

HOUSE No. 4065

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act promoting the planning and development of sustainable communities.

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

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 2012
20 Official Edition, is hereby amended by striking the definition of “permit granting authority” and
21 inserting the following definition:-

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

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

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

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

37 “Cluster development” means a class of residential development in which reduced
38 dimensional requirements allow the developed areas to be concentrated in order to permanently
39 preserve natural 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 “Density divisor”, means the number of net acres of land required to support a specified
45 unit of development, but does not necessarily mean a lot size.

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

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

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

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

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

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

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

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

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

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

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

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

110 40A:2. Authority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

196 SECTION 12. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
197 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

198 If a complete application for a definitive plan is duly submitted to a planning board for
199 approval under the subdivision control law, and written notice of such submission has been given
200 to the city or town clerk before the first publication of notice of the public hearing on such
201 ordinance or by-law required by section five, the plan shall be governed by the applicable
202 provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such
203 submission while such plan or plans are being processed under the subdivision control law, and,

204 if such definitive plan or an amendment thereof is finally approved, for eight years from the date
205 of the endorsement of such approval. For the purposes of this section the term definitive
206 subdivision plan shall include a minor subdivision under section 81L and 81P of chapter 41,
207 provided the planning board has adopted rules and regulations for minor subdivisions under
208 section 81Q of said chapter. In such cases, the aforesaid provisions shall apply but the period of
209 time shall be four years from the date of the endorsement of such approval. Such period of eight
210 or four years shall be extended by a period equal to the time which a city or town imposes or has
211 imposed upon it by a state, a federal agency, or a court, a moratorium on construction, the
212 issuance of permits, or utility connections.

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

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

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

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

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

229 SECTION 18. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
230 striking out the fourteenth paragraph and inserting in place thereof the following paragraphs:-

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

239 Upon written application by the grantee of a special permit, the special permit granting
240 authority in its discretion after notice and a public hearing, unless under local ordinance or by-
241 law a public hearing is not required, may by the vote majority currently required to approve a
242 special permit, extend the time for the exercise of such special permit for a period of time not to
243 exceed the original duration of the special permit. Such application must be filed no later than
244 65 days prior to the lapse of the special permit. If the permit granting authority does not grant
245 the extension within 65 days of the date of application therefor, upon the lapse of the special
246 permit, the special permit may only be re-established pursuant to the requirements of this section.

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

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

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

253 40A:9D. Site Plan Review

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

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

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

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

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

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

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

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

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

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

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

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

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

339 40A:9E. Development Impact Fees

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

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

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

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

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

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

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

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

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

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

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

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

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

406 Any funds not expended or encumbered by the end of the calendar quarter immediately
407 following 10 years from the date the development impact fee was paid shall, upon request of the
408 applicant or its assigns, be returned with interest provided that an application for a refund
409 prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to
410 the expiration of the 10 year period. If no application for refund is received by the city or town
411 within said period, any funds not expended or encumbered by the end of the calendar quarter
412 shall be deposited into an enterprise fund under section 53F1/2 of chapter 44 or other such
413 dedicated fund, the use of which is limited to defraying costs of the off-site public capital
414 facilities listed in the ordinance or by-law. In the event of any disagreement relative to who shall
415 receive the refund, the city or town may retain said development impact fee pending instructions
416 given in writing by the parties involved or by a court of competent jurisdiction. Notwithstanding
417 the foregoing, a city or town authorized to impose development impact fees pursuant to a special
418 act shall comply with the requirements set forth in such special act.

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

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

424 Consultant Fees: The board or official designated by ordinance or by-law to review
425 development impact fees under this section may, by rules and regulations adopted by such board
426 or official, provide for the imposition of reasonable fees for the employment of outside
427 consultants in the same manner as set forth in section 53G of chapter 44.

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

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

436 40A:9F. Inclusionary Zoning

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

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

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

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

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

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

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

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

480 40A:9G. Land Use Dispute Avoidance

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

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

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

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

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

505 Rules: Public officials or local boards may adopt, and from time to time amend, after a
506 public hearing, rules to implement the conflict evaluation or resolution efforts undertaken
507 pursuant to this section. For this rule-making, public officials and local boards may seek the
508 assistance of the Massachusetts Office of Public Collaboration or its successor agency or its
509 designee in developing best practices for land use dispute avoidance. Notice of the hearing on the
510 proposed rules, including the location, date, and time of the hearing shall be filed with the city or
511 town clerk and published once in a newspaper of general circulation in the city or town at least
512 14 days before the public hearing.

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

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

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

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

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

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

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

551 40A:10. Variances

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

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

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

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

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

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

587 Recordation of Variance: No variance, or any extension, modification or renewal thereof,
588 shall take effect until a copy of the decision bearing the certification of the city or town clerk that
589 20 days have elapsed after the decision has been filed in the office of the city or town clerk is
590 recorded in the registry of deeds for the county and district in which the land is located and
591 indexed in the grantor index under the name of the owner of record or is recorded and noted on
592 the owner's certificate of title. The certification shall include either a statement that no appeal has
593 been filed or that if such appeal has been filed, that it has been dismissed or denied; or if it is a
594 variance which has been approved by reason of the failure of the permit granting authority to act
595 thereon within the time prescribed, a copy of the petition for the variance accompanied by the
596 statement of the city or town clerk stating the fact that the permit granting authority failed to act
597 within the time prescribed, and no appeal has been filed, and that the grant of the petition
598 resulting from such failure to act has become final or that if such appeal has been filed, that it has
599 been dismissed or denied. The fee for recording or registering shall be paid by the owner or
600 applicant.

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

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

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

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

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

622 CHAPTER 40X

623 CONSOLIDATED PERMITTING

- 624 1. Definitions
- 625 2. Concurrent Applications
- 626 3. Consolidated Hearing and Notice
- 627 4. Decisions

628 40X:1. Definitions

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

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

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

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

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

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

646 “Local Permit” means any permit, site plan review, certificate, order (excluding
647 enforcement orders), license, certification, determination, exemption, variance, waiver, or other
648 approval or determination of rights by any Local Board concerning the use or development of
649 real property that is issued or made under chapter 40, chapter 40A to 40C, inclusive, chapter
650 40R, chapter 41, chapter 43D, chapter 131, chapter 131A, or any local by-law or ordinance,
651 regardless of whether a public hearing is required by law.

652 40X:2. Concurrent Applications

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

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

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

673 40X:3. Consolidated Hearing and Notice

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

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

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

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

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

698 40X:4. Decisions

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

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

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

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

711 CHAPTER 40Y

712 PLANNING AHEAD FOR GROWTH ACT

713 1. Preamble

714 2. Definitions

715 3. Elements of implementing regulations

716 4. Certification and adoption of implementing regulations

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

718 6. Review of certification by regional planning agency

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

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

721 9. Regulations

722 40Y:1 Preamble

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

728 40Y:2 Definitions

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

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

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

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

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

758 “Economic development district” means a zoning district that permits or allows
759 commercial or industrial use or permits or allows mixed use including commercial or residential
760 or industrial use, and is an eligible location.

761 “Eligible location” means an area that by virtue of its physical and regulatory suitability
762 for development, the adequacy of transportation and other infrastructure and the compatibility of
763 proximate land uses is, in the determination of the regional planning agency, a suitable location
764 for development of the type contemplated by the implementing regulations. Any area that would
765 qualify as an “eligible location” under chapter 40R shall automatically qualify as an “eligible
766 location” for a residential development district. Any area that has been designated as a priority
767 development site under chapter 43D shall automatically qualify as an “eligible location” for an
768 economic development district.

769 “Housing target number” means a number equal to five per cent of the total number of
770 year-round housing units enumerated for the municipality in the latest available United States
771 census as of the date on which the implementing regulations are submitted to the regional

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

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

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

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

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

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

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

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

810 “Prompt and predictable permitting” means that zoning and other local land use
811 regulations allow development to proceed as of right by permitting processes that are designed to
812 result in final decisions on all local permits and approvals in less than 180 days. For commercial
813 and industrial development, local permitting pursuant to chapter 43D shall also be deemed
814 “prompt and predictable permitting.” Where a development permit application is referred to the
815 Cape Cod Commission, the Nantucket Planning and Economic Development Commission, or the
816 Martha’s Vineyard Commission under chapter 716 of the Acts of 1989, chapter 561 of the Acts
817 of 1973, or chapter 831 of the Act of 1977, respectively, as those acts may be amended, or the
818 review of a development permit application is suspended by the operation of those acts, the
819 zoning and other local land use regulations shall still be considered “prompt and predictable
820 permitting” if, but for such referral or suspension, they otherwise would meet the requirements of
821 this definition.

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

828 “Regional planning agency” means the regional or district planning commission
829 established pursuant to chapter 40B for the region within which a municipality is located. The
830 term shall also mean the Martha’s Vineyard Commission, as described in chapter 831 of the Acts
831 of 1977, the Nantucket Planning and Economic Development Commission, as described in
832 chapter 561 of the Acts of 1973, the Cape Cod Commission, as described in chapter 716 of the
833 Acts of 1989, the Franklin Council of Governments, as described in chapter 151 of the Acts of
834 1996, and the Northern Middlesex Council of Governments, as described in chapter 420 of the
835 Acts of 1989.

836 “Residential development district” means a zoning district that: permits or allows through
837 prompt and predictable permitting residential use at a density of not less than four units per acre
838 of developable land for single-family residential use, not less than eight units per acre of
839 developable land for two- and three-family and attached townhouse residential use, or not less
840 than twelve units per acre of developable land for multi-family residential use, or permits or
841 allows mixed use including residential use at such density; is an eligible location; and does not
842 impose other requirements that add unreasonable costs or otherwise unreasonably impair the
843 economic feasibility of residential development at such density. A zoning district that permits or
844 allows mixed use may qualify as both an economic development district and a residential
845 development district, if the standards for both districts are met. The implementing regulations

846 for any residential development district that permits or allows mixed use shall contain adequate
847 provisions to ensure that any contemplated contribution towards the housing target number to be
848 provided by such district will be achieved. The foregoing minimum density for single-family
849 residential use may be reduced to not less than two units per acre of developable land upon a
850 determination by the regional planning agency that the lack of adequate water supply or
851 wastewater infrastructure within the municipality prevents full compliance with the minimum
852 density standard. If there is no public water supply or public wastewater infrastructure existing
853 anywhere within the municipality, then the minimum density for single-family residential use
854 may be reduced to not less than two units per acre of developable land without the need for a
855 determination by the regional planning agency.

856 “Secretary” means the secretary of the Executive Office of Housing and Economic
857 Development.

858 40Y:3 Elements of Implementing Regulations

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

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

866 (B) Establish prompt and predictable permitting of residential development within one or
867 more identified residential development districts that can collectively accommodate, in the
868 determination of the regional planning agency, a number of new housing units (excluding new
869 housing units which are restricted, through zoning or other legal means, as to the number of
870 bedrooms or as to the age of their residents) equal to the housing target number. For the initial
871 certification of implementing regulations, a municipality’s housing target number shall be
872 reduced by the number of new housing units for which building permits were issued within two
873 years prior to the municipality’s effective date, to the extent such building permits were issued
874 within residential development districts for which there was prompt and predictable permitting at
875 the time of building permit issuance.

876 (C) Require that, for any zoning district that requires a minimum lot area of greater than
877 40,000 square feet for single-family residential development, development of five or more new
878 housing units utilize open space residential design, except upon a determination by the regional
879 planning agency that open space residential design is not feasible or the land and natural resource
880 conservation objectives of open space residential design are achieved through alternate means
881 such as the transfer of development rights or natural resource protection zoning. Open space
882 residential design may be found infeasible due to adoption of development limitations necessary

883 to qualify for zero rate of interest state revolving fund loans, or due to the requirements of an
884 area-wide plan, management program or other plan or program implemented pursuant to section
885 208 of the federal Clean Water Act, 33 United States Code section 1251, et seq. In districts
886 requiring minimum lot areas of between 40,000 and 80,000 square feet where Title 5 of the
887 Environmental Code is in effect, the minimum preservation requirement of 50 per cent set forth
888 in section 2, open space residential design, shall be modified to equal the percentage resulting
889 from the subtraction of 40,000 square feet from the lot size requirement, divided by the lot size
890 requirement, and multiplied by 100, except to the extent inconsistent with requirements adopted
891 by a regional planning agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts
892 of 1977, as those acts may be amended.

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

896 (E) Contiguous municipalities may also satisfy the requirements of this Section 3 on a
897 regional or multi-municipal basis under the following conditions: (i) the number of new housing
898 units (excluding new housing units which are restricted, through zoning or other legal means, as
899 to the number of bedrooms or as to the age of their residents) provided by these residential
900 development districts, in the aggregate, must equal the housing target number, as calculated by
901 summing the target numbers of all participating municipalities; and (ii) each municipality must
902 satisfy the requirements of subsections (A), (C), and (D). For municipalities within Barnstable
903 and Dukes counties, municipalities must also be consistent with any regional policy plans and
904 districts of critical planning concern adopted by, and local comprehensive plans certified by, the
905 regional planning agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts of
906 1977, respectively, as those acts may be amended.

907 40Y:4 Certification and adoption of implementing regulations

908 Section 4. The chief executive officer of the municipality may submit the implementing
909 regulations to the regional planning agency for certification. Within 90 days of receiving a
910 submission, the regional planning agency shall determine whether the implementing regulations
911 are consistent with the requirements of this chapter. The implementing regulations shall be
912 deemed consistent with this chapter if they effectuate the commitments established in section 3
913 herein. Implementing regulations shall have the benefit of a presumption of consistency with the
914 requirements for eligible locations of this chapter if the regulations are consistent with a process
915 of mapping priority development and preservation areas within the municipality, undertaken by
916 municipal planning officials in collaboration with the regional planning agency. If the regional
917 planning agency determines that the implementing regulations are consistent with this chapter,
918 then the agency shall issue a written certification to that effect. If the regional planning agency
919 determines that it is unable to issue such a certification, then the agency shall provide the
920 municipality with a written statement of the reasons for its determination. A municipality may

921 re-submit for certification at any time modified implementing regulations that address the issues
922 set forth in the agency’s statement of reasons. If the regional planning agency does not issue a
923 certification or provide a statement of reasons within 90 days after receiving implementing
924 regulations (including re-submitted implementing regulations), then the implementing
925 regulations shall be deemed certified. Where implementing regulations are submitted for
926 certification on a regional or multi-municipal basis pursuant to Section 3(E) of this chapter, they
927 shall be submitted jointly by the chief executive officer of each municipality.

928 Following certification by the regional planning agency, the implementing regulations
929 may be adopted by the municipality or municipalities. On the date of receipt by the regional
930 planning agency of proof of adoption of the certified implementing regulations, a municipality
931 shall be deemed a “certified community.” Such date shall be deemed the “municipality’s
932 effective date.”

933 40Y:5 Effect of certified community status on zoning and land use regulation

934 Section 5. (A) Following the municipality’s effective date, local zoning or general
935 ordinances or by-laws, subdivision rules and regulations, and other local land use regulations
936 (other than certified implementing regulations) which are determined to be inconsistent with the
937 certified implementing regulations shall be invalid as applied within the areas subject to the
938 certified implementing regulations. Such a determination may be sought and obtained through
939 any means otherwise available by statute for the determination of the validity of such land use
940 regulations. Any material amendment to certified implementing regulations that has not been
941 prepared, certified and adopted in accordance with the provisions hereof shall be presumed to be
942 inconsistent with this chapter.

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

948 (C) If at any time more than two years after the municipality’s effective date the total
949 number of housing units for which building permits have been applied for within the residential
950 development districts since the municipality’s effective date is greater than the housing target
951 number (adjusted pro rata if the number of years since the municipality’s effective date is less
952 than ten), but the total number of housing units for which building permits have been issued
953 within the residential development districts is less than the pro rata housing target number, then
954 the provisions of this subsection shall be in effect. During such time period, any applications for
955 building permits or other local land use permits for residential development within such
956 residential development districts shall be deemed constructively approved if not acted upon
957 within 180 days after receipt of permit applications. In addition, an application received under

958 this section shall be subject only to those conditions that are necessary to ensure substantial
959 compliance of the proposed development project with applicable laws and regulations; and it
960 may be denied only on the grounds that: the proposed development project does not substantially
961 comply with applicable laws and regulations; or the applicant failed to submit information and
962 fees required by applicable laws and regulations and necessary for an adequate and timely review
963 of the development project. The foregoing provisions shall no longer be in effect once the total
964 number of housing units for which building permits have been issued within such residential
965 development districts equals or exceed the pro rata housing target number. The provisions of
966 this subsection shall not apply where a development permit application is referred to the Cape
967 Cod Commission or the Martha's Vineyard Commission under chapter 716 of the Acts of 1989
968 or chapter 831 of the Act of 1977, respectively, as those acts may be amended, or the review of a
969 development permit application is suspended by the operation of those acts.

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

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

976 (F) Following the municipality's effective date, and notwithstanding section 6 of chapter
977 40A, the minimum vesting period for a definitive subdivision plan shall not be eight years, but
978 shall instead be five years. This provision shall not apply to the four-year minimum vesting
979 period for minor subdivisions in said section.

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

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

988 40Y:6 Review of certification by regional planning agency

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

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

996 If a municipality provides written notice to the secretary of the certification by a regional
997 planning agency of implementing regulations or a material amendment of same (including a
998 deemed certification resulting from a regional planning agency’s failure to act), then the
999 secretary may only review such certification if such review is completed within 60 days of such
1000 written notice.

1001 The secretary may through regulation, with the concurrence of the secretary of the
1002 Executive Office of Energy and Environmental affairs, establish a procedure for reviewing and
1003 approving guidelines prepared by regional planning agencies to be used in the certification of
1004 implementing regulations and material amendments thereto. If a certification or determination of
1005 non-certification has been issued by the regional planning agency based upon an approved
1006 guideline, then the secretary may only modify or reverse such decision for inconsistency with the
1007 approved guideline.

1008 Notwithstanding any other provision of this section, the secretary may not review a
1009 determination under Section 3(E) of this chapter by the regional planning agency that
1010 implementing regulations are or are not consistent with regional policy plans and districts of
1011 critical planning concern adopted under, or local comprehensive plans certified under, chapter
1012 716 of the Acts of 1989 or chapter 831 of the Act of 1977, respectively, as those acts may be
1013 amended, nor may the secretary modify such a determination or any conditions found by the
1014 regional planning agency to be necessary to such a determination.

1015 40Y:7 Expiration and renewal of certified community status; amendments

1016 Section 7. A municipality’s status as a certified community shall expire ten years after
1017 the municipality’s effective date, unless renewal implementing regulations are prepared,
1018 certified, and to the extent necessary adopted in accordance with the provisions hereof prior to
1019 such date. Each such renewal implementing regulations shall also expire in ten years. Expiration
1020 of a municipality’s status as a certified community shall cause section 5 herein to be inapplicable
1021 to such municipality.

1022 From and after a municipality’s effective date, any material amendment to certified
1023 implementing regulations shall be prepared, certified, and adopted in accordance with the
1024 provisions hereof.

1025 40Y:8 Priorities for state investments; consistency of state investments

1026 Section 8. In furtherance of the purposes of this chapter to advance the state’s economic,
1027 environmental, and social well-being through enhanced planning for economic growth,
1028 workforce housing creation, and land conservation, the commonwealth shall, when awarding

1029 discretionary funds for municipal infrastructure or other discretionary funds or grants
1030 administered through the executive office of housing and economic development, the executive
1031 office of energy and environmental affairs, the department of transportation, and the executive
1032 office of administration and finance, give priority consideration to certified communities and to
1033 communities with certified local comprehensive plans and with regulations deemed consistent
1034 with a local and regional plan as certified by the regional planning agency pursuant to chapter
1035 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, respectively, as those acts may be
1036 amended.

1037 When awarding discretionary funds for municipal infrastructure, the commonwealth shall
1038 give priority consideration to investments that support development within economic
1039 development districts and residential development districts in certified communities and similar
1040 districts established by local comprehensive plans certified by the regional planning agency
1041 pursuant to chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, respectively, as
1042 those acts may be amended.

1043 State agencies responsible for regulatory or capital spending programs that have a
1044 material effect on local land use and development shall take into account the land use goals,
1045 objectives, and policies as set forth in master plans adopted under section 81D of chapter 41 in
1046 administering such programs in certified communities.

1047 When awarding discretionary funds for municipal infrastructure and land preservation
1048 investments within communities for which there exists a regional plan under section 5 of chapter
1049 40B, under chapter 716 of the Acts of 1989, or under chapter 831 of the Acts of 1977,
1050 respectively, as these acts may be amended, the commonwealth shall cause such awards to be
1051 consistent with such plan, to the maximum extent feasible.

1052 40Y:9 Regulations

1053 Section 9. The secretary may issue such regulations as are necessary and appropriate for
1054 the implementation of this chapter.

1055 SECTION 29. Section 81D of chapter 41 of the General Laws, as appearing in the 2012
1056 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the
1057 following section 81D:-

1058 41:81D. Master Plan

1059 Section 81D. Option to Plan: A planning board established in any city or town that
1060 makes a master plan for such city or town shall do so in accordance with this section. The plan
1061 shall take effect upon adoption by the legislative body as provided herein. For a plan to remain
1062 in effect, from time to time not to exceed 10 years from the date of adoption, the planning board
1063 shall conduct a comprehensive review of the plan and may extend, revise, or remake the plan,

1064 and the plan or amendment thereto shall thereafter be re-adopted as provided in this section. The
1065 plan, once adopted, shall be the official master plan of the city or town, replacing any previously
1066 adopted master plans. All plans for capital projects of another governmental agency on land
1067 included in a city or town master plan made and adopted pursuant to this section after the
1068 effective date of this act shall take such master plan into consideration.

1069 A master plan adopted in accordance with section 81D of chapter 41 in effect on the date
1070 of passage of this act may continue in full force and effect and shall not be subject to this section
1071 until a date 10 years from the date of passage of this act, provided such plan is not extended,
1072 revised, or remade during the period.

1073 General Description of Plan: The plan shall be a comprehensive framework, through
1074 text, maps, and illustrations that provides a basis for decision making about land use and the long
1075 term physical development of the municipality. Other completed and current plans, reports, and
1076 studies may be incorporated by reference to fulfill in whole or in part the requirements of each
1077 subject listed below, provided that such material will then be considered part the plan, including
1078 its implementation. The master plan shall be internally consistent in its policies, forecasts and
1079 standards, and may support and provide a coherent rationale for the municipality's zoning
1080 ordinance or bylaws, subdivision regulations, and other land use laws, regulations, policies, and
1081 capital expenditures.

1082 The plan shall include the required subjects identified herein, any optional subjects at the
1083 discretion of the municipality, and the regional plan self assessment. The plan subjects may be
1084 written as separate elements or organized and integrated as deemed appropriate by the planning
1085 board. Due to the wide range of community types, characteristics, and planning needs in the
1086 commonwealth it is recognized that the subjects addressed with a particular city or town in mind
1087 may be expanded upon or contracted as appropriate, and may vary greatly among communities
1088 in the focus and depth of their analysis.

1089 Required Plan Subjects: Master plans need not include data collection or analysis in areas
1090 not related to land use and the long term physical development of the community. The plan shall
1091 address the following five required subjects, described below in a general manner:

1092 (1) Goals and Objectives: A statement that identifies the goals and objectives of the
1093 municipality for its future growth, development, redevelopment, conservation, and preservation.
1094 Each community shall conduct a public participation process to determine community values,
1095 establish goals, and identify patterns of development, redevelopment, conservation, and
1096 preservation consistent with these goals. The goals and objectives statement shall address the
1097 required and any additional selected optional plan subjects.

1098 (2) Housing: (a) An inventory of local demographic characteristics, an assessment and
1099 forecast of housing needs, and a statement of local housing policies. Where applicable, existing
1100 local housing plans and studies may be included by reference. (b) An analysis of housing units

1101 by type of structure (e.g., single-family, two-family, multi-family); affordable housing and
1102 subsidized housing; housing available for rental; special needs housing; and housing for the
1103 elderly, including assisted living residences. (c) An analysis of existing local policies, programs,
1104 laws, or regulations that encourage the preservation, improvement, and development of such
1105 housing, including an assessment of their adequacy. (d) An evaluation of zoning and other land
1106 use policies for the creation of a variety of housing that meets a broad range of housing needs,
1107 including but not limited to the affordable housing needs of low, moderate, and median income
1108 households and the accessible housing needs of people with disabilities and special needs. The
1109 evaluation shall examine specific measures to address these needs, including strategies,
1110 programs, and assistance for the preservation or rehabilitation of existing housing; the
1111 construction of new housing; and the adoption or amendment of local ordinances or bylaws and
1112 regulations permitting, encouraging, or requiring diversity in housing locations, types, designs,
1113 and area densities that offer alternatives to single family detached housing. A current housing
1114 production plan consistent with 760 CMR 56.03(4) may constitute the subject matter relative to
1115 this subsection (d).

1116 (3) Natural Resources and Energy Management: (a) A general overview of the
1117 significant natural and energy resources of the municipality. (b) Identification of protected and
1118 unprotected wetlands and water resources, lands critical to sustaining surface and groundwater
1119 quality and quantity, environmentally sensitive lands, critical wildlife habitat and biodiversity,
1120 agricultural lands and forests. Priorities for protection of wildlife habitat, water resources, vistas
1121 and key landscapes, outdoor recreation facilities, and farm and forestry land shall be identified.
1122 (c) An outline of local laws, regulations, policies, and strategies to address needs for the
1123 protection, restoration, and sustainable management of these resources and to promote
1124 development that respects and enhances the state's natural resources. (d) An energy component
1125 that explores locally feasible land use strategies to: maximize energy efficiency and renewable
1126 energy opportunities; support land, energy, water, and materials conservation strategies, local
1127 clean power generation, distributed generation technologies, and innovative industries; and
1128 address global climate change by reducing greenhouse gas emissions and the consumption of
1129 fossil fuels.

1130 (4) Land Use and Zoning: (a) An identification of historic settlement patterns and
1131 present land uses, and designation of the proposed distribution, location, and inter-relationship of
1132 public and private land uses in a general manner sufficient to guide the development of zoning
1133 ordinances or by-laws, zoning maps, and other land use regulations. (b) Land use policies and
1134 related maps, which shall be based upon a land use suitability analysis identifying areas most
1135 suitable for development and related transportation infrastructure and facilities. Growth and
1136 development areas, if identified, shall support the revitalization of city and town centers and
1137 neighborhoods by promoting development that is compact and walkable, conserves land, protects
1138 historic resources, integrates uses, and coordinates the provision of housing with the location of
1139 jobs, transit and services, and new infrastructure. The plan shall, if appropriate, identify areas for

1140 economic development and job creation, related public and private transportation and pedestrian
1141 connections, and encourage the creation or extension of pedestrian-accessible districts and
1142 neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with
1143 open space and housing. (c) A consideration of the relationship between proposed development
1144 intensity and the capacity of land and existing and planned public facilities and infrastructure.
1145 (d) A land use map illustrating the land use policies and desired future development patterns of
1146 the municipality and a proposed zoning map, both drawn in a general manner.

1147 (5) Implementation: An implementation program that defines and prioritizes the specific
1148 municipal actions necessary to achieve the goals and objectives of the master plan in accordance
1149 with the policies outlined therein. This program may be separately written or integrated into the
1150 required and selected subject matter. This implementation program shall specify the
1151 recommended course of action by which the municipality's regulatory structures, including
1152 zoning and subdivision control regulations, may need to be amended in order to be consistent
1153 with the master plan. This section may examine the current land use permitting process in a
1154 community and, if necessary, make recommendations for the development of clear, predictable,
1155 coordinated, and timely procedures thereunder, including an assessment of the adequacy and
1156 effectiveness of the existing structure of and roles and responsibilities of elected and appointed
1157 boards, officers, and personnel to implement the master plan through land use ordinances, by-
1158 laws, regulations, and procedures.

1159 Optional Subjects: The following seven subjects are optional depending upon community
1160 characteristics, and described below in a general manner:

1161 (6) Economic Development: (a) An inventory and analysis of the local economic base,
1162 including: employment; local industries and business clusters; labor force characteristics; land
1163 and buildings used for nonresidential purposes, including vacant space; and office, retail, and
1164 industrial market conditions. (b) An assessment of opportunities and barriers to economic
1165 development, including but not limited to identification of land use policies and available
1166 locations that: support the growth of jobs, the retention of existing businesses, and the provision
1167 of space for new businesses; encourage the reuse and rehabilitation of existing infrastructure,
1168 including brownfields, rather than the construction of new infrastructure in undeveloped areas;
1169 and facilitate larger-scale economic redevelopment or development in industry clusters
1170 consistent or compatible with the regional and local economy. (c) An assessment of
1171 opportunities and barriers to agriculture, including all branches of farming and forestry, where
1172 applicable. (d) An assessment of opportunities and barriers to self-employment and home-based
1173 occupations, including but not limited to consideration of land use policies, infrastructure and
1174 utilities, and communications technology.

1175 (7) Cultural Resources: (a) An inventory of the significant cultural, scenic, and historic
1176 structures, sites, and landscapes of the municipality, including archaeological resources. (b) An
1177 assessment of policies and strategies to protect and manage the community's cultural resources,

1178 including but not limited to a community-wide preservation plan, ordinances or bylaws and
1179 incentives for historic preservation, and land use policies to facilitate the reuse of historic
1180 structures, where appropriate.

1181 (8) Open Space Protection and Recreation: An inventory of recreational facilities and
1182 open space areas of the municipality, and policies and strategies for the management, protection,
1183 and enhancement of such facilities and areas as essential public health infrastructure. A current
1184 open space and recreational plan approved by the Division of Conservation Services shall
1185 constitute the subject matter relative to open space and recreation hereunder.

1186 (9) Infrastructure and Capital Facilities: An identification and analysis of existing and
1187 forecasted needs for infrastructure and facilities used by the public. Scheduled expansion or
1188 replacement of public facilities, infrastructure components such as water and sewer systems or
1189 circulation system components and the anticipated costs and revenues associated with
1190 accomplishment of such activities shall be detailed.

1191 (10) Transportation: (a) An inventory of existing and proposed circulation, parking, and
1192 transportation systems. (b) An assessment of opportunities and barriers to increasing access to
1193 available or feasible transportation options, including land and water-based public transit,
1194 bicycling, walking, and transportation services for populations with disabilities. (c)
1195 Identification of strategic investment options for transportation infrastructure to encourage smart
1196 growth, maximize mobility, conserve fuel, and improve air quality; and to facilitate the location
1197 of new development where a variety of transportation modes can be made available.

1198 (11) Water Management: (a) An inventory of current and potential municipal sources of
1199 water supply, including capacity and safe yield, and an assessment of water demand including
1200 types of water users, changes in water consumption over time, and water billing rate structure.
1201 (b) An assessment of the adequacy of existing and proposed water supplies to meet projected
1202 demands, water quality and treatment issues, existing measures for water supply protection,
1203 water conservation, drought management and emergency interconnections. (c) An assessment of
1204 the ability of stormwater regulations and practices to limit off-site stormwater runoff to levels
1205 substantially similar to natural hydrology through decentralized management practices and the
1206 protection of on-site natural features. (d) An analysis of municipal need and capacity for
1207 wastewater disposal, including the suitability of sites and water bodies for the discharge of
1208 treated wastewater. (e) Recommended strategies for water supply provision and protection,
1209 water conservation, wastewater disposal, stormwater management, drought management and
1210 emergency interconnections, and needed improvements to meet future water resource needs.

1211 (12) Public Health: (a) An inventory of conditions and assets in the natural and built
1212 environment which contribute to or constitute a barrier to health. These conditions may include
1213 parks and recreational facilities; local agriculture; walking, bicycling and public transit options,
1214 including the safety and walkability of streets and public spaces; access to affordable housing,

1215 economic opportunities, and medical and other services; environmental quality; and sustainable
1216 development. The inventory should describe conditions with a disproportionate impact on
1217 residents based on geography, ethnicity, income, immigration status, or other characteristics.
1218 Where applicable, this inventory may reference other sections of the master plan. (b) An
1219 assessment of opportunities and barriers to increasing access to conditions and assets in the
1220 natural or built environment that contribute to health. (c) Recommendations of available
1221 implementation policies and strategies, including zoning and other local laws and regulations,
1222 affecting health needs related to the natural or built environment.

1223 Regional Plan, Self Assessment: Any required or selected optional subjects above shall
1224 include a self assessment against similar subject matter in a regional plan adopted by the regional
1225 planning agency under section 5 of chapter 40B and in effect, if any, or under any special act.

1226 Proposal, Adoption, and Distribution of Plan: The plan shall only be made, extended,
1227 revised, or remade from time to time by a simple majority vote of the planning board after a
1228 public hearing, notice of which shall be posted and published in the manner prescribed for
1229 zoning amendments under section 5 of chapter 40A. Following any such action, the planning
1230 board shall transmit the plan to the chief executive officer of the city or town, and the plan shall
1231 be an agenda item or warrant article on a subsequent legislative session of the city or town.
1232 Adoption of the plan, or the extension, revision, or remake of the plan, shall be by a simple
1233 majority vote of the legislative body of the city or town; however, no vote of the legislative body
1234 to alter the plan or amendment as proposed by the planning board shall be other than by a two-
1235 thirds majority. The planning board shall, upon adoption by the legislative body of any plan or
1236 report, or any change or amendment to a plan or report produced under this section, furnish a
1237 copy of such plan or report or amendment thereto, to the Department of Housing and Community
1238 Development.

1239 Barnstable and Dukes Counties: Instead of adopting a master plan pursuant to the
1240 requirements of this section 81D, a municipality in Barnstable or Dukes county may adopt a
1241 local comprehensive plan pursuant to the special acts that protect those two regions, St. 1989, c.
1242 716, as amended, and St. 1977, c. 831, as amended, respectively, and the regulations and
1243 regional policy plans adopted thereunder. The regional planning agency shall review the local
1244 comprehensive plan solely for consistency with the governing special act (St. 1989, c. 716 or St.
1245 1977, c. 831, as these acts may be amended) and any regulations and regional policy plans
1246 adopted thereunder, rather than the requirements for master plans set forth in this section 81D.
1247 The time limits and requirements set forth in this section 81D shall not apply to the review of
1248 such local comprehensive plans. An adopted local comprehensive plan certified by the regional
1249 planning agency as consistent with this section 81D shall be deemed a master plan in compliance
1250 with this section 81D and shall entitle the municipality to any statutory benefits of having an
1251 adopted master plan.

1252 SECTION 30. Section 81L of said chapter 41 of the General Laws, as so appearing, is
1253 hereby amended by striking out the definition of “Subdivision” and inserting in place thereof the
1254 following definition:-

1255 “Subdivision” shall mean the division of a lot, tract, or parcel of land into two or more
1256 lots, tracts, or parcels of land and shall include re-subdivision. When appropriate to the context,
1257 subdivision shall include the process of subdivision or the land or territory subdivided. A change
1258 in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may
1259 be defined as a minor subdivision and, in such case, be governed by the provisions of section
1260 81P.

1261 SECTION 31. Said section 81L of said chapter 41, as so appearing, is hereby amended
1262 by inserting the following definition:-

1263 “Minor Subdivision” shall mean a residential subdivision created in accordance with
1264 section 81P, provided however that until rules and regulations are adopted by a planning board
1265 under 81P therefor, “minor subdivision” shall solely mean the division of a lot, tract, or parcel of
1266 land into two or more lots, tracts, or parcels where, at the time when it is made, every lot within
1267 the lot, tract or parcel so divided has frontage on: a) a public way or a way which the clerk of the
1268 city or town certifies is maintained and used as a public way; b) a way shown on a plan
1269 theretofore approved and endorsed in accordance with the subdivision control law; or c) a way in
1270 existence when the subdivision control law became effective in the city or town in which the
1271 land lies, having, in the opinion of the planning board, sufficient width, suitable grades and
1272 adequate construction to provide for the needs of vehicular traffic in relation to the proposed use
1273 of the land abutting thereon or served thereby, and for the installation of municipal services to
1274 serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at
1275 least such distance as is then required by the zoning ordinance or by-law, if any, of said city or
1276 town for erection of a building on such lot, and if no distance is so required, such frontage shall
1277 be of at least 20 feet.

1278 SECTION 32. Section 81O of said chapter 41, as so appearing, is hereby amended by
1279 striking out the second sentence in the first paragraph and inserting in place thereof the following
1280 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,
1281 and size of the lots shown thereon, may not be changed unless the plan is amended as provided
1282 in section 81W. In the alternative, a planning board may adopt rules and regulations under
1283 sections 81P and 81Q of this chapter defining and regulating such changes as minor
1284 subdivisions.

1285 SECTION 33. Said chapter 41, as so appearing, is hereby amended by striking out
1286 section 81P and inserting in place thereof the following section 81P:-

1287 41:81P. Minor Subdivisions

1288 Section 81P. Applicability: Minor subdivisions, as defined in this chapter, and as may be
1289 further defined in the local subdivision rules and regulations, shall be governed by this section.
1290 Section 81S and the public hearing requirements in section 81T of this chapter shall not apply to
1291 minor subdivisions. Except as provided below, all other sections of the subdivision control law
1292 that apply to subdivisions shall apply to minor subdivisions in so far as apt.

1293 Rules and Regulations, Transition Provision: A planning board may adopt alternative
1294 rules and regulations under section 81Q of this chapter relative to minor subdivisions, but in no
1295 case may such rules and regulations impose a procedural or substantive requirement more
1296 stringent than those specified in this chapter, this section 81P, or contained in the local rules and
1297 regulations otherwise applicable to subdivisions. Until such rules and regulations are adopted,
1298 the procedures in the sixth paragraph below shall apply to minor subdivisions.

1299 Rules and Regulations, Required Provisions: The rules and regulations for minor
1300 subdivisions shall: specify that an application for a minor subdivision may create up to six
1301 additional residential lots within the meaning of the subdivision control law, either on ways
1302 described in the definition of minor subdivision or on new ways; set forth the reasonable
1303 requirements and standards of the board for those existing ways described in the definition of
1304 minor subdivision, provided that no requirements shall be made for the location of such ways
1305 and that requirements for total travelled lanes widths of greater than 22 feet in a residential minor
1306 subdivision shall be presumed to serve no valid purpose of the subdivision control law unless
1307 such widths already exceed 22 feet; set forth the reasonable requirements and standards of the
1308 board for the proposed ways shown on a plan, provided that requirements for total travelled lanes
1309 widths of greater than 22 feet in a residential minor subdivision shall be presumed to serve no
1310 valid purpose of the subdivision control law unless such ways are designed to be extended to
1311 later serve a greater number of residential lots; and establish a time period for the planning board
1312 to take final action and to file with the city or town clerk a certificate of such action within 65
1313 days or less in the case of an existing way, or 95 days or less in the case of a new way.

1314 Rules and Regulations, Optional Provisions: The rules and regulations for minor
1315 subdivisions may: notwithstanding the first paragraph above, require a public hearing under
1316 Section 81T of this chapter for minor subdivisions served by a new way; require that applications
1317 for minor subdivisions from the same lot, tract, or parcel from which the first minor subdivision
1318 was created not create more than the maximum number of additional lots in a set period of years;
1319 lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to
1320 subdivisions; lessen or eliminate any local rule or regulation adopted under section 81Q of this
1321 chapter otherwise applicable to subdivisions; and describe a means by which the planning board
1322 may, by agreement with the applicant, accept payments from the applicant in lieu of otherwise
1323 required improvements to an existing way, provided those improvements are completed by the
1324 city or town in a reasonable period of time.

1325 Rules and Regulations, Optional Provisions Requiring Ratification by Legislative Body:
1326 Subject to ratification by the local legislative body by a simple-majority vote, the rules and
1327 regulations for minor subdivisions may increase the maximum number of additional lots created
1328 in an application for a minor subdivision to a number greater than six and define “minor
1329 subdivision” more broadly than in section 81L of this chapter.

1330 Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted: Until
1331 such rules and regulations are adopted, any person wishing to cause to be recorded a plan of land
1332 situated in a city or town in which the subdivision control law is in effect, who believes that his
1333 plan does not require approval under the subdivision control law, may submit his plan to the
1334 planning board of such city or town in the manner prescribed in section 81T, and, if the board
1335 finds that the plan does not require such approval, it shall immediately, without a public hearing,
1336 endorse thereon or cause to be endorsed thereon by a person authorized by it the words “approval
1337 under the subdivision control law not required” or words of similar import with appropriate name
1338 or names signed thereto, and such endorsement shall be conclusive on all persons. Such
1339 endorsement shall not be withheld unless such plan shows a subdivision. If the board shall
1340 determine that in its opinion the plan requires approval, it shall within 21 days of such submittal,
1341 give written notice of its determination to the clerk of the city or town and the person submitting
1342 the plan, and such person may submit his plan for approval as provided by law and the rules and
1343 regulations of the board, or he may appeal from the determination of the board in the manner
1344 provided in section 81BB. If the board fails to act upon a plan submitted under this section or
1345 fails to notify the clerk of the city or town and the person submitting the plan of its action within
1346 21 days after its submission, it shall be deemed to have determined that approval under the
1347 subdivision control law is not required, and it shall immediately make such endorsement on said
1348 plan, and on its failure to do so immediately the city or town clerk shall issue a certificate to the
1349 same effect. The plan bearing such endorsement or the plan and such certificate, as the case may
1350 be, shall be delivered by the planning board, or in case of the certificate, by the city or town
1351 clerk, to the person submitting such plan. The planning board of a city or town which has
1352 authorized any person, other than a majority of the board, to endorse on a plan the approval of
1353 the board or to make any other certificate under the subdivision control law, shall transmit a
1354 written statement to the register of deeds and the recorder of the land court, signed by a majority
1355 of the board, giving the name of the person so authorized.

1356 SECTION 34. Section 81Q of said chapter 41, as so appearing, is hereby amended by
1357 inserting after the fourth sentence thereof the following sentence:- Without limiting the
1358 foregoing, there shall be a rebuttable presumption that such rules and regulations are unlawfully
1359 excessive, to the extent that the design and dimensional requirements thereof for the laying out,
1360 construction or alteration of ways exceed the standards and criteria commonly applied by that
1361 city or town to the reconstruction of its publicly financed ways located in similarly zoned
1362 districts within such city or town. Design and dimensional requirements for total travel lane
1363 widths no greater than 24 feet shall be presumed not to be excessive.

1364 SECTION 35. Said section 81Q of said chapter 41, as so appearing, is hereby amended
1365 by inserting after the word “thereof,” in line 69, the following words:- but the rules and
1366 regulations may require the plan to show a park or parks suitably located for playground,
1367 environmental conservation and education, or recreation purposes benefiting the lots in the
1368 subdivision or for providing light and air, and not exceeding five per cent of the land being
1369 subdivided.

1370 SECTION 36. Section 81T of said chapter 41, as so appearing, is hereby amended by
1371 striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is
1372 not required”.

1373 SECTION 37. Section 81U of said chapter 41, as so appearing, is hereby amended by
1374 striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

1375 SECTION 38. Section 81X of said chapter 41, as so appearing, is hereby amended by
1376 striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of
1377 the planning board that approval of such plan is not required, as provided in section eighty-one P,
1378 or (3)”.

1379 SECTION 39. Said section 81X of said chapter 41, as so appearing, is hereby amended
1380 by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted
1381 pursuant to section eighty-one P and that it has been determined by failure of the planning board
1382 to act thereon within the prescribed time that approval is not required,”.

1383 SECTION 40. Said section 81X of said chapter 41, as so appearing, is hereby amended
1384 by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

1385 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the register of
1386 deeds shall accept for recording, and the land court shall accept with a petition for registration or
1387 confirmation of title, any plan bearing a professional opinion by a registered professional land
1388 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of
1389 streets and ways shown are those of public or private streets or ways already established, and that
1390 no new lines for division of existing ownership or for new ways are shown.

1391 Lot Line Changes: The register of deeds and the land court shall accept for recording or
1392 registration any plan showing a change in the line of any lot, tract, or parcel bearing a
1393 professional opinion by a registered professional land surveyor and a certificate by the person or
1394 board charged with the enforcement of the zoning ordinance or by-law of the city or town that
1395 the property lines shown: do not create an additional building lot; do not create, add to, or alter
1396 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render
1397 an existing nonconforming lot or structure more nonconforming; and are not subject to
1398 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.
1399 All such plans, if approved and as recorded, shall immediately be filed with the planning board

1400 and board of assessors of the city or town. The recording of such plan shall not relieve any
1401 owner from compliance with the provisions of the Subdivision Control Law or of any other
1402 applicable law.

1403 SECTION 41. Section 81BB of said chapter 41, as so appearing, is hereby amended by
1404 striking out the first paragraph, and inserting in place thereof the following paragraph:-

1405 Section 81BB. Any person, whether or not previously a party to the proceedings, or any
1406 municipal officer or board, aggrieved by a decision of a board of appeals under section 81Y, or
1407 by any decision of a planning board concerning a plan of a subdivision of land, or by the failure
1408 of such a board to take final action concerning such a plan within the required time, may appeal
1409 to the superior court for the county in which said land is situated or to the land court; provided,
1410 that such appeal is entered within twenty days after such decision has been recorded in the office
1411 of the city or town clerk or within twenty days after the expiration of the required time as
1412 aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as
1413 to be received within such twenty days. Such civil action shall be in the nature of certiorari
1414 pursuant to section 4 of chapter 249. A complaint by a plaintiff challenging a subdivision or
1415 minor subdivision approval under this section shall allege the specific reasons why the
1416 subdivision or minor subdivision fails to satisfy the requirements of the board's rules and
1417 regulations or other applicable law and allege specific facts establishing how the plaintiff is
1418 aggrieved by such decision. A complaint by an applicant challenging a subdivision or minor
1419 subdivision denial or conditioned approval under this section shall similarly allege the specific
1420 reasons why the subdivision or minor subdivision properly satisfies the requirements of the
1421 board's rules and regulations or other applicable law.

1422 SECTION 42. Section 3A of chapter 185 of the General Laws, as appearing in the 2012
1423 Official Edition, is hereby amended by striking out the third paragraph in its entirety and
1424 inserting in place thereof the following paragraph:-

1425 The permit session shall have original jurisdiction, concurrently with the superior court
1426 department, over civil actions in whole or part: (1) based on or arising out of the appeal of any
1427 municipal, regional, or state permit, order, certificate or approval, or the denial thereof,
1428 concerning the use or development of real property for residential, commercial, or industrial
1429 purposes (or any combination thereof), including without limitation appeals of such permits,
1430 orders, certificates or approvals, or denials thereof, arising under or based on or relating to
1431 chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive,
1432 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of
1433 1956; or any local bylaw or ordinance; (2) seeking equitable or declaratory relief designed to
1434 secure or protect the issuance of any municipal, regional, or state permit or approval concerning
1435 the use or development of real property, or challenging the interpretation or application of any
1436 municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any
1437 permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution,

1438 abuse of process, intentional or negligent interference with advantageous relations, or intentional
1439 or negligent interference with contractual relations arising out of, based upon, or relating to the
1440 appeal of any municipal, regional, state permit or approval concerning the use or development of
1441 real property; and (4) any other claims between persons holding any right, title, or interest in land
1442 and any municipal, regional or state board, authority, commission, or public official based on or
1443 arising out of any action taken with respect to any permit or approval concerning the use or
1444 development of real property but in all such cases of claims (1) to (4), inclusive, only if the
1445 underlying project or development, in the case of a development that is residential or a mix of
1446 residential and commercial components, involves either 25 or more dwelling units or the
1447 construction or alteration of 25,000 square feet or more of gross floor area or both or, in the case
1448 of a commercial development, involves the construction or alteration of 25,000 square feet or
1449 more of gross floor area. Industrial development projects and any project in which an industrial
1450 use is a component of a mixed-use project shall not be subject to any such minimum thresholds.

1451 SECTION 43. Said section 3A of said chapter 185, as so appearing, is hereby further
1452 amended by striking out the fourth paragraph in its entirety and inserting in place thereof the
1453 following paragraph:-

1454 Notwithstanding any other general or special law to the contrary, any action not
1455 commenced in the permit session, but within the jurisdiction of the permit session as provided in
1456 this section, shall be transferred to the permit session, upon the filing by any party of a notice
1457 demonstrating compliance with the jurisdictional requirements of this section filed with the court
1458 where the action was originally commenced with a copy to the permit session. Unless the court
1459 where the action was originally commenced receives notice within 10 days from the permit
1460 session that the case to be transferred does not meet the jurisdictional requirements of this
1461 section, the original court shall transfer the case file to the permit session within 20 days of its
1462 receipt of the notice of transfer from the party. In the event the court receives notice of
1463 noncompliance with jurisdictional requirements, the court where the action was originally
1464 commenced shall decide the matter on motion filed by the party claiming noncompliance. If a
1465 party to an action commenced in or transferred to the permit session claims a valid right to a jury
1466 trial, then the action shall be transferred to the superior court for a jury trial.

1467 SECTION 44. Section 14A of chapter 240 of the General Laws, as appearing in the 2012
1468 Official Edition, is hereby amended by inserting after the first paragraph the following
1469 paragraph:-

1470 In any claim challenging the validity of any provision of a zoning ordinance or by-law,
1471 the court shall first determine if the provision challenged is not inconsistent with the city's or
1472 town's master plan if any, provided such plan has been certified by the applicable regional
1473 planning agency to have been prepared and adopted in accordance with section 81D of chapter
1474 41 as such section appears after the effective date of this Act. The court shall also determine
1475 whether the zoning ordinance or by-law is not inconsistent with a local comprehensive plan

1476 certified by the regional planning agency, or was adopted as a regulation to implement a district
1477 of critical planning concern, pursuant to chapter 716 of the Acts of 1989 or chapter 831 of the
1478 Acts of 1977, respectively, as those acts may be amended. If the court determines that the
1479 challenged provision is not inconsistent with the master plan or the local comprehensive plan or
1480 was adopted as a regulation to implement a district of critical planning concern under afore-
1481 mentioned special acts, then such provision shall be deemed to serve a public purpose. A failure
1482 by the court to determine that a provision is not inconsistent or the absence of an adopted master
1483 plan shall not for that reason alone be determinative of whether the challenged provision serves a
1484 public purpose.