

Shaping The Future of Your Community

A Citizen's Guide to Involvement in Community Planning, Land Protection, and Project Review in Massachusetts

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Mass Audubon works to protect the nature of Massachusetts for people and wildlife. Together with more than 100,000 members, we care for 32,000 acres of conservation land, provide educational programs for 200,000 children and adults annually, and advocate for sound environmental policies at local, state, and federal levels. Mass Audubon's mission and actions have expanded since our beginning in 1896 when our founders set out to stop the slaughter of birds for use on women's fashions. Today we are the largest conservation organization in New England.

Our statewide network of 43 wildlife sanctuaries welcomes visitors of all ages and serves as the base for our conservation, education, and advocacy work. To support these important efforts, call

800-AUDUBON (283-8266) or visit www.massaudubon.org.

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SHAPING THE FUTURE OF YOUR COMMUNITY

INTRODUCTION

Protecting the Nature of Massachusetts



The nature of Massachusetts is all around us—from coastal beaches and salt marshes to shady woods, streams and lakes, wetlands, and rocky hilltops. The state’s rich ecology and biological diversity are irreplaceable and valuable. Despite its small size, Massachusetts provides habitat for myriad species of plants and animals.

All organisms (plants, wildlife, and humans) rely on a healthy environment for clean water and air, healthful food, and safe shelter. People also rely on—and often take for granted—other benefits of a healthy environment such as a robust economy, pleasant neighborhoods to live and work in, and opportunities for outdoor recreation.

For more than 110 years, Mass Audubon has been dedicated to protecting the nature of Massachusetts for wildlife and people. Working with you, we can maintain the Commonwealth’s natural heritage for the benefit of this and future generations. You can make a difference in shaping the future of your community. This booklet will assist you in taking effective action.

The Problem: Sprawling Development

More land has been developed in Massachusetts in the last 40 years than in the previous 340 years. This trend shows no signs of slowing. Mass Audubon’s *Losing Ground* <http://www.massaudubon.org/losingground> series documents the changes in Massachusetts land use. The third edition (2003) showed that the state lost 40 acres per

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day to “visible” development between 1985 and 1999. This adds up to over 200,000 acres during this time period.

Between 2000 and 2002 alone, new residential and commercial development impacted an additional 40,000 acres. The amount of habitat lost to development is even higher if access roads and habitat degradation on “undeveloped” portions of development lots are considered, resulting in 78 acres lost per day. Most of this impact is from low-density, large-lot, residential development. The sprawling pattern of development consumes land at an excessive rate, far greater than population growth. While land prices escalate, open land disappears and the supply of reasonably priced housing falls well below the need.



The Consequences: Sprawling development destroys and fragments wildlife habitats and ecosystems; reduces biodiversity; damages drinking-water recharge areas; limits recreational, agricultural, and forestry opportunities; and alters local community character and our sense of place.

Natural habitat provides a host of nonmarket ecosystem service values such as clean air and water, amounting to more than \$6 billion dollars a year. The public is not compensated when these “free” services are lost to development and environmental quality is degraded. Massachusetts faces loss of the very things that characterize the state and the landscapes that influenced the history of the entire nation.

Landowners have a right to use their land in accordance with state and local regulations. But many citizens are frustrated with land-management practices and trends in their community. Laws are complex and not always adequate or consistent, and volunteer members of municipal boards struggle to keep plans and zoning up-to-date.

To meet the needs of both people and wildlife, we need to direct development to appropriate locations while protecting those areas that are most important and sensitive.

Shaping the Future of Your Community- Introduction

Landowners, municipal officials, and citizens can and must work together to effectively address these concerns.



The Solution: Get Involved in Shaping Your Community

As development continues (and in many areas accelerates), residents are seeking better ways to plan for and manage growth in their communities or address the impacts of a proposed development in their neighborhood. Good planning is a crucial first step. You can help your community accommodate commerce, residences, and recreation while protecting water supplies, wildlife corridors, and interconnected tracts of open space. Your involvement can help craft effective strategies to implement community plans, establish land-acquisition priorities, provide incentives for well-planned growth, and establish regulations to minimize the impacts of development.

The Purpose of this Guide: To Help You Make a Difference

Shaping the Future of Your Community is Mass Audubon's response to *Losing Ground*. There are many ways that you as an individual can make a real difference and help shape a better future for your community and the Commonwealth.

Shaping the Future of Your Community gives you the tools for active involvement. It explains the most effective ways of curbing sprawl in your community through land use planning, regulation, and protection. It also guides you in determining what you can do to minimize the impacts of a development project that has already been proposed.

This guide can help you work to chart a positive future. Your participation will determine whether our children and grandchildren will have healthy forests, fertile fields, clean air, clear streams and lakes, adequate and safe water supplies, and thriving populations of native plants and animals.

Shaping the Future of Your Community- Introduction

The emphasis of this guide is on participation with implementation and application of community laws, regulations, and policies because it is often at the local level that citizens can have the most significant influence on land use practices. Some of the most important state and federal environmental laws are mentioned as well.

In order to help you play an effective role in shaping your community, this information will:

- Help you promote better-planned and better managed long-term growth in your community,
- Provide direction to the appropriate forum for addressing your land use concern through project review, and
- Familiarize you with land use policies and practices.

Shaping the Future of Your Community is divided into six sections:

- How to be an Effective Advocate
- Who's Who of Local, Regional, State, and Federal Agencies
- Local Land Use Planning and Conservation Strategies
- Zoning, Regulatory Controls, and Incentives
- Land Protection
- Project Review and Permitting

Shaping the Future of Your Community also provides access to related information and resources:

- Federal, State, and Local Environmental and Land Use Laws and Regulations Summary Chart
- Useful contacts and links

You can choose the topic that you are most inclined to start working from, and together the entire web-based *Shaping the Future of Your Community* series provides a comprehensive tool kit that will enable you to work effectively with others in your community and with land conservation organizations.

SHAPING THE FUTURE OF YOUR COMMUNITY

CHAPTER I

How to be an Effective Advocate

The fate of the Massachusetts landscape is being decided now. The only way to have an effect upon the result is to become involved with the process of land use management. You can have a powerful influence. There are many opportunities for you to take action and make a difference in Shaping the Future of Your Community. Start by doing some homework and connecting with other local citizens.

Get to Know the Issues

Whether you want to influence the design of a single proposed development or are concerned with long-range planning for your community, you are most effective when you are well informed about the issues and the laws and regulations that govern them. Your local newspaper is likely an excellent source of information, as are local interest groups, not-for-profit organizations, and the officers, employees, and files of municipal boards. Your community's website may also have important information of interest.



Get to Know the Laws and Regulations

Our legal framework is made of federal and state laws, and city ordinances or town bylaws. Our implementation framework is made of regulations. Land use and environmental protection laws and regulations are powerful planning and management tools. They help establish a balance among private property rights; public health, safety, and welfare; and ecological protection.

Sections 3-6 of this guide describe the most pertinent land use laws and regulations in Massachusetts; and the chart of Federal, State and Local Environmental and Land Use Laws and Regulations describes and provides links to many other environmental laws and regulations. If you have specific questions about land use laws or regulations, you

can call state or local officials, or you can obtain copies of the laws and regulations from state agencies, city or town clerks, or appropriate community boards. Many laws and regulations are also available online.

Get to Know the Decision-Making Processes

It is important to understand how laws are established and implemented in your community. This information helps you know when and how to become most effectively involved. Call community officials for descriptions of local procedures (such as project reviews or planning procedures). Local ordinances, bylaws, and regulations provide more detailed information. The town or city clerk can provide all this information and is a good place to start.



The Massachusetts Open Meeting Law (<http://www.mass.gov/ago/government-resources/open-meeting-law/open-meeting-law-mgl-c-30a-18-25.html>) allows for public observation of and participation in government decisions and prevents secretive decision-making. It requires all government bodies, including local boards, to conduct their meetings, deliberations, and votes in sessions open to the public. Exceptions are made in a very limited number of circumstances for emergencies and executive sessions.

A *public meeting* is an informal but advertised gathering designed for exchanging information.

A *public hearing* is a formal forum in which citizens are given legal rights to participate in the decision making of municipal government through written and oral testimony.

Public hearings are required by many state and local laws and must be advertised. Citizens may attend in person, send a designee, or submit written comments. For more information on the Open Meeting Law (Ch. 39 sec. 23A-24), see <http://www.mass.gov/ago/government-resources/open-meeting-law/>

The Massachusetts Public Records Law <http://www.sec.state.ma.us/pre/prepdf/guide.pdf> allows for public access to government documents and records as long as the desired data is not exempted from disclosure by other statutes (i.e., Hospital records, C. 111 S. 70, Hazardous substances reports, C. 111F S. 21, etc.). Administered by the Supervisor of Public Records (SPR) in the Secretary of State office and enforced by the state Attorney General, the law also states that the requested material must be disclosed as soon as possible but not later than 10 days following the request. If the request is rejected, a written statement detailing legal justification for the denial must be received within the same time period.

Get to Know the Players and their Interests

Local, regional, and state officials, interested citizens, conservation groups, developers, realtors, engineers, and landowners are some of the most critical players in land use decisions. Understanding their roles and interests will help make all aspects of gathering information, achieving consensus, and implementing action plans easier. Public meetings and hearings provide many of the best opportunities for meeting people, communicating, and taking action.

Most land use planning and decisions are made at the local level in Massachusetts. With 351 cities and towns and much variation among communities, it is difficult to outline a “typical” process. If you are unsure where to begin, the town or city clerk’s office is an excellent resource. The clerk is the legal repository of records, and will have all local bylaws/ordinances and regulations, with copies available for a reasonable fee. Many applications for permits or other actions must be filed with the clerk as well. The clerk is familiar with how the local government operates and can also refer you to the appropriate officials relevant to your interests. Many communities also have information on local boards and permitting rules posted on their municipal website.

Participate in Project Reviews—Bring Suggestions to the Table

If you want to influence a single and specific development project, participate in the permitting reviews of the project. When a development project is proposed, the plans are made public. Then public hearings are held by all applicable permit-granting boards (e.g., planning board, zoning board, conservation commission, and board of health). These hearings allow citizens to learn about the proposal and submit comments.

If you are concerned about a project under review, you should attend meetings and hearings held by the relevant boards and familiarize yourself with the project plans, then offer your input and suggestions. Target your comments to the appropriate board, based on its jurisdiction. For example, discuss wetland issues with the conservation commission, but reserve comments about traffic congestion and zoning issues for the planning board. Tailoring your comments to the appropriate boards will get the best results and ensure efficient use of everyone’s time.

Remember, the project review process is not designed to stop an objectionable project, per se; rather, it is designed to ensure that the project meets all regulatory requirements and is conditioned properly. No amount of project review can replace the effectiveness of long-term planning for the protection of natural areas in the community.

For more information on Project Reviews and Permitting see Section 6 of this guide.

Building Effective Coalitions Green Neighborhoods Alliance as a Case Study

Environmental protection is often perceived as irreconcilably conflicting with economic development interests. Yet this need not be the case. In fact, in order for a community to be truly healthy and sustainable, it needs consider and integrate a wide range of environmental, social, and economic interests and values. This can be achieved by building diverse coalitions and undertaking participatory processes that involve and respect the full range of interests.

One example of an effective coalition of this type is the Green Neighborhoods Alliance. In 1996, the Massachusetts Office of Coastal Zone Management: North Shore Regional Office (CZM) and Mass Audubon North Shore Conservation Advocacy (Mass Audubon:NS) undertook an analysis that showed sprawl to be one of the largest threats to coastal resources, including open space, wildlife habitat and water quality. One obvious source of the problem was conventional zoning that actually promotes suburban sprawl by assigning a “one-size fits all” blueprint to subdivision design.

CZM and Mass Audubon:NS recognized that, if a new subdivision design process were to be created and accepted and if people were going to be asked to rethink residential development, each stakeholder in the land use planning and development process had to be involved from the start. So, they invited representatives from development companies; town and city authorities, conservation organizations, state agencies, regional planning councils, and realty businesses to meet and discuss the problems with the current subdivision design and permitting processes and needed changes.

The first few meetings were contentious with everyone venting their anger at “the system” and pointing fingers as to which stakeholder was the troublemaker. It was an “us against them” mentality. Stereotypes flourished: The environmentalists want to halt all growth; the developers want to destroy all land; the towns want too much control and make the system cumbersome and expensive. Once the parties grew to know and trust each other, however, they realized that they all agreed that the regulatory system was unworkable. No stakeholder’s needs were met, whether economically, environmentally, or socially. This shared dissatisfaction with the status quo resulted in the first stage of consensus and paved the way for the coalition to solidify and work toward solutions.

The result was the [Green Neighborhoods Alliance](http://www.greenneighborhoods.org) <http://www.greenneighborhoods.org> that included representatives of all the interest groups. The Alliance developed the Open Space Residential Design (OSRD) model ordinance, a new regulatory tool based on work by nationally known land use planner and innovative subdivision designer Randall Arendt, providing cities and towns, developers, environmental protection advocates and realtors with an opportunity to reach their individual goals in a less contentious and more creative manner. The OSRD model has since been adopted (often with local modifications) by dozens of communities statewide.

The lesson of the Green Neighborhoods Alliance can be applied more broadly to other land use challenges throughout the commonwealth. By sitting down at the table with a wide range of interests, more can often be achieved than taking an adversarial approach.

Based on a summary by Kathryn Leahy and Andrea Cooper in:
Hamin, E. M., L. Silka, P. Geigis, Eds. (2007). *Enhancing and preserving communities: A guide for citizens, planners and policymakers*. Amherst, Mass. University of Massachusetts Press.

Work with a Local Board—Contribute to the Future, Now

The people serving on most local permitting boards in Massachusetts are volunteers—some positions are appointed by the selectmen, or city council while others are elected positions. One of the most effective ways you can influence local decisions is to get involved with local boards. Meet with the current members of the board to learn about their work and determine whether there are full or associate positions available. If you have time available, join a board. Even if your time is limited, you can often help a local board as a volunteer or associate member. Local boards depend on citizen assistance for

special projects and monitoring activities, and to help them in increasing support in the community at large.

Strive for Open Communication and Consensus

Keep in mind that local board members are well-intentioned citizens just like you trying to do the best job that they can under what are often difficult (and contentious) conditions. And remember that developers are usually only trying to build projects according to the rules—they don't generally intend to destroy natural resources or community character.

Take your interests, concerns, and ideas to local officials. Be sure that they are working to promote environmental protection and the public good. Encourage them to sponsor public workshops and planning sessions on community growth and development, public infrastructure, land protection, ecological health, and community character. Help them organize such activities.

Try to be a constructive member of all discussions, working with local officials and interested parties toward mutually acceptable outcomes. Members of your community have a diversity of views that should be respected. Try to understand others' needs (and fears) and work to address them.

In project reviews, work to find “win-win” compromises that improve the design of the project and avoid, or mitigate its impact on the environment. It is usually not productive to take a hard-and-fast adversarial stand characterized by statements such as, “We want to stop all development on this parcel!” (unless you are prepared to build support for acquisition of the property and to help secure the funding). Remember that property owners have the legal right to use their properties and realize economic gain from them in a manner that is consistent with the community's zoning and other rules and regulations.

Participate in Planning—Contribute to the Future, Now

Planning allows a community to determine what its collective needs and desires are and how it can achieve its goals.

Master (or comprehensive) plans are guides for development and land use.

Open space plans define the natural lands and open space requirements necessary for ecological health, water supplies, and aesthetic and recreational features.

Land use regulations apply to many aspects of human activity including, for example, construction, waste disposal, farming, and forestry.



Shaping the Future of Your Community — Effective Advocacy

Citizen participation in both community planning projects and implementation of these plans is vital to shaping a positive future for the community.

The following links will connect you with statewide organizations and agencies that provide training and support for current and potential members of conservation commissions, planning boards, zoning boards, and boards of health.

Massachusetts Association of Conservation Commissions (MACC)

<http://www.maccweb.org/>

Massachusetts Citizen Planner Training Collaborative (CPTC)

<http://masscptc.org/>

Massachusetts Association of Health Boards (MAHB)

<http://www.mahb.org/>

Massachusetts Department of Housing and Community Development (DHCD)

<http://www.mass.gov/dhcd/>

Massachusetts Department of Environmental Protection (DEP)

<http://www.mass.gov/dep/>

More Ways to Take Action

You can protect the nature of Massachusetts in other ways.

Vote in all local, state, and federal elections, both for governmental officials and on referenda. This is one of the most effective ways to become involved in land management. Ask questions about candidates' positions on conservation, planning, and development issues when they are running for office. Help ensure that environmentally conscious officials are elected and that conservation-oriented initiatives succeed. It is often said, "local government is run by those who show up." So show up and participate!

Learn what needs to be preserved in your community.

Share your knowledge with your neighbors and local officials before development plans are filed. Waiting to become involved in natural resource conservation in your community until a development is proposed often means that lack of time and financial constraints will make it very difficult to successfully protect the natural resources at risk.



Educate your friends, neighbors, and local officials about issues of concern, such as the costs associated with development and the importance of local natural areas. You can write letters to the editor of the local paper. You can attend public meetings.

Support groups and organizations that work for positive change and conservation in your neighborhood and community.

12 Tips for Collaborative Leadership

1. “Nothing great was ever accomplished without enthusiasm.” Ralph Waldo Emerson
2. Nothing beats “time spent.” Your efforts make a difference.
3. Focus on building solid, trusting relationships both with individuals and broader groups or coalitions.
4. Assume good intent—don’t jump to conclusions before knowing the facts.
5. Sarcasm is the weapon of the weak.
6. Look for the good and let the rest die of neglect.
7. People support what they help create.
8. A person’s greatest emotional need is to feel appreciated—a simple “thank you” goes a long way.
9. Always, always share credit.
10. You can save the world and still have fun doing it; you don’t have to be overly serious to be effective.
11. Don’t burn bridges—today’s opponent may be your most important ally tomorrow.
12. Don’t Quit!

Adapted from a list by Deborah Carv

Persevere—Land Protection is an Ongoing Challenge



Land use management and open space protection are ongoing needs that require dedicated and long-term involvement. Many land use issues take years to address and resolve. Do not get discouraged if you do not see immediate results. Failure to protect a parcel of land from development does not mean that your efforts were wasted. Through involvement, you may limit the scale or improve the design of the development, educate

others and initiate new partnerships, or become a more effective player in land protection.

Preserving our Commonwealth's rich natural heritage and quality of life is not something that is easily accomplished in one effort but rather depends on the ongoing commitment of thousands of citizens across the state. Your contributions to this effort are valuable investments in protecting the nature of Massachusetts.

Useful Links

Massachusetts Open Meeting Law Guidelines-Attorney General

<http://www.mass.gov/treasury/affiliated-prog/asian-amer-comm/meetings-and-publications/oml-guide.pdf>

A Guide to the Massachusetts Public Records Law

<http://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Massachusetts Association of Conservation Commissions (MACC)

<http://www.maccweb.org/>

Massachusetts Citizen Planner Training Collaborative (CPTC)

<http://masscptc.org/>

Massachusetts Association of Health Boards (MAHB)

<http://www.mahb.org/>

Massachusetts Department of Housing and Community Development (DHCD)

<http://www.mass.gov/dhcd/>

Massachusetts Department of Environmental Protection (DEP)

<http://www.mass.gov/dep/>

SHAPING THE FUTURE OF YOUR COMMUNITY

CHAPTER 2

Who's Who of Local, Regional, State, Federal Management and Environmental Agencies

Massachusetts has a long and proud tradition of home rule; a provision established under Massachusetts General Laws (MGL) Ch. 40 Section 21

<http://www.mass.gov/legis/laws/mgl/40-21.htm>.

Localities control all areas of law not specifically assumed by the state. As a result, much of the responsibility for land use management is at the local level.

However, many of the locally administered land use bylaws and ordinances are based on state laws and regulations that establish a general regulatory framework under which municipalities establish their own specific ordinances and bylaws.

For example, the state Subdivision Control Act and the Zoning Act provide the general framework for communities to establish local subdivision and zoning ordinances, bylaws, and regulations.

Local Government is Key

Most municipal governments in Massachusetts are one of two types—town governments and city governments.

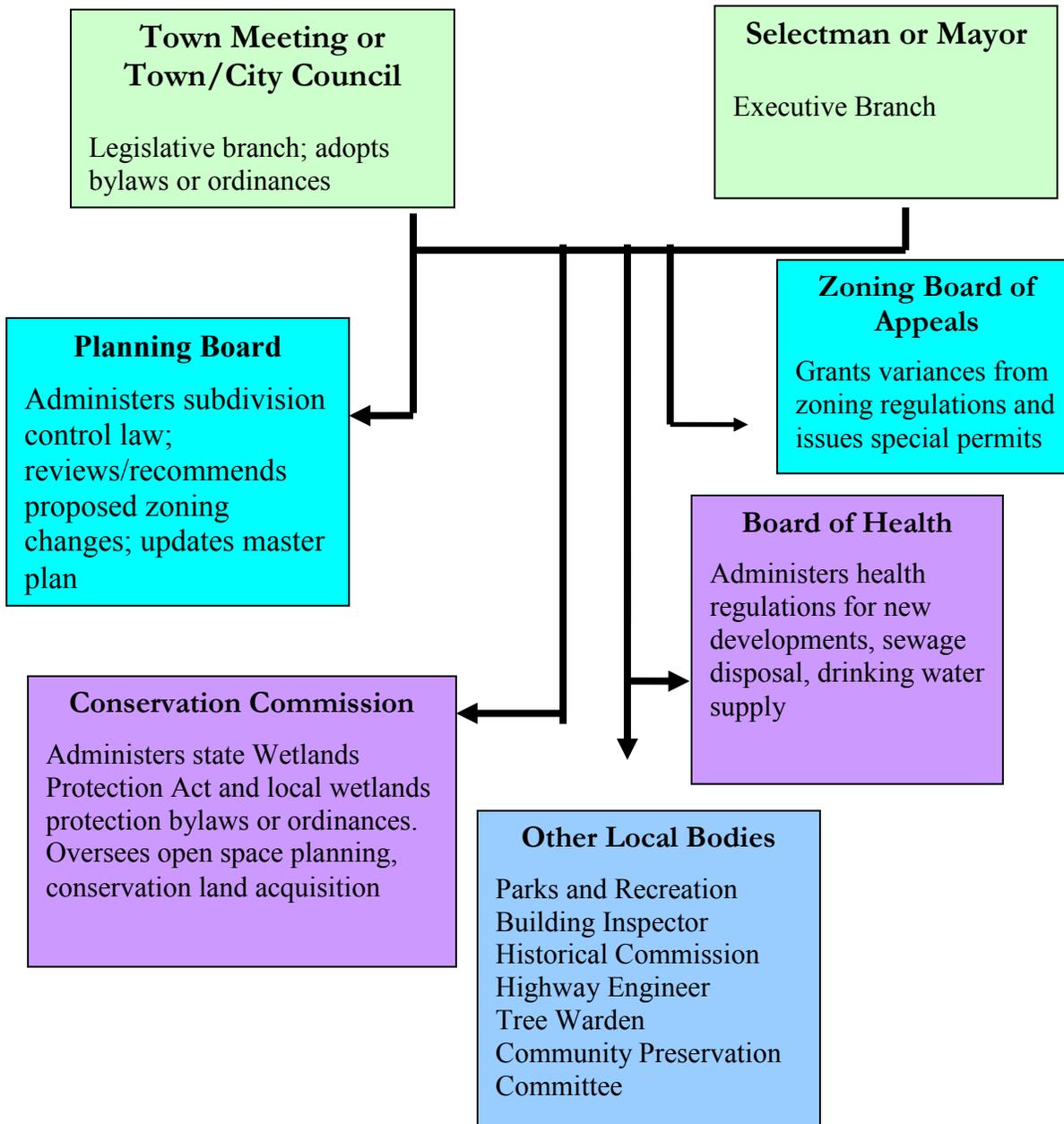
- *Town* governments are usually guided by boards of selectmen (the “executive branch”) and a town meeting (the “legislative branch”). A few towns have town councils.
- *City* governments are guided by mayors (the “executive branch”) and city councils/boards of aldermen (the “legislative branch”).

The citizens involved in town meeting or the members of the city council approve any changes in the local ordinances or bylaws and appropriate money for capital expenditures including land acquisition for conservation purposes.



Both towns and cities have boards that implement state and local regulations. Local boards are responsible for much of the day-to-day administration of municipal policy and land use controls. Specific responsibilities and duties vary by community. In some smaller communities, the selectmen, mayor or city council, or special municipal boards or employees may have special permitting responsibilities usually assigned to a local board.

Local Government Organizational Chart



Town Meeting or City Council

Communities in Massachusetts practice a more-or-less pure form of democracy. Many towns hold regular and special town meetings when every eligible voter can vote on important affairs of the town, including any changes in local ordinances or bylaws and appropriation of money for the operating budget as well as capital expenditures such as land acquisition. These are called open town meetings. Some towns have a representative form of town meeting where elected members vote rather than the general public. Some city councils have special permit granting authority. These are called "Representative Town Meetings." A few large towns have town councils with elected members. Cities have city councils comprised of elected representatives that vote on city ordinances and many other aspects of city business.

Board of Selectmen or Mayor

Boards of selectmen and mayors are the local executive branch of government elected by citizens of the towns and cities respectively. They are responsible for administering the essential functions of the municipality such as selecting appointed officials, hiring staff, and paying bills. They may issue permits such as earth-removal permits for gravel pits, or operating permits for junkyards. In some communities, the selectmen also have special permit issuance authority.

Planning Board

The planning board is made up of five to nine people who are appointed or elected. It is responsible for administering laws related to the subdivision of land. The planning board develops and updates the community's master plan, recommends changes in the zoning laws to the city council or town meeting, and may grant special permits in cases for which standard regulations and permits do not apply.

Zoning Board of Appeals

The zoning board of appeals grants variances from the zoning regulations and, in some communities, issues special permits. It also grants comprehensive permits for affordable housing, known as 40B projects, and hears appeals from decisions of the building inspector.

Conservation Commission

All 351 municipalities in Massachusetts have established local conservation commissions of five to seven appointed (or, rarely, elected) volunteers. The conservation commission is responsible for local administration of the state's Wetlands Protection Act. In communities that have their own local wetlands protection laws, the conservation commission also administers local permitting.

The conservation commission is also responsible for open space planning, and acquisition and stewardship of municipal land set aside for conservation through direct ownership or through conservation restrictions. In some communities, an Open Space Committee may fulfill some of these duties. Nonprofit local land trusts also are involved in open space planning and management.

Board of Health

Local boards of health are responsible for protecting public health. Sewage disposal (Title 5) and the supply and quality of drinking water are the two health regulations governing most new development. Boards of health also regulate sewer connections and “public-nuisance” activities such as the transport and disposal of refuse.

Other Local Bodies

Other local boards and bodies also play roles in local land use management and natural resource conservation. The parks or recreation department may maintain and operate significant community properties. The building inspector issues building permits and enforces zoning provisions. The historical commission researches, preserves, and protects historical and archaeological resources in the community. The highway superintendent or municipal engineer is responsible for road maintenance and issuing driveway permits. The tree warden regulates tree cutting on public lands and along roads. The finance committee makes recommendations on expenditures, including funding for land acquisition. The community preservation committee reviews and makes recommendations on funding for projects relating to affordable housing or the preservation of historical sites and open spaces. Made possible by the Community Preservation Act <http://www.communitypreservation.org/>, which must be voluntarily adopted by participating communities, funding is acquired through a surcharge on property taxes as well as matching funds from the state.

REGIONAL, STATE, AND FEDERAL ROLES IN LAND MANAGEMENT

Regional Roles

Under Massachusetts General Laws (MGL) Chapter 40B, all cities and towns are assigned to a regional planning district and implementing agency composed of representatives from each member community. In Massachusetts, 13 regional planning agencies (RPAs) serve as land use planning service bureaus on regional issues; most offer planning assistance to municipalities for a fee. The powers of the RPAs vary across the state, depending on their authorizing statutes—on Cape Cod and Martha’s Vineyard, for example, the RPAs have land use permitting authority. The RPAs are typically the regional transportation planning agency and regional Geographic Information System (GIS) data center. You can find the RPA for your community on the state website

Shaping the Future of Your Community — Who's Who

<http://www.mass.gov/portal/government/local/> and link to your community profile from the Local Government scroll-down menu.

Massachusetts also has many private watershed associations that work on regional land use management issues on a watershed basis. Some of them also provide technical assistance to communities and plan for regional land and resource protection. The Massachusetts Rivers Alliance <http://massriversalliance.org/?s=watershed> and the Massachusetts Watershed Coalition <http://www.commonwaters.org/healthy-waters/your-watershed> websites have links to each specific watershed association.

State Roles

Massachusetts has a number of programs and incentives to assist municipalities and regions in planning and applying smart growth tools. The state environmental agencies that play the most prominent roles in environmental regulation and management are in the Executive Office of Energy and Environmental Affairs (EOEEA). The state's Department of Housing and Community Development and other agencies also provide tools and support for community planning and land use regulation.

The EOEEA offices include the following.

Coastal Zone Management

<http://www.mass.gov/czm/czm.htm> (coastal planning and technical assistance)

Division of Conservation Services

<http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/> (open space planning, conservation restriction, and grants programs)

Mass Environmental Policy Act

<http://www.mass.gov/eea/agencies/mepa/> (review of large development proposals)

Mass Environmental Trust

www.mass.gov/eea/met (a fund that provides environmental grants)

Mass Geographic Information System

<http://www.mass.gov/mgis/massgis.htm>
(computerized mapping with many types of data available online)



EOEEA departments include the following.

Agricultural Resources

<http://www.mass.gov/agr/>

Department of Public Utilities

<http://www.mass.gov/dpu>

Division of Energy Resources (DOER)

<http://www.mass.gov/doer/>



Conservation and Recreation

<http://www.mass.gov/dcr/>

(acquires and manages state parks and recreational resources)

Environmental Protection

<http://www.mass.gov/eea/agencies/massdep/>

(provides regulatory oversight of wetlands, tidelands, permits for public water supplies and sewers, air quality, waste handling and disposal facilities, hazardous spill management and waste site cleanup)

Fish and Game

<http://www.mass.gov/eea/agencies/dfg/index.htm>

(regulates activities in rare species habitats and other wildlife management including hunting and fishing, and runs a Riverways Program)

Federal Roles

The federal agencies that play the most prominent roles in environmental regulation and management are the following.

The U.S. Army Corps of Engineers

<http://www.usace.army.mil/>

U.S. Fish and Wildlife Service

<http://www.fws.gov/>

U.S. Environmental Protection Agency

<http://www.epa.gov/>

National Oceanic and Atmospheric Administration

<http://www.noaa.gov/>

Key federal laws include the following.

- National Environmental Policy Act
<https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>
- Coastal Zone Management Act <https://coast.noaa.gov/czm/act/>
- Clean Water Act <https://www.epa.gov/laws-regulations/summary-clean-water-act>
- Endangered Species Act
<https://www.epa.gov/laws-regulations/summary-endangered-species-act>

See chart of Federal, State and Local Environmental and Land Use Laws and Regulations for more information on these and other laws.

Federal laws generally regulate large, publicly funded activities but can apply to many midsize projects. Some federal agencies acquire land or provide technical and acquisition assistance to municipalities and nonprofit organizations to assist with land conservation or restoration. Examples include National Wildlife Refuges managed by the U.S. Fish and Wildlife Service in Massachusetts and funding assistance for wetlands restoration provided by several federal agencies.

Useful Links

Massachusetts General Laws (MGL) Ch. 40 Section 21
<http://www.mass.gov/legis/laws/mgl/40-21.htm>

Massachusetts General Laws (MGL) Ch. 111
<http://www.mass.gov/legis/laws/mgl/gl-111-toc.htm>

Community Preservation Coalition
<http://www.communitypreservation.org/>

Massachusetts Official Website
<http://www.mass.gov/>

Massachusetts Rivers Alliance
<http://massriversalliance.org>

Massachusetts Watershed Association
<http://www.commonwaters.org>

Massachusetts Executive Office of Energy and Environmental Affairs
<http://www.mass.gov/eea>

Massachusetts Department of Housing and Community Development
<http://www.mass.gov/dhcd>

Massachusetts Office of Coastal Zone Management
<http://www.mass.gov/czm/czm.htm>

Massachusetts Division of Conservation Services
<http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/>

Massachusetts Environmental Policy Act
<http://www.mass.gov/eea/agencies/mepa/>

Massachusetts Environmental Trust
www.mass.gov/eea/met

Massachusetts Geographic Information System
<http://www.mass.gov/mgis/massgis.htm>

Massachusetts Department of Agricultural Resources
<http://www.mass.gov/agr/>

Massachusetts Department of Public Utilities
<http://www.mass.gov/dpu/>

Shaping the Future of Your Community — Who's Who

Massachusetts Department of Energy Resources

<http://www.mass.gov/doer/>

Massachusetts Department of Conservation and Recreation

<http://www.mass.gov/dcr/>

Massachusetts Department of Environmental Protection

<http://www.mass.gov/eea/agencies/massdep/>

Massachusetts Department of Fish and Game

<http://www.mass.gov/eea/agencies/dfg/>

Massachusetts Riverways Program

<http://rifls.org/>

U.S. Army Corps of Engineers

<http://www.usace.army.mil/>

U.S. Fish and Wildlife Service

<http://www.fws.gov/>

U.S. Environmental Protection Agency

<http://www.epa.gov/>

National Oceanic and Atmospheric Administration

<http://www.noaa.gov/>

SHAPING THE FUTURE OF YOUR COMMUNITY

CHAPTER 3

Local Land Use Planning and Conservation Strategies

Imagine your community “fully built-out” with a house on every zoned house lot and a business on every zoned commercial and industrial lot. What else would there be? Would there be any parks? Any woods or fields? Would the community have an ample, protected, clean water supply? Planning can protect against sprawling development, reduced property values, overall degradation of the natural environment, pollution, habitat fragmentation, traffic congestion, and overburdened municipal budgets and infrastructure. Planning promotes efficient use of public funds and effective management of public resources.



To be effective, land use management must begin with clear goals and a good land use plan. Planning can help a community define goals for its character, economy, and natural environment; anticipate and prioritize its needs; and describe the means and mechanisms for achieving its goals. An implementation strategy can be effective only if it is tailored to meet local land use goals.

Planning

While most planning occurs at the local level, some planning occurs at the federal, state, and regional levels. State and federal planning tend to address state and federally funded projects (such as the construction of government buildings, highways, water supplies, and other infrastructure) and the purchase of land. Regional planning agencies address shared resources and needs of

According to MGL Chapter 41, a master plan must include eight elements:

- Land use
- Transportation
- Housing
- Open Space and Recreation
- Implementation
- Public facilities
- Economic development.
- Natural and cultural resources

Shaping the Future of Your Community – Planning

whole regions. All such plans should also get careful review at the local level. In planning, your community should coordinate with neighboring communities to establish open space links, protect regional resources such as water supplies, and engage in cooperative land protection initiatives.

Three main planning products—master plans, open space plans, and zoning maps and regulations—should be designed and implemented in coordination with one another to protect natural habitats. The direct and indirect economic and quality-of-life effects of community plans should be carefully considered.

Local Master Plans: Long-Range Planning for the Community

Master plans (also known as comprehensive plans) are required under state law and are essential to community health. When implemented, they are the most effective means of guiding growth. They help a community develop a common vision of land use and a plan of action for achieving that vision. They encourage the kinds of development that are most needed, discourage those that are not wanted, and channel development projects to the most appropriate locations. Without the guidance offered by a master plan, development will occur in a haphazard manner.

According to MGL Chapter 41 Section 81D

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section81D>, a master plan must include the following eight elements.

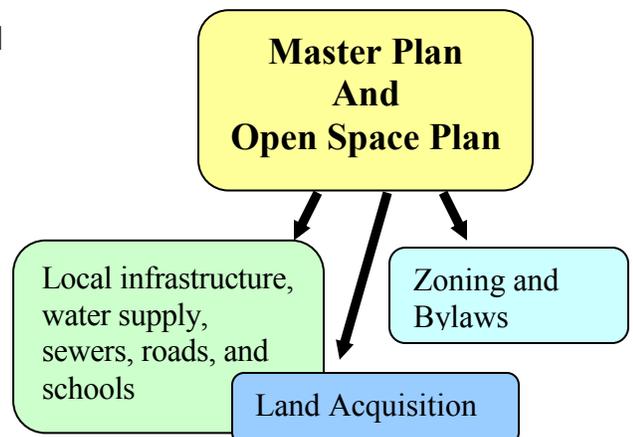
- Land use
- Housing
- Open space and recreation
- Economic development
- Transportation
- Implementation
- Public facilities
- Natural and cultural resources

The plan must include a goal, policies, and proposed actions for each category. Additional issues should also be addressed, such as protection of intact wildlife habitat, protection of water resources, and provision for desirable “build-outs.” Planning boards bear the primary responsibility for leading the process to create master plans.

Each community should develop and periodically update its master plan. If you have concerns about how your community addresses development issues or protects natural resources, call your local planning board to see if your community has an up-to-date master plan. If it does not or if the current plan is in need of additions or revisions, consider working with local officials to create or update the master plan.

Planning for Zoning and Subdivision Control

Zoning and subdivision control are powerful *regulatory* tools for guiding growth and development, but to put in place appropriate zoning maps and laws and subdivision regulations, communities must first plan carefully. Ideally, your zoning and development regulations will be consistent with your community’s master plan—or your



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community will be working to achieve that end. In a master planning process, communities must determine land use goals, then zone and regulate in such a way as to guide development to support those goals.

Planning for changes in local zoning ordinances and subdivision regulations is generally orchestrated by local planning boards.

Remember, you're going to get what you zone for! Cities and towns need to consider what the complete build-out will look like under the local zoning regulations. If every developable parcel of land is built out (in accordance with local zoning laws), will your community retain its character and quality of life?

The state's Executive Office of Energy and Environmental Affairs

<http://www.mass.gov/eea> and Department of Housing and Community Development

<http://www.mass.gov/dhcd> provide many tools and support for community planning and land use regulation.



For more information on zoning, regulatory land use controls, and incentives, see Section 4 of this guide.

Local Open Space Plans: Long-Range Planning for Conservation

Open space and recreation plans are developed by each community as an aid to land use planning and management. You should consider the open space and recreation plan as a very detailed component of the master plan. Ideally, the two will be consistent with as well as complement one another.

Conservation commissions, in coordination with other local boards and interested

The Massachusetts Division of Conservation Services (DCS) requires that open space plans address seven areas:

- Water resources
- Landscape character
- Scenic/unique resources
- Fisheries and wildlife
- Environmental problems
- Vegetation
- Geology, soils, and topography

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individuals, oversee open space planning efforts. Open space and recreation plans focus on identifying and protecting the community’s natural resources and their ecological functions, as well as providing recreational facilities to meet community needs. They describe the land- and water-based resources in the community and lay out a plan for their management. They address, therefore, development potential, land management interests, and open space protection priorities in the context of watershed management, greenways protection, wildlife habitat protection, and public open space preservation.



DEP aerial photo showing approximate locations of wetlands outlined in blue

Approval of the open space plan by the Division of Conservation Services (DCS) <http://www.mass.gov/eea/state-parks-beaches/land-use-and-management/division-conservation-services/> makes the community eligible for state grants (e.g., the Massachusetts Self-Help Program) for land protection and recreational facility development. Many communities use the DCS open space plan guidelines as the open space and recreation element of their community’s master plan.

The Costs and Benefits of Development and Open Space Protection: Economic Analyses

Economic analysis addresses the entire value of resources—i.e. how much things are worth. Sometimes value is measured in dollars (like the value of a tree for lumber); sometimes value is measured in our hearts (like the value of a habitat or a scenic view). Values play a central role in land use decisions but often remain implicit.

Until recently, it was assumed that if something didn’t have a market price it had no value at all. Now it is clear that many things without a market price (e.g., wetland function) have real but unrealized dollar values (e.g., the value of the water filtration capacity of wetlands) *and* non-dollar values (e.g., aesthetic, ecological, and recreational values). These values can *and should* be accounted for in land use planning. Many people object to placing values on natural resources, yet we do it implicitly every day in the decisions we make. By making the valuation and the comparison of values explicit, we can elucidate problems, promote open discussion, and bring prompt resolution. Mass Audubon’s study, *Losing Ground: At What*

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Cost? http://www.massaudubon.org/content/download/8599/149714/file/LosingGround_All.pdf estimates an annual value of \$6 billion in non-market ecosystem services from our state's undeveloped and recreational land. As a result of development, over \$200 million in annual ecosystem service value was lost between 1985 and 1999.

Economic analysis is not required by any state law, but it is in the best interest of every community to undertake even rudimentary economic analyses in planning and project review. Economic analyses help communities understand near-, mid-, and long-term costs and benefits (dollar and nondollar) to citizens. To make the best land use decisions, we must address the value of the land.

Planning is the stage during which economic analysis is most relevant and helpful. Communities should undertake economic analyses when they review municipal budgets. Local boards should undertake economic analyses when they develop goals, operating plans, or new laws and regulations. Economic analyses help answer questions such as the following.

- **Should our community buy that parcel of open space?** Economic analysis can compare the purchase costs borne by current citizens with the benefits of protecting the municipality's water supply and providing public recreation opportunities.
- **How would proposed zoning regulations affect the community's finances and nonmarket values?** For example, economic analysis can compare the water quality benefits of the proposed large lots with the costs of the resulting consumption of open space and fragmentation of wildlife habitat caused by low-density development. Cost of community services studies <http://www.farmlandinfo.org/cost-community-services-studies> such as those conducted by the American Farmland Trust <https://www.farmland.org> compare the costs of providing services such as schools, fire, and police to different categories of land use.
- **What would be the effects of proposed new infrastructure (e.g., municipal roads, water lines, or sewers)?** Economic analysis can compare the capital costs and benefits borne by current citizens with the costs and benefits of new development promoted by infrastructure development.



Useful Links

Massachusetts General Laws (MGL) Ch. 41 Section 81D

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section81D>

Massachusetts Executive Office of Energy and Environmental Affairs

<http://www.mass.gov/eea>

Massachusetts Department of Housing and Community Development

<http://www.mass.gov/dhcd>

Division of Conservation Services

<http://www.mass.gov/eea/state-parks-beaches/land-use-and-management/division-conservation-services/>

Mass Audubon's report, *Losing Ground: At What Cost?*

http://www.massaudubon.org/content/download/8599/149714/file/LosingGround_All.pdf

American Farmland Trust

<https://www.farmland.org>

SHAPING THE FUTURE OF YOUR COMMUNITY

CHAPTER 4

Zoning, Regulatory Land Use Controls, and Incentives

To shape a positive future for the community, local land use bylaws and ordinances should be written and implemented in such a way as to promote the desired type and patterns of development. Making desirable development quicker, easier, and cheaper than less desirable development is key to promoting well-planned growth. Citizen involvement in the regulatory realm is vital. Citizens can contribute to developing creative local land use laws and reviewing projects affected by those laws (see Section 6 of this guide for information on Project Reviews).

Local Zoning

Under the Massachusetts Zoning Act, Act, MGL Ch.40A <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A> municipalities have the power to establish various districts, or “zones,” limited to specific uses. Most municipalities in Massachusetts have local zoning laws that divide communities into different zones, such as residential, commercial, industrial, and open space. Some communities allow mixed-use zones where businesses and residences mingle.



Zoning laws usually establish requirements for minimum lot size, street frontage, density, open space, parking, and the process for site plan approval. Certain uses are permitted as a matter of right; others require a special permit.

The concept underlying zoning is to promote public health, safety, and welfare and encourage the most appropriate use of land throughout the municipality. Zoning is developed, for example, to lessen congestion in the streets; provide safety from fire, floods, and other hazards; and facilitate provision for transportation, water, drainage, sewerage, schools, parks, and open space.

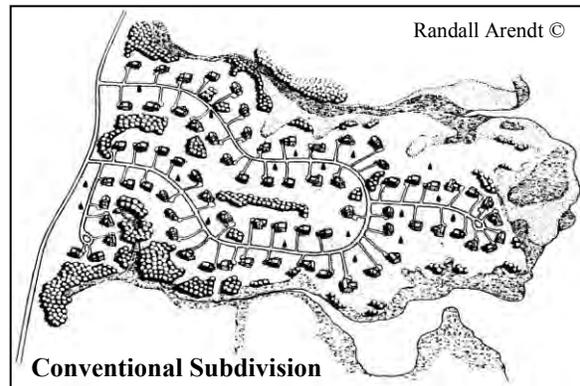
Zoning helps avoid placing incompatible uses, such as heavy industry and residential developments, in close proximity to one another. Zoning is a mechanism that allows communities to shape their own future. It is the single-most powerful land use management tool.

Creative zoning regulations and bylaws/ordinances can allow for development that meets the community’s economic and housing needs while protecting natural resources. Zoning can contribute to or help discourage sprawl. Zoning should reflect and be responsive to different communities’ needs and interests. Some communities may want to retain their agricultural heritage; others may want to promote commerce and industry; still others may choose to encourage small neighborhoods and “villages.” All changes to zoning laws must conform to state zoning standards and be approved by the community’s legislative body.

Local Subdivision Control

The Massachusetts Subdivision Control Act, MGL Ch. 41 §81K-81GG

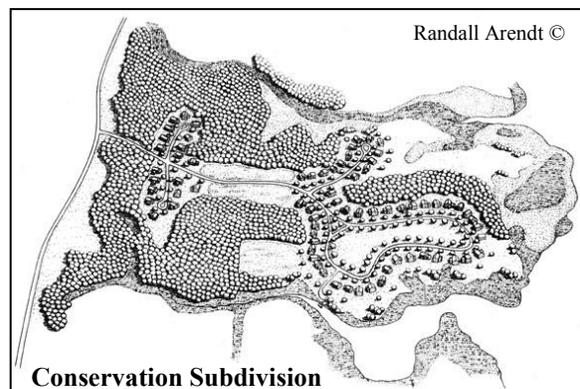
<http://www.mass.gov/legis/laws/mgl/41-81k.htm>, requires minimum frontage for the division of land into buildable lots and gives local planning boards authority over subdivision of land. Municipal planning boards can enact local subdivision control regulations that put in place more stringent requirements or restrictions to address public health, safety, and welfare. Local subdivision control is employed in close coordination with local zoning and health codes.



Conventional local subdivision regulations do not address ecological values, public access, or other public amenities—they are established solely to regulate the laying out of new roads and lots. This often results in “cookie cutter” subdivision layouts that are geometric rather than tailored to the land’s nature contours.

Conventional subdivision, especially in conjunction with large minimum lot sizes, consumes a great deal of land resulting in sprawl.

If proposed new lots meet the basic frontage requirements on an existing way, the planning board must accept the lots through the “Approval Not Required” (ANR) guidelines. If proposed new lots do not have frontage on an existing way, the planning board will employ local subdivision laws and regulations and require submission and review of a subdivision plan.



Open Space Zoning

Many communities have implemented alternatives to conventional subdivisions, known as cluster or open space zoning. One popular version is Open Space Residential Design (OSRD), which includes a four-step process that precedes formal planning board review:

1. Identify and set aside for protection critical natural habitat and/or other features such as buffers;
2. Identify appropriate sites for the homes or businesses;
3. Locate roadways and other infrastructure;
4. Draw in the lot lines.

Density bonuses allowing construction of additional units may provide more open space and/or provide incentives to use OSRD or other open space zoning approaches or to gain affordable housing. In this way, the community’s housing needs are met without destroying as much land and natural resources as a conventional subdivision. The homeowners and often the public also receive the added benefit of shared open space.

The Green Neighborhoods Alliance <http://www.greenneighborhoods.org/> formed by Mass Audubon and other groups developed model OSRD bylaws and regulations that are being utilized successfully by many communities.

Creative Zoning for the Future

Zoning can and should be developed by individual municipalities so as to protect the community’s most important natural assets. In most communities, changes are needed that allow creative, conservation-oriented zoning to prevail. Changes in zoning maps and regulations are overseen by the local planning board. Model zoning laws are available from several sources.

Mixed-Use Zones

These zones are modeled after traditional New England villages that had shops, homes, and small service providers all located within walking distance of one another—allowing a mixture of compatible uses in one area. Such zones can encourage village-style developments where residences and businesses share space and open space is left intact for public use and enjoyment.

Web Resources for Zoning:

- [Smart Growth Alliance](http://ma-smartgrowth.org/)
- [Green Neighborhoods](http://www.greenneighborhoods.org/)
- [“Growth Management Tools: A Summary for Massachusetts Planning Boards”](http://www.mass.gov/dcr/waterSupply/watershed/documents/growthmanagementtools.pdf)
- [Massachusetts Smart Growth/Smart Energy Toolkit](http://www.mass.gov/envir/smart_growth_toolkit/index.html)
- [Citizen Planner Training Collaborative](http://masscptc.org/)
- [Planning Commissioners Journal](http://www.plannersweb.com/)
- [Low Impact Development](http://www.mass.gov/envir/lid)

Concentrated Growth Districts

Districts where relatively dense development is allowed can be used to encourage concentrated development around existing downtowns or other locations where infrastructure is available and the land is appropriate for intensive development. This balances districts with less concentrated uses in locations that are more sensitive.

Transferable Development Rights (TDRs)

Landowners in an area within a municipality targeted for preservation can agree to “sell” their development rights to landowners in areas that are more suitable for development. This is a relatively new tool that is currently being used in several Massachusetts communities, including Plymouth and Groton.

For more information on TDRs visit the Planning Commissioners Journal website: <http://www.plannersweb.com/>.

Performance Zoning

With performance zoning, restriction is placed on the impacts caused by a development, rather than on the categories of use. In this way, flexibility can be encouraged while affording maximal protection to the resources of concern. Examples include amount of traffic generated or the percentage of impervious surfaces allowed.

Conservation-Oriented Special Zoning, or Overlay District

Increased protection is provided for special categories of resources, such as floodplains, wetlands, riverfront areas, areas overlying water supplies, and historically significant areas. These protections can “overlay” (on top of or in addition to) the existing, “underlying” zoning, hence the term “Overlay District.” In some cases a conservation-oriented underlying district approach can be used, for example zoning areas with prime agricultural soils for agricultural use.

Low Impact Development (LID)

Low Impact Development <http://www.mass.gov/eea/waste-mgmt-recycling/water-resources/preserving-water-resources/partners-and-agencies/water-resources-commission/low-impact-development.html> addresses stormwater through small, cost-effective, landscape features located throughout the development instead of collecting water from large portions of a site and piping it to centralized retention/detention basins. LID helps replicate and retain the natural ways that rainfall is managed and distributed. It can be applied to new development as well as redevelopment and revitalization projects.

Phased Growth and Building Moratoria

Communities experiencing rapid, unplanned, uncontrolled growth that threatens to overwhelm municipal services and degrade important aspects of the local environment and

quality of life can limit the number of building permits issued each year to “*phase their growth*” based on infrastructure capacities or to avoid excessive growth while a community is in the process of updating its master plan and zoning.

Other communities may adopt a *building moratorium* to temporarily halt the issuance of new building permits or subdivision approval. Moratoria are not meant to stop development altogether but rather to give the community time to plan and improve standards to guide growth and development. However, beware: a moratorium can backfire if developers rush to get projects approved before the moratorium goes into effect. Careful attention is also needed in adopting such bylaws and ordinances in order to ensure that they are able to withstand court challenge. It is best if a community puts such a requirement in place for a specific period of time while needed capital facilities or infrastructure is being developed.

Occasionally, communities limit new connections to water or sewer systems because of inadequate supplies or capacities or they are ordered to do so by the state Department of Environmental Protection (DEP) <http://www.mass.gov/dep>. If on-site water and septic are available, this may have little impact on overall growth.

Wetlands Protection

Although it was not designed as a growth management tool, the Massachusetts Wetlands Protection Act (310 CMR 10.00) <http://www.mass.gov/eea/agencies/massdep/water/regulations/310-cmr-10-00-wetlands-protection-act-regulations.html> is one of the most



powerful environmental protection laws in the state and strongly influences land development patterns.

The purpose of the Wetlands Protection Act is to protect public health, safety, and welfare by preserving the ability of wetlands to absorb floodwaters, filter pollutants, recharge water supplies, and support fisheries and wildlife.

The state Act and accompanying state wetlands regulations limit development in or near wetlands, rivers, and floodplains and require filing for a permit from the local conservation commission for projects in and near these areas. While the state law provides a good foundation for wetlands protection, it does not adequately protect certain areas such as buffer strips adjacent to wetlands or small but

ecologically important vernal pools. Many communities have therefore adopted local wetland bylaws and ordinances.

Model bylaws and ordinances are available from the Massachusetts Association of Conservation Commissions <http://www.maccweb.org/>, which also provides training, advice, and support to conservation commissions. The Wetlands Protection Act and local bylaws and ordinances are administered by the local conservation commission, typically with concurrent review of both permit applications at the same time for a particular project. The Department of Environmental Protection (DEP) <http://www.mass.gov/dep> provides the state regulations <http://www.mass.gov/eea/agencies/massdep/water/watersheds/wetlands-protection.html#5> that conservation commissions apply in administering the Wetlands Protection Act. DEP also hears appeals of local decisions under the state law, provides training and guidance documents, and administers a variety of other laws that protect water resources.

Protecting Water Supply

Zoning and regulations can ensure that new potential water source areas are protected to meet the community's future growth needs and that local zoning bylaws encourage water conservation. Open space or cluster residential development, for example, can reduce stormwater runoff by minimizing road lengths, and cut water use by minimizing lawn area. In some communities, the lot coverage in aquifer recharge areas is limited to encourage the maximum recharge rates.

DEP requires mapping of areas contributing to local water supplies, and encourages local bylaws and ordinances that restrict certain kinds of development and other activities in these areas. New water supplies from any ground or surface source require permits through the New Source Approval process. New withdrawals of over 100,000 gallons per day also require a permit from DEP under the Massachusetts Water Management Act.

Sewage Disposal Regulations

Under Title 5, the state sanitary code, DEP established standards (such as soil percolation rates) for the siting and construction of septic systems. This code is administered by the local board of health, and municipalities often supplement it with local regulations. Some communities rely on septic regulations to limit growth, but this is not the proper purpose of such regulations and in any case is unlikely to work in the long run with the advent of alternative septic systems and the extension of sewers. Communities do need to be careful about the potential unintended growth effects of local sewer system expansions, and Title 5 now provides greater flexibility to address this concern. Other alternatives for solving a neighborhood's septic failures should also be considered, such as shared systems or small package treatment plants.

Incentives for Better Project Design

The land use regulations described above are designed to protect individual sites, resources, or interests. The net result, however, is a complicated network of standards with which

Shaping the Future of Your Community – Zoning and Regulation

developers and landowners must reckon. Many developers feel overburdened by municipal permit requirements and fee structures, so they often submit project proposals that are tried-and-true (i.e., guaranteed to be approved). This strive for efficiency by developers often limits the creativity of their proposals, creativity that could promote open space and natural resource protection.

Coordination among local boards of permit application and review requirements, clarification of (and making more flexible) regulatory standards, and increases in financial incentives for

creative and environmentally appropriate project proposals can support developers' interests in efficiency and predictability, ease burdens on local officials, and be crafted to foster greater resource protection. Communities that know what type of development they want to see are more likely to be successful in communicating this to developers than those that adopt a more reactive posture.

Useful Links

Massachusetts General Law (MGL) Ch.40A

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A>

Massachusetts General Law (MGL) Ch. 41 §81K-81GG

<http://www.mass.gov/legis/laws/mgl/41-81k.htm>

Smart Growth Network

<http://www.smartgrowth.org>

Green Neighborhoods

<http://www.greenneighborhoods.org>

“Growth Management Tools: A Summary for Massachusetts Planning Boards”

<http://www.mass.gov/dcr/waterSupply/watershed/documents/growthmanagementtools.pdf>

Massachusetts Smart Growth/Smart Energy Toolkit

http://www.mass.gov/envir/smart_growth_toolkit/index.html

Citizen Planner Training Collaborative

<http://masscptc.org/>

Planning Commissioners Journal

<http://www.plannersweb.com/>

Low Impact Development (LID)

<http://www.mass.gov/envir/lid/>

Massachusetts Association of Conservation Commissions (MACC)

<http://www.maccweb.org/>

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Massachusetts Department of Environmental Protection
<http://www.mass.gov/dep>

SHAPING THE FUTURE OF YOUR COMMUNITY

CHAPTER 5

Land Protection

Massachusetts is blessed with a rich and varied landscape. Our coastal regions, central uplands, hills, and river valleys provide clean water, productive farmland, scenic vistas, and an impressive diversity of wildlife. Your involvement can make a real difference in protecting these values and shaping the future of your community.



At this moment, roughly half of Massachusetts –some three million acres– is privately owned, unprotected wildlife habitat, primarily woodlands and wetlands. The decisions we make in the next twenty years about this land will have a profound and long-lasting effect on the kind of communities our children and grandchildren will inherit, on the patterns that growth will take in our communities, and on the wildlife that share this landscape with us.



The Commonwealth also benefits from a strong tradition of land protection. Massachusetts is where the first land trusts were established, including Mass Audubon in 1896; where the first conservation land was dedicated; and where more land trusts exist than any other state in the country.

Across Massachusetts there are state and local agencies and many nonprofit organizations working to permanently protect land using a wide variety of techniques. In many cases, collaborative land protection partnerships between agencies and nonprofits are helping to secure funds to protect important lands. In many cases, protection through direct measures—acquisition of land or rights—is much more feasible than landowners and other stakeholders realize.

The most critical factor is having the right information when important decisions about land are made. The purpose of this section is to provide information about these land protection techniques, describe sources of funding for land protection, and provide guidance about where to begin in seeking to protect important lands.

Land Protection Techniques

There are a wide variety of ways to protect land. Some key questions to consider in selecting the right technique are the following:

Land Protection Goals	Possible Tools
Fee Ownership: Is it desirable to have the land owned by a municipality or nonprofit organization (for example when public access is the goal)?	Purchase or gift of land; bequest
Restricted Uses: Can the land remain in private hands and be subjected to permanent restrictions that prevent or limit future development?	Conservation restriction; agricultural preservation restriction
Landowner Finances: Does the landowner need to be compensated for the land? Might they consider a gift or a sale for less than the full fair market value?	Purchase, bargain sale
Partial Protection: Is a portion of the land suitable for development?	Limited development; conservation buyer

The answers to these questions will guide your choices and help you determine which is the most productive route for you to explore. Several of the most common options are described in this chapter, but there are additional variations and hybrids that can be developed to help you meet your specific conservation objectives, particularly for large properties.

Gifts of Land

An outright gift of property for conservation is often the simplest and best way to protect it. A gift of land can ensure that the property will remain undeveloped and in conservation use while relieving the owner of the responsibilities of ownership and management, including property taxes.

Landowners can donate property to either a nonprofit land conservation organization (often called a *land trust*) or a public conservation agency, such as a city or town conservation commission, or state agency. The process of making a gift is fairly straightforward once agreement has been reached with the recipient.

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A deed needs to be drawn up, and the recipient will investigate the title and the condition of the land. A survey may be necessary if one hasn't already been done.

Donors of land can claim the value of a properly made gift as a charitable contribution on their federal income tax return. The IRS has certain limitations on how much of a deduction a taxpayer can claim in any given year, but unused portions of the gift can be carried forward for up to five additional years. An appraisal will generally be required to document the value of the gift.

For more information see:

Mass Audubon Land Protection

<http://www.massaudubon.org/get-involved/conserve-land>

Massachusetts Land Trust Coalition

<http://www.massland.org/>

Gifts of Conservation Restrictions and Agricultural Preservation Restrictions



Landowners who want to keep their land (and someday leave it to their children or sell it), but want to know that, regardless of ownership, the land will stay open and undeveloped, may be willing to place a permanent conservation restriction on their land. A conservation restriction is a voluntary legal agreement between a landowner and a conservation organization (either a land trust or public conservation agency) that forever limits development of a property, and gives to the conservation organization the

responsibility to enforce and defend the terms of the agreement.

Conservation restrictions are placed on record at the local registry of deeds and bind all future owners of the land. The land itself remains in private hands and on the tax rolls (with reduced assessments), and can be given, sold or left to anyone the owner chooses, but future owners will be bound by the terms of the agreement. The public has no right of access to the property unless the owner specifically grants it.

Conservation restrictions have become very popular tools for land conservation in recent years. For the owner who wishes to keep land in the family but ensure its preservation, a conservation restriction is the perfect tool. Conservation restrictions can be tailored to reflect the particular qualities of the land and the specific objectives of the landowner and recipient organization. For example, they may allow continued farming or forestry and may also allow a small amount of development – such as an additional house.



Shaping the Future of Your Community – Land Protection

Agricultural preservation restrictions (APRs) are similar tools, designed specifically to protect farmland and encourage its continued agricultural use. APRs can be donated or may be purchased by the Department of Agricultural Resources, often in partnership with municipalities.

As with gifts of land, donors of conservation restrictions are eligible to claim a charitable contribution on their federal income tax return. The amount of the gift is determined by professional appraisal, and is generally the amount by which the conservation restriction has lowered the value of the property. Donors may realize significant estate and property tax savings as well.

For more information about conservations restrictions, see the EOEEA Division of Conservation Service’s website <http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/>

For more information about agricultural preservation restrictions, visit the website of the Massachusetts Department of Agricultural Resources <http://www.mass.gov/eea/agencies/agr/land-use/agricultural-preservation-restriction-program-apr.html>.

Sales and Bargain Sales

Many landowners cannot afford to make gifts of land and conservation restrictions, but would nonetheless like to see their property permanently preserved. Though funds for purchases are limited, many conservation agencies and land trusts do have some funds for conservation purchases, depending on the situation (see below for more information about funding). Either the land or a conservation restriction (or both) may be purchased.

Many landowners will find it advantageous to consider taking advantage of tax provisions that allow for a bargain or charitable sale of their property for conservation. A sale for less than the property’s full fair market value (essentially part sale, part donation) provides the landowner with some cash while making the purchase more affordable for the conservation organization. Bargain sales are particularly attractive for landowners that have highly appreciated property that they have owned for a long time as they provide an opportunity for a charitable deduction that can offset large capital gains. Landowners are often surprised to find that a bargain sale can be surprisingly competitive with a market sale in terms of the net result to their bottom line.

Estate Planning and Bequests

Some landowners want to keep their land for their lifetimes but are willing to consider options for conservation after their death. In these cases, a gift of land or conservation restriction *by will* is a possible option. Land and conservation restriction gifts by will can also be smart tax planning; though they don’t provide an income tax deduction, they do remove the value of the property from a landowner’s taxable estate. New tax provisions now provide even greater estate tax benefits for gifts of conservation restrictions – and

allow these gifts to be made during a landowner’s lifetime, by will, or by heirs for a short period of time after a landowner’s death.

In some cases, landowners choose to make a gift of land now, but reserve the right to use the property during their lifetime – what is known as a *reserved life estate*. In such instances, the landowner continues to live on or use the property while the title transfers to a conservation organization or agency.

Conservation Buyers and Limited Development

If a landowner needs to sell at a price higher than a conservation organization or agency can afford, another option is for both parties to look for a *conservation buyer*. These are private individuals who are seeking an opportunity to purchase a special piece of land and also willing to agree to subject the property to a permanent conservation restriction, limiting future development.

A similar approach is to consider a *limited development* project, which provides for the development of the least environmentally sensitive portions of the property in order to generate the funding that will enable the landowner to conserve the remainder for little or no cost. So for example, a few frontage lots or a small subdivision might be developed on the front of a property to enable conservation of the backland.

Regulatory Tools to Protect Open Space



Across the Commonwealth, municipalities and other government agencies are working creatively in partnership with developers to set aside important open space areas through the regulatory process.

Open Space Residential Design (OSRD) and Transfer of Development Rights (TDRs) are tools that can be implemented through zoning to set aside for conservation critical natural habitats and buffer zones, while allowing for subdivision development in designated areas. In this way, communities can meet their housing needs while conserving habitats that would be destroyed by a conventional subdivision.

These tools work best when a community identifies an area that they are seeking to preserve (for example, a river corridor) by using this tool. For more information on OSRD, refer to section 4 and visit the OSRD website http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-osrd.html. For more information on TDRs visit the planners’ website at: <http://www.plannersweb.com>.

MGL Chapter 41, Section 81U of the Subdivision Control law permits a planning board to require a modest area of parkland to be set aside within subdivisions for a three-year period before it can be developed. This may give communities time to secure the funds to buy the land and protect it.

In addition, communities are increasingly entering negotiation with developers to set aside critical lands through the development process. While state law limits the ability of local boards to require the protection of land during development review, such preservation measures are often offered by developers in exchange for waivers or other reduced regulatory requirements.

Chapter 61 Programs – A Temporary Land Protection Measure

Under the state’s “Chapter 61” laws, landowners can voluntarily agree to keep land in forestry, agriculture, or open space and recreational use for a specified period of time in exchange for a reduction in local property taxes.

By obtaining property tax relief, landowners are often able to continue to hold and use land for these purposes. In exchange, municipalities receive a right of first refusal to purchase the land at fair-market value if it is converted to another use during the enrollment period.



The municipality may act on the right of first refusal itself, or assign it to a nonprofit land conservation organization such as a land trust. This provides a mechanism for communities to protect these lands if they choose. The requirements for each of the programs (Chapter 61 for forestry lands, Chapter 61A for agricultural lands, and Chapter 61B for open space and recreation lands) vary, but include minimum acreage requirements (generally 5 to 10 acres), specified property tax savings, and other provisions.

While many thousands of acres are enrolled in these programs, including many of the largest farmlands and privately owned timberlands in the state, only a small percentage of landowners who are eligible to participate in Chapter 61 programs are currently enrolled. Landowners who are interested in enrolling in the program can learn more through their municipal assessor’s office. Municipalities interested in enrolling additional land in the programs may want to consider educational workshops for landowners or providing assistance with enrollment.

Citizens in municipalities with important lands enrolled in Chapter 61 programs should consider working proactively with local boards to determine the best way to protect these lands for open space and municipal purposes should the landowners wish to convert them to another use. Because the Chapter 61 right of first refusal time frame is rather short, it is prudent for municipal conservation commissions and open space committees to ensure

that the landowner is aware of the local interest in protecting the land. Since it is much more difficult to acquire a property once contract terms are set and the deadline is approaching, it is always preferable to encourage landowners to approach the town, or a local land trust, prior to entering into a contract to sell the land.

For more information on Chapter 61 and other forestry programs, see <http://www.masswoods.net/>.

Securing Needed Funds for Land Protection

Citizens seeking to preserve land in their communities must often wrestle with one of the greatest challenges of land conservation—identifying funding sources to buy the land or to buy a conservation restriction from the landowner. Available funds are limited—and the needs are great. Increasingly, given rising land values, successful land protection projects are completed using a variety of funding sources. The principal sources of funding for land conservation are described below.

Case Study in Local Action Bone Hill Farm, Barnstable

In August 2003, neighbors of Bone Hill Farm were disappointed to learn that a key parcel of land at the gateway to Mass Audubon's Long Pasture Wildlife Sanctuary was slated for residential development. The resulting two large homes would have destroyed the open meadow forever. This possibility catalyzed creation of the Committee to Preserve Northside Open Space, a group of local residents who rallied to oppose the development plans and advocate for a partnership with Mass Audubon and the Barnstable Land Trust to purchase the meadow.

As a result, the development plans were withdrawn and the owners graciously agreed to work cooperatively with Mass Audubon and the neighborhood to provide an opportunity for the land to be permanently protected for conservation purposes. The land was generously offered at a bargain sale price in recognition of the importance of this project. Still, more than \$700,000 needed to be raised.



Over the course of the next two years, the committee waged a fundraising campaign that resulted in more than 500 separate donations toward the effort. Sources of funds included an appropriation from the town's land bank (similar to Community Preservation Act funds), private foundations, local businesses, and generous individuals, some of whom made several gifts during the campaign.

Today, the land is permanently protected—the result of this creative partnership among three organizations and the town—and a tribute to the power of local action to shape neighborhoods and communities.

Many other communities have banded together with similarly positive results when citizens were concerned about the future of treasured parcels of lands. You can do it too!

Municipal Funding

Funding can be provided through funds that the community has on hand or funds that are borrowed for the purchase. Potential sources include municipal conservation funds (controlled by the city or town's conservation commission), Community Preservation Act funds, or funds that are appropriated at town meeting or city council from free cash, a reserve fund, or other municipal sources. In some cases, a Proposition 2½ override may be needed to enable the purchase. A few communities have developed innovative funding programs for open space protection. For example, in the spring of 2000, the town of Ipswich authorized a \$10 million Open Space Bond for the protection of land for open space, water supply protection, and recreation.

Community Preservation Act

The Community Preservation Act is a state law that can be adopted locally. It is a tremendously effective tool to protect open space, promote affordable housing, and preserve historic resources at the local level.

Municipalities that adopt the act place a 1 to 3 percent surcharge on local property taxes, with exemptions available for the first \$100,000 of property value and low-income and elderly residents. The state supplements these local funds with matching funds. The town's residents then decide how these funds are spent to promote community preservation priorities.

The legislative body (town meeting or council) determines how the money will be spent. The only stipulation is that at least 10 percent of spending each year must be set aside for housing, 10 percent for historic preservation and 10 percent for open space. The remaining 70 percent can be spent on any of those needs or on recreational needs as well. Community Preservation Act money can be reserved for future use. All funds are spent locally.

For more information, see visit the Community Preservation Coalition's website <http://www.communitypreservation.org/>.

State and Federal Land Acquisition Programs and Funding

State and Federal funds are sometimes available to protect important lands. Such funding can come from a variety of potential sources. The EOEEA Division of Conservation Services administers programs that provide direct matching grants to communities for land conservation projects, parks, and recreational facilities. The grants are competitive and available only to communities with approved Open Space and Recreation Plans. The project must be approved by town meeting or city council and the land must be open for public use and enjoyment. For more information on these and other programs, visit the website of the Division of Conservation Services <http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/>.

Various other state or federal funds are available to protect important lands. In addition to the DCS municipal grants program, state conservation agencies sometimes acquire environmentally significant land and conservation restrictions for state ownership. Land conservation programs exist within the Department of Conservation and Recreation (DCR) <http://www.mass.gov/eea/agencies/dcr/> and the Division of Fisheries and Wildlife (DFW) <http://www.mass.gov/eea/agencies/dfg/dfw/> within the Department of Fish and Game.

Other sources of state funding include the Agricultural Preservation Restriction (APR) program <http://www.mass.gov/eea/agencies/agr/land-use/agricultural-preservation-restriction-program-apr.html> within the Department of Agricultural Resources <http://www.mass.gov/eea/agencies/agr/> for agricultural land. For appropriate land protection projects, funds are sometimes available from DCR's greenways and trails program <http://www.mass.gov/eea/agencies/dcr/services-and-assistance/grants-and-technical-assistance/greenways-and-trails-program.html>, from the water resource grant program <http://www.mass.gov/eea/agencies/massdep/water/grants/> within the Department of Environmental Protection (DEP), through the Massachusetts Highway Department <http://www.massdot.state.ma.us/highway/Main.aspx>, and from the federal Forest Legacy Program <https://www.fs.fed.us/spf/coop/programs/loa/flp.shtml>.

Partnerships With Nonprofit Land Conservation Organizations

Partnerships are becoming increasingly common as a means to protect open space and conservation land. In Massachusetts, there is a wealth of state, regional, and local land conservation organizations, known as land trusts. A list of these organizations by region is available on the website of the Massachusetts Land Trust Coalition <http://www.massland.org/member-list>.

Such organizations can assist with projects in a variety of ways, including providing technical assistance—or advice—to citizens interested in conserving land, developing grant applications for foundations, and assisting with private fundraising. In some cases, they may be willing to acquire a piece of land directly using funds that are on hand or raised for the project. Each organization has a specific mission and specific land conservation priorities and will typically evaluate proposed projects to see if they are a good fit for the organization and whether the needed funds can be raised. More information about the work of land trusts is also available through the Land Trust Alliance <http://www.landtrustalliance.org>.

Private Funds

Private funds are key to completion of many land conservation projects. Conservation-minded individuals often step forward to donate funds to nonprofit organizations to conserve land or buy available parcels and keep them off the market to allow time for fundraising. Most often these individuals are from the community where the land protection project is located—and often they live in the neighborhood where the land is protected.

Useful Links

Mass Audubon's Land Protection Department

<http://www.massaudubon.org/get-involved/conserves-land>

Massachusetts Land Trust Coalition

www.massland.org

EOEEA Division of Conservation Services

<http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/>

Massachusetts Department of Agricultural Resources Agricultural Restriction Program

<http://www.mass.gov/eea/agencies/agr/land-use/agricultural-preservation-restriction-program-apr.html>

OSRD and Planners Web

http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-osrd.html

Mass Woods Forestry Programs

<http://www.masswoods.net>

Community Preservation Coalition

<http://www.communitypreservation.org>

Land Trust Alliance

<http://www.landtrustalliance.org>

SHAPING THE FUTURE OF YOUR COMMUNITY

CHAPTER 6

Project Review and Permitting

If you are concerned about the impacts of a specific development project, you should participate in the permit review processes. Project review is the process during which a proposed project is evaluated by a variety of regulatory bodies. When a development project is proposed, the plans are filed with the permit-granting boards (e.g. planning board, conservation commission, and board of health) and public meetings or hearings are held.



Whether the project is local or state, and whether it affects a wetland, a forest, or a whole community, the same general process of review and opportunity for input exists—the project proponent submits full plans for public review, the permitting board reviews the plans and any public comments, and a permit is issued (often with conditions) or denied. Developers and other landowners will often hire legal, scientific, and engineering experts to assist with permit applications and participate in the hearing process. The reviewing authorities also have the right to hire technical consultants, and can often charge the developer for reasonable independent consulting services related to the permit application.

As a citizen, you have clearly defined rights to participate with the permitting agencies at times throughout the review process. Familiarize yourself with a particular project under review by attending meetings and hearings held by the appropriate boards then clearly state your concerns or recommendations for improvements.

The project review process is designed to ensure that the project meets all regulatory requirements and has been given the proper conditions.

To understand a local development proposal, you first need to identify the local permits and boards involved. If you are unsure where to begin, use the

project review table and descriptions of the authorities of various boards in this publication to see which local community, commission, or board has jurisdiction. The local city or town clerk may also be able to guide you to the appropriate review boards.

Topic of Concern	Potentially Applicable Permits
New lots and/or streets Subdivisions	The Massachusetts Subdivision Control Act The Massachusetts Zoning Act and local zoning Local Subdivision Control and Approval Not Required (ANR) Open Space Residential Design Zoning and Subdivision Appeals
New or expanded commercial or industrial development; other large projects	The Massachusetts Subdivision Control Act The Massachusetts Zoning Act and local zoning Site Plan Review Special Permit Massachusetts Environmental Policy Act if thresholds met and triggered
Affordable Housing	Comprehensive Permit (40B) The Massachusetts Comprehensive Permit Law and Local Project Review Process
Smart Growth Zoning (40R)	MGL Ch. 40R
Development in or near wetlands, rivers, and floodplains	The Massachusetts Wetlands Protection Act Local Wetlands Bylaws & Regulations Federal Clean Water Act and Massachusetts Programmatic General Permit State (401) Water Quality Certification
Alteration of rare species habitat	The Massachusetts Natural Heritage & Endangered Species Program (NHESP) The Massachusetts Endangered Species Act
Large projects	Massachusetts Environmental Policy Act
Other	See Section 2: Who’s Who of Local, Regional, State, and Federal Management and Environmental Agencies and Chart of Federal State and Local Laws and Regulations Pertaining to Land Use

Local Project Review

Local review processes are fairly similar across the state. While a few communities have a process for coordinating project review by local boards, most communities have each local board review the project independently and issue permits separately. Concerned citizens should check with local officials to find out how the project review process works in their own communities. A review of the local laws will provide details on the requirements for each board when reviewing applications and the allowable time periods for review, comment, and appeals of decisions.

Shaping the Future of Your Community – Project Review and Permitting

While only comprehensive planning can really guide overall development patterns, reviews of individual projects can provide some protection against increased habitat destruction, pollution, traffic, flooding, and other adverse effects of development.

In reviewing development proposals, it may be most effective to communicate with and seek the assistance of a number of local boards since each board addresses different regulatory issues. Target your comments to issues subject to each board's jurisdiction so that the board can respond with appropriate permit conditions to improve the development design.

Let us imagine that a landowner wishes to build a 20-unit single-family subdivision on a parcel of land with fields, forest, streams, and wetlands. The following chart describes the process that the developer and other interested parties might follow to see the project through to construction. Opportunities for citizen involvement are indicated in italics in the right-hand column. (Note: there is no pre-set order for obtaining the required permits—this is determined by both local custom and the applicant).

Local Project Review Process

Developer's Actions

Site Suitability Assessment

Developer assesses site for development potential and begins to develop a proposal

Plan Submission

Developer submits project proposal to pertinent local boards (planning, zoning, health, and/or conservation).

Board Review

Boards conduct site visits and hold public meetings/hearings.

Local Board Decisions

Each board denies, requires revisions, or approves with conditions (usually within 21-90 days).

Appeals

Any aggrieved party with standing may appeal a board's decision within the legally allotted time. Appeals must have legal bases.

Construction

Once approval is given, proposed work can proceed.

Role for Concerned Citizens

Check Local Regulation

Try to ensure that land use plans and laws exist that will protect natural resources.

Be Aware of Pending Projects

Check regularly with all local boards to see if developers have submitted preliminary proposals. Read legal notices in local newspaper.

Review Proposal and Attend Hearings

Look at the applications and plans held by the reviewing boards. Attend site visits. (Don't trespass on private property.) Educate other interested citizens. Attend all pertinent meetings/hearings and site visits. Voice concerns and suggest alternatives. Focus comments on issues relevant to the reviewing board's authority.

Appeal Decision if Necessary

File an appeal if you feel a board's decision was legally in error. File quickly; the appeal period may be only 10 days long.

Monitor Construction

Monitor the construction to ensure that it conforms to the terms of the permits. Enter private sites only with permission, view from public areas, and communicate with local officials who have access.

Subdivision and Zoning

The Massachusetts Subdivision Control Act

The Massachusetts Subdivision Control Act

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/overviewofthesubdivision.pdf> regulates any division of land into two or more lots. The act requires minimum road frontage for the division of land into buildable lots (to accommodate services such as fire and ambulance) and gives local planning boards authority over subdivisions.

The Massachusetts Zoning Act

The Zoning Act <http://www.mass.gov/hed/docs/dhcd/cd/zoning/zoningact.pdf> promotes zoning in each municipality in Massachusetts. Local planning boards and zoning boards of appeal implement local zoning laws and regulations. Planning boards recommend changes to local zoning maps, laws, and regulations and implement zoning regulations through the subdivision plan review process (see below). Zoning boards of appeal grant special permits, hear requests for variances from established zoning requirements, and appeal the decisions of the Building Inspector. Citizens can get involved with local zoning through any of the following three avenues.

- Developing or revising municipal zoning maps and regulations (requires a two-thirds vote of the town meeting or city council)
- Reviewing (and commenting on) requests for zoning variances
- Reviewing applications for projects requiring special permits such as cluster developments, “pork-chop” lots, or uses not automatically allowed “by right.”

Local Subdivision Control – Planning Board

Municipalities can enact local subdivision control laws and regulations that put in place requirements or restrictions to address public health, safety, and welfare. Local subdivision control is employed in close coordination with local zoning and health codes.

The Subdivision Control Law <http://www.mass.gov/hed/docs/dhcd/cd/zoning/subdivisioncontrollaw.pdf> is MGL Ch. 41 s. 81K through s. 81GG. A community adopts pursuant to statute its own Subdivision Rules and Regulations, which vary greatly from community to community.

A subdivision of land includes the design of a new roadway and all associated amenities (such as stormwater management facilities and street trees) to provide access to new lots for housing and commercial and industrial development. Preliminary subdivision plans are required for land zoned for nonresidential uses. Your community should strongly encourage them for residential subdivisions as well.

Preliminary plans are just that—a first cut at how the land might be subdivided. Definitive plans are more detailed. The lot lines are surveyed, and all the details are worked out, such as precise locations of each catch basin and streetlight. The planning board must

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hold a public hearing to discuss a definitive plan after notifying abutters and other municipal boards and commissions. Unless the board of health finds that unhealthful conditions exist or will result from the proposal (such as an insufficient supply of water available to serve a proposed development, either from existing public water sources or new private wells, or the land's insufficient ability to handle septic systems if not in a sewered area), the planning board must approve the plan if it complies with the community's Subdivision Rules and Regulations. The planning board can waive strict compliance with these regulations if such a waiver is both (1.) not inconsistent with the purposes of subdivision control and (2.) in the public interest.

In some communities, many new lots are being created along existing public ways. These are ANR ("Approval Not Required" under the Subdivision Control Law)

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/anrhandbook.pdf> or Form A (named after the first form in most communities' Subdivision Rules and Regulations) lots, a planning tool unique to Massachusetts. If the lot has the required frontage along the public way or a way approved under the Subdivision Control Law and the required lot area, the planning board must endorse without conditions the plan creating the new lot. There are



Department of Environmental Protection

no requirements for stormwater management, street trees, streetlights, or any of the other improvements required in a subdivision. In rural communities, with many miles of road frontage, there is often little incentive to actually subdivide—most new lots are created along roads, which result in roadside sprawl—fragmenting the landscape into roadside houses with undeveloped backland.

Special Permits – Zoning Boards of Appeals and Planning Boards

Zoning boards of appeals, planning boards, or occasionally the selectboard or city council may also be designated as Special Permit Granting Authorities in the local zoning



ordinance. Special permits are a more discretionary permit than subdivisions and require a "supermajority" vote (e.g. 4 or 5 members must vote to approve). The board must make affirmative findings that the proposed development is in compliance with specific criteria in the bylaw and is afforded significant discretion by the courts in making their decisions.

Variances – Zoning Boards of Appeals

The zoning board of appeals also considers variance requests. A variance is relief from the strict application of the community’s zoning ordinance. It must be based on circumstances relating to the soil conditions, shape, or topography of the lot or structures, not the personal circumstances of the applicant. The applicant must also demonstrate that a literal enforcement of the ordinance would involve substantial hardship, financial or otherwise, and lastly, that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially deviating from the intent or purpose of the zoning ordinance or bylaw. In Massachusetts, use variances, which provide for the possibility that the use of the land be varied by the zoning board; may be allowed if the community specifically allows them in their ordinance or bylaw. Because use can be changed by the town meeting or city council as a zoning map change, it is generally not considered advisable to authorize use variances. The zoning board may impose conditions and limitations, but, once exercised, the variance “runs with the land”– the relief continues even if the ownership of the land or structure changes.

Exempt Uses – “Dover Amendment”

The Zoning Act (MGL Ch. 40A s. 3) exempts nonprofit religious and educational uses from strict compliance with the local zoning ordinance. The community may apply reasonable regulations concerning the height and massing of structures and determining lot areas, setbacks, parking, and building coverage requirements. Other exempted uses include agriculture and forestry, group homes, day care centers, and solar energy facilities.

Zoning and Subdivision Appeals

Any aggrieved party with standing may appeal a planning board or zoning board of appeals decision to the Massachusetts Superior Court within 20 days of the decision. The appeal must be based on the state and local laws governing issuance of the permit.

Site Plan

Site plan review (known in some communities as site plan approval) determines criteria for the scale, appearance, layout, safety, and environmental impacts of industrial or commercial development. The review usually concentrates on traffic, parking, drainage, signage, roadway construction, screening, utilities, and lighting. Site plan review seeks to “fit” larger projects into the existing community by designing the best possible plan for the location. Communities can generally not deny such a project but can use the site plan review process to better shape the project by modifying the proposal. Usually, a developer must obtain a site plan approval before the building or special permit is issued.

The Massachusetts Zoning Act does not provide guidelines for site plan review; rather, the varying processes are products of local boards and court decisions. The Planning board, board of selectmen or city council, zoning board of appeals, and building inspector may exercise their authority over site plan review.

Fiscal Impact Analysis

Economic analysis can also inform project reviews. Consider a proposed new residential development. Contrary to popular belief, residential development is rarely an economic boon for a community. Rather, as demonstrated by the American Farmland Trust <http://www.farmland.org/services/fiscalplanning/default.asp>, residential development tends to demand more in community services (e.g., schools, fire, police) than it generates



in tax revenues; so it actually becomes a financial burden. In addition, the loss of open space can cause the loss of recreational opportunities, flood control, clean drinking water, flora and fauna, and community character. Commercial development may provide a short-term benefit, but may also foster new residential growth and demand additional services. Economic analysis can help a community identify the true costs and benefits of development proposals.

Affordable Housing

The Massachusetts Comprehensive Permit Law

Chapter 40B (also known as The Massachusetts Comprehensive Permit Law) <http://www.mass.gov/hed/community/40b-plan/> is a state law aiming to increase the supply and improve the distribution of low-and moderate-income housing throughout Massachusetts. The statute mandates that local zoning boards of appeal (ZBAs) apply more flexible rules to approve qualifying affordable housing developments.

For the flexible rules to apply, at least 20 to 25 percent of the units in the proposed development must have long-term affordability restrictions. The remaining market rate units can subsidize the restricted prices of the affordable units. The law aims to encourage affordable housing with little cost to the state. If 10 percent of the community's housing stock is determined to be "affordable" the law does not apply.

Local Project Review of 40B projects

A developer seeking to qualify for Chapter 40B must first seek preliminary project approval under a state or federal housing program (MassHousing, the Department of Housing and Community Development, MassDevelopment, or the U.S. Department of Housing and Urban Development). Municipal boards can comment to MassHousing as part of approval process.

If the project is certified as an eligible 40B project, the developer then submits an application to the local zoning board of appeals for a comprehensive permit. The ZBA

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consults with other relevant boards—such as the planning board, historical commission, the conservation commission, water commission and the board of health—in a streamlined review process that substitutes for various local permits. The Wetlands Protection Act still regulates development under comprehensive permit, so the local conservation commission reviews the project to ensure compliance with state wetlands protection. The ZBA review substitutes for all other usual forms of local review, and local rules such as wetlands bylaw may be waived.

Within 30 days of receiving the developer’s formal application, the local ZBA begins a public hearing to review the project. Typically open for several months, the hearing culminates in the ZBA’s decision, which must be filed in writing within 40 days of the close of the public hearing. The ZBA has three options in its decision: to approve the application as submitted, to approve the project with conditions, or to deny the project outright.

Through the Chapter 40B approval process, a developer can seek waivers of any provision of the Municipality’s bylaws or ordinances that would render the project unaffordable to construct. This may include waivers of specific fee requirements, lot size, local wetlands buffers and any other requirements. The applicant is required to submit detailed financial data with the application (called a pro forma) that demonstrates the need for these waivers. The ZBA reviews this information and consults with other local boards before making a decision. As a result of such waivers, and the need for additional units to subsidize the affordable units, these development projects are often built at a much higher density than would otherwise be allowed by local zoning.

For more information:

Department of Housing and Community Development
Planning and Housing Development Toolkit
<http://www.mass.gov/hed/community/planning/guide/affordable-housing-development-planning.html>

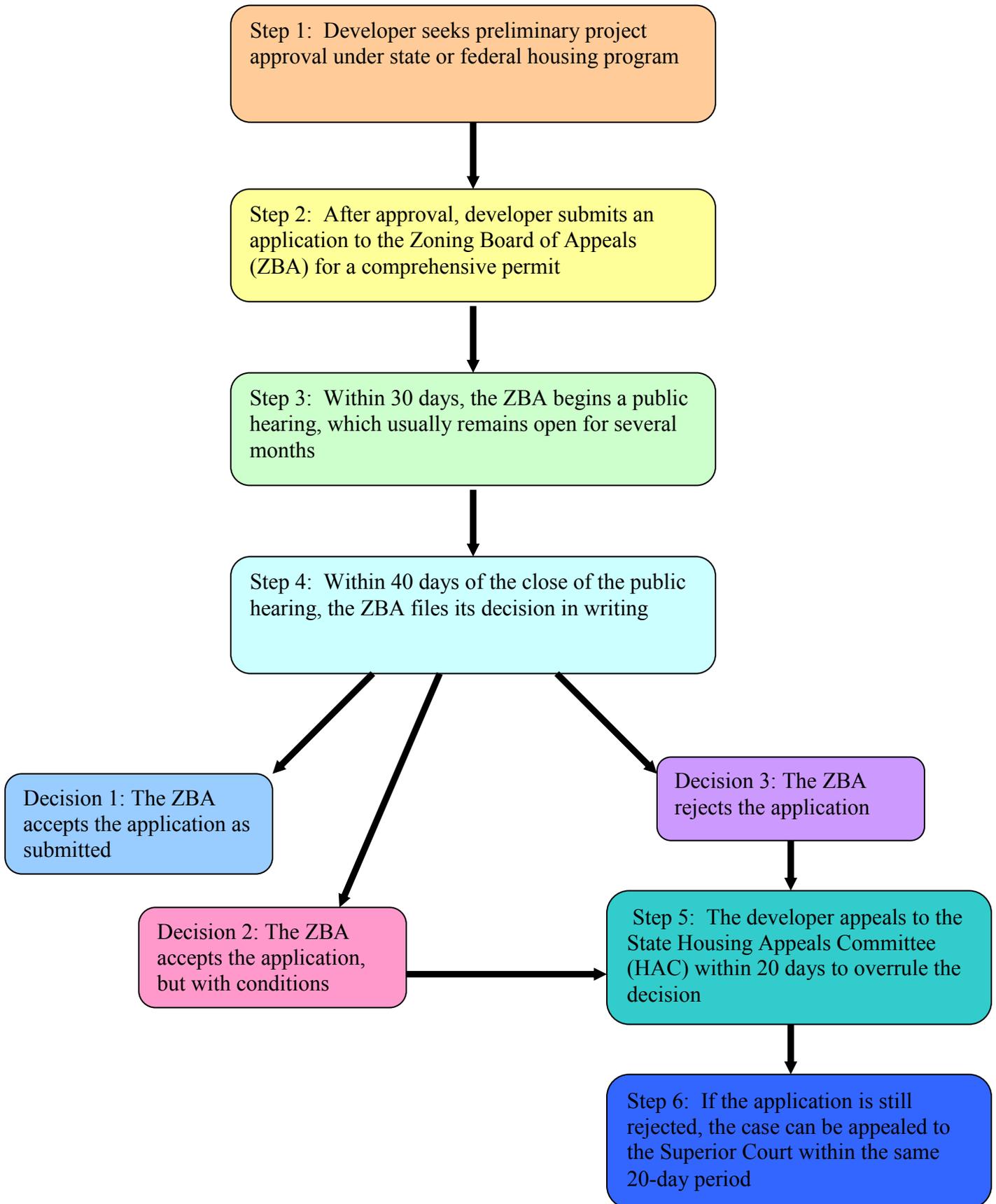
Massachusetts Housing Partnership
<http://www.mhp.net/community/technical-support>

The Chapter 40B Appeals Process

If the ZBA rejects the application, the developer may be able to direct an appeal to the State Housing Appeals Committee (HAC). The appeal must be made within 20 days of the notice of the ZBA decision. The HAC decision can be appealed to the Superior Court.

Citizens or abutters can appeal the ZBA decision to the Superior Court within the same 20-day period. If both the developer and abutters file appeals, the Superior Court will generally not take any action pending completion of the proceedings before the HAC.

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Wetlands

The Massachusetts Wetlands Protection Act

The state Wetlands Protection Act (which includes the Rivers Protection Act) <http://www.mass.gov/eea/agencies/massdep/water/watersheds/protecting-wetlands-in-massachusetts.html> is an important state conservation law. It is administered primarily at the local level by municipal conservation commissions in accordance with regulations adopted by the state Department of Environmental Protection. The act and the accompanying state wetlands regulations protect the following eight important public interests or values derived from wetlands.

- Public or private water supply
- Prevention of pollution
- Groundwater supply
- Shellfish habitat
- Flood control
- Wildlife habitat
- Storm damage prevention
- Fisheries habitat



The act prohibits any dredging, filling, or alteration of the land surface, water levels, or vegetation in wetlands, floodplains, the riverfront area (within 200 feet of a river), or other water resource areas, on private or municipal lands, without a permit from the local conservation commission. There are some exemptions for certain activities such as agriculture and mosquito control. The Massachusetts Association of Conservation Commissions <http://www.maccweb.org/> and the Department of Environmental Protection <http://www.mass.gov/dep/water/resources/wetlands.htm> provide training programs and guidance documents regarding the Wetlands Protection Act and regulations.

Local conservation commissions review project proposals and issue permits for any work within 100 feet of a designated wetland or 200 feet from either side of most perennial streams (except in certain designated urban areas where the Riverfront Area is limited to 25 feet).

Many cities and towns have adopted local wetland laws that offer greater protection, require separate permits, or dictate additional restrictions for building in designated protected resource areas such as buffer zones and near vernal pools. Model wetland laws can be obtained by contacting the Massachusetts Association of Conservation Commissions <http://www.maccweb.org/>.

Projects taking place within areas mapped by the state as “Estimated Habitat of Rare Wetlands Wildlife” require concurrent filing of the application (called a “Notice of Intent”) with the Massachusetts Natural Heritage & Endangered Species Program (NHESP) <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/>. If a project falls within an Estimated Habitat, the proponents must submit a copy of a Notice of Intent directly to the NHESP. The NHESP determines the impact of the proposed development on rare wildlife and informs the local conservation commission of its opinion. The Natural Heritage Program also conducts a separate regulatory review of developments in

Shaping the Future of Your Community – Project Review and Permitting

both upland and wetlands habitats of rare species under the Massachusetts Endangered Species Act.

After a full review and appropriate public meetings, site visits and hearings, the conservation commission issues its decision.

Appeals

If you believe that the permit is contrary to the state wetland regulations or your local bylaws, you may be able to appeal. After the conservation commission issues its decision, there is a 10-day period during which time any abutter or group of 10 residents of the municipality can make an appeal to the Massachusetts Department of Environmental Protection (DEP), which will issue a Superseding Determination of Applicability or a Superseding Order of Conditions, which may uphold the original findings/permit or impose new findings, permits, and conditions.

To appeal a decision under the State Wetlands Protection Act you must act within ten days after the decision was issued, show that you have the proper standing to appeal, and meet other appeal filing requirements. See the regulations for more details. If a party is dissatisfied with DEP's Superseding Order of Conditions, it may, under certain circumstances, file another appeal, which will result in DEP holding an "adjudicatory hearing" to address the concerns. A third and final appeal can be filed with the Massachusetts Superior Court.

The appeals procedure can be long and involved, and it may require the services of lawyers or expert witnesses. It should not be entered into lightly. You should make every effort to have your concerns heard and addressed at the first stage of the review process when the project is before the local conservation commission.

If a party files an appeal under the local wetland bylaw (filed with the District Court), that appeal must be resolved before the state will address appeals filed under the state Wetlands Protection Act.

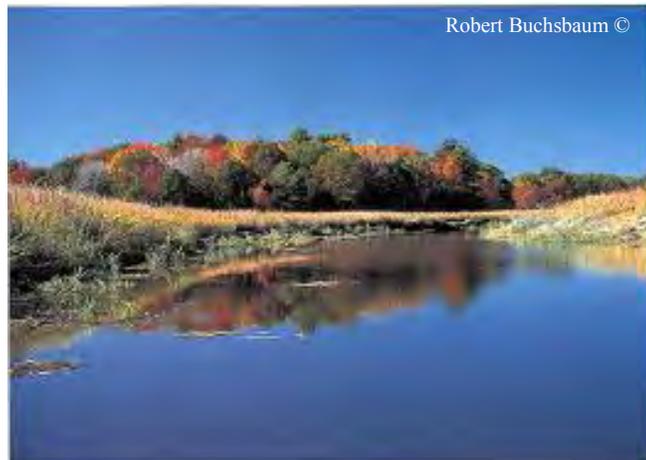
401 Water Quality Certification Program

Under the federal Clean Water Act, a 401 Water Quality Certification

<https://www.epa.gov/cwa-404/overview-section-401-certification-and-focusing-wetlands>

must be obtained prior to any activity involving dredging or the discharge of dredged material into state waters above certain

minimum thresholds. Under a state 401 review, it is ensured that the evaluated project will abide by state water quality standards and other relevant regulations.



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When submitted, applications are evaluated in one of three categories: major projects (BRP WW 07), minor projects (BRP WW 08), or amended projects (BRP WW 09). Major project certification includes the dredging of 5,000 cubic yards (c.y.) or greater, while minor project certification includes any other projects entailing less than 5,000 c.y. but more than 100 c.y. For more information about application requirements, fees, and other specifications, see <http://www.mass.gov/eea/agencies/massdep/water/approvals/wetlands-and-waterways-forms.html>.

U.S. Army Corps of Engineers 404 Clean Water Act Permits

Section 404 of the federal Clean Water Act requires permits for any discharges of fill or other material into wetlands and waterways. This law is administered by the U.S. Army Corps of Engineers <http://www.nae.usace.army.mil/>. In Massachusetts, the Army Corps has adopted a statewide Programmatic General Permit (PGP). The PGP allows most small projects (less than 5,000 square feet of fill) to utilize an Order of Conditions issued under the state Wetlands Protection Act as a substitute for separate review by the Army Corps, provided all the standard conditions in the PGP are also met. Larger projects may require a screening process (Category II), and those with the greatest impacts require an Individual Permit under Category III.

Rare Species

The Massachusetts Endangered Species Act (MESA)

MESA, MGL Ch. 131A

<http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/regulatory-review/mass-endangered-species-act-mesa/>, prohibits the “taking” of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern by the Massachusetts Division of Fisheries and Wildlife (DFW). The Natural Heritage and Endangered Species Program <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/> within DFW regulates the issuance of permits for activities within areas mapped as Priority Habitats of state listed rare species to ensure that no takings occur.

“Take” includes protection of rare species habitat, and is defined as, “in references to animals to harass, harm, pursue, hunt, shoot, hound, kill, trap, capture, collect, process, disrupt the nesting, breeding, feeding or migratory activity or attempt to engage in any such conduct, or to assist such conduct, and in reference to plants, means to collect, pick, kill, transplant, cut or process or attempt to engage or to assist in any such conduct. Disruption of nesting, breeding, feeding or migratory activity may result from, but is not limited to, the modification, degradation or destruction of Habitat.”

Permits for taking rare species for scientific, educational, conservation, or management purposes can be granted through the Division of Fisheries & Wildlife. If certain criteria are met, projects resulting in a "take" of state-listed rare species *may* be eligible for a



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Conservation and Management Permit, if commitments are made to mitigation that results in a net benefit to the species. The NHESP also reviews projects within Estimated Habitats of Rare Wetland Wildlife during review under the Massachusetts Wetlands Protection Act and submits letters to the conservation commission that the commissioners must consider before issuing a wetlands permit.

For information on rare species, maps of Estimated or Priority Habitats, and the regulatory processes and requirements, please visit the Natural Heritage and Endangered Species Program website (<http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/>).

The Massachusetts Environmental Policy Act



The Massachusetts Environmental Policy Act (MEPA) <http://www.mass.gov/eea/agencies/mepa/> is the state counterpart to the National Environmental Policy Act and is administered by EOE. The primary purpose of MEPA is to ensure that all state-agency actions avoid and minimize the environmental impacts of state-affiliated development projects. MEPA also provides mechanisms for public participation and comment on many projects that significantly affect the environment.

State MEPA Review Process

MEPA is designed to provide state agencies with adequate information for making permitting and funding decisions and to ensure that environmental damages are minimized and mitigated.

MEPA requires state and public review for projects that:

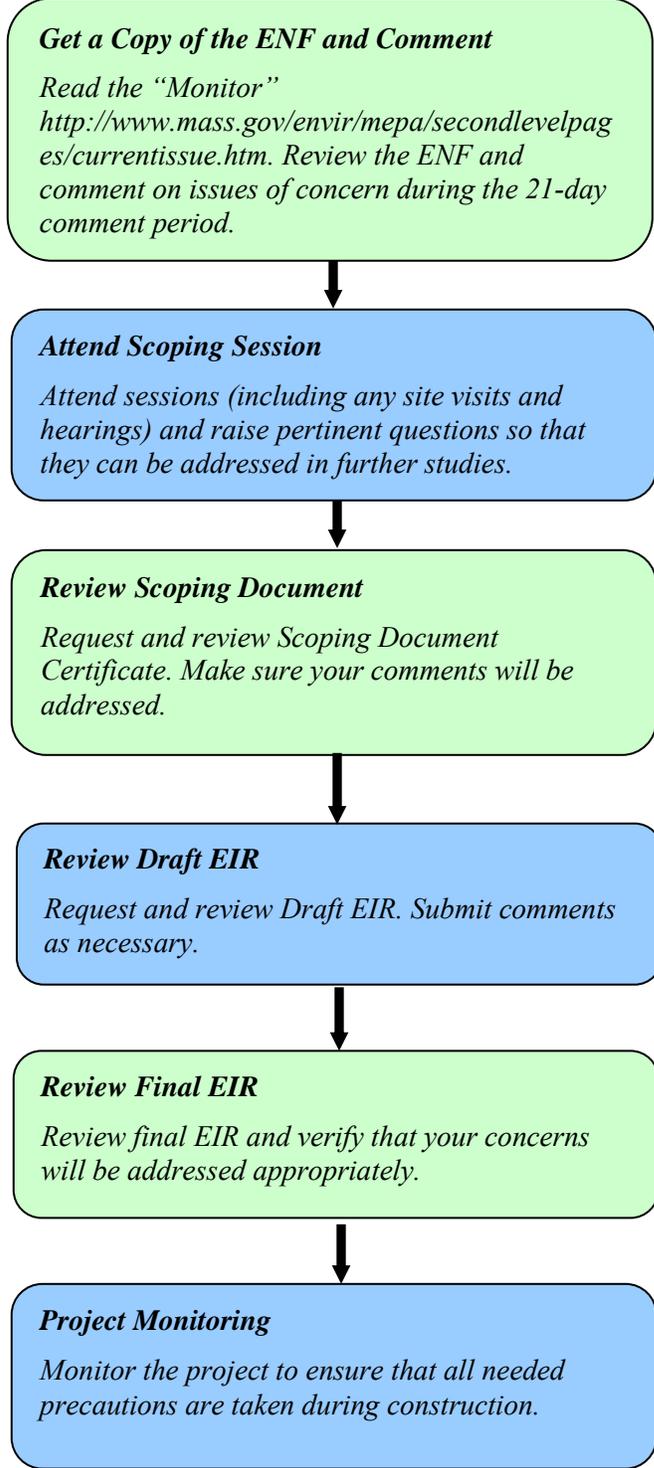
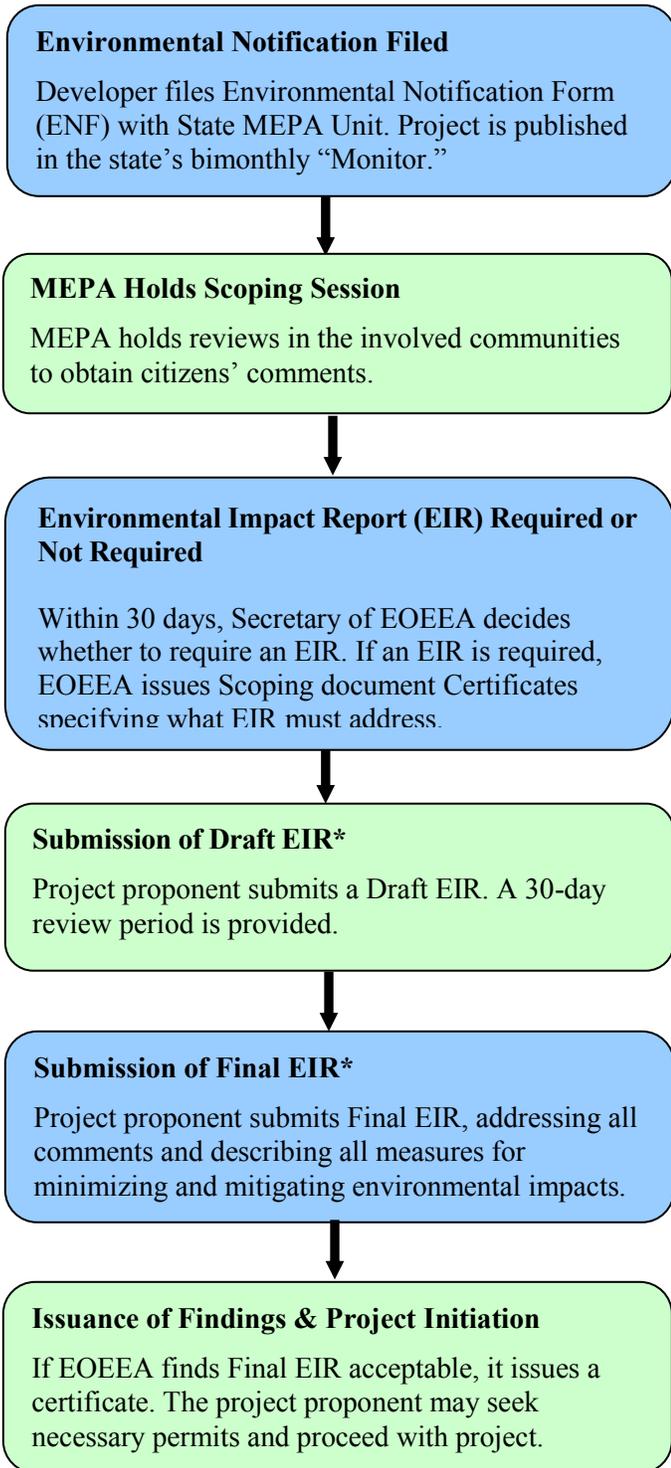
- Are conducted by, are funded by, or require permits from state agencies; *and*
- Exceed established thresholds for size or degree of environmental impact.

For private projects, the scope of MEPA review is limited to aspects of the project over which state agencies have jurisdiction such as state permits or use of state property. For projects undertaken or funded by the state, MEPA review includes all areas of environmental impact including air, land, and water.

The following chart describes the process through which a large development project might proceed. The MEPA review process offers important opportunities for citizens to get involved with larger scale public projects still in the planning stages. Concerned parties should call the MEPA analyst and request to be notified of scoping sessions, then attend. Opportunities for citizen involvement are indicated in detail on the chart in italics in the right-hand column.

Project Proponent’s Actions

Role for Concerned Citizens



*If insufficient information is provided in the Draft or Final EOR, supplemental information may be required by the MEPA unit.

Shaping the Future of Your Community – Project Review and Permitting

Twice a month the MEPA office issues a summary of all projects presently under review, called *The Environmental Monitor*. Anyone can access this information and the regulations via the MEPA webpage: <http://www.mass.gov/eea/agencies/mepa/>

Useful Links

American Farmland Trust
<https://www.farmland.org>

Department of Housing and Community Development
Planning and Housing Development Toolkit
<http://www.mass.gov/hed/community/planning/guide/affordable-housing-development-planning.html>

Massachusetts Housing Partnership
<http://www.mhp.net/community/technical-support>

Massachusetts Association of Conservation Commissions (MACC)
<http://www.maccweb.org/>

Department of Environmental Protection (DEP)
<http://www.mass.gov/eea/agencies/massdep/>

Massachusetts Natural Heritage & Endangered Species Program (NHESP)
<http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/>

401 Water Quality Certification
<https://www.epa.gov/cwa-404/overview-section-401-certification-and-focusing-wetlands>

Army Corps of Engineers
<http://www.nae.usace.army.mil/>

MGL Ch. 131A
<http://www.mass.gov/legis/laws/mgl/gl-131a-toc.htm>

The Massachusetts Environmental Policy Act (MEPA)
<http://www.mass.gov/eea/agencies/mepa/>

Federal, State and Local Environmental and Land Use Laws and Regulations

1: Growth Management	2: Development	3: Wetlands	4: Wildlife and Habitat	5: Water Quality	6: Water Supply	7: Transportation	8: Waste Management	9: Air Quality
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ENVIRONMENTAL REVIEW

PLANNING AND LAND USE

Laws	Common Abbr.	Legal Citation	Administering Body	Summary of pertinent aspects of the law	Areas of Relevance (see above)								
					1	2	3	4	5	6	7	8	9
National Environmental Policy Act	NEPA	42 USC §4331 et seq.	U.S. Environmental Protection Agency	Requires federal agencies to file a detailed statement of anticipated environmental impacts (Environmental Impact Statement) of proposed actions and alternatives. Must be made available to the public and government agencies.	✓	✓	✓	✓	✓	✓	✓		✓
Massachusetts Environmental Policy Act	MEPA	MGL Ch.30 §61-62H	Executive Office of Environmental Affairs/MEPA Unit	Requires state agencies to evaluate anticipated impacts of state-funded and state-permitted projects and alternatives in an Environmental Impact Report. The EIR must address all types of impacts from water quality to habitat to air quality.	✓	✓	✓	✓	✓	✓	✓		✓
Coastal Zone Management Program (State and Federal)	CZMA	16 USC 1451 et seq.	National Oceanic and Atmospheric Administration and Massachusetts Coastal Zone Management Office	Voluntary program designed to help states address water quality, preservation of natural areas, coastal hazards, and harbor planning via inventories, plans, implementation. Massachusetts has a comprehensive program for preservation and restoration of significant coastal resource areas and assisting coastal conservation commissions through regional coordinators.	✓	✓	✓	✓	✓				
Massachusetts Zoning Act and Local Zoning Ordinances		MGL Ch.40A and local ordinances	Planning Board and Zoning Board of Appeals	Massachusetts Zoning Act allows municipalities to establish zones with limited uses to prevent incompatible uses in close proximity. The plan/design of local zoning districts and accompanying ordinances regulates activities therein.	✓	✓							
Local Master Plan		Local plan, authorized by MGL Ch.41 §81D	Planning Board	Plan describing a municipality's goals regarding residential, commercial, and industrial development potential as well as potential for open space protection, using such tools as zoning changes.	✓	✓			✓	✓	✓		
Massachusetts Subdivision Control Law and Local Subdivision Control		MGL Ch. 41 §81K-81GG and local ordinances	Planning Board and Zoning Board of Appeals	The Massachusetts Subdivision Control Law regulates design standards of subdivisions to protect public health, safety, and welfare. Towns with subdivision bylaws may have more stringent requirements for activities or performance standards than the state laws demand.	✓	✓	✓	✓	✓	✓	✓		
Massachusetts open space tax classifications	Chapter 61	MGL Ch.61; Ch.61A; and Ch.61B	Selectmen or City Council and Conservation Commission	Provides reductions in real estate taxes to landowners who keep their properties in forestry, agriculture/horticulture, or open space and recreational use. The municipality has the right of first refusal to purchase such land before it can be converted to residential, commercial, or industrial use.	✓	✓		✓					
Massachusetts Conservation Restriction Laws		MGL Ch.184 §31-33; Ch.40 §5(70); Ch.44 §7(3)	Held by government agency or nonprofit organization	Establishes Preservation, Agricultural Preservation, and Watershed Preservation Restrictions through deed restrictions, covenants, easements, or restrictions in perpetuity or for a stated number of years. Designed to keep parcels in predominantly natural, open, or scenic condition. Requires approval by the Secretary of EOA.	✓	✓	✓	✓	✓	✓			



Federal Law



State Law



Local Law

PLANNING AND LAND USE

WATER RESOURCES

Laws	Common Abbr.	Legal Citation	Administering Body	Summary of pertinent aspects of the law	Areas of Relevance (see above)										
					1	2	3	4	5	6	7	8	9		
Local Open Space and Recreation Plan	OSP	Local Open Space and Recreation Plan	Conservation Commission	Plan identifying important local natural resources and a program for their protection and management. Approval by Div. of Conservation Services makes community eligible for open space acquisition funds.	✓	✓	✓	✓	✓	✓					
Mass. Historical Commission regulations		MGL Ch. 9 §26-27c and 950 CMR 71.00	Historical Commissions	Govern the protection of properties included in the State Register of Historic Places.		✓									
Historic District Bylaws		MGL Ch.40C	Hist. Dist. Comms., Historical Comms.	Program officially designating historic districts and reviewing new development and renovations to ensure compatibility with districts.		✓									
Massachusetts Wetlands Protection Act	WPA	MGL Ch.131 §40	Conservation Commission and Mass. Department of Environmental Protection (DEP)	Gives local conservation commissions review authority over all activities within 100 feet of designated wetlands and 200 feet of perennial streams and rivers. The commission must protect 8 statutorily defined wetlands values and functions (e.g., water quality and habitat value).		✓	✓	✓	✓	✓					
Local wetland bylaws/ordinances		local ordinances	Conservation Commission	Local bylaws may impose more stringent requirements and restrictions on activities in and around wetlands and floodplains.		✓	✓	✓	✓	✓					
Massachusetts Coastal and Inland Wetlands Restriction Acts		MGL Ch.130 §105 ; MGL Ch. 131 §40A	Mass. DEP/ Wetlands Conservancy Program	Places restrictive orders limiting development on priority wetland sites identified by the Mass. Department of Environmental Protection.	✓	✓	✓	✓	✓	✓					
Mass. Chapt. 91 Waterways Program & Great Ponds	Chapter 91	MGL Ch. 91	Mass. DEP	Regulates activities in great ponds, tidelands, and some navigable rivers and streams to protect public lands, promote water-dependent uses, and protect water quality and habitat.	✓	✓	✓	✓	✓						
Federal Clean Water Act: Section 404 Permit	CWA	33 USC §1251 et seq.	U.S. Army Corps of Engineers	Requires permits for discharging fill into a wetland or waterway to prevent pollution of surface waters.		✓	✓		✓						
Federal Clean Water Act: Section 401: Water Quality Certification	Section 401 Certification	33 USC §1251 et seq.	Mass. DEP and U.S. Environmental Protection Agency	Applies to all Section 404 applicants and other Clean Water Act permit applicants. It links federal law to state law by requiring the state to certify that issuance of a federal permit will not violate state water quality standards. Cumulative effects are considered.		✓	✓		✓						
Federal Clean Water Act: National Pollution Discharge Elimination System	NPDES	33 USC §1362 et seq.	Mass. DEP; U.S. Environmental Protection Agency	Permits for the discharge of point-source effluents into surface waters are jointly signed. The state conducts or oversees monitoring.		✓			✓	✓			✓		
Federal Clean Water Act: Massachusetts Stormwater Management Policy		33 USC §	Mass. DEP	Requires development projects that need a permit under the Massachusetts Wetlands Protection Act or 401 Water Quality Certification to meet certain performance standards so as to minimize nonpoint source pollution.		✓	✓		✓						
Massachusetts Clean Water Act		MGL Ch. 21 §25-53	Mass. DEP/ Div. of Watershed Mgmt.	Follows federal guidelines. Provides loans for municipal wastewater treatment plants.		✓			✓	✓			✓		
Massachusetts water quality classification and standards		314 CMR 4.00	Mass. DEP	Federal law requires state designation of the water quality of every reach of every stream. Designation is based on water's potability, swimmability, and fishability. Outstanding Resource Waters (ORWs), e.g., reservoirs and certified vernal pools, are given special protection.			✓	✓	✓	✓					



Federal Law



State Law



Local Law

WATER RESOURCES

WILDLIFE AND HABITAT

TRANSPORTATION

Laws	Common Abbr.	Legal Citation	Administering Body	Summary of pertinent aspects of the law	Areas of Relevance (see above)									
					1	2	3	4	5	6	7	8	9	
Massachusetts Title 5	Title 5	MGL Ch. 111 §127; 310 CMR 15.00	Local Board of Health; Mass. DEP	Establishes minimum standards for siting, construction, and up-grading of on-site sewage disposal systems. Regulates type of soil, setbacks, and design standards.		✓	✓		✓	✓		✓		
Mass. Watershed Protection Act	Cohen Bill	313 CMR 11.00	Metropolitan District Commission; Mass. Water Resources Authority	Applies land use controls to Quabbin Reservoir, Wachusett Reservoir, and the Ware River, which contributes to them. Requires DEP to establish standards for all water supply watersheds.	✓	✓			✓	✓				
Federal Safe Drinking Water Act		42 USC §300f et seq.	U.S. Environmental Protection Agency	Mandates monitoring and treatment of municipal surface water supplies.					✓	✓				
Massachusetts water supply law		MGL Ch. 111 §5G	Mass. DEP	DEP may order a municipality, district, or person maintaining a water supply to provide treatment facilities that it determines are necessary to insure delivery of safe water supply to consumers. Aquifer regulations require designation of “well head” & “Zone II Recharge” areas in which activities and density may be limited.					✓	✓				
Local water supply and aquifer protection bylaws		Local bylaws and ordinances	Local Board of Health, Planning Board, and Board of Selectmen	Municipalities can enact laws to provide additional protection for water resources.	✓	✓			✓	✓				
Mass. Water Management Act		MGL Ch. 21G	Mass. DEP and Mass. Department of Environmental Mgt.	Regulates new withdrawals of over 100,000 gallons per day for “consumptive” uses. Requires DEP to track and allocate water use on a watershed basis.		✓				✓				
Mass. Inter-Basin Transfer Act		MGL Ch. 21 §8B-D	EOEA/Water Resources Commission	Regulates the transfer of surface, ground-, and wastewater from one watershed to another through a permitting system.			✓	✓		✓				
Federal Endangered Species Act	ESA	16 USC §1536 a-d	U.S. Fish and Wildlife Service	Prohibits sale and traffic of federally listed threatened and endangered species. Gives protection from federal actions to federally listed species and their habitats.				✓						
Massachusetts Endangered Species Act	MESA	MGL Ch. 131A	Mass. Natural Heritage and Endangered Species Program	Prohibits the taking of state-listed “special concern,” “threatened,” or “endangered” species and prohibits the destruction of designated “significant habitat.” Requires all state agencies to review projects for possible impacts on state-listed species.		✓		✓						
Mass. Areas of Critical Environmental Concern	ACEC	MGL Ch. 30 §61 et seq. 301 CMR 11.00	Executive Office of Environmental Affairs	This program requires heightened review and protection under MEPA for all state permits and activities within ACECs and provides for the development and implementation of management plans.		✓	✓	✓	✓	✓			✓	
Department of Transportation Act	DOT Act	49 USC §303	U.S. Department of Transportation/ Office of Intermodalism	Prohibits the use of public park land, recreation areas, wildlife and waterfowl refuges, and historic sites for a transportation project unless there is no “prudent and feasible” alternative and harm to the area is minimized as much as possible.	✓	✓		✓				✓		
Intermodal Surface Transportation Efficiency Act	ISTEA and TEA21	49 USC §5501 et seq.	U.S. Department of Transportation	Requires all forms of transportation to be developed in an inter-connected manner that reduces energy consumption and air pollution; requires improvements in public and pedestrian transportation.								✓		

 Federal Law  State Law  Local Law

	Laws	Common Abbr.	Legal Citation	Administering Body	Summary of pertinent aspects of the law	Areas of Relevance (see above)									
						1	2	3	4	5	6	7	8	9	
DEVELOPMENT	Scenic Roads Act		MGL Ch. 40 §15c	Local Planning Board	Provides for increased protection of the environmental, aesthetic, and historic value of local roads. Conservation commissions recommend roads for designation to town meeting or city council.		✓								
	Comprehensive Environmental Response, Compensation, and Liability Act	CERCLA, Superfund	42 USC §9601 et seq.	U.S. Environmental Protection Agency	Authorizes the federal government to take remedial actions and recover costs, or permit private parties to take such actions, in response to an existing or threatened release of hazardous substances into land, water, or air under federal jurisdiction.	✓	✓			✓			✓	✓	
WASTE MANAGEMENT	Resource Conservation and Recovery Act	RCRA	42 USC §6901 et seq.	U.S. Environmental Protection Agency	Authorizes the EPA to identify particular wastes as “hazardous” and to regulate their treatment, storage, and disposal so as to protect public health and the environment.					✓			✓		
	Massachusetts Hazardous Waste Management Act	21C	MGL Ch. 21C	Mass. DEP	Requires DEP to license landfills and any other facilities that store, transport, dispose of, or treat wastes that pose a potential hazard to public health or the environment (including groundwater supplies).					✓			✓		
	Massachusetts Hazardous Waste Facility Siting Act	21D	MGL Ch. 21D, Ch. 40A §9, Ch. 16 §19	Mass. DEP	Sets out the required steps for siting any facility that treats, processes, or disposes of hazardous waste. This includes review of the proposal by the Hazardous Waste Facility Siting Council, submission of a project impact report, and a siting agreement with the host community.					✓			✓		
	Massachusetts Oil and Hazardous Material Release Prevention and Response Act	21E (Mass. Superfund Law)	MGL Ch 21E	Mass. DEP	Establishes liability of various parties for releases or threats of release of hazardous materials or oils to the environment. Authorizes DEP to take response actions and recover costs, or to permit private response actions. Releases and threats of release subject to 21E and types of response actions are described in the Massachusetts Contingency Plan (310 CMR Ch.40.0000).					✓			✓		
	Mass. Solid Waste Facility Siting Act and regulations		MGL Ch. 111 §150A & §150A1/2	Local Board of Health; Mass. DEP	Provides for a state Solid Waste Master Plan. Regulates the placement and maintenance of landfills and other waste disposal and handling facilities. Mandates recycling.					✓			✓		
	Local health codes		Local bylaws and ordinances	Local Board of Health	Communities may establish additional standards that supplement state rules.		✓			✓	✓		✓		
	Federal Clean Air Act	CAA	42 USC §7401 et seq.	U.S. Environmental Protection Agency	Regulates emissions standards for air pollutants from stationary and vehicular sources. Requires each state to develop and implement a plan for meeting federal air quality standards.										✓
AIR QUALITY	Massachusetts Clean Air Act		MGL Ch. 111 §2B and C.	Mass. DEP	Allows DEP to issue orders to enforce air pollution statutes or regulations under its jurisdiction. Authorizes DEP to declare an air pollution emergency after public hearings, and then to place restrictions on emissions of potentially dangerous air contaminants from any source.									✓	

 Federal Law  State Law  Local Law



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