorari
1338 pursuant to section 4 of chapter 249. A complaint by a plaintiff challenging a subdivision or
1339 minor subdivision approval under this section shall allege the specific reasons why the
1340 subdivision or minor subdivision fails to satisfy the requirements of the board's rules and
1341 regulations or other applicable law and allege specific facts establishing how the plaintiff is
1342 aggrieved by such decision. A complaint by an applicant challenging a subdivision or minor
1343 subdivision denial or conditioned approval under this section shall similarly allege the specific
1344 reasons why the subdivision or minor subdivision properly satisfies the requirements of the
1345 board's rules and regulations or other applicable law.

1346 SECTION 41. Section 3A of chapter 185 of the General Laws, as appearing in the 2010
1347 Official Edition, is hereby amended by striking out the third paragraph in its entirety and
1348 inserting in place thereof the following paragraph:-

1349 The permit session shall have original jurisdiction, concurrently with the superior court
1350 department, over civil actions in whole or part: (1) based on or arising out of the appeal of any
1351 municipal, regional, or state permit, order, certificate or approval, or the denial thereof,
1352 concerning the use or development of real property for residential, commercial, or industrial
1353 purposes (or any combination thereof), including without limitation appeals of such permits,
1354 orders, certificates or approvals, or denials thereof, arising under or based on or relating to
1355 chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive,
1356 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of
1357 1956; or any local bylaw or ordinance; (2) seeking equitable or declaratory relief designed to
1358 secure or protect the issuance of any municipal, regional, or state permit or approval concerning

1359 the use or development of real property, or challenging the interpretation or application of any
1360 municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any
1361 permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution,
1362 abuse of process, intentional or negligent interference with advantageous relations, or intentional
1363 or negligent interference with contractual relations arising out of, based upon, or relating to the
1364 appeal of any municipal, regional, state permit or approval concerning the use or development of
1365 real property; and (4) any other claims between persons holding any right, title, or interest in land
1366 and any municipal, regional or state board, authority, commission, or public official based on or
1367 arising out of any action taken with respect to any permit or approval concerning the use or
1368 development of real property but in all such cases of claims (1) to (4), inclusive, only if the
1369 underlying project or development, in the case of a development that is residential or a mix of
1370 residential and commercial components, involves either 25 or more dwelling units or the
1371 construction or alteration of 25,000 square feet or more of gross floor area or both or, in the case
1372 of a commercial development, involves the construction or alteration of 25,000 square feet or
1373 more of gross floor area. Industrial development projects and any project in which an industrial
1374 use is a component of a mixed-use project shall not be subject to any such minimum thresholds.

1375 SECTION 42. Said section 3A of said chapter 185, as so appearing, is hereby further
1376 amended by striking out the fourth paragraph in its entirety and inserting in place thereof the
1377 following paragraph:-

1378 Notwithstanding any other general or special law to the contrary, any action not
1379 commenced in the permit session, but within the jurisdiction of the permit session as provided in
1380 this section, shall be transferred to the permit session, upon the filing by any party of a notice
1381 demonstrating compliance with the jurisdictional requirements of this section filed with the court
1382 where the action was originally commenced with a copy to the permit session. Unless the court
1383 where the action was originally commenced receives notice within 10 days from the permit
1384 session that the case to be transferred does not meet the jurisdictional requirements of this
1385 section, the original court shall transfer the case file to the permit session within 20 days of its
1386 receipt of the notice of transfer from the party. In the event the court receives notice of
1387 noncompliance with jurisdictional requirements, the court where the action was originally
1388 commenced shall decide the matter on motion filed by the party claiming noncompliance. If a
1389 party to an action commenced in or transferred to the permit session claims a valid right to a jury
1390 trial, then the action shall be transferred to the superior court for a jury trial.

1391 SECTION 43. Section 14A of chapter 240 of the General Laws, as appearing in the 2010
1392 Official Edition, is hereby amended by inserting after the first paragraph the following
1393 paragraph:-

1394 In any claim challenging the validity of any provision of a zoning ordinance or by-law,
1395 the court shall first determine if the provision challenged is consistent with the city's or town's
1396 master plan adopted pursuant to chapter 41, section 81D, if any. If the court determines that the

1397 challenged provision is consistent with the master plan, then such provision shall be deemed to
1398 serve a public purpose. A determination of inconsistency by the court or the absence of an
1399 adopted master plan shall not for that reason alone be determinative of whether the challenged
1400 provision serves a public purpose.