DEVELOPMENTS OF REGIONAL SIGNIFICANCE AND IMPACT: FINDINGS AND RECOMMENDATIONS

REPORT OF THE ADVISORY COMMITTEE ON DEVELOPMENTS OF REGIONAL SIGNIFICANCE AND IMPACT

MARCH 2012

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
108 Finance Building
Harrisburg, Pennsylvania 17120

The Joint State Government Commission was created by the act of July 1, 1937 (P.L.2460, No.459), as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

Joint State Government Commission
Room 108 Finance Building
Harrisburg, PA 17120-0018

Telephone: 717-787-4397
Fax: 717-783-9380

E-mail: jntst02@legis.state.pa.us
Website: http://jsg.legis.state.pa.us

Project Manager: Stephen F. Rehrer, Counsel
srehrer@legis.state.pa.us
(717) 787-6422

Project Staff: Ronald D. Grenoble, Attorney
Theodore S. Herman, Research Analyst
David S. John, Jr., Executive Director
Yelena P. Khanzhina, Research Analyst
Debra P. Reese, Administrative Assistant

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CONTENTS

INTRODUCTION 1
The Joint State Government Commission 1
House Resolution No. 897 of 2006 1
House Resolution No. 845 of 2008 2
The Task Force and Advisory Committee 2
Contents of Report 3

SUMMARY OF PROPOSED LEGISLATION 7

PENNSYLVANIA MUNICIPALITIES PLANNING CODE 13
Land Development 13
Comprehensive Plans 15
Intergovernmental Cooperative Planning and Implementation Agreements 17
Mediation 22
Appeals 24
Previous Proposed Amendments Regarding Projects of Regional Impact 24

DEPARTMENT OF TRANSPORTATION GUIDELINES 29

STORM WATER MANAGEMENT 31

SEWAGE FACILITIES 33

KEYSTONE PRINCIPLES 37

IMPLEMENTATION AGREEMENTS 45
Centre Region Growth Boundary/Sewer Service Area Implementation Agreement 45
Pottstown Metropolitan Region Intergovernmental Cooperative Implementation Agreement for Regional Planning 46
Phoenixville Region Intergovernmental Cooperative Implementation Agreement for Regional Planning 50

AMERICAN LAW INSTITUTE MODEL LAND DEVELOPMENT CODE 53
Factors and Procedures 53
The Development of Thresholds 57

EXAMPLES FROM OTHER STATES 59
Colorado 59
Florida 61

Georgia 71
Maine 78
Massachusetts: Cape Cod Commission 79
Minnesota: Metropolitan Council of the Twin Cities 83
New Hampshire 85
Vermont 86
Washington 87

ADVISORY COMMITTEE DELIBERATIONS 89
Background Information 89
Subcommittee Deliberations 91
Community Services 92
Economic Impacts 92
Environmental Impacts 94
Social Impacts 96
Transportation 97
The Development of Legislation 97
Proactive Planning 98
Purposes 99
Definitions 99
Applicability 100
Scope 100
Compliance 100
Thresholds 101
Impact Analysis 102
Classification as Development of Regional Significance and Impact 103
Mitigation Plan 104
Coordinated and Expedited Review 104
Municipal Review and Determination 106
Additional Standards and Criteria 108
Financial Considerations 108
Notice Generally 109
Appeals 109
Conforming Amendments 110
Effective Date 110

PROPOSED LEGISLATION 111

CONFORMING AMENDMENTS 133

EFFECTIVE DATE 135

APPENDIX 137
House Bill No. 613 of 2011 (Printer's No. 597) 139
House Resolution No. 845 of 2008 159

INTRODUCTION

The Joint State Government Commission

The Joint State Government Commission serves as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly. The Commission has the power to conduct investigations, study issues and gather information, as directed by resolution. In performing its duties, the Commission may call upon any department or agency of the Commonwealth of Pennsylvania for pertinent information and may designate individuals, other than members of the General Assembly, to act in advisory capacities. The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly.

House Resolution No. 897 of 2006

House Resolution No. 897 of 2006 directed the Joint State Government Commission to conduct an in-depth investigation into the September 19, 2006 landslide in Kilbuck Township, Allegheny County, and thoroughly review the applicable state and local permit and approval processes. The resolution authorized the Commission to create a legislative Task Force and Advisory Committee and compile a report based on the findings and recommendations of the Task Force. In June 2008, the Commission published a report titled *The Kilbuck Township Landslide: Findings and Recommendations*, which contained background information and a summary of relevant statutory law, case law and regulations, along with proposed legislation (the Geologically Hazardous Areas Act).[1]

[1] The proposed Geologically Hazardous Areas Act was introduced as House Bill No. 1450 of 2009 (Printer's No. 4013; Prior Printer's No. 1791), which was reported as amended from the House Environmental Resources and Energy Committee and received first consideration on June 29, 2010. Because no further legislative action was taken on the bill during the 2009-10 legislative session, the proposed Geologically Hazardous Areas Act was reintroduced as House Bill No. 613 of 2011 (Printer's No. 597). House Bill No. 613 was referred to the House Environmental Resources and Energy Committee, where it remained on the date of publication of this report. *Infra* pp. 139-158.

House Resolution No. 845 of 2008

House Resolution No. 845 of 2008[2] authorized the Joint State Government Commission to reconstitute the Task Force and Advisory Committee established under House Resolution No. 897 of 2006 to conduct an in-depth study of the subject of developments of regional significance and impact.[3] House Resolution No. 845 explained that the Commission report of June 2008 "acknowledged that further consideration, discussion and analysis should be given to the subject of developments of regional significance and impact" since that subject was addressed only briefly in the report.

The Task Force and Advisory Committee

The Task Force on Developments of Regional Significance and Impact, like the Task Force on the Kilbuck Township Landslide, is a bipartisan panel of legislators. The reconstituted Task Force consists of Representatives Daniel J. Deasy, Robert F. Matzie, T. Mark Mustio and Randy Vulakovich.[4]

The Advisory Committee on Developments of Regional Significance and Impact represents a broad range of expertise and interests and includes attorneys, geologists, engineers, land use planners, representatives of local and county governments, representatives of community development organizations, environmental advocates, representatives of Communities First!, the Executive Director of the Joint Legislative Air and Water Pollution Control and Conservation Committee, and representatives of the Pennsylvania Departments of Community and Economic Development, Environmental Protection, and Transportation.[5]

Between January 2009 and November 2011, the Advisory Committee met as a group on six different occasions.[6]

---

[2] *Infra* pp. 159-161. The resolution was adopted on October 8, 2008. Although the resolution specified submission of a report based on the findings and recommendations of the reconstituted Task Force and Advisory Committee within two years of adoption, an extension was granted.

[3] A development of regional significance and impact is "any land development that because of its character, magnitude or location, will have substantial effect upon the health, safety or welfare of citizens in more than one municipality." Act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code ("MPC"), reenacted and amended December 21, 1988 (P.L.1329, No.170), § 107(a); 53 P.S. § 10107(a).

[4] Representatives Mustio and Vulakovich also served on the Task Force established under House Resolution No. 897.

[5] Although an Advisory Committee member may represent a particular department, agency, association or group, such representation does not necessarily reflect the endorsement of the department, agency, association or group of all the findings and recommendations contained in this report.

[6] January 9, 2009; March 12, 2009; March 25, 2010; August 12, 2010; January 13, 2011 and November 17, 2011.

In March 2009, the Advisory Committee agreed to form five subcommittees to discuss specific issues regarding developments of regional significance and impact: Community Services, Economic Impacts, Environmental Impacts, Social Impacts and Transportation. Between March 2009 and February 2010, the individual subcommittees conducted various teleconferences, and in March 2010 they presented their findings to the full Advisory Committee.

Beginning in August 2010, the Advisory Committee discussed how to integrate the concepts and specific proposals that the five subcommittees outlined. At its January and November 2011 meetings, the Advisory Committee extensively discussed the proposed statutory framework for developments of regional significance and impact under the Pennsylvania Municipalities Planning Code (MPC). Throughout the process, members were given the opportunity to provide feedback, offer suggestions and ask questions regarding the proposed legislation. Following its November 2011 meeting, the Advisory Committee reached consensus on the proposed legislation.[7]

The Advisory Committee subsequently reviewed and approved a draft of this report, which then was formally presented to the Task Force. In March 2012, the Task Force authorized both the publication of this report and the introduction of the legislation contained in this report.[8]

Contents of Report

This report contains proposed legislation that amends the MPC by adding a new article regarding developments of regional significance and impact.[9] The proposed legislation contains official comments, which may be used in determining the intent of the General Assembly.[10] In light of the proposed legislation, conforming amendments are proposed to the MPC.[11] Provisions regarding the effective date of the proposed legislation follow the conforming amendments.[12] This report also contains the following:

[7] Consensus does not necessarily reflect unanimity among the Advisory Committee members on each individual legislative recommendation. However, it does reflect the general sense of the Advisory Committee, gained after lengthy review and discussion.

[8] Task Force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in this report.

[9] *Infra* pp. 111-131. Because the proposed article represents new statutory language, the text is underlined. A summary of the proposed legislation is found *infra* pp. 7-12.

[10] 1 Pa.C.S. § 1939 ("The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly").

[11] *Infra* p. 133.

[12] *Infra* p. 135.

(1) Current provisions from the MPC related to the subject of developments of regional significance and impact, including specific provisions regarding land development, comprehensive plans, intergovernmental cooperative planning and implementation agreements, mediation and appeals.[13]

(2) Provisions regarding level of service and transportation impact study warrants from the Pennsylvania Department of Transportation guidelines, contained in *Policies and Procedures for Transportation Impact Studies.*[14]

(3) A summary of the statutory provisions regarding storm water management in Pennsylvania.[15]

(4) A summary of the statutory provisions regarding sewage facilities in Pennsylvania.[16]

(5) The Pennsylvania Department of Community and Economic Development's Keystone Principles and Criteria for Growth, Investment and Resource Conservation.[17]

(6) A summary of the implementation agreements from the Centre Region, the Pottstown Metropolitan Region and the Phoenixville Region.[18]

(7) Background information regarding the American Law Institute Model Land Development Code, as discussed in the American Planning Association's *Growing Smart Legislative Guidebook.*[19]

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[13] *Infra* pp. 13-24. Previous proposed amendments to the MPC related to developments of regional significance and impact are set forth *infra* pp. 24-28.

[14] Bureau of Highway Safety & Traffic Eng'g, Pa. Dep't of Transp., *Policies and Procedures for Transportation Impact Studies* (Jan. 28, 2009). *Infra* p. 29.

[15] Act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act; 32 P.S. §§ 680.1-680.17. *Infra* pp. 31-32.

[16] Act of January 24, (1966) 1965 (P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act; 35 P.S. §§ 750.1-750.20a. *Infra* pp. 33-35.

[17] Pennsylvania - State of Innovation, *available at* http://newpa.com/find-and-apply-for-funding/keystone-principles/index.aspx (last accessed Mar. 29, 2010). *Infra* pp. 37-43.

[18] *Infra* pp. 45-51.

[19] *Growing Smart Legislative Guidebook* (Stuart Meck, gen. ed., Jan. 2002), *available at* http://www.huduser.org/publications/pdf/growingsmart_guide.pdf (last accessed Nov. 16, 2011). *Infra* pp. 53-57.

(8) Examples from other states and jurisdictions, including Colorado, Florida, Georgia, Maine, the Cape Cod Commission in Massachusetts, the Metropolitan Council of the Twin Cities in Minnesota, New Hampshire, Vermont and Washington.[20]

(9) A summary of the Advisory Committee deliberations, including background information reviewed, a summary of the deliberations of the five subcommittees created and an explanation of how the legislation was developed.[21]

(10) An appendix containing House Bill No. 613 of 2011 (Printer's No. 597)[22] and House Resolution No. 845 of 2008.[23]

[20] *Infra* pp. 59-87.
[21] *Infra* pp. 89-110.
[22] *Infra* pp. 139-158.
[23] *Infra* pp. 159-161.

SUMMARY OF PROPOSED LEGISLATION

This report proposes a new Article VI-A for the Pennsylvania Municipalities Planning Code (MPC), which provides a statutory framework for developments of regional significance and impact. The following sections are part of this new article:

601-A. This section sets forth the purposes of the article, which are to (1) authorize a comprehensive and coordinated review by a municipality regarding a proposed development of regional significance and impact; (2) evaluate and mitigate potentially adverse impacts as a result of the development; (3) develop cost-effective and reasonable accountability measures regarding the development; (4) encourage timely, well-communicated and well-coordinated procedures to consider and authorize the development and (5) encourage planning consistent with the Natural Resources and the Public Estate provisions of the Constitution of Pennsylvania.

602-A. This section defines the terms department, earth disturbance activity, host municipality, intermodal terminal, petroleum storage facility, quarry, truck stop facility and waste handling facility.

603-A. This section states that unless Article VI-A specifically provides to the contrary, the provisions of Article VI-A supplement the MPC and do not supersede any provision of the MPC or any other law.

604-A. This section limits the scope of Article VI-A and provides that Article VI-A does not apply to any person or legal entity that is regulated by the Surface Mining Conservation and Reclamation Act, The Bituminous Mine Subsidence and Land Conservation Act, the Coal Refuse Disposal Control Act, the Coal and Gas Resource Coordination Act, the Noncoal Surface Mining Conservation and Reclamation Act, or the Oil and Gas Act.

605-A. This section mandates that each municipal, multimunicipal or county comprehensive plan must include provisions consistent with Article VI-A. If a host municipality is not governed by a municipal or multimunicipal comprehensive plan, the provisions of the county comprehensive plan of the county in which the host municipality is located shall govern and be consistent with respect to the provisions contained in Article VI-A.

606-A. Subsection (a) provides that if a proposed land development meets the specified thresholds, an impact analysis must be submitted to the host municipality.

Subsection (b) specifies that an impact analysis is always required of the following proposed land developments, without regard to the location or magnitude of the development: (1) an airport, (2) an intermodal terminal, (3) a petroleum storage facility, (4) a waste handling facility or the cumulative expansion of an existing facility that occurs during any one three-year period and creates a significant degradation in the level of service with respect to traffic impact, (5) a quarry or the cumulative expansion of an existing quarry that occurs during any one three-year period and creates a significant degradation in the level of service with respect to traffic impact, (6) a truck stop facility that creates a significant degradation in the level of service with respect to traffic impact, (7) a land development in a watershed that is unstudied under the Storm Water Management Act and consists of at least 100 acres of contributory watershed upstream from the development or at least 25 acres in total land area of earth disturbance activity associated with the development or (8) a land development in an area with insufficient sanitary sewer capacity as provided in the Pennsylvania Sewage Facilities Act.

Subsection (c) provides that an impact analysis is required if a proposed land development is within a host municipality with a population of 10,000 or more and will result in either (1) the generation of 3,000 or more average daily trips or 1,500 vehicles per day or (2) a significant impact on highway safety or traffic flow.

Subsection (d) provides that an impact analysis is required if a proposed land development is within a host municipality with a population of less than 10,000 and will result in (1) a significant impact on highway safety or traffic flow, (2) the generation of 3,000 or more average daily trips or 1,500 vehicles per day, (3) the generation of 100 or more vehicle trips entering or exiting the development during any one-hour time period of any day of the week or (4) for existing sites being redeveloped, the generation of 100 or more additional vehicle trips entering or exiting the development during any one-hour time period of any day of the week.

Subsection (e) permits a host municipality to increase or decrease any numerical threshold to apply to the municipality if a revised numerical threshold is adopted in a county plan or multimunicipal plan and the host municipality has adopted the plan (and accordingly conformed its local plans and ordinances to the plan) or entered into an implementation agreement to carry out the plan.

607-A. Subsection (a) requires an applicant to submit an impact analysis to the host municipality as required by the thresholds under Section 606-A.

Subsection (b) specifies that an applicant is responsible for all costs involving the preparation and review of the impact analysis.

Subsection (c) specifies that an impact analysis must analyze the effect of the proposed development on the host municipality and affected municipalities and must address (1) the financial impact regarding any expanded emergency and infrastructure services; (2) the disturbance of agricultural areas, forested areas and greenfields; (3) the effect on natural resources, historic resources and tourism; (4) the effect on residential housing opportunities; (5) the redevelopment of brownfields or greyfields; (6) the likelihood that the proposed development will spur other land development in the area; (7) the effect on transportation and transportation infrastructure and (8) any other matter that is required by an applicable provision in the municipal or multimunicipal ordinance that governs the host municipality or that is covered by an applicable provision in the municipal, multimunicipal or county comprehensive plan for the host municipality.

608-A. Subsection (a) mandates that a host municipality provide timely notice of the public hearing regarding the classification of a proposed development as a development of regional significance and impact to each contiguous municipality and each municipality that is potentially impacted by the proposed land development and identified in the impact analysis.

Subsection (b) mandates that the host municipality conduct a public hearing to review the required impact analysis and determine whether a proposed land development is a development of regional significance and impact. A representative from a municipality that received the required notice of the hearing may provide public comment to the host municipality.

Subsection (c) specifically provides that the host municipality must consider the potential direct impacts on other municipalities when it determines whether to classify the proposed development as a development of regional significance and impact. The host municipality must provide specific reasons for its determination.

Subsection (d) provides that a development of regional significance and impact is subject to the provisions of Article VI-A.

609-A. Subsection (a) requires an applicant to submit to the host municipality a written mitigation plan that explains the nature and extent of mitigation efforts to address any known or potential harm or negative effect cited by the host municipality in the classification of the proposed development as a development of regional significance and impact.

Subsection (b) requires that, at a minimum, a traffic engineer and another licensed and qualified professional must review the submitted mitigation plan and prepare written comments to the host municipality regarding the effect of the proposed mitigation measures on the public health, safety and welfare.

Subsection (c) specifies that an applicant is responsible for all costs involving the preparation and review of the mitigation plan.

610-A. Subsection (a) provides that an applicant may request a coordinated and expedited review of any aspect of a proposed development of regional significance and impact by a governmental entity.

Subsection (b) ensures adequate communication and cooperation by and between governmental entities.

Subsection (c) requires an applicant, in consultation with governmental entities, to submit the necessary information for review of the proposed development.

Subsection (d) requires a governmental entity, within 45 days after submission of all necessary information, to prepare a report of findings, comments and recommendations regarding the proposed development. The report must be sent to the applicant and the host municipality.

Subsection (e) specifies that a governmental entity is not required to conduct a coordinated and expedited review. Upon the written consent of the applicant, the governmental entity may extend the time period for review and preparation of the report.

Subsection (f) provides that an applicant is responsible for all fees involving the coordinated and expedited review. Unless the applicant agrees otherwise, if the governmental entity cannot complete the coordinated and expedited review within the requisite time period, the governmental entity must return to the applicant the full amount of the fee collected for the coordinated and expedited review.

611-A. Subsection (a) mandates that a host municipality conduct a hearing to review a proposed development of regional significance and impact.

Section (b) sets forth the matters that the host municipality must consider at the hearing, including (1) testimony and other information from governmental entities, the county in which the host municipality is located, contiguous municipalities, municipalities and area school districts potentially impacted by the proposed development, concerned individuals, municipal and regional planners, engineers, persons potentially impacted by the proposed development and other persons as the host municipality determines; (2) the required impact analysis; (3) the required mitigation plan; (4) whether the proposed development is consistent with an applicable provision in a municipal, multimunicipal and county comprehensive plan and in a municipal or multimunicipal ordinance or regulation and (5) the totality of impacts regarding the proposed development and the cumulative effect of development on the host municipality and affected municipalities.

Section (c) permits the host municipality to limit the testimony to be presented at the hearing if it is repetitive in nature.

Section (d) provides that a host municipality may approve the proposed development, approve the proposed development with conditions or disapprove the proposed development. A condition must (1) be reasonable and necessary to mitigate any impact or additional impact attributable to the proposed development, (2) bear a direct relationship to the burden being imposed by the proposed development and (3) not involve (i) the correction of an existing deficiency in the environment or public infrastructure, (ii) a contribution or payment for the acquisition of land or expansion of public facilities unless the host municipality's municipal ordinance contains the same or a similar condition for development that is not subject to Article VI-A, or (iii) the contribution or payment associated with the cost of a municipal improvement that exceeds the proposed development's proportionate share of the cost established under Article VI-A or any applicable provision of the MPC or other law or ordinance. By accepting the proposed development's proportionate share, the host municipality is assuring that the municipal improvement be made without any additional contribution or payment from the applicant for that purpose.

Subsection (e) requires the host municipality to provide specific reasons for its determination regarding the proposed development.

612-A. This section permits a municipality to establish additional standards and criteria regarding thresholds, the contents of an impact analysis, the classification of a development of regional significance and impact, and matters to consider during the hearing on whether to approve a proposed development of regional significance and impact.

613-A. Subsection (a) permits the host municipality or a county in which the host municipality is located to provide financial incentives to an applicant to mitigate the costs regarding an impact analysis, a mitigation plan, or a coordinated and expedited review of a proposed development of regional significance and impact.

Subsection (b) requires the host municipality to develop a tax sharing plan for contiguous municipalities adversely affected by an approved development of regional significance and impact. This subsection acknowledges that the neighboring municipalities may incur additional expenses relating to police and fire protection, medical services, road maintenance and infrastructure.

Subsection (c) provides that, if the host municipality lacks capacity regarding the professional review of the proposed land development plans, the impact analysis or the mitigation plan, the county in which the host municipality is located must determine whether, and the extent to which, the county can assist the host municipality with such professional review.

614-A. This section specifies the notice required for hearings under Article VI-A. Written notice must be given to the applicant, any owner of property that is contiguous to the proposed land development and any person requesting a copy of the notice. The municipality may provide timely written notification to any contiguous municipality or any municipality or area school district potentially impacted by the proposed land development.

615-A. Subsection (a) provides that an appeal of a determination regarding the approval, approval with conditions or disapproval of a proposed development of regional significance and impact shall be heard by the court of common pleas of the county in which the host municipality which made the determination is located.

Subsection (b) specifies that only those parties who appeared before the host municipality may appeal the determination by the host municipality.

Subsection (c) provides that Article X-A of the MPC governs the review of the determination.

Subsection (d) provides for mediation as an aid to a formal appeal.

PENNSYLVANIA
MUNICIPALITIES PLANNING CODE

This section of the report summarizes the provisions in the Pennsylvania Municipalities Planning Code (MPC) regarding land development, comprehensive plans, intergovernmental cooperative planning and implementation agreements, mediation and appeals. In addition, this section summarizes the provisions of House Bill No. 2662 of 1994 (Printer's No. 3457), Senate Bill No. 1076 of 1995 (Printer's No. 1203) and House Bill No. 2271 of 2003 (Printer's No. 3122), all of which proposed amendments to the MPC related to developments of regional significance and impact.

Land Development

A development of regional significance and impact is "any land development that because of its character, magnitude or location, will have substantial effect upon the health, safety or welfare of citizens in more than one municipality."[24] A land development is defined as any of the following activities:

> (1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
>
> (i) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
>
> (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.
>
> (2) A subdivision of land.

[24] MPC, *supra* note 3, § 107(a); 53 P.S. § 10107(a). The MPC does not apply to the cities of Philadelphia and Pittsburgh, which are first and second class cities, respectively. Under the MPC, a municipality is defined as "any city of the second class A or third class, borough, incorporated town, township of the first or second class, county of the second class through eighth class, home rule municipality, or any similar general purpose unit of government which shall hereafter be created by the General Assembly." *Id.*

(3) Development in accordance with section 503(1.1).[25]

The MPC addresses developments and land uses of regional impact and significance as follows:

> (1) A county comprehensive plan must, among other things, identify current and proposed land uses that have a regional impact and significance. These uses include "large shopping centers, major industrial parks, mines and related activities, office parks, storage facilities, large residential developments, regional entertainment and recreational complexes, hospitals, airports and port facilities."[26]
>
> (2) A county or multimunicipal comprehensive plan that is the subject of an intergovernmental cooperative planning and implementation agreement may plan for developments of areawide significance and impact.[27]
>
> (3) A cooperative implementation agreement shall establish a process for review and approval of a development of regional significance and impact that is proposed within a participating municipality.[28]

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[25] *Id.* A subdivision is defined as follows:

> the division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development: Provided, however, That the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

Id.

> A subdivision and land development ordinance may include:
>
> (1.1) Provisions for the exclusion of certain land development from the definition of land development contained in section 107 only when such land development involves:
>
> (i) the conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than three residential units, unless such units are intended to be a condominium;
>
> (ii) the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; or
>
> (iii) the addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For purposes of this subclause, an amusement park is defined as a tract or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by proper authorities.

Id. § 503(1.1); 53 P.S. § 10503(1.1).

[26] *Id.* § 301(a)(7)(ii); 53 P.S. § 10301(a)(7)(ii). A county comprehensive plan is "a land use and growth management plan prepared by the county planning commission and adopted by the county commissioners which establishes broad goals and criteria for municipalities to use in preparation of their comprehensive plans and land use regulation." *Id.* § 107(a); 53 P.S. § 10107(a).

[27] *Id.* § 1103(a)(5); 53 P.S. § 11103(a)(5).

[28] *Id.* § 1104(b)(2); 53 P.S. § 11104(b)(2).

Comprehensive Plans

A municipal, multimunicipal or county comprehensive plan must include objectives for future development, a land use plan, a housing plan, a plan for movement of people and goods, a plan for community facilities and utilities, the interrelationships among the various plan components, short-range and long-range plan implementation strategies, a statement regarding the compatibility with area development, a statement that development is generally consistent with existing objectives and plans, and a plan for the protection of natural and historic resources. The MPC specifically provides that each of these plans must include the following related basic elements:

> (1) A statement of objectives of the municipality concerning its future development, including, but not limited to, the location, character and timing of future development . . . .
>
> (2) A plan for land use, which may include provisions for the amount, intensity, character and timing of land use proposed for residence, industry, business, agriculture, major traffic and transit facilities, utilities, community facilities, public grounds, parks and recreation, preservation of prime agricultural lands, flood plains and other areas of special hazards and other similar uses.
>
> (2.1) A plan to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality, which may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodation of expected new housing in different dwelling types and at appropriate densities for households of all income levels.
>
> (3) A plan for movement of people and goods, which may include expressways, highways, local street systems, parking facilities, pedestrian and bikeway systems, public transit routes, terminals, airfields, port facilities, railroad facilities and other similar facilities or uses.
>
> (4) A plan for community facilities and utilities, which may include public and private education, recreation, municipal buildings, fire and police stations, libraries, hospitals, water supply and distribution, sewerage and waste treatment, solid waste management, storm drainage, and flood plain management, utility corridors and associated facilities, and other similar facilities or uses.
>
> (4.1) A statement of the interrelationships among the various plan components, which may include an estimate of the environmental, energy conservation, fiscal, economic development and social consequences on the municipality.
>
> (4.2) A discussion of short- and long-range plan implementation strategies, which may include implications for capital improvements programming, new or updated development regulations, and identification of public funds potentially available.

(5) A statement indicating that the existing and proposed development of the municipality is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities, or a statement indicating measures which have been taken to provide buffers or other transitional devices between disparate uses, and a statement indicating that the existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan.

(6) A plan for the protection of natural and historic resources to the extent not preempted by Federal or State law. This clause includes, but is not limited to, wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, flood plains, unique natural areas and historic sites. . . .[29]

The comprehensive plan must also "include a plan for the reliable supply of water, considering current and future water resources availability, uses and limitations, including provisions adequate to protect water supply sources."[30]

A county comprehensive plan must identify the following:

(1) Land uses regarding important natural resources and appropriate utilization of existing minerals.

(2) Current and proposed land uses that have a regional impact and significance.

(3) A plan to preserve and enhance prime agricultural land and encourage the compatibility of land use regulation with existing agricultural operations.

(4) A plan for historic preservation.[31]

A municipal, multimunicipal or county comprehensive plan "may identify those areas where growth and development will occur so that a full range of public infrastructure services, including sewer, water, highways, police and fire protection, public schools, parks, open space and other services can be adequately planned and provided as needed to accommodate growth."[32]

[29] *Id.* § 301(a)(1)-(6); 53 P.S. § 10301(a)(1)-(6).
[30] *Id.* § 301(b); 53 P.S. § 10301(b).
[31] *Id.* § 301(a)(7); 53 P.S. § 10301(a)(7).
[32] *Id.* § 301(d); 53 P.S. § 10301(d).

Intergovernmental Cooperative Planning and Implementation Agreements

Article XI of the MPC concerns intergovernmental cooperative planning and implementation agreements, and the MPC defines the terms "multimunicipal planning agency" and "regional planning agency" as follows:

> "Multimunicipal planning agency," a planning agency comprised of representatives of more than one municipality and constituted as a joint municipal planning commission in accordance with Article XI, or otherwise by resolution of the participating municipalities, to address on behalf of the participating municipalities multimunicipal issues, including, but not limited to, agricultural and open space preservation, natural and historic resources, transportation, housing and economic development.
>
> "Regional planning agency," a planning agency that is comprised of representatives of more than one county. Regional planning responsibilities shall include providing technical assistance to counties and municipalities, mediating conflicts across county lines and reviewing county comprehensive plans for consistency with one another.[33]

The stated purpose of Article XI of the MPC references compatible and complementary land development, community character, agricultural land, cooperation and coordinated planning, economic development, the environment, transportation, public services, water resources, wastewater treatment, infrastructure services, conservation and housing:

> It is the purpose of this article:
>
> (1) To provide for development that is compatible with surrounding land uses and that will complement existing land development with a balance of commercial, industrial and residential uses.
>
> (2) To protect and maintain the separate identity of Pennsylvania's communities and to prevent the unnecessary conversion of valuable and limited agricultural land.
>
> (3) To encourage cooperation and coordinated planning among adjoining municipalities so that each municipality accommodates its share of the multimunicipal growth burden and does not induce unnecessary or premature development of rural lands.

[33] *Id.* § 107(a); 53 P.S. § 10107(a). A planning agency is defined as "a planning commission, planning department, or a planning committee of the governing body." *Id.* A governing body is defined as "the council in cities, boroughs and incorporated towns; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; the board of commissioners in counties of the second class through eighth class or as may be designated in the law providing for the form of government." *Id.*

(4) To minimize disruption of the economy and environment of existing communities.

(5) To complement the economic and transportation needs of the region and this Commonwealth.

(6) To provide for the continuation of historic community patterns.

(7) To provide for coordinated highways, public services and development.

(8) To ensure that new public water and wastewater treatment systems are constructed in areas that will result in the efficient utilization of existing systems, prior to the development and construction of new systems.

(9) To ensure that new or major extension of existing public water and wastewater treatment systems are constructed only in those areas within which anticipated growth and development can adequately be sustained within the financial and environmental resources of the area.

(10) To identify those areas where growth and development will occur so that a full range of public infrastructure services, including sewer, water, highways, police and fire protection, public schools, parks, open space and other services, can be adequately planned and provided as needed to accommodate the growth that occurs.

(11) To encourage innovations in residential, commercial and industrial development to meet growing population demands by an increased variety in type, design and layout of structures and by the conservation and more efficient use of open space ancillary to such structures.

(12) To facilitate the development of affordable and other types of housing in numbers consistent with the need for such housing as shown by existing and projected population and employment data for the region.[34]

To develop, adopt and implement a comprehensive plan, the MPC enables municipalities, counties, authorities and special districts to enter into intergovernmental cooperative agreements:

> For the purpose of developing, adopting and implementing a comprehensive plan for the entire county or for any area within the county, the governing bodies of municipalities located within the county or counties may enter into intergovernmental cooperative agreements, as provided by 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation), except for any provisions permitting initiative and referendum. Such agreements may also be entered into between and among counties and municipalities for areas that include municipalities in more than one county, and between and among counties, municipalities, authorities and special districts providing water and sewer facilities,

[34] *Id.* § 1101; 53 P.S. § 11101.

transportation planning or other services within the area of a plan and with the opportunity for the active participation of State agencies and school districts. Implementation of the comprehensive plan and subdivision and zoning ordinances shall be accomplished in accordance with articles of this act.[35]

The MPC provides for the contents of county or multimunicipal comprehensive plans as follows:

Section 1103. County or Multimunicipal Comprehensive Plans.

(a) The comprehensive plan that is the subject of an agreement may be developed by the municipalities or, at the request of the municipalities, by the county planning agency, or agencies in the case of a plan covering municipalities in more than one county, in cooperation with municipalities within the area and shall include all the elements required or authorized in section 301 for the region of the plan, including a plan to meet the housing needs of present residents and those individuals and families anticipated to reside in the area of the plan, which may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodations of expected new housing in different dwelling types and of appropriate densities for households of all income levels. The plan may:

(1) Designate growth areas where:

(i) Orderly and efficient development to accommodate the projected growth of the area within the next 20 years is planned for residential and mixed use densities of one unit or more per acre.

(ii) Commercial, industrial and institutional uses to provide for the economic and employment needs of the area and to insure that the area has an adequate tax base are planned for.

(iii) Services to serve such development are provided or planned for.

(2) Designate potential future growth areas where future development is planned for densities to accompany the orderly extension and provision of services.

(3) Designate rural resource areas, if applicable, where:

(i) Rural resource uses are planned for.

(ii) Development at densities that are compatible with rural resource uses are or may be permitted.

(iii) Infrastructure extensions or improvements are not intended to be publicly financed by municipalities, except in villages, unless the participating or affected municipalities agree that such service should be provided to an area for health or safety reasons or to accomplish one or more of the purposes set forth in section 1101.

[35] *Id.* § 1102; 53 P.S. § 11102.

(4) Plan for the accommodation of all categories of uses within the area of the plan, provided, however, that all uses need not be provided in every municipality but shall be planned and provided for within a reasonable geographic area of the plan.

(5) Plan for developments of areawide significance and impact, particularly those identified in section 301(3) and (4).

(6) Plan for the conservation and enhancement of the natural, scenic, historic and aesthetic resources within the area of the plan.[36]

Furthermore, section 1104 of the MPC provides a statutory framework for implementation agreements, with subsection (b)(2) specifically referencing a development of regional significance and impact:

Section 1104. Implementation Agreements.

(a) In order to implement multimunicipal comprehensive plans under section 1103, counties and municipalities shall have authority to enter into intergovernmental cooperative agreements.

(b) Cooperative implementation agreements shall:

(1) Establish the process that the participating municipalities will use to achieve general consistency between the county or multimunicipal comprehensive plan and zoning ordinances, subdivision and land development and capital improvement plans within participating municipalities, including adoption of conforming ordinances by participating municipalities within two years and a mechanism for resolving disputes over the interpretation of the multimunicipal comprehensive plan and the consistency of implementing plans and ordinances.

(2) Establish a process for review and approval of developments of regional significance and impact that are proposed within any participating municipality. Subdivision and land development approval powers under this act shall only be exercised by the municipality in which the property where the approval is sought. Under no circumstances shall a subdivision or land development applicant be required to undergo more than one approval process.

(3) Establish the role and responsibilities of participating municipalities with respect to implementation of the plan, including the provision of public infrastructure services within participating municipalities as described in subsection (d), the provision of affordable housing and purchase of real property, including rights-of-way and easements.

(4) Require a yearly report by participating municipalities to the county planning agency and by the county planning agency to the participating municipalities concerning activities carried out pursuant to the agreement during the previous year. Such reports shall include

[36] *Id.* § 1103(a); 53 P.S. § 11103(a). Section 301(3) and (4) of the MPC is now § 301(a)(3) and (4). *See supra* p. 15.

summaries of public infrastructure needs in growth areas and progress toward meeting those needs through capital improvement plans and implementing actions and reports on development applications and dispositions for residential, commercial and industrial development in each participating municipality for the purpose of evaluating the extent of provision for all categories of use and housing for all income levels within the region of the plan.

(5) Describe any other duties and responsibilities as may be agreed upon by the parties.

(c) Cooperative implementation agreements may designate growth areas, future growth areas and rural resource areas within the plan. The agreement shall also provide a process for amending the multimunicipal comprehensive plan and redefining the designated growth area, future growth area and rural resource area within the plan.

(d) The county may facilitate convening representatives of municipalities, municipal authorities, special districts, public utilities, whether public or private, or other agencies that provide or declare an interest in providing a public infrastructure service in a public infrastructure service area or a portion of a public infrastructure service area within a growth area, as established in a county or multimunicipal comprehensive plan, for the purpose of negotiating agreements for the provision of such services. The county may provide or contract with others to provide technical assistance, mediation or dispute resolution services in order to assist the parties in negotiating such agreements.[37]

If a municipality has conformed its local plans and ordinances to the applicable county or multimunicipal plan by implementing a cooperative agreement and adopting appropriate resolutions and ordinances, a state agency "shall consider and may give priority consideration to applications for financial or technical assistance for projects consistent with the county or multimunicipal plan."[38] A participating municipality that has entered into an implementation agreement to carry out a county or multimunicipal plan may (1) provide by cooperative agreement for the sharing of tax revenues and fees by municipalities within the region of the plan and (2) adopt a transfer of development rights program by adoption of an ordinance applicable to the region of the plan, to enable development rights to be transferred from rural resource areas in any municipality within the plan to designated growth areas in any municipality within the plan.[39]

A participating municipality may also "adopt a specific plan for the systematic implementation of a county or multimunicipal comprehensive plan for any nonresidential part of the area covered by the plan."[40] This plan must specify all of the following in detail:

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[37] *Id.* § 1104(a)-(d); 53 P.S. § 11104(a)-(d).
[38] *Id.* § 1105(a)(3); 53 P.S. § 11105(a)(3).
[39] *Id.* § 1105(b); 53 P.S. § 11105(b).
[40] *Id.* § 1106(a); 53 P.S. § 11106(a).

(1) The distribution, location, extent of area and standards for land uses and facilities, including design of sewage, water, drainage and other essential facilities needed to support the land uses.

(2) The location, classification and design of all transportation facilities, including, but not limited to, streets and roads needed to serve the land uses described in the specific plan.

(3) Standards for population density, land coverage, building intensity and supporting services, including utilities.

(4) Standards for the preservation, conservation, development and use of natural resources, including the protection of significant open spaces, resource lands and agricultural lands within or adjacent to the area covered by the specific plan.

(5) A program of implementation including regulations, financing of the capital improvements and provisions for repealing or amending the specific plan. Regulations may include zoning, storm water, subdivision and land development, highway access and any other provisions for which municipalities are authorized by law to enact. The regulations may be amended into the county or municipal ordinances or adopted as separate ordinances. If enacted as separate ordinances for the area covered by the specific plan, the ordinances shall repeal and replace any county or municipal ordinances in effect within the area covered by the specific plan, and ordinances shall conform to the provisions of the specific plan.[41]

Mediation

Mediation is "a voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable."[42]

Under the MPC, "[t]he county planning commission shall offer a mediation option to any municipality which believes that its citizens will experience harm as the result of an applicant's proposed subdivision or development of land in a contiguous municipality if the municipalities agree."[43] The applicant has the right to participate in the mediation.[44] In addition, "[t]he governing body of the municipality may appear and

[41] *Id.* A specific plan may not be adopted or amended unless the proposed plan or amendment is consistent with the adopted county or multimunicipal comprehensive plan. In addition, a capital project by a municipal authority or municipality may not be approved or undertaken (and a final plan, development plan or plat for a subdivision or development of land may not be approved) unless the project, plan or plat is consistent with the adopted specific plan. *Id.* § 1106(b); 53 P.S. § 11106(b).

[42] *Id.* § 107(a); 53 P.S. § 10107(a).

[43] *Id.* § 502.1(a); 53 P.S. § 10502.1(a).

[44] *Id.*

comment before the governing body of a contiguous municipality and the various boards and commissions of the contiguous municipality considering a proposed subdivision, change of land use or land development."[45]

Similarly, "[t]he county planning commission shall offer a mediation option to any municipality which believes that its citizens will experience harm as the result of the adoption of a zoning ordinance or an amendment to an existing zoning ordinance in a contiguous municipality if the contiguous municipalities agree."[46]

In exercising this option, the municipalities must comply with the procedures set forth in Article IX (zoning hearing board and other administrative proceedings),[47] and the cost of the mediation is shared equally by the municipalities or parties unless otherwise agreed.[48] Participation in mediation is voluntary, and the appropriateness of mediation is determined by the particular circumstances of each case and the willingness of the parties to negotiate.[49] A municipality offering the mediation option must assure that the mediating parties develop terms and conditions for the following:

> (1) Funding mediation.
>
> (2) Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
>
> (3) Completing mediation, including time limits for such completion.
>
> (4) Suspending time limits otherwise authorized in this act, provided there is written consent by the mediating parties, and by an applicant or municipal decisionmaking body if either is not a party to the mediation.
>
> (5) Identifying all parties and affording them the opportunity to participate.
>
> (6) Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.
>
> (7) Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decisionmaking body pursuant to the authorized procedures set forth in the other sections of this act [the MPC].[50]

[45] *Id.* § 502.1(b); 53 P.S. § 10502.1(b).
[46] *Id.* § 602.1; 53 P.S. § 10602.1.
[47] *Id.* §§ 901-918; 53 P.S. §§ 10901-10918.
[48] *Id.* §§ 502.1(a) & 602.1; 53 P.S. §§ 10502.1(a) & 10602.1.
[49] *Id.* § 908.1(b); 53 P.S. § 10908.1(b).
[50] *Id.*

Appeals

An appeal from a land use decision must be taken to the court of common pleas of the judicial district in which the land is located.[51] The court may hold a hearing to receive additional evidence, remand the case to the governing body or refer the case to a referee to receive additional evidence. If the record includes findings of fact made by the governing body and no additional evidence is taken, the court may not disturb the findings if they are supported by substantial evidence. However, if the record does not include findings of fact or if additional evidence is taken, the court must make its own findings of fact based on the record below as supplemented by any additional evidence.[52]

Previous Proposed Amendments Regarding Projects of Regional Impact

House Bill No. 2662 of 1994 (Printer's No. 3457) and Senate Bill No. 1076 of 1995 (Printer's No. 1203), which are identical pieces of legislation, proposed Article VI-A of the MPC regarding projects of regional impact. Although the proposed article was never enacted into law, its provisions are nevertheless instructive in reviewing the subject of developments of regional significance and impact and are replicated as follows:

ARTICLE VI-A
Projects of Regional Impact

> Section 601-A. Purposes.--In order to ensure consistency between municipal development approvals for projects of regional impact and county comprehensive plans, to mitigate impacts to adjoining municipalities caused by regional projects, and to facilitate the orderly development of this Commonwealth and its subdivisions, the following powers are granted exclusively to counties.
>
> Section 602-A. County Powers.--Counties shall prepare and adopt regional facility siting ordinances, either as part of a zoning ordinance as authorized by section 602 or as a separate ordinance. Provisions governing the siting of projects of regional impact shall apply throughout the county, whether or not any municipality located within the county has

[51] *Id.* § 1102-A; 53 P.S. § 11002-A. The MPC distinguishes a "hearing" from a "public hearing." *Id.* § 107(a) & (b); 53 P.S. § 10107(a) & (b). A hearing is a formal administrative proceeding, where a record is established for appellate purposes. A public hearing, on the other hand, is a formal meeting that is held after public notice is given and "intended to inform and obtain public comment" prior to an action being taken.

[52] *Id.* § 1005-A; 53 P.S. § 11005-A.

enacted a municipal zoning ordinance. If standards and procedures governing the siting of regional facilities are adopted as part of a county zoning ordinance, such provisions shall remain in effect in any municipality that subsequently enacts a zoning ordinance even though other provisions of the county zoning ordinance shall be repealed pro tanto as provided by section 602. If a municipality within a county has adopted a zoning ordinance, the county may not approve a project that has not been approved by the municipality. County authority to adopt regional facility siting ordinances pursuant to this section shall be in addition to and not in lieu of the authority of any municipality to approve, condition or disapprove land uses within that jurisdiction when the municipality has adopted ordinances regulating the use. Counties shall also cooperate with other counties in evaluating and permitting projects that impact regions beyond individual county boundaries.

Section 603-A. Preparation of Ordinances.--County planning commissions shall develop and recommend for adoption to the board of commissioners of each county in this Commonwealth a regional facility siting ordinance. Such ordinance may provide, after the approval of a project of regional impact or significance by a municipality or concurrent with the review and approval by the municipality, for the approval, approval with conditions, or denial of projects which have impacts that extend beyond the boundaries of a host municipality. Such ordinances may regulate any of the following types of projects which are hereby designated as projects of regional impact:

(1) Regional shopping center with more than 250,000 gross square feet of retail or office space.

(2) Industrial or commercial office park with more than 500,000 gross square feet of floor space.

(3) Petroleum or highly flammable or explosive material refining, processing or storage area.

(4) Warehouse complex with more than 500,000 gross square feet, port terminal or inland port, or trucking terminal averaging more than 250 container or trailer loads per day.

(5) Residential development involving more than 250 dwelling units, whether phased or not.

(6) Regional entertainment and recreational complex, including multiscreen theaters totaling more than 2,000 seats, opera or symphony halls, theaters or centers for the performing arts, stadiums for competitive sports, amusement parks, horse or dog racing tracks, automobile raceways or drag strips, downhill ski areas, marinas and similar facilities.

(7) Hospital and medical center offering inpatient care facilities.

(8) Airport.

(9) Office center of 150,000 gross square feet or more.

(10) Institution of higher education, such as a college, university or technical trade school, to be initially located, relocated or expanded in a campus area on a tract or contiguous tracts of land totaling ten or more acres.

(11) Combination of retail, office or warehousing uses to be developed or expanded on the same tract or contiguous tracts of land under single or joint ownership with a total combined area of 500,000 gross square feet or more of floor space.

(12) Any combination of the uses listed in this subsection, that includes a use listed in clause (6), (7), (8) or (10), to be developed or expanded on the same tract or contiguous tracts of land under single or joint ownership, regardless of the total floor area of any single use.

Section 604-A. Content of Ordinances.--

(a) Regional facility siting ordinances adopted by any county shall contain criteria, consistent with the adopted county comprehensive plan, for the planning and siting of projects of regional impact.

(b) A county may establish permissible standards for the location and development of a project of regional impact or establish standards for issuance or denial of permits for designated regional facilities. Such standards shall be contained in a county regional facility siting ordinance. In approving a project of regional impact a county may attach such reasonable conditions as are necessary to mitigate impacts directly attributable to the regional facility. All conditions shall bear a direct relationship to the burden being imposed by the development of the regional facility. No county shall require as a condition of permit approval the correction of existing deficiencies in the environment or public infrastructure, but only the mitigation of any additional impact caused by the development of the regional facility.

(c) The ordinance may prescribe reasonable fees for the processing of applications for a permit, for the conduct of public hearings and for the preparation and distribution of findings of fact.

Section 605-A. Permit Required.--

(a) No project constituting a project of regional impact shall be undertaken or enlarged without a permit as required by any applicable regional facility siting ordinance.

(b) All permits issued or denied by any county pursuant to any ordinance adopted under this section shall be accompanied by written findings of fact. Such findings shall contain the relevant standards applied to the permit, the evidence relied on in the decision and the conclusions of law.

(c) Permits may be issued, conditioned or denied for any regional facility as authorized by county ordinance by the county planning commission or a regional planning agency designated for that purpose. For the purpose of investigating the facts relevant to a proposed permit,

the county regional facilities siting ordinance may authorize the hearing body to accept testimony and written arguments, conduct public hearings and publish its findings and decision. Public notice shall be given of the proposed permit and of any public hearing. Written notice shall be given to the applicant, the municipality and abutting property owners as provided by ordinance and to any other person who has requested a copy of the notice. Ordinances shall contain procedures for notification, when appropriate, of neighboring municipalities or other counties that are located adjacent to the municipality containing the site of a proposed regional facility and that may have interest in the proceedings.

(d) Appeal of any final decision by a county hearing body regarding issuance, conditioning or denial of any permit for a facility of regional significance shall be to the court of common pleas. Appeals shall be limited to those parties who appeared before the county hearing body. The review of such decision shall be confined to the record established before the county hearing body. Parties to a contested case involving a facility of regional significance may utilize mediation as an option to formal appeal. In exercising such an option, the mediating parties shall meet the stipulations and follow the procedures set forth in Article IX. Mediation shall be voluntary and the costs shall be shared equally by all parties unless otherwise agreed upon by the mediating parties. The standing of any party to pursue an appeal shall not be in any way affected by a decision to participate in mediation should a mediated settlement not be achieved.

(e) A violation of any provision of a county regional facility siting ordinance shall constitute a violation of law and may be remedied through a civil enforcement proceeding as provided for violation of zoning or other land use ordinances. Counties, municipalities or an adjacent or neighboring property owner who would be specially damaged by the violation may, in addition to other remedies, institute injunction, mandamus or other appropriate action to prevent the unlawful erection, construction, expansion, alteration or conversion of use of a facility subject to the county regulations.

(f) All permits for a project of regional impact shall be granted or denied within 120 days of application to the county when the municipality has already acted to approve the use or within 120 days of the decision of the municipality, whichever is the most recent event. The period of time in which a decision must be rendered may be extended by the agreement of parties to the case.

House Bill No. 2271 of 2003 (Printer's No. 3122) also would have amended the MPC, but it was not enacted into law. The bill proposed a new section 622 to the MPC regarding large retail establishments:

Section 622. Large Retail Establishments Prohibited in Certain Locations.--(a) Notwithstanding any other provisions of law to the contrary, a retail establishment of 100,000 square feet or larger shall not be established or operated within 1,200 feet of a hospital established prior to the retail establishment.

(b) The provisions of this section shall apply whether or not an occupancy permit or certificate of use has been issued to the owner or operator of the retail establishment prior to the effective date of this section.

(c) This section shall not apply to a retail establishment operating prior to December 15, 2003.

(d) As used in this section, the term "hospital" shall mean a community hospital licensed by the Department of Health which has no more than 250 beds.

The bill also amended the definitions of (1) "city" to include a city of the first class as well as a city of the second class A and third class and (2) "municipality" to include any city (not just one of the second class A or third class) and any county (not just one of the second class through eighth class). These amendments would have made the MPC applicable to Philadelphia.

DEPARTMENT OF TRANSPORTATION GUIDELINES

The Pennsylvania Department of Transportation provides guidelines regarding transportation impacts. The department defines the term "level of service" as:

> a qualitative measure describing the operational conditions within a section of roadway or at an intersection that includes factors such as speed, travel time, ability to maneuver, traffic interruptions, delay and driver comfort. Level of service is described as a letter grade system (similar to a school grading system) where delay (in seconds) is equivalent to a certain letter grade from A through F.[53]

A "significant degradation" is "a degradation in the level of service below LOS C in rural areas and LOS D in urban areas."[54]

In addition, the department requires a traffic impact study for all highway occupancy permit applications that meet any of the following characteristics:

(1) The site is expected to generate 3,000 or more average daily trips or 1,500 vehicles per day.

(2) During any one hour time period of any day of the week, the development is expected to generate 100 or more vehicle trips entering the development or 100 or more vehicle trips exiting the development.

(3) For existing sites being redeveloped, the site is expected to generate 100 or more additional trips entering or exiting the development during any one hour time period of any day of the week.

(4) In the opinion of the department, the development or redevelopment is expected to have a significant impact on highway safety or traffic flow, even if Study Warrants (1), (2) or (3) are not met.[55]

[53] Bureau of Highway Safety & Traffic Eng'g, *supra* note 14, at A-3.
[54] *Id.* at A-4.
[55] *Id.* at 4.

STORM WATER MANAGEMENT

The Storm Water Management Act is intended to:

> (1) Encourage planning and management of storm water runoff in each watershed which is consistent with sound water and land use practices.
>
> (2) Authorize a comprehensive program of storm water management designated to preserve and restore the flood carrying capacity of Commonwealth streams; to preserve to the maximum extent practicable natural storm water runoff regimes and natural course, current and cross-section of water of the Commonwealth; and to protect and conserve ground waters and ground-water recharge areas.
>
> (3) Encourage local administration and management of storm water consistent with the Commonwealth's duty as trustee of natural resources and the people's constitutional right to the preservation of natural, economic, scenic, aesthetic, recreational and historic values of the environment.[56]

Each county must prepare and adopt a watershed storm water management plan for each watershed located in the county, in consultation with the municipalities located within the watershed.[57] The plan must include the following:

> (1) A survey of existing runoff characteristics in small and large storms, including the impact of soils, slopes, vegetation and existing development.
>
> (2) A survey of existing significant obstructions and their capacities.
>
> (3) An assessment of projected and alternative land development patterns in the watershed and the potential impact of runoff quantity, velocity and quality.
>
> (4) An analysis of present and projected development in flood hazard areas and its sensitivity to damages from future flooding or increased runoff.
>
> (5) A survey of existing drainage problems and proposed solutions.
>
> (6) A review of existing and proposed storm water collection systems and their impacts.

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[56] Storm Water Mgmt. Act, *supra* note 15, § 3; 32 P.S. § 680.3. The term "storm water" is defined as "[d]rainage runoff from the surface of the land resulting from precipitation or snow or ice melt." *Id.* § 4; 32 P.S. § 680.4. A "watershed" is "[t]he entire region or area drained by a river or other body of water, whether natural or artificial." *Id.*

[57] *Id.* § 5(a); 32 P.S. § 680.5(a).

(7) An assessment of alternative runoff control techniques and their efficiency in the particular watershed.

(8) An identification of existing and proposed state, federal and local flood control projects located in the watershed and their design capacities.

(9) A designation of those areas to be served by storm water collection and control facilities within a ten-year period; an estimate of the design capacity and costs of such facilities; a schedule and proposed methods of financing the development, construction and operation of such facilities; and an identification of the existing or proposed institutional arrangements to implement and operate the facilities.

(10) An identification of flood plains within the watershed;

(11) Criteria and standards for the control of storm water runoff from existing and new development which are necessary to minimize dangers to property and life and carry out the purposes of this act.[58]

Each watershed storm water plan must:

(1) contain such provisions as are reasonably necessary to manage storm water such that development or activities in each municipality within the watershed do not adversely affect health, safety and property in other municipalities within the watershed and in basins to which the watershed is tributary; and

(2) consider and be consistent with other existing municipal, county, regional and State environmental and land use plans.[59]

Once a watershed storm water plan is in place, the location, design and construction of the following within the watershed must be consistent with the plan: storm water management systems, obstructions, flood control projects, subdivisions and major land developments, highways and transportation facilities, facilities for the provision of public utility services, and facilities owned or financed in whole or in part by funds from the Commonwealth.[60]

Among other things, the Department of Environmental Protection must coordinate the management of storm water in Pennsylvania, provide technical assistance to counties and municipalities (in cooperation with the Department of Community and Economic Development) and cooperate with appropriate federal agencies and other states and agencies regarding the planning and management of storm water.[61]

[58] *Id.* § 5(b); 32 P.S. § 680.5(b).
[59] *Id.* § 5(c); 32 P.S. § 680.5(c).
[60] *Id.* § 11(a); 32 P.S. § 680.11(a).
[61] *Id.* § 14(a); 32 P.S. § 680.14(a).

SEWAGE FACILITIES

The Pennsylvania Sewage Facilities Act provides for the planning and regulation of community and individual sewage systems.[62] The act describes the policy of the Commonwealth as follows:

> (1) To protect the public health, safety and welfare of its citizens through the development and implementation of plans for the sanitary disposal of sewage waste.
>
> (2) To promote intermunicipal cooperation in the implementation and administration of such plans by local government.
>
> (3) To prevent and eliminate pollution of waters of the Commonwealth by coordinating planning for the sanitary disposal of sewage wastes with a comprehensive program of water quality management.
>
> (4) To provide for the issuance of permits for on-lot sewage disposal systems by local government in accordance with uniform standards and to encourage intermunicipal cooperation to this end.
>
> (5) To provide for and insure a high degree of technical competency within local government in the administration of this act.
>
> (6) To encourage the use of the best available technology for on-site sewage disposal systems.
>
> (7) To insure the rights of citizens on matters of sewage disposal as they may relate to this act and the Constitution of this Commonwealth.[63]

Each municipality[64] must develop and implement an official plan for sewage services for areas within its jurisdiction that addresses present and future sewage disposal needs. A plan must be modified as new land development projects are proposed or the municipality's sewage disposal needs change. The Department of Environmental

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[62] The term "sewage" is defined as:

> any substance that contains any of the waste products or excrement or other discharge from the bodies of human beings or animals and any noxious or deleterious substances being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation, or which constitutes pollution under the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," as amended.

Pa. Sewage Facilities Act, *supra* note 16, § 2; 35 P.S. § 750.2. A "community sewage system" is "any system, whether publicly or privately owned, for the collection of sewage or industrial wastes of a liquid nature from two or more lots, and the treatment and/or disposal of the sewage or industrial waste on one or more of the lots or at any other site." *Id.* An "individual sewage system" is "a system of piping, tanks or other facilities serving a single lot and collecting and disposing of sewage in whole or in part into the soil or into any waters of this Commonwealth or by means of conveyance to another site for final disposal." *Id.*

[63] *Id.* § 3; 35 P.S. § 750.3.

[64] A "municipality" is "a city, town, township, borough or home rule municipality other than a county." *Id.* § 2; 35 P.S. § 750.2.

Protection must review and determine whether to approve the plan and any subsequent revision. The department may also provide technical assistance to a county, municipality and authority to coordinate a plan.[65] An official plan must, among other things:

> (1) Delineate areas in which community sewage systems exist, areas experiencing problems with sewage disposal (along with a description of the problems), areas where community sewage systems are and are not planned to be available within a ten-year period and all existing or approved subdivisions.
>
> (2) Generally provide for the orderly extension of community interceptor sewers in a manner consistent with the comprehensive plans and needs of the whole area.
>
> (3) Provide for adequate sewage treatment facilities that will prevent the discharge of untreated or inadequately treated sewage or other waste into any waters (or will otherwise provide for the safe and sanitary treatment of sewage or other waste).
>
> (4) Consider all aspects of planning, zoning, population estimates, engineering and economics to accurately delineate those portions of the area that community systems may and may not reasonably be expected to serve.
>
> (5) Consider any existing state plan affecting the development, use and protection of water and other natural resources.
>
> (6) Designate municipal responsibility for implementation of the plan.[66]

A person may not perform any of the following actions without first obtaining a permit indicating that the site and the plans and specifications of the sewage system comply with the Pennsylvania Sewage Facilities Act: (1) install, construct, award a contract for construction, alter, repair or connect to an individual sewage system or community sewage system; (2) construct, request bid proposals for construction for, install or occupy any building or structure for which an individual sewage system or community sewage system is to be installed. A local agency[67] may not issue a permit if the department requires a permit pursuant to The Clean Streams Law or determines that the permit is not necessary for the protection of the public health.[68] In addition, a local agency may not issue a permit for an individual sewage system or community sewage system unless the system proposed is consistent with the official plan, a special study or an update revision to the official plan of the municipality. Generally, if the municipality has no plan or has not received department approval of an update revision or special study to the official plan, a permit may not issued in an area of the municipality in which

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[65] *Id.* § 5; 35 P.S. § 750.5. The department may also administer grants to a county, municipality and authority to assist in preparing an official plan and any revision and "carrying out related studies, surveys, investigations, inquiries, research and analyses." *Id.* § 6; 35 P.S. § 750.6.

[66] *Id.* § 5(d); 35 P.S. § 750.5(d).

[67] A "local agency" is "a municipality, or any combination thereof acting cooperatively or jointly under the laws of the Commonwealth, county, county department of health or joint county department of health." *Id.* § 2; 53 P.S. § 750.2.

[68] *Id.* § 7(a)(1); 53 P.S. § 750.7(a)(1).

the department finds "a serious risk to the health, safety and welfare of persons within or adjacent to the municipality by reason of the municipality's failure to revise or implement its plan" until the municipality has (1) submitted the plan, revision or special study to the department and received approval or (2) commenced implementation of the plan, revision or special study in accordance with a schedule approved by the department.[69]

A permit will be revoked if the local agency determines that (1) a change has occurred in the physical condition of any land that will materially affect the operation of the community sewage system or individual sewage system covered by the permit, (2) a test material to the issuance of the permit has not been properly conducted, (3) information material to the issuance of the permit has been falsified, (4) the original decision of the local agency otherwise failed to conform to the provisions of the Pennsylvania Sewage Facilities Act or departmental rules and regulations or (5) the permittee has violated departmental rules and regulations.[70]

A local agency must either employ an adequate number of primary and alternate sewage enforcement officers[71] or contract with individuals, firms or corporations to adequately perform the services of sewage enforcement officers. A sewage enforcement officer must be certified by the department but is not a departmental employee. A local agency, through its sewage enforcement officer, may approve or deny permits for the construction of on-lot sewage disposal systems prior to system installation.[72]

[69] *Id.* § 7(b)(4) & (4.1); 53 P.S. § 750.7(b)(4) & (4.1).

[70] *Id.* § 7(b)(6); 53 P.S. § 750.7(b)(6).

[71] A "sewage enforcement officer" is "the official of the local agency who issues and reviews permit applications and conducts such investigations and inspections as are necessary to implement the act and the rules and regulations thereunder." *Id.* § 2; 53 P.S. § 750.2.

[72] *Id.* § 8; 53 P.S. § 750.8.

KEYSTONE PRINCIPLES

PREAMBLE

The Keystone Principles & Criteria for Growth, Investment & Resource Conservation were adopted by the Economic Development Cabinet on May 31, 2005. They were developed by the Interagency Land Use Team, a working group of the Cabinet, over a period of two years.[73] The Principles & Criteria are designed as a coordinated interagency approach to fostering sustainable economic development and conservation of resources through the state's investments in Pennsylvania's diverse communities.

The Principles lay out general goals and objectives for economic development and resource conservation agreed upon among the agencies and programs that participated in their development. The Criteria are designed to help measure the extent to which particular projects accomplish these goals.

The Criteria do not replace agency program guidelines or criteria. Rather, at each agency's discretion, they will either be integrated into existing program criteria (preferable) or used as additional, favorable considerations in the scoring or decision-making process. The Principles and Criteria are designed to encourage multifaceted project development that will integrate programs and funding sources from a variety of state agencies into a comprehensive strategy to address issues affecting whole communities. There are two categories of criteria:

Core Criteria, where relevant, should be given primary consideration in all investment decisions made by Commonwealth agencies when making grants or loans to public or private projects using agency funds.

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[73] The Economic Development Committee of the Cabinet (Committee) has the power and duty to (1) recommend strategies and policies that fosters development; conserves land and open space; attracts businesses near existing housing, social services, and public infrastructure; rehabilitates infrastructure and previously developed land; encourages transportation options; and promotes strategic investment in transportation that encourages the revitalization of older communities; (2) recommend policies and program enhancements that encourage the conservation and wise stewardship of natural resources and encourage community preservation and revitalization; (3) develop performance measures for economic development and community revitalization programs managed by state agencies and (4) identify economic, environmental and social trends of concern that require coordinated responses from Committee members. 4 Pa. Code § 1.553(4), (7), (9) and (10).

The existing Interagency Land Use Team serves as a working group to assist the Committee by identifying (1) agency programs and policies that impede sound land use management, conservation of natural resources, responsible development and economic growth; (2) the causes of negative environmental, economic and social trends caused by existing land use practices that require coordinated responses of Cabinet members and (3) policies and strategies for conserving land and open space, reusing previously developed sites and rehabilitating existing infrastructure. 4 Pa. Code § 1.554(c).

Preferential Criteria should be used by Commonwealth agencies in all programs to which they are applicable to evaluate projects and make decisions on grants or loans using agency funds.

Projects are to be evaluated with the recognition that rural, suburban, and urban areas have different characteristics and needs, and that what might work in an urban area might not work in a rural area (the "Be Fair" standard).

The Cabinet also approved a process to implement the Principles and Criteria over the next six months during which each agency will determine how they will integrate the criteria into each of their programs. A committee of the Interagency Team, led by the Governor's Office, will review the plans and offer feedback with the goal of fine-tuning the use of the Principles and Criteria for full implementation in the next calendar year.

PRINCIPLES:

1. **REDEVELOP FIRST.** Support revitalization of Pennsylvania's many cities and towns. Give funding preference to reuse and redevelopment of "brownfield" and previously developed sites in urban, suburban, and rural communities for economic activity that creates jobs, housing, mixed use development, and recreational assets. Conserve Pennsylvania's exceptional heritage resources. Support rehabilitation of historic buildings and neighborhoods for compatible contemporary uses.

2. **PROVIDE EFFICIENT INFRASTRUCTURE.** Fix it first: Use and improve existing infrastructure. Make highway and public transportation investments that use context sensitive design to improve existing developed areas and attract residents and visitors to these places. Provide transportation choice and intermodal connections for air travel, driving, public transit, bicycling and walking. Increase rail freight. Provide public water and sewer service for dense development in designated growth areas. Use on-lot and community systems in rural areas. Require private and public expansions of service to be consistent with approved comprehensive plans and consistent implementing ordinances.

3. **CONCENTRATE DEVELOPMENT.** Support infill and "greenfield" development that is compact, conserves land, and is integrated with existing or planned transportation, water and sewer services, and schools. Foster creation of well-designed developments and walkable, bikeable neighborhoods that offer healthy lifestyle opportunities for Pennsylvania residents. Recognize the importance of projects that can document measurable impacts and are deemed "most ready" to move to successful completion.

4. **INCREASE JOB OPPORTUNITIES.** Retain and attract a diverse, educated workforce through the quality of economic opportunity and quality of life offered in Pennsylvania's varied communities. Integrate educational and job training opportunities for workers of all ages with the workforce needs of businesses. Invest in businesses that offer good paying, high quality jobs, and that are located near existing or planned water and sewer infrastructure, housing, existing workforce, and transportation access (highway or transit).

5. **FOSTER SUSTAINABLE BUSINESSES.** Strengthen natural resource-based businesses that use sustainable practices in energy production and use, agriculture, forestry, fisheries, recreation and tourism. Increase our supply of renewable energy. Reduce consumption of water, energy and materials to reduce foreign energy dependence and address climate change. Lead by example: support conservation strategies, clean power and innovative industries. Construct and promote green buildings and infrastructure that use land, energy, water and materials efficiently. Support economic development that increases or replenishes knowledge-based employment, or builds on existing industry clusters.

6. **RESTORE AND ENHANCE THE ENVIRONMENT.** Maintain and expand our land, air and water protection and conservation programs. Conserve and restore environmentally sensitive lands and natural areas for ecological health, biodiversity and wildlife habitat. Promote development that respects and enhances the state's natural lands and resources.

7. **ENHANCE RECREATIONAL AND HERITAGE RESOURCES.** Maintain and improve recreational and heritage assets and infrastructure throughout the Commonwealth, including parks and forests, greenways and trails, heritage parks, historic sites and resources, fishing and boating areas and game lands offering recreational and cultural opportunities to Pennsylvanians and visitors.

8. **EXPAND HOUSING OPPORTUNITIES.** Support the construction and rehabilitation of housing of all types to meet the needs of people of all incomes and abilities. Support local projects that are based on a comprehensive vision or plan, have significant potential impact (e.g., increased tax base, private investment), and demonstrate local capacity, technical ability and leadership to implement the project. Coordinate the provision of housing with the location of jobs, public transit, services, schools and other existing infrastructure. Foster the development of housing, home partnerships, and rental housing opportunities that are compatible with county and local plans and community character.

9. **PLAN REGIONALLY; IMPLEMENT LOCALLY.** Support multi-municipal, county and local government planning and implementation that has broad public input and support and is consistent with these principles. Provide education, training, technical assistance, and funding for such planning and for transportation, infrastructure, economic development, housing, mixed use and conservation projects that implement such plans.

10. **BE FAIR.** Support equitable sharing of the benefits and burdens of development. Provide technical and strategic support for inclusive community planning to ensure social, economic, and environmental goals are met. Ensure that in applying the principles and criteria, fair consideration is given to rural projects that may have less existing infrastructure, workforce, and jobs than urban and suburban areas, but that offer sustainable development benefits to a defined rural community.

IMPLEMENTING THE KEYSTONE PRINCIPLES:

I. Core Criteria

1. Project avoids or mitigates high hazard locations (e.g., floodplain, subsidence or landslide prone areas).

2. Project/infrastructure does not adversely impact environmentally sensitive areas, productive agricultural lands, or significant historic resources.

3. Project in suburban or rural area: Project and supporting infrastructure are consistent with multi-municipal or county & local comprehensive plans and implementing ordinances, and there is local public/private capacity, technical ability, and leadership to implement project.

4. Project in "core community" (city, borough or developed area of township): Project is supported by local comprehensive vision & plan, and there is local public/private capacity, technical ability, and leadership to implement project.

5. Project supports other state investments and community partnerships.

II. Preferential Criteria

1. Development/Site Location

1. Brownfield or previously developed site.

2. Rehabilitation or reuse of existing buildings (including schools and historic buildings).

3. Infill in or around city, borough, or developed area of township.

4. If greenfield site, located in or adjacent to developed area with infrastructure.

5. Located in distressed city, borough or township.

2. Efficient Infrastructure

1. Use of existing highway capacity and/or public transit access available.

2. Within ½ mile of existing or planned public transit access (rail, bus, shared ride or welfare to work services).

3. Use of context sensitive design for transportation improvements.

4. Use/improvement of existing public or private water and sewer capacity and services.

3. Density, Design, and Diversity of Uses

1. Mixed residential, commercial & institutional uses within development or area adjacent by walking.

2. Sidewalks, street trees, connected walkways and bikeways, greenways, parks, or open space amenities included or nearby.

3. Interconnected project streets connected to public streets.

4. Design of new water, sewer and storm water facilities follows Best Management Practices, including emphasizing groundwater recharge and infiltration, and use of permeable surfaces for parking and community areas.

4. Expand Housing Opportunities

1. Adopted county and multi-municipal or local municipal plans include a plan for affordable housing; and implementing zoning provides for such housing through measures such as inclusion of affordable housing in developments over a certain number of units (e.g., 50), provision for accessory units, and zoning by right for multifamily units.

2. Project provides affordable housing located near jobs (extra weight for employer assisted housing).

3. Project adds to supply of affordable rental housing in areas of demonstrated need.

5. Increase Job Opportunities

1. Number of permanent jobs created and impact on local labor market.

2. Number of temporary jobs created and impact on local labor market.

3. Number of jobs paying family sustaining wages.

4. Increased job training coordinated with business needs and locations.

6. Foster Sustainable Businesses

1. Sustainable natural resource industry improvement or expansion: agriculture, forestry, recreation (fisheries, game lands, boating), tourism.

2. Business or project is energy efficient; uses energy conservation standards; produces, sells or uses renewable energy; expands energy recovery; promotes innovation in energy production and use; or expands renewable energy sources, clean power, or use of Pennsylvania resources to produce such energy.

3. Project meets green building standards.

4. Project supports identified regional industry cluster(s).

7. Restore/Enhance Environment

1. Cleans up/reclaims polluted lands and/or waters.

2. Protects environmentally sensitive lands for health, habitat, and biodiversity through acquisition, conservation easements, planning and zoning, or other conservation measures.

3. Development incorporates natural resource features and protection of wetlands, surface and groundwater resources, and air quality.

8. Enhance Recreational/Heritage Resources

1. Improves parks, forests, heritage parks, greenways, trails, fisheries, boating areas, game lands and/or infrastructure to increase recreational potential for residents and visitors.

2. Historic, cultural, greenways and/or opens space resources incorporated in municipal plans and project plan.

3. Makes adaptive reuse of significant architectural or historic resources or buildings.

9. Plan Regionally; Implement Locally

1. Consistent county and multi-municipal plan (or county and local municipal plan) adopted and implemented by county and local governments with consistent ordinances.

2. County or multi-municipal plan addresses regional issues and needs to achieve participating municipalities' economic, social, and environmental goals. All plans (county, multi-municipal, and local) follow standards for good planning, including:

    a. Is up-to-date.

    b. Plans for designated growth and rural resource areas, and developments of regional impact.

    c. Plans for infrastructure, community facilities, and services, including transportation, water and sewer, storm water, schools.

    d. Plans for tax base and fair share needs for housing, commercial, institutional, and industrial development.

    e. Identification of high hazard areas where development is to be avoided.

    f. Identification of and plans for prime agricultural land, natural areas, historic resources, and appropriate mineral resource areas to be conserved.

    g. Open space plan for parks, greenways, important natural and scenic areas and connected recreational resources.

3. County and local ordinances implement the governing plans and use innovative techniques, such as mixed use zoning districts, allowable densities of six or more units per acre in growth areas, and/or clustered development by right, transfer of development rights, specific plans, and tax and revenue sharing.

IMPLEMENTATION AGREEMENTS

This section of the report summarizes implementation agreements from the Centre Region, the Pottstown Metropolitan Region and the Phoenixville Region.

Centre Region Growth Boundary/ Sewer Service Area Implementation Agreement

The Centre Region[74] adopted an implementation agreement that defines a development of regional impact (DRI) by establishing a regional process to consider proposals to expand the Regional Growth Boundary/Sewer Service Area (RGB/SSA).[75] The agreement "encourages discussion among the Centre Region elected officials early in the planning process" and "provides for regional discussion before local decisions are made on regionally significant land use issues."[76] The following proposals are designated as a DRI: (1) a request to expand the RGB/SSA or extend public sewer lines to areas outside the existing sewer service area; (2) a request to rezone or amend a zoning ordinance with respect to property within the RGB/SSA in a manner that could increase density by more than 50 equivalent dwelling units (EDUs) or (3) a request to rezone or amend a zoning ordinance with respect to a property outside the RGB/SSA that will result in an increase of EDUs.[77]

Before the host municipality reviews a DRI proposal to determine if it has merit and warrants discussion at the regional level, the applicant must submit a standardized application containing the following information:

(1) The effect of the DRI on the existing sewer collection, conveyance and treatment system; water infrastructure; the transportation network; the public transportation system; emergency services; environmental features; school facilities and adjacent land uses.

(2) Community fiscal impacts.

[74] The Centre Region consists of the following Centre County municipalities: the Townships of College, Ferguson, Halfmoon, Harris and Patton and the Borough of State College.

[75] Centre Region Growth Boundary/Sewer Serv. Area Implementation Agreement (Aug. 16, 2006) (on file with the J. State Gov't Comm'n).

[76] *Id.* at 2.

[77] *Id.* § IV(1), at 3.

(3) An economic analysis on the impact of the DRI on other areas of the community.

(4) Quality of life issues and the value the DRI would add to the community.

(5) The consistency of the proposal with smart growth planning criteria.[78]

Pottstown Metropolitan Region Intergovernmental Cooperative Implementation Agreement for Regional Planning

The purpose of the Pottstown Metropolitan Region[79] Intergovernmental Cooperative Implementation Agreement for Regional Planning, through regional cooperation and planning, is to:

(1) Protect the unique historical, cultural and natural resources of the region.

(2) Promote the economic vitality and quality of life of the region's existing communities.

(3) Implement growth management techniques to provide for orderly and well-planned new development.

(4) Preserve open space and agriculture in the region.

(5) Develop transportation choices for better mobility in and through the region.

(6) Encourage walkable communities with a mix of uses and a range of housing options where appropriate.

(7) Promote new economic opportunities and jobs.

(8) Maintain and improve recreation options.

[78] *Id.* § IV(2)(a), at 3-4.

[79] The Pottstown Metropolitan Region consists of the following municipalities: the Townships of Douglass, East Coventry, Lower Pottsgrove, New Hanover, North Coventry, Upper Pottsgrove and West Pottsgrove and the Borough of Pottstown. Pottstown Metro. Region Intergov'tal Coop. Implementation Agreement for Reg'l Planning (Oct. 2005) (on file with the J. State Gov't Comm'n).

(9) Address the specific needs and unique conditions of each municipality.[80]

The implementation agreement sets several goals and objectives, including the following:

(1) **Housing**, to meet residential fair share requirements as a region, maintain and promote revitalization of existing residential neighborhoods and villages, concentrate new housing where infrastructure is currently located and in designated growth areas, encourage pedestrian-oriented residential neighborhoods that foster a sense of community, and accommodate housing opportunities for a range of income levels and age groups.

(2) **Commercial and Retail**, to maintain and enhance existing commercial areas, limit the amount of new commercial development outside existing commercial areas, promote revitalization of downtown Pottstown as a regional destination, and preserve and enhance village areas that support a mix of uses in a pedestrian-friendly environment.

(3) **Office**, to provide high-quality employment opportunities, enhance the region's tax base, accommodate various office types for a range of users, and locate office uses where adequate transportation access and necessary utilities are available and planned.

(4) **Industrial and Light Manufacturing**, to provide high-quality employment opportunities, enhance the region's tax base, provide for industrial and light manufacturing uses that meet the needs of a range of users, prioritize redevelopment of underutilized existing industrial sites, promote clean and environmentally friendly industrial and light manufacturing uses, and locate industrial and light manufacturing uses where adequate transportation access and necessary utilities are available and planned.

(5) **Parks and Recreation**, to coordinate park and recreational opportunities among the region's eight municipalities, implement the park and recreation goals of municipal open space plans, maintain and enhance existing park and recreation facilities, encourage parks and open spaces within new developments, create active and passive recreation opportunities, emphasize park and recreation opportunities that preserve natural linkages and environmental resources (including view sheds), expand recreational opportunities along the

[80] *Id.* § II, at 1-2.

Schuylkill River, develop a regional trail network to connect communities and recreation areas, and work with private organizations to provide recreational options.

(6) **Open Space**, to implement the open space goals of municipal open space plans, designate growth and rural resource areas within the region to ensure preservation of open spaces, promote design options for new developments that preserve open space, encourage coordination and connection of open space areas between municipalities, actively pursue strategies and resources to preserve open space in the region, and emphasize open space opportunities that preserve natural linkages and environmental resources (including view sheds and especially along the Schuylkill River).

(7) **Natural Resource Protection**, to protect existing groundwater resources and encourage groundwater recharge in the designs of new developments, preserve sensitive natural resources areas (including woodlands, stream systems, wetlands, steep slopes and wildlife, especially along the Schuylkill River), promote and protect street trees and other vegetation in developed areas, protect all municipalities within the same watershed from impacts of improper development, and implement the natural resource preservation goals of municipal open space plans.

(8) **Agriculture**, to encourage farmland preservation through participation in government and private preservation programs (at the local, state, and national level), designate growth areas and rural resource areas within the region to ensure preservation of agriculture, and emphasize that new development in designated agricultural areas be limited and maximize agricultural preservation.

(9) **Transportation**, to manage the region's vehicular traffic congestion, improve transportation safety in the region, emphasize transportation improvements in new developments that maintain or enhance the region's road hierarchy and connectivity, promote the design of new developments to be walkable and encourage multiple transportation options, expand public transportation options in the region (particularly regional rail service), develop a local and regional pedestrian and bicycle network, support innovative parking strategies to provide adequate parking that is safe and effective while minimizing traffic congestion and impervious coverage, and provide charter and other aviation transportation services at the Pottstown Municipal Airport.

(10) **Community Facilities**, to encourage the coordination of municipal services and facilities, use public sewer and water facilities efficiently by extending theses systems only within designated growth areas, protect surface water quality and ensure sufficient water supply by using public and private sewer and water systems effectively (including on-site systems), support existing emergency services and improve their capacities to serve a growing population, cooperate with educational facilities (the local school districts, Montgomery County Community College and local library systems) to encourage appropriate locations for new or expanded facilities and promote pedestrian access to these facilities, and develop ways for residents from non-Montgomery County communities within the region to greater utilize Montgomery County Community College.[81]

The Pottstown Metropolitan Regional Planning Committee shall review and comment on all subdivision or land development plans of regional impact[82] and in doing so "shall consider the merits of the proposal as it relates to the stated goals, objectives and policies of the adopted Regional Comprehensive Plan."[83] Specifically, the committee "shall consider the professional reviews written or other items prepared for the municipality as part of the standard municipal review process."[84] However, only the host municipality may approve a subdivision or land development of regional impact;[85] each Pottstown Metropolitan Region municipality shall retain its own municipal planning commission and zoning hearing board, and the implementation agreement does not modify their functions.[86]

If a dispute arises between two or more municipalities regarding the interpretation of the regional comprehensive plan or the adoption of a specific plan, the committee shall mediate the dispute.[87]

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[81] *Id.* § III, at 2-6.

[82] A subdivision or land development of regional impact includes (1) a subdivision or land development that due to its character, magnitude or location will have substantial impact upon the health, safety or welfare of the citizens of the Pottstown Metropolitan Region; (2) a residential subdivision or land development that results in the creation of 25 lots or more or results in the development of 50 units or more; (3) a nonresidential land development with a building containing 40,000 square feet or more of gross floor area for retail, office, industrial or other nonresidential purposes; (4) a subdivision or land development that has the potential to generate 100 or more peak-hour one-way trips per day or 1,500 or more total trips per day; (5) a portion of a subdivision involving three or more lots or a land development with a building containing 20,000 square feet or more of gross floor area that falls within 300 feet of a municipal line of the region and (6) a residential or nonresidential subdivision or land development proposing the construction of a community sewage facility, whether publicly or privately owned, for the collection of sewage. *Id.* § IV, at 6-7.

[83] *Id.* § IX(2)(b), at 12.

[84] *Id.* § IX(2)(c), at 12.

[85] *Id.* § IX(e), at 12.

[86] *Id.* §§ XV & XVI, at 17.

[87] *Id.* § XIX, at 18. The dispute resolution "shall be undertaken only by a non-disputing member or members of the Committee. If there is no non-disputing member of the Committee available or willing to mediate, the services of the Montgomery County Planning Commission, Chester County Planning Commission, or other outside mediation service shall be engaged to mediate." *Id.*

Phoenixville Region Intergovernmental Cooperative Implementation Agreement for Regional Planning

The purpose of the Phoenixville Region[88] Intergovernmental Cooperative Implementation Agreement for Regional Planning is identical to that of the Pottstown Metropolitan Region Intergovernmental Cooperative Implementation Agreement for Regional Planning.[89] A subdivision or land development of regional impact (DRI) is so classified if it meets any of the following standards:[90]

Type of Development	Threshold for DRI Review
Office or Retail	Greater than 75,000 gross square feet
Wholesale or Distribution	Greater than 100,000 gross square feet
Hospitals or Health Care	Greater than 200 new beds or generating more than 250 peak hour vehicle trips per day
Residential	Greater than 100 new lots or units
Industrial	Greater than 125,000 gross square feet, employing more than 300 workers or covering more than 25 acres
Hotels	Greater than 150 rooms
Mixed Use	Total gross square feet greater than 100,000
Attractions or Recreational Facilities	Greater than 500 parking spaces or a seating capacity of more than 1,000
Waste Handling Facilities	New facility or expansion of existing facility by more than 50%
Quarries Asphalt or Cement Plants	New facility or expansion of existing facility by more than 50%
Petroleum Storage Facilities Energy Generation or Distribution Facility	New facility or expansion of existing facility by more than 50%
Public or Private School	New or relocated facility with a capacity of 500 students or more
Any other development types not identified above (include parking facilities)	300 parking spaces
Any other proposed subdivision or land development which, in the opinion of the governing body of the host municipality, could have a regional impact or an impact beyond the boundaries of the host municipality and for which the host municipality desires input from the regional planning committee	--

[88] The Phoenixville Region consists of the following municipalities in Chester County: the Townships of Charlestown, East Pikeland, East Vincent, Schuylkill and West Vincent and the Borough of Phoenixville. Phoenixville Region Intergov'tal Coop. Implementation Agreement for Reg'l Planning (June 12, 2007) (on file with the J. State Gov't Comm'n).

[89] *Id.* § II, at 1-2. The purpose appears *supra* pp. 46-47.

[90] Phoenixville Region Intergov'tal Coop. Implementation Agreement for Reg'l Planning, *supra* note 88, § IV(K), at 4-5.

The Phoenixville Regional Planning Committee shall review and comment on all subdivision or land development plans of regional impact[91] and in doing so "shall consider the merits of the proposal as it relates to the stated goals, objectives and policies of the adopted Regional Comprehensive Plan."[92] Specifically, the committee "shall consider the professional reviews written or other items prepared for the municipality as part of the standard municipal review process."[93] However, only the host municipality may approve a subdivision or land development of regional impact;[94] each Phoenixville Region municipality shall retain its own municipal planning commission and zoning hearing board, and the implementation agreement does not modify their authority or functions.[95] If a dispute arises between two or more municipalities regarding the interpretation of the regional comprehensive plan or the adoption of a specific plan, the committee shall mediate the dispute.[96]

[91] Id. § IX(A), at 9.
[92] *Id.* § IX(B)(2), at 9.
[93] *Id.* § IX(B)(3), at 9-10.
[94] *Id.* § IX(B)(5), at 10.
[95] *Id.* §§ XV & XVI, at 15.
[96] *Id.* § XIX, at 16. The dispute resolution "shall be undertaken only by a non-disputing member or members of the Committee. If there is no non-disputing member of the Committee available or willing to mediate, the services of the Pennsylvania Governor's Center of Local Government Services, or other outside mediation service as the parties may agree shall be engaged to mediate." *Id.*

AMERICAN LAW INSTITUTE
MODEL LAND DEVELOPMENT CODE

This section of the report summarizes the various provisions from the American Law Institute (ALI) Model Land Development Code, as discussed in the American Planning Association's *Growing Smart Legislative Guidebook.*

Factors and Procedures

A development of regional significance and impact raises "issues of intergovernmental coordination, the adequacy of local permitting procedures, and the application of measures to mitigate any adverse effects on neighboring communities."[97] The ALI adopted the first model legislation for developments of regional impact (DRIs) in *A Model Land Development Code* (May 1975). The model code "establishe[s] the DRI procedure as a means for allowing state and regional agency involvement in development matters that have effects beyond local borders."[98]

The model code sets forth factors to be considered when designating a development as a DRI:

(1) The alleviation of environmental problems, such as water pollution or noise.

(2) The amount of pedestrian or vehicular traffic likely to be generated.

(3) The number of person likely to be residents.

(4) The size of the site to be occupied.

(5) The likelihood that additional development would be generated.

[97] *Growing Smart*, *supra* note 19, at 5-46.

[98] *Id.* The model code defines a DRI as "any development that, because of its character, magnitude, or location, would have substantial effect upon the health, safety, or welfare or more than one [county, city, town, or other political subdivision]." *Id.* at 5-58.

(6) The unique qualities of particular areas of the state where the development is proposed.[99]

The model code also contains (1) a provision that the DRI review procedure may be applied only in jurisdictions with an adopted land development ordinance, (2) special development procedures and (3) a benefit-detriment test to be applied before a permit may be issued for a DRI.[100] A local land development agency is mandated to determine whether the "probable net benefit" from a proposed development exceeds the "probable net detriment." The benefit-detriment analysis uses specified criteria that include factors that are "relevant not just to the local jurisdiction, but to the surrounding areas. The intent [is] to ensure that extralocal interests also receive consideration in the development review process."[101]

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[99] *Id.* at 5-47. The model code provides that the state planning agency must develop thresholds "to determine which land uses (and at what size, scale, nature, characteristics, etc.) shall be designated a development of regional impact (DRI) and undergo DRI review." ALI Model Land Development Code § 5-303(1), replicated in *Growing Smart*, *supra* note 19, at 5-59. Specifically, the model code mandates that the state planning agency consider the following:

(a) the impact of a proposed development on the environment and natural resources of the state or region, including, but not limited to, air, ground, surface water supply and quality, coastal areas, air quality, endangered or threatened species habitats, open space, scenic resources, agriculture, and aquaculture;
(b) the impact of a proposed development on the built environment of the state or region, including but not limited to, historical, cultural, architectural, archaeological, and recreational resources;
(c) the impact of a proposed development on the existing capital facilities of affected local governments and special districts and the extent to which new capital facilities will be required to serve the proposed development;
(d) the amount of vehicular and pedestrian traffic likely to be generated;
(e) the number of persons likely to be residents, employees, or otherwise present on site;
(f) the size of a proposed development site;
(g) the size of structure(s) to be constructed on site;
(h) the likelihood that a proposed development will stimulate additional development in the surrounding area;
(i) the unique qualities of a site;
(j) the likelihood that a proposed development will be affected by or will affect natural hazards;
(k) the extent to which a proposed development would create an additional demand for energy; and/or
(l) other factors of state, regional, and/or local concern.

Id. § 5-303(2), replicated in *Growing Smart*, *supra* note 19, at 5-59 to 5-60. The state planning agency "may vary the thresholds by locality, taking into account factors that include population and development characteristics (e.g., urban, suburban, or rural)." *Id.* § 5-304(1), replicated in *Growing Smart*, *supra* note 19, at 5-60. In addition, a regional planning agency or local government may petition "to increase or decrease a numerical threshold as applied to a given locality." *Id.* § 5-304(2). Furthermore, the model code recommends that a state planning agency develop a list of development activities presumed to be DRIs and a list of those activities presumed not to be DRIs. An activity presumed not to be a DRI "may nonetheless be subject to DRI approval if the host local government, in its analysis of the proposed development, determines that the proposed development will have regional impacts." *See* the text following *id.* § 5-303.

[100] *Growing Smart*, *supra* note 19, at 5-47.

[101] *Id.* at 5-48.

The model DRI regulatory process is intended to be used within the framework of a state plan or set of goals for planning and land development, regional plans and goals, and local goals and land development regulations, such as those addressing multijurisdictional issues.[102] The process involves eight main components:

(1) The state planning agency adopts rules regarding DRIs, which address:
   (a) Categories or types of developments presumed to have regional impact.
   (b) Rules and responsibilities of state, regional and local agencies.
   (c) DRI application requirements.
   (d) Criteria and procedures for reviewing, approving or denying DRI applications.
   (e) Standards for exemptions from DRI requirements.

(2) A developer applies for a development permit, and the host municipality determines and notifies the developer whether the proposed development meets the criteria for a DRI.

(3) If the proposed development constitutes a DRI, the host municipality either accepts the application or refers the application to the regional planning agency for review. The agency may impose additional application requirements.

(4) The primary reviewing agency must send copies of the application to all interested agencies and entities.

(5) The application is reviewed by the host municipality or the regional planning agency.

(6) The primary reviewing agency gives notice and hold public hearings on the proposed DRI.

(7) The primary reviewing agency considers comments, reports and recommendations from interested parties and entities and decides whether to approve the DRI, approve the DRI conditionally or deny the application for development.

[102] *Id.* at 5-55.

(8) The decision may be appealed to a court of competent jurisdiction.[103]

The model code "recommends that a DRI program be made a component of an integrated state, regional, and local planning development control system . . . based on sound planning goals and policies" but "does not provide specific thresholds for states to adopt to define DRIs since this process would be more appropriately created by a state in its own administrative rule-making process."[104] Each state designing a DRI program must determine "which level of government is the appropriate agency to conduct the primary review and approval of the DRI application. The model code establishes the local government . . . as the primary reviewing and permitting agency for DRIs."[105] State-established criteria should be implemented "to evaluate the impacts of a proposed development and set forth conditions under which it may be approved or denied."[106] In addition,

> [t]o be effective, review and approval authority should reside with the agency that has the power to make policy decisions regarding development patterns and to prepare and adopt a plan that is consistent with state, regional, and local goals (to the extent that they exist). In addition, the statute must also set forth what other levels of government and agencies will be required or allowed to review the DRI application and to make recommendations to the primary reviewing agency. Such recommendations are typically advisory only, but the statute may vary as to whether the comments of other agencies must be formally

[103] *Id.* at 5-55 to 5-56. The model code provides that the review of a proposed DRI must include the consideration of whether (1) the proposed DRI is consistent with state law and applicable municipal, regional and county comprehensive plans; (2) the natural environment, including the potential for natural hazards, would have an adverse effect on the proposed DRI and (3) the proposed DRI will have a favorable or adverse impact on the following:

1. the environmental, agricultural, historical, scenic, and/or cultural resources of the region and local government;
2. air quality, water quality, erosion, flooding, and safety issues related to natural hazards;
3. the regional and local economy;
4. existing public facilities, including, but not limited to, roads, sewers, sewage treatment plants, stormwater management facilities, water supply and treatment plants, and educational facilities, as well as those facilities that are planned for construction in the succeeding [5] years;
5. the ability of people to find adequate housing that is reasonably accessible to places of employment;
6. the supply and distribution of low- and moderate-income housing for the region and local government;
7. historical settlement patterns of the region and locality, including population, density, and development characteristics (e.g., urban, suburban, or rural); and
8. any area of critical state concern, designated pursuant to Section [5-207].

ALI Model Land Development Code § 5-309, replicated in *Growing Smart*, *supra* note 19, at 5-64 to 5-65.

[104] *Growing Smart*, *supra* note 19, at 5-56.

[105] *Id.* at 5-56 to 5-57.

[106] *Id.* at 5-57.

acknowledged. At a minimum, the primary reviewing agency should be required to provide a written acknowledgment of the recommendations of other agencies in its final decision.

The regional planning agency contemplated by the model will vary in form from state to state.[107]

The Development of Thresholds

The criteria for DRIs vary widely from state to state. However, "[f]or each land use to which a DRI threshold is applied, the threshold must be set at the point at which that land use has an extralocal effect. For example, simply because a building is large does not necessarily mean it will have a multijurisdictional impact or even a negative impact."[108] Thresholds, therefore, necessarily must take into consideration factors other than the size of the proposed development (the population or character of the region may also be relevant factors).[109] In developing DRI thresholds, there must be a recognition of their subjective nature (they may tend to be arbitrary, rigid or vague) and the possibility of a disconnection to the larger planning process.[110] Thresholds should be periodically reviewed "to ensure that developments with similar impacts are being treated fairly and equally."[111]

[107] *Id.*
[108] *Id.* at 5-54.
[109] *See id.*
[110] *Id.* at 5-53 & 5-54.
[111] *Id.* at 5-54.

EXAMPLES FROM OTHER STATES

This section summarizes the statutory provisions from Colorado, Florida, Georgia, Maine, Massachusetts (the Cape Cod Commission), Minnesota (the Metropolitan Council of the Twin Cities), New Hampshire, Vermont and Washington.

Colorado

The Colorado statutes set forth a framework concerning areas and activities of state interest and specify the following:

> The protection of the utility, value, and future of all lands within the state, including the public domain as well as privately owned land, is a matter of public interest . . . [and] land use, land use planning, and quality of development are matters in which the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state.[112]

A municipality or county may designate the following as "areas of state interest": (1) mineral resource areas; (2) natural hazard areas; (3) areas containing, or having a significant impact upon, historical, natural or archaeological resources of statewide importance and (4) areas around key facilities[113] in which development may have a material effect upon the key facility or the surrounding community.[114] Under Colorado law, for example,

> Mineral resource areas designated as areas of state interest shall be protected and administered in such a manner as to permit the extraction and exploration of minerals therefrom, unless extraction and exploration would cause significant danger to public health and safety. If the local government having jurisdiction, after weighing sufficient technical or other evidence, finds that the economic value of the minerals present therein is less than the value of another existing or requested use, such

[112] Colo. Rev. Stat. § 24-65.1-101 (2007).

[113] A "key facility" is defined as an airport, a major facility of a public utility, an interchange involving an arterial (limited-access) highway, or a rapid or mass transit terminal, station or fixed gateway. *Id.* § 24-65.1-104(7).

[114] *Id.* § 24-65.1-201.

other use should be given preference; however, other uses which would not interfere with the extraction and exploration of minerals may be permitted in such areas of state interest. . . .

Floodplains shall be administered so as to minimize significant hazards to public health and safety or to property. . . . Open space activities such as agriculture, horticulture, floriculture, recreation, and mineral extraction shall be encouraged in the floodplains. Any combination of these activities shall be conducted in a mutually compatible manner. Building of structures in the floodplain shall be designed in terms of the availability of flood protection devices, proposed intensity of use, effects on the acceleration of floodwaters, potential significant hazards to public health and safety or to property, and other impact of such development on downstream communities such as the creation of obstructions during floods. Activities shall be discouraged that, in time of flooding, would create significant hazards to public health and safety or to property. Shallow wells, solid waste disposal sites, and septic tanks and sewage disposal systems shall be protected from inundation by floodwaters. . . .

In geologic hazard areas all developments shall be engineered and administered in a manner that will minimize significant hazards to public health and safety or to property due to a geologic hazard. . . .

Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance, as determined by the state historical society, the department of natural resources, and the appropriate local government, shall be administered by the appropriate state agency in conjunction with the appropriate local government in a manner that will allow man to function in harmony with, rather than be destructive to, these resources. Consideration is to be given to the protection of those areas essential for wildlife habitat. Development in areas containing historical, archaeological, or natural resources shall be conducted in a manner which will minimize damage to those resources for future use.[115]

In addition, if a municipality or county determines that the operation of a key facility may cause a danger to public health and safety or to property, then the area around the key facility shall be administered so as to minimize that danger, and

[a]reas around key facilities shall be developed in a manner that will discourage traffic congestion, incompatible uses, and expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services as determined by local government. Compatibility with nonmotorized traffic shall be

[115] *Id.* § 24-65.1-202(1)-(3).

> encouraged. A development that imposes burdens or deprivation on the communities of a region cannot be justified on the basis of local benefit alone.[116]

In order to assist a municipality or county in designating matters of state interest and adopting administrative guidelines, the appropriate Colorado state agencies shall provide technical assistance, which the department of local affairs shall oversee and coordinate.[117]

Florida

The Florida statute requires state and regional review of a development of regional impact (DRI)[118] and local government analysis and approval of a DRI. A DRI generally includes large residential developments (ranging from 250 to 3,000 dwelling units), power plants and shopping centers. Thresholds for 14 land-use categories help define which projects fall under DRI purview.[119] In addition,

> [t]he DRI review process can be initiated by either the developer or the local government. A developer can request a prompt determination from the state Department of Community Affairs as to whether a project meets DRI qualifications, and, if so, whether it would be excluded from DRI review because he or she has vested rights. The department is required to respond via a "binding letter of interpretation" within 60 days. The local government, the regional agency, and the developer are all bound by the state's interpretation.
>
> Once a project is designated as a DRI, the local government and the regional agency each begin their own review. The regional agency prepares a report and recommendations on the regional impacts of the proposed development, using the criteria for measuring benefits and detriments as set forth in the statute. These criteria include consideration of factors (again, both negative and positive) that include the development's effect on the environment, the economy, public facilities (including sewer, water, and transportation networks), the jobs/housing balance, energy consumption, and other factors that the regional agency deems appropriate. The local government reviews projects according to its existing land development regulations.

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[116] *Id.* § 24-65.1-202(4).

[117] *Id.* § 24-65.1-403(1) & (2).

[118] A "development of regional impact" is "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Fla. Stat. § 380.06(1).

[119] *Growing Smart, supra* note 19, at 5-48.

> Local governments are responsible for ultimately deciding whether to issue a development order allowing a DRI to proceed. The local government must consider the report and recommendations of the regional agency concerning the potential regional impacts of a project but is not required to abide by those recommendations. The local government must also consider whether the project interferes with the achievement and objectives of the state land development plan and whether the project is consistent with its own local land development regulations. The owner, the developer, and the state Department of Community Affairs may appeal the local government's decision to the state Land and Water Adjudicatory Commission (Florida's land court). Until 1993, regional agencies were also empowered with this appeal privilege. The legislature removed that authority in part to streamline the review process; the regional agency's role in DRI review is now primarily to act as a coordinator.
>
> Over the nearly 25-year life of the program, the Department of Community Affairs has developed separate rules and review procedures for several types of DRIs. These include the following: a conceptual agency review procedure; a "comprehensive application" for proposals that include two or more DRIs; special rules for downtown development authorities acting as DRI applicants; and the Florida Quality Developments (FQD) program. A developer can elect to undergo the FQD program if his or her development site contains significant environmentally sensitive lands (e.g., wetlands, beaches, and coastal areas) and if a significant portion of the site will be set aside for permanent protection from development.[120]

Although "Florida's growth management legislation is among the most sophisticated in the nation . . ., in recent years, many have noted the prevalence of strained infrastructure and ugly sprawl, and have questioned the ability of Florida's existing legislation to adequately and effectively manage its rapid growth."[121] In addition, "by many accounts, the DRI remains a cumbersome, expensive, time-consuming process."[122] Nevertheless, Florida law gives:

> regional interests a voice at the bargaining table concerning large developments that are expected to have an impact on the region. Typically, absent the DRI, seats at this bargaining table would be reserved only for the developer and the local government with permitting authority.

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[120] *Id.* at 5-48 to 5-49 (footnote omitted).

[121] Joseph Van Rooy, *The Development of Regional Impact in Florida's Growth Management Scheme: The Changing Role in Regionalism*, 19:2 J. of Land Use 255, 255 (Spring 2004).

[122] *Id.* at 257. The process frequently costs millions of dollars and often takes over two years to complete. The costs are a direct function of the sophisticated nature of the process, as land use planning and transportation consultants, engineers and attorneys frequently play important roles in the process. Developers also complain that the process subjects them to a high public profile, thereby making them "targets" for anti-development groups. *Id.* at 263.

> Without the DRI program there would be very little opportunity for input from neighboring local governments about developments within the region that may have a direct effect on the neighboring local government.[123]

The following summarizes the specific provisions under Chapter 380 (Land and Water Management) of Title XXVIII (Natural Resources; Conservation, Reclamation, and Use) of the Florida Statutes.

Guidelines and standards to be used in determining whether a particular development must undergo DRI review must consider and be guided by the following:

1. The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise.
2. The amount of pedestrian or vehicular traffic likely to be generated.
3. The number of persons likely to be residents, employees, or otherwise present.
4. The size of the site to be occupied.
5. The likelihood that additional or subsidiary development will be generated.
6. The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments.
7. The unique qualities of particular areas of the state.[124]

A development that is below 100% of the numerical thresholds in the guidelines and standards is not required to undergo DRI review, while a development that is at or above 120% of any such threshold must undergo DRI review. It is presumed that a development that is at 100% or between 100 and 120% of any such threshold is required to undergo DRI review.[125]

Depending on the type of development, the applicable guidelines and standards must be increased by specified amounts in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans comply with other specified law. In addition, the applicable guidelines and standards must be increased by 150% for development in any area designated as a rural area of critical economic concern.[126]

The state land planning agency, a regional planning agency or a local government may petition to increase or decrease the numerical thresholds of any statewide guideline and standard: "[t]he state land planning agency or the regional planning agency may

[123] *Id.* at 256 (citations omitted).
[124] Fla. Stat. § 380.06(2)(b).
[125] *Id.* § 380.06(2)(d).
[126] *Id.* § 380.06(2)(e).

petition for an increase or decrease for a particular local government's jurisdiction or a part of a particular jurisdiction. A local government may petition for an increase or decrease within its jurisdiction or a part of its jurisdiction."[127]

The state land planning agency has 180 days to prepare and submit a report and recommendations on the proposed variation. The report must evaluate any applicable policies in an adopted strategic regional policy plan and whether the local government has adopted and effectively implemented (1) a comprehensive plan that reflects and implements the goals and objectives of an adopted state comprehensive plan; (2) a comprehensive set of land development regulations that include a planned unit development ordinance, along with a capital improvements plan, consistent with the local government comprehensive plan; (3) the authority and the fiscal mechanisms for requiring developers to meet development order conditions and (4) satisfactory development review procedures.[128]

The affected regional planning agency, adjoining local governments and the local government must be given a reasonable opportunity to submit recommendations regarding the proposed variations.[129]

The statewide guidelines and standards may be increased or decreased by up to 50% above or below the statewide presumptive threshold, and the thresholds may be reconsidered and adjusted as deemed necessary.[130]

A developer required to undergo DRI review may undertake a DRI only if the development has been approved under the statutory requirements. If any development is proposed on land within "an area of critical state concern," the development must also be approved under the DRI requirements.[131]

Prior to undertaking any development, a developer required to undergo DRI review must file an application for development approval with the appropriate local government having jurisdiction. The application must contain a statement that the developer proposes to undertake a DRI.[132] Before filing an application for development approval, the developer must:

> contact the regional planning agency with jurisdiction over the proposed development to arrange a preapplication conference. Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in this conference and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed

[127] *Id.* § 380.06(3).
[128] *Id.* § 380.06(3)(a).
[129] *Id.* § 380.06(3)(b).
[130] *Id.* § 380.06(3)(c).
[131] *Id.* § 380.06(5)(a).
[132] *Id.* § 380.06(6)(a).

> development. . . . The regional planning agency shall provide the developer information about the development-of-regional-impact process and the use of preapplication conferences to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development. If agreement is reached regarding assumptions and methodology to be used in the application for development approval, the reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the project or information obtained during the review make those assumptions and methodologies inappropriate.[133]

A developer may elect to request a conceptual agency review,[134] either concurrently with the DRI review (and any comprehensive plan amendments) or subsequent to a preapplication conference.[135] Each agency participating in conceptual agency reviews must determine its information and application requirements and furnish these requirements to the state land planning agency and any developer seeking conceptual agency review.[136] In addition, "[e]ach agency shall cooperate with the state land planning agency to standardize, to the extent possible, review procedures, data requirements, and data collection methodologies among all participating agencies, consistent with the requirements of the statutes that establish the permitting programs for each agency."[137]

After the conceptual agency review, the agency must give notice of its proposed agency action (granting conceptual approval, with or without conditions, or denying conceptual approval) and the reasons for the action. It must forward a copy of the notice to the appropriate regional planning council with a report of the agency's conclusions on potential development impacts.[138] Although an agency's decision to grant conceptual approval does not relieve the developer of any other permit requirements, the decision creates a rebuttable presumption that the developer is entitled to receive a permit for an activity for which the agency granted conceptual review approval. However, the agency may revoke or appropriately modify a valid conceptual approval if (1) materially false or

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[133] *Id.* § 380.06(7)(a). The intent if the statutory framework is "to encourage reduction of paperwork, to discourage unnecessary gathering of data, and to encourage the coordination of the development-of-regional-impact review process with federal, state, and local environmental reviews when such reviews are required by law." *Id.* § 380.06(7)(b).

[134] "Conceptual agency review" is defined as "general review of the proposed location, densities, intensity of use, character, and major design features of a proposed development required to undergo review . . . for the purpose of considering whether these aspects of the proposed development comply with the issuing agency's statutes and rules." *Id.* § 380.06(9)(a)2.

[135] *Id.* § 380.06(9)(a)(1). The purpose of this request is to (1) facilitate the planning and preparation of permit applications for projects that undergo DRI review and (2) coordinate the information required to issue the permits. *Id.*

[136] *Id.* § 380.06(9)(c)1.

[137] *Id.* § 380.06(9)(c)2.

[138] *Id.* § 380.06(9)(d).

inaccurate information was submitted in the application for conceptual approval, (2) the developer violated a condition of the conceptual approval or (3) the development will cause a violation of the agency's applicable laws or rules.[139]

When an applicant files an application for development approval with a local government, it must also send copies of the application to the appropriate regional planning agency and the state land planning agency. If the regional planning agency determines that the application contains insufficient information, it must so inform the local government and the applicant. After receipt of the necessary additional information, the regional planning agency will then review the information (and may request additional clarifying information). If the applicant does not provide requested information in a timely manner, the application is deemed withdrawn.[140]

The appropriate local government must give notice and hold a public hearing on the application for development approval. The hearing must be recorded by tape or a certified court reporter and made available for transcription at the expense of any interested party. If a DRI is proposed within the jurisdiction of more than one local government, the local governments, at the request of the developer, may hold a joint public hearing. The notice of public hearing must state that the proposed development is undergoing a DRI review and must be given to (1) the state land planning agency, (2) the applicable regional planning agency, (3) any state or regional permitting agency participating in the conceptual agency review process and (4) other persons designated by the state land planning agency as entitled to receive notice. The public hearing must be held no later than 90 days after issuance of notice by the regional planning agency, unless the applicant requests an extension.[141]

Within 50 days after receipt of the required notice of public hearing, the regional planning agency must prepare and submit to the local government a report and recommendations on the regional impact of the proposed development, identifying regional issues that consider whether, and the extent to which, the development will (1) have a favorable or unfavorable impact on state or regional resources or facilities identified in the state comprehensive plan or regional plan, (2) significantly impact adjacent jurisdictions and (3) favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[142]

At the request of the regional planning agency, other appropriate agencies must review the proposed development and prepare reports and recommendations on issues that are clearly within the jurisdiction of those agencies. Although the agency reports become part of the regional planning agency report, the regional planning agency may attach dissenting views.[143] The regional planning agency must afford the developer or

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[139] *Id.* § 380.06(9)(e).

[140] *Id.* § 380.06(10)(a) & (b).

[141] *Id.* § 380.06(11).

[142] *Id.* § 380.06(12)(a). At the request of the appropriate local government, a regional planning agency may also review and comment upon issues that affect only the requesting local government. *Id.* § 380.06(12)(a)2.

[143] *Id.* § 380.06(12)(b).

any substantially affected party reasonable opportunity to present evidence to the regional planning agency regarding the proposed regional agency report and recommendations.[144]

If the development is not located in an area of critical state concern, in considering whether the development should be approved (or approved subject to conditions, restrictions or limitations) or denied, the local government must consider whether, and the extent to which, the development is consistent with (1) the local comprehensive plan and local land development regulations, (2) the report and recommendations of the regional planning agency and (3) the state comprehensive plan.[145]

The appropriate local government must render a decision on the application for development approval within 30 days after the hearing, unless the developer requests an extension. When possible, a local government should issue development orders concurrently with other local permits or development approvals that may be applicable to the proposed development.[146]

The development order must include findings of fact and conclusions of law and shall specify, among other things, monitoring procedures, the local official responsible for assuring compliance by the developer and compliance dates. The order may specify the types of changes to the development that require submission for a substantial deviation determination or a notice of proposed change.[147]

A condition in an order requiring a developer to contribute land for a public facility (or pay for land acquisition or construction or expansion of a public facility or portion of the facility), must meet the following criteria:

1. The need to construct new facilities or add to the present system of public facilities must be reasonably attributable to the proposed development.
2. Any contribution of funds, land, or public facilities required from the developer shall be comparable to the amount of funds, land, or public facilities that the state or the local government would reasonably expect to expend or provide, based on projected costs of comparable projects, to mitigate the impacts reasonably attributable to the proposed development.
3. Any funds or lands contributed must be expressly designated and used to mitigate impacts reasonably attributable to the proposed development.
4. Construction or expansion of a public facility by a nongovernmental developer as a condition of a development order to mitigate the impacts reasonably attributable to the proposed

[144] *Id.* § 380.06(12)(c).
[145] *Id.* § 380.06(14).
[146] *Id.* § 380.06(15)(a) & (b).
[147] *Id.* § 380.06(15)(c).

> development is not subject to competitive bidding or competitive negotiation for selection of a contractor or design professional for any part of the construction or design.[148]

A local government may not include as a condition for a DRI a requirement that a developer contribute or pay for land acquisition or construction or expansion of a public facility (or portion of the facility), unless the local government has enacted a local ordinance which requires another development not subject to the DRI provisions to contribute its proportionate share of the funds, land or public facilities necessary to accommodate any impacts having a rational nexus to the proposed development. The need to construct new facilities or add to the present system of public facilities must be reasonably attributable to the proposed development. In general, a local government may not approve a DRI that does not make adequate provision for the public facilities needed to accommodate the impacts of the proposed development, unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order. The Department of Community Affairs and other state and regional agencies involved in the administration and implementation of the DRI provisions must cooperate and work with units of local government in preparing and adopting local impact fee and other contribution ordinances.[149]

In general, if the development order requires the developer to contribute land or a public facility or construct, expand or pay for land acquisition or construction or expansion of a public facility (or portion of the facility), and the developer is also subject by local ordinance to impact fees to meet the same needs, the local government must credit a development order fee toward an impact fee imposed by local ordinance for the same need. The local government and the developer may enter into capital contribution front-ending agreements as part of a DRI development order to reimburse the developer, for voluntary contributions paid in excess of the developer's fair share. However, these provisions do not "apply to internal, onsite facilities required by local regulations or to any offsite facilities to the extent such facilities are necessary to provide safe and adequate services to the development."[150]

With respect to local monitoring, "[t]he local government issuing the development order is primarily responsible for monitoring the development and enforcing the provisions of the development order. Local governments shall not issue any permits or approvals or provide any extensions of services if the developer fails to act in substantial compliance with the development order."[151] The developer must submit a biennial report on the DRI to the local government, the regional planning agency, the state land planning agency and all affected permit agencies, unless the development order by its terms requires more frequent monitoring.[152]

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[148] *Id.* § 380.06(15)(d).
[149] *Id.* § 380.06(15)(e).
[150] *Id.* § 380.06(16).
[151] *Id.* § 380.06(17).
[152] *Id.* § 380.06(18).

A developer may wish to propose changes to an approved DRI, as in the case of changed market conditions. The Florida DRI statute provides the following:

> Any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, shall constitute a substantial deviation and shall cause the proposed change to be subject to further [DRI] review.[153]

Any proposed change to a previously approved DRI "or development order condition which, either individually or cumulatively with other changes, exceeds" the specified criteria will constitute a substantial deviation and cause the development to be subject to further DRI review "without the necessity for a finding of same by the local government."[154]

A regional planning agency that performs DRI may assess and collect fees to fund the direct and indirect costs of conducting the review process. The state land planning agency must adopt rules to provide uniform criteria for the assessment and collection of these fees. Although fees may vary depending on the type and size of a proposed project, they may not exceed $75,000, unless the state land planning agency determines that the fees were reasonable and necessary for an adequate regional review of the impacts of a project.[155]

The Florida statute provides a number of exemptions from the DRI provisions, including the following proposals: (1) a hospital; (2) an electrical transmission line or power plant; (3) certain additions to an existing sports facility complex; (4) certain additions of permanent seats or parking spaces for an existing sports facility located on property owned by a public body; (5) certain increases in the seating capacity of an existing sports facility having a permanent seating capacity of at least 50,000 spectators; (6) certain expansions in the permanent seating capacity or additional improved parking facilities of an existing sports facility; (7) an expansion to port harbors, spoil disposal sites, navigation channels, turning basins, harbor berths, port transportation facilities and projects and intermodal transportation facilities when the expansion, project or facility is consistent with a compliant comprehensive master plan; (8) a facility for the storage of any petroleum product or any expansion of an existing facility; (9) a renovation or redevelopment within the same land parcel that does not change land use or increase density or intensity of use; (10) a waterport and marina development, including dry storage facilities; (11) certain developments within an urban service boundary; (12) certain developments within a rural land stewardship area; (13) the establishment, relocation or expansion of a military installation; (14) a self-storage warehouse that does not allow retail or other services; (15) a nursing home or assisted living facility; (16) a development identified in an airport master plan and adopted into the comprehensive plan; (17) a development identified in a campus master plan and

[153] *Id.* § 380.06(19)(a).
[154] *Id.* § 380.06(19)(b).
[155] *Id.* § 380.06(23)(d).

subsequently adopted; (18) a development in a specific area plan that is adopted into the comprehensive plan and (19) a development within a county with a research and education authority created by special act and that is also within a research and development park that is operated or managed by a research and development authority.[156]

A developer may submit for review an areawide DRI, which must include an areawide development plan.[157] After review and approval of an areawide DRI, all development within the defined planning area must conform to the approved areawide development plan and development order. Individual developments that conform to the approved areawide development plan are not required to undergo further DRI review, unless otherwise provided in the development order.[158] A petition for an areawide DRI review must be submitted to the local government, the regional planning agency and the state land planning agency. The state land planning agency must evaluate whether the defined planning area and anticipated development are of a character, magnitude and location that a proposed areawide development plan would be in the public interest.[159]

The local government must schedule a public hearing within 60 days after receipt of the petition regarding an areawide DRI. In addition to the public hearing notice by the local government, the petitioner must provide actual notice to each person owning land within the proposed areawide development plan at least 30 days prior to the hearing. If the petitioner is a local government, notice of the public hearing must be provided by the publication of an advertisement in a newspaper of general circulation. The local government must specifically notify in writing the regional planning agency and the state land planning agency at least 30 days prior to the public hearing. At the public hearing, all interested parties may testify and submit evidence regarding the need for and benefits of an areawide DRI. If more than one local government has jurisdiction over the defined planning area in an areawide development plan, the local governments shall hold a joint public hearing. That hearing must address, at a minimum, the need to resolve any conflicting provisions in applicable ordinances and comprehensive plans. Following the public hearing, the local government must (1) issue a written order that approves, approves with conditions or denies the petition and (2) submit the order that approves the

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[156] *Id.* § 380.06(24). The Florida statute also provides for exemptions for dense urban land areas and other comparable areas. *Id.* § 380.06(29).

[157] An "areawide development plan" is defined as a plan of development that at a minimum (1) encompasses a defined planning area that will include two or more developments; (2) maps and defines the land uses proposed, including the amount of development by use and development phasing; (3) integrates a capital improvements program for transportation and other public facilities to ensure development staging contingent on availability of facilities and services; (4) incorporates land development regulation, covenants and other restrictions adequate to protect resources and facilities of regional and state significance and (5) specifies responsibilities and identifies the mechanisms for implementing the commitments in the areawide development plan and for compliance with all the conditions. *Id.* § 380.06(25)(a).

[158] *Id.*

[159] *Id.* § 380.06(25)(b)3b. A public interest determination is preliminary and not binding on the state land planning agency, regional planning agency or local government. *Id.*

petition (either with or without conditions) to the petitioner, all owners of property within the defined planning area, the regional planning agency and the state land planning agency within 30 days after the order becomes effective.[160]

The petitioner, an owner of property within the defined planning area, the appropriate regional planning agency or the state land planning agency may appeal the decision of the local government to the Florida Land and Water Adjudicatory Commission by filing a notice of appeal with the commission. After the time for appeal of the decision has run, an approved developer may apply for development approval for a proposed areawide DRI for land within the defined planning area. Development undertaken in conformance with an areawide development order does not require further DRI review.[161]

In reviewing an application for a proposed areawide DRI, the regional planning agency must evaluate, and the local government must consider whether (1) the developer has demonstrated its legal, financial and administrative ability to perform any commitments it has made in the application for a proposed areawide DRI; (2) the developer has demonstrated that all property owners within the defined planning area consent or do not object to the proposed areawide DRI and (3) the area and the anticipated development are consistent with the applicable local, regional and state comprehensive plans.[162]

A development order approving, or approving with conditions, a proposed areawide DRI must specify the approved land uses and the amount of development approved within each land use category in the defined planning area. The development order must incorporate by reference the approved areawide development plan. A local government may not approve an areawide development plan that is inconsistent with the local comprehensive plan, except that a local government may amend its comprehensive plan.[163]

Georgia

In Georgia, the Department of Community Affairs must utilize the comprehensive plans of qualified local governments and "assist the Governor in encouraging, coordinating, developing, and implementing coordinated and comprehensive

[160] *Id.* § 380.06(25)(e)-(g).
[161] *Id.* § 380.06(25)(h) & (i).
[162] *Id.* § 380.06(25)(j).
[163] *Id.* § 380.06(25)(k).

planning."[164] The department must establish the minimum standards and procedures for this planning process[165] and

> shall develop planning procedures with respect to regionally important resources, for planning with respect to developments of regional impact, and for encouraging interjurisdictional cooperation among local governments. The department shall determine, in its judgment and for each region, what shall constitute developments of regional impact. Such determinations by the department shall be made for each region after receiving any necessary information from the regional development center for the region, from local governments within the region, and from others within the region. The department's determinations shall be publicly promulgated, using such means as the commissioner may determine, so that all local governments within a region will receive notice of the department's determinations affecting that region . . . .[166]

The Rules of the Georgia Department of Community Affairs provide a regulatory framework regarding a development of regional impact (DRI). The Georgia Planning Act authorizes the department to establish the specific thresholds, rules and procedures for the identification and review of a DRI. The DRI review process is intended to:

> (1) Enhance focus on quality growth in planning and executing major development projects throughout Georgia.
>
> (2) Carefully consider and plan for impacts of major development projects on local public infrastructure and services.
>
> (3) Improve local, regional and state level communication about new growth in Georgia.
>
> (4) Coordinate, streamline and provide consistency with the required review and approval by the Georgia Regional Transportation Authority (GRTA) of state and federal expenditures to create land transportation services and access to a DRI located within the GRTA's jurisdictional area.[167]

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[164] Ga. Code Ann. § 50-8-7.1(a). A "qualified local government" is a county or municipality that has a comprehensive plan in conformity with the minimum standards and procedures, along with regulations consistent with this plan, and has not failed to participate in the department's conflict resolution process in good faith. *Id.* § 50-8-2(a)(18).

[165] *Id.* § 50-8-7.1(b).

[166] *Id.* § 50-8-7.1(b)(3). The term "local government" is defined as "any county, municipality, consolidated government or other political subdivision of the state." Ga. Comp. R. & Regs. 110-12-3-.06(1)(j).

[167] *Id.* at 110-12-3-.01(1).

A local government must submit any development project that meets or exceeds the specified thresholds to its regional commission to determine whether it qualifies for DRI review. If the regional commission determines that the project qualifies for DRI review, the project must be reviewed in accordance with specified procedures. The local government may not approve the project during this review process, which will evaluate the development project for its local impacts, potential effects on neighboring jurisdictions and consistency with specified criteria in the regional commission's regional plan and the state planning recommendations. This review process must be completed in 30 calendar days. The regional commission will then issue its finding and recommendations for the project, which the local government is encouraged to consider in making its decisions regarding the project.[168]

The rules identify the department's minimum DRI thresholds for each type of development and for two distinct population tiers within the state: (1) metropolitan areas, which include counties with population of 50,000 or more and (2) non-metropolitan areas, which include the remaining counties within the state. Proposed developments that do not equal or exceed these thresholds are not subject to DRI review requirements. If it is not easily determined whether a project equals or exceeds the applicable DRI thresholds, the regional commission must consider additional specific rules involving such matters as speculative development, multi-phased development and multiple land parcels for the project.[169]

If a proposed development is submitted for review before project specifics are available, the regional commission must determine whether the project should be reviewed presently or resubmitted for DRI review when project specifics become available. The regional commission must then consider (1) whether the assessment of project impacts is likely to change substantially once project specifics are clarified, (2) whether the project will remain consistent with the regional commission's regional plan and the state planning recommendations once project specifics are clarified and (3) the benefit of an earlier review to the local government, as in the case of the need to plan infrastructure expansions well in advance of development.[170]

The regional commission may determine that a previously reviewed DRI is nevertheless subject to another review if the project changes are substantial enough to warrant a new DRI review. New DRI review may be warranted if the project size increases by 10% or more or if the mix of uses changes by 20% or more. The regional commission must then consider (1) whether the assessment of project impacts will change substantially for the altered project, (2) whether the altered project will remain consistent with the regional commission's regional plan and the state planning recommendations once project specifics are clarified and (3) the time that has passed since the previous DRI review, since the local infrastructure and service availability

[168] *Id.* at 110-12-3-.01(2)(a)-(d).
[169] *Id.* at 110-12-3-.02(1)(a).
[170] *Id.* at 110-12-3-.02(1)(b).

situations may have changed. In addition, a proposed redevelopment that exceeds a DRI threshold must be considered a new DRI, even if the previous development on the site was reviewed as a DRI.[171]

Within 5 days of receiving a required DRI information form, the regional commission must evaluate whether the project qualifies for DRI review. The regional commission must then issue notice to the local government, applicant, GRTA (if the local government is located within GRTA's jurisdiction) and the department, stating whether or not the project qualifies for DRI review. If the regional commission determines that the project does not qualify for DRI review, the review process is terminated. If, however, the regional commission determines that the project does qualify for DRI review, the regional commission must schedule a pre-review consultation to be held within 10 days of receipt of the DRI information form from the local government. The local government, the applicant and all affected parties[172] are invited to participate in this consultation, the purpose of which is to (1) explain the DRI review process, (2) discuss issues related to the project, (3) determine if expedited review is warranted and (4) determine whether additional information is required of the applicant, but the regional commission and affected parties must be reasonable in identifying this additional information.[173]

The DRI review process may be completed early if, during the pre-review consultation, the regional commission, local government and affected parties all agree that (1) the proposed development has clearly addressed all potential impacts or conflicts and adequately addresses the considerations for DRI review identified in the regional commission's regional plan or (2) the applicant has provided sufficient assurances to take the steps necessary to do so. However, the expedited review does not affect the requirements regarding the specified notice to affected parties and the 14-day comment period for affected parties.[174]

The DRI review process will not begin until the regional commission and GRTA (if the local government is located within GRTA's jurisdiction) certify that all the required materials have been submitted by the local government and the applicant. Within five days of this certification, the regional commission must provide a project summary for review and comment to all affected parties and other organizations that the regional commission would like included in the review process. The regional commission must then prepare an evaluation and analysis of the proposed DRI using the information provided by the applicant and the local government. If the regional commission determines that adverse impacts or conflicts will result from the project, it

[171] *Id.* at 110-12-3-.02(1)(c).

[172] The term "affected parties" is defined as (1) any local government within geographic proximity that may be impacted by a DRI project located outside its jurisdictional limits; (2) any local, state or federal agency that could potentially have concern about a project's impact on regional systems and resources; (3) GTRA, if the proposed project is located within GRTA's jurisdiction and (4) the host regional commission and any regional commission within geographic proximity that could potentially have concern about a project's impact on regional systems and resources. *Id.* at 110-12-3-.06(1)(a).

[173] *Id.* at 110-12-3-.03(4) & (5).

[174] *Id.* at 110-12-3-.03(6).

may bring the local government, the applicant and the affected parties together to discuss the results of the evaluation and analysis and try to manage the impacts before issuing its public finding.[175]

Upon conclusion of its evaluation and analysis, the regional commission must issue either (1) a negative finding, if it determines that adverse impact and conflicts related to the proposed development remain unresolved, in which case it avers that the proposed local government action is not in the best interest of either the region or the state or (2) a positive finding, if it determines that no adverse impact or conflict exist, in which case it avers that the proposed action is in the best interest of the region and the state. However, these findings are advisory only. In addition, the regional commission may provide recommendations and technical assistance to the local government to address impacts of the proposed development. These recommendations, like the public finding, are advisory only, and the technical assistance will be offered only if the local government so requests. The regional commission's finding and recommendations must be transmitted to the local government, the applicant and all affected parties.[176]

The regional commission may approve up to three 30-day extensions of the DRI review process to permit negotiations and conflict resolution. An extension must be requested in writing and may be submitted at any time during the DRI review process by the applicant, the local government or any affected party.[177]

Alternative dispute resolution of conflicts relating to the regional commission's finding and recommendations may be initiated in accordance with the rules adopted by the Board of Community Affairs.[178]

A local government may not take any official action approving a project until the DRI review process is completed and it has had adequate time to consider the regional commission's finding and recommendations. The rules intend that the DRI review process occur simultaneously with local development review procedures, to minimize administrative delay for review and approval of large developments. Therefore, the local government may proceed with its development review process during the DRI review period, if it (1) does not make decisions on final approvals, (2) allows enough time to consider the regional commission's finding and recommendations and (3) seeks appropriate alterations of the proposed project from the applicant before granting final approvals.[179]

The rules also provide specific DRI thresholds and defines the various types of development.[180]

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[175] *Id.* at 110-12-3-.03(8), (10), (11) & (12).
[176] *Id.* at 110-12-3-.03(13) & (14).
[177] *Id.* at 110-12-3-.03(17).
[178] *Id.* at 110-12-3-.03(18).
[179] *Id.* at 110-12-3-.04(4).
[180] *Id.* at 110-12-3-.07.

(1) Thresholds Table.

Type of Development	Metropolitan Regions	Nonmetropolitan Regions
Office	Greater than 400,000 gross square feet	Greater than 125,000 gross square feet
Commercial	Greater than 300,000 gross square feet	Greater than 175,000 gross square feet
Wholesale & Distribution	Greater than 500,000 gross square feet	Greater than 175,000 gross square feet
Hospitals and Health Care Facilities	Greater than 300 new beds; or generating more than 375 peak hour vehicle trips per day	Greater than 200 new beds; or generating more than 250 peak hour vehicle trips per day
Housing	Greater than 400 new lots or units	Greater than 125 new lots or units
Industrial	Greater than 500,000 gross square feet; or employing more than 1,600 workers; or covering more than 400 acres	Greater than 175,000 gross square feet; or employing more than 500 workers; or covering more than 125 acres
Hotels	Greater than 400 rooms	Greater than 250 rooms
Mixed Use	Gross square feet greater than 400,000 (with residential units calculated at either 1800 square feet per unit or, if applicable, the minimum square footage allowed by local development regulations); or covering more than 120 acres; or if any of the individual uses meets or exceeds a threshold as identified herein	Gross square feet greater than 125,000 (with residential units calculated at either 1800 square feet per unit or, if applicable, the minimum square footage allowed by local development regulations); or covering more than 40 acres; or if any of the individual uses meets or exceeds a threshold as identified herein
Airports	All new airports, runways and runway extensions	Any new airport with a paved runway; or runway additions of more than 25% of existing runway length
Attractions & Recreational Facilities	Greater than 1,500 parking spaces or a seating capacity of more than 6,000	Greater than 1,500 parking spaces or a seating capacity of more than 6,000
Post-Secondary School	New school with a capacity of more than 2,400 students, or expansion by at least 25 percent of capacity	New school with a capacity of more than 750 students, or expansion by at least 25 percent of capacity
Waste Handling Facilities	New facility or expansion of use of an existing facility by 50 percent or more	New facility or expansion of use of an existing facility by 50 percent or more
Quarries, Asphalt & Cement Plants	New facility or expansion of existing facility by more than 50 percent	New facility or expansion of existing facility by more than 50 percent
Wastewater Treatment Facilities	New major conventional treatment facility or expansion of existing facility by more than 50 percent. Community septic treatment facilities exceeding 150,000 gallons per day or serving a development project that meets or exceeds an applicable threshold as identified herein.	New major conventional treatment facility or expansion of existing facility by more than 50 percent. Community septic treatment facilities exceeding 150,000 gallons per day or serving a development project that meets or exceeds an applicable threshold as identified herein.
Petroleum Storage Facilities	Storage greater than 50,000 barrels if within 1,000 feet of any water supply; otherwise, storage capacity greater than 200,000 barrels	Storage greater than 50,000 barrels if within 1,000 feet of any water supply; otherwise, storage capacity greater than 200,000 barrels
Water Supply Intakes/ Reservoirs	New Facilities	New Facilities
Intermodal Terminals	New Facilities	New Facilities
Truck Stops	A new facility with more than three (3) diesel fuel pumps; or containing a half acre of truck parking or 10 truck parking spaces.	A new facility with more than three (3) diesel fuel pumps; or containing a half acre of truck parking or 10 truck parking spaces.
Any other development types not identified above (includes parking facilities)	1000 parking spaces or, if available, more than 5,000 daily trips generated	1000 parking spaces or, if available, more than 5,000 daily trips generated

(2) Definitions for Types of Development. The following definitions must be used to identify the types of development that qualify for the development thresholds listed in the thresholds table above.

1. 'Airports' means land areas and related facilities that are maintained for the landing and takeoff of aircraft and for receiving and discharging passengers and/or cargo.

2. 'Attractions & Recreational Facilities' means an establishment or set of establishments that provide leisure time recreational or entertainment activities occurring in either an indoor or outdoor setting.

3. 'Commercial' means activities within land areas that are predominantly associated with the sale of goods and/or services.

4. 'Hospitals and Health Care Facilities' means a structure, or set of structures, primarily intended to provide health care services for human in-patient medical or surgical care for the sick and injured.

5. 'Hotels' means establishments that provide temporary lodging and may also provide food and beverage service, entertainment, and/or convention services.

6. 'Housing' means land areas used predominantly for residential purposes, including one family, two family, and multiple family dwellings.

7. 'Industrial' means activities within land areas predominantly connected with manufacturing, assembly, processing or storage of products.

8. 'Mixed Use' means a type of development that is comprised of multiple land uses (e.g. commercial, residential, office, etc.) which may also include multiple density and intensity of each use.

9. 'Office' means a building(s) wherein services are performed involving predominantly administrative, professional, or clerical operations.

10. 'Petroleum Storage Facilities' means facilities used to store gasoline, motor fuel, or other petroleum products.

11. 'Post-Secondary Schools' means the facilities (buildings, open space, dormitories, recreational facilities, and parking) of public and private vocational and technical schools, and colleges and universities.

12. 'Quarries, Asphalt & Cement Plants' Quarries means an open excavation used for obtaining building stone, slate, or limestone. The terms 'Asphalt' and 'Cement Plants' are self-explanatory. This includes ready mix concrete plants.

13. 'Truck Stops' means an establishment that provides fuel, parking, and related goods and services to primarily support interstate truck transportation. Such facilities do not include convenience stores that have the primary purpose of selling goods and services to support the traveling public.

14. 'Intermodal Terminals' means an area and building where the mode of transportation for cargo or freight changes and where the cargo and freight may be broken down or aggregated in smaller or larger loads for transfer to other land based vehicles. Such terminals do not include airports or seaports.

15. 'Waste Handling Facilities' means structures or systems designed for the collection, processing or disposal of solid waste, including hazardous wastes, and includes transfer stations, processing plants, recycling plants, and disposal systems.

16. 'Wastewater Treatment Facilities' means structures or systems designed for the treatment of sewage. This definition does not include septic tanks.

17. 'Wholesale and Distribution' means activities within land areas that are predominantly associated with the receipt, storage, and distribution of goods, products, cargo and materials.

18. 'Water Supply Intakes/Reservoirs' means facilities excavated, drilled, dug or impounded that are used for the supply of potable water for general public consumption.

Maine

With respect to the site location of a development, the Maine statutes provides

that the economic and social well-being of the citizens of the State of Maine depends upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage

> to the people and the environment on the development sites and in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect the environment and quality of life in Maine.[181]

In general, a proposed development will be approved if the developer (1) has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and (2) has made adequate provision for fitting the development harmoniously into the existing natural environment such that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.[182]

In addition, "[a] state department or agency shall provide technical assistance to a municipality in the form of a peer review of development studies when the state capacity and resources exist."[183] The department or agency may charge a municipality for this assistance, but the municipality may recover the costs from the developer.[184] Furthermore, "[a] municipality may also obtain technical assistance in the form of a peer review from a private consultant or regional council and may recover costs from the developer for a project of any size."[185]

Massachusetts: Cape Cod Commission

The Cape Cod Commission was established because the Cape Cod region "possesses unique natural, coastal, scientific, historical, cultural, architectural, archaeological, recreational, and other values" and "there is a regional, state and national interest in protecting, preserving and enhancing these values."[186] The Cape Code Commission Act specifically provides the following:

> (b) In order to protect these values and promote the public health, safety and general welfare, to maintain and enhance sound local and regional economies, and to ensure balanced economic development, this act creates the Cape Cod commission as the regional planning and land use commission with authority to prepare and oversee the implementation of a regional land-use policy plan for all of Cape Cod, to recommend for

[181] Me. Rev. Stat. Ann. tit. 38, § 481 (2006).
[182] *Id.* § 484(1) & (3).
[183] *Id.* § 489-D.
[184] *Id.* § 489-D(1).
[185] *Id.* § 489-D(2)(B).
[186] Cape Cod Comm'n Act, § 1(a), *available at* http://www.capecodcommission.org/index.php?id=15&maincatid=2 (last accessed Jan. 18, 2012).

designation specific areas of Cape Cod as districts of critical planning concern, and to review and regulate developments of regional impact.

(c) The purpose of the Cape Cod commission shall be to further: the conservation and preservation of natural undeveloped areas, wildlife, flora and habitats for endangered species; the preservation of coastal resources including aquaculture; the protection of groundwater, surface water and ocean water quality, as well as the other natural resources of Cape Cod; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply, and solid, sanitary and hazardous waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of fair affordable housing; and the preservation of historical, cultural, archaeological, architectural, and recreational values.

(d) The commission shall: anticipate, guide and coordinate the rate and location of development with the capital facilities necessary to support such development; review developments which will have impacts beyond their local community and determine the comparative benefits and detriments of those projects and their consistency with the regional policy plan and local comprehensive plans and goals; identify and protect areas whose characteristics make them particularly vulnerable to adverse effects of development; preserve the social diversity of Cape Cod by promoting fair affordable housing for low-income and moderate-income persons; promote the expansion of employment opportunities; and implement a balanced and sustainable economic development strategy for Cape Cod capable of absorbing the effects of seasonal fluctuations in economic activity.[187]

Under the act, a regional policy plan must include at a minimum:

(1) identification of [the] county's critical resources and management needs, including its natural, scientific, coastal, historical, recreational, cultural, architectural, aesthetic, and economic resources, groundwater and

[187] *Id.* § 1(b)-(d). The term "capital facilities" is defined as "public facilities and services necessary to support development, including but not limited to roads, water, sewers, waste disposal, affordable housing, schools, police and fire protection facilities." *Id.* § 2(c). A "development" is "any building, construction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation; any material change in the use or appearance of any structure or in the land itself; the division of land into parcels; any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or a change to a commercial or industrial use from a less intensive use; any activity which alters a shore, beach, seacoast, river, stream, lake, pond, canal, marsh, dune area, woodland, wetland, endangered species habitat, aquifer, or other resource area . . .; demolition of a structure; the clearing of land as an adjunct of construction; or the deposit of refuse, solid or liquid waste or fill on a parcel of land or in any water area. *Id.* § 2(e). A "development of regional impact" is "a development which, because of its magnitude or the magnitude of its impact on the natural or built environment, is likely to present development issues significant to or affecting more than one municipality, and which conforms to the criteria established in the applicable standards and criteria for developments of regional impact" under this act. *Id.* § 2(h).

surface water supplies, available open space, and available regions for agricultural, aquacultural and development activity;

(2) a growth policy for [the] county including guidelines for the protection of [the] county's resources and the provision of capital facilities necessary to meet current and anticipated needs;

(3) regional goals for the provision of fair, affordable housing, job creation, waste disposal, open space, recreation, coastal resources, capital facilities, economic development, historic preservation, and any other goals deemed appropriate and important by the commission; and

(4) a policy for coordinating regional and local planning efforts, including coordinating planning activities of private parties and local, state or federal governmental authorities.[188]

The standards and criteria for developments of regional impact are based on the following factors: (1) the impact of the development on the environment and natural resources, including air quality, surface water, historical or cultural resources, architecture, recreation, endangered species habitats, open space, agriculture and aquaculture; (2) the impact of the development on existing capital facilities, including transportation, infrastructure, sewage, waste disposal, water supply, fair affordable housing and meaningful employment; (3) the physical size of the development and the site to be developed; (4) the amount of pedestrian and vehicular traffic that the development would produce; (5) the anticipated number of new residents or employees generated by development; (6) the location of the development near a waterway, public land or municipal boundary; (7) the extent of waste disposal, water supply, sewage treatment, parking, tourist services and public education facilities required for the development; (8) the importance of the development to economic development in the region and (9) the effect of the development on resources of the surrounding municipalities.[189]

Examples of thresholds established by the Cape Cod Commission that concern size and potential impact are:

(1) Any proposed demolition or substantial alteration of an historic structure or archaeological site.

(2) The construction of a bridge or roadway that would provide direct access to a waterway.

(3) Residential projects greater than 30 acres or 30 dwelling units.

(4) Commercial developments of at least 10,000 square feet, whether it is new construction, an addition or a change in use.[190]

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[188] *Id.* § 7(b).

[189] *Id.* § 12(b).

[190] *Growing Smart*, *supra* note 19, at 5-49 to 5-50; Cape Cod Comm'n Act, *supra* note 186, § 12(c).

Under the Cape Cod Commission Act,

> [t]he review process begins when a developer brings a proposal to a local government for review. If the proposal meets the criteria for a DRI, the local government refers the application to the Cape Cod Commission for review. The Commission notifies the applicant that the project will be reviewed according to DRI standards. At that point, the local review process is suspended while the application is under consideration by the Commission. The Commission then schedules a public hearing, which must take place within 60 days of the submission of the application.

The Commission and its staff review the application and may approve, approve with conditions, or disapprove DRIs. The Commission review process is guided by the goals of the act and by the regional policy plan, which focus on issues that include water quality, traffic circulation, historic values, affordable housing, and economic development. Specifically, the act directs the Commission to consider the following questions in evaluating a proposed DRI:

> (1) Is the probable benefit from the proposed development greater than the probable detriment?
>
> (2) Is the proposed development consistent with the regional policy plan and the local comprehensive plan of the municipality in which it is located?
>
> (3) Is the proposed development consistent with municipal development bylaws? Or, if it is inconsistent, is the inconsistency necessary to enable a substantial segment of the population to secure adequate opportunities for housing, conservation, environmental protection, education, recreation, or balanced growth?
>
> (4) Is the proposed development located within a designated district of critical planning concern? And, if so, is it consistent with the rules and regulations established for such districts?

After receiving approval of a DRI from the Commission, the developer must then complete the local government's review and permitting procedures.[191]

[191] *Growing Smart*, *supra* note 19, at 5-50; Cape Cod Comm'n Act, *supra* note 186, § 13.

If the Commission denies an application, "the project is essentially dead, unless the developer decides to appeal. Projects that are approved are then returned to the local government's jurisdiction and subject to local development review procedures."[192]

A developer may file for a standard exemption or a hardship exemption. A standard exemption may be granted if the developer can demonstrate that the location, character or environmental effects of the proposed development will not impact other municipalities. Although a proposed development meets the stated thresholds for a DRI, its impact may not be regionwide.[193] A hardship exemption may be granted in whole or in part and with appropriate conditions if a developer "can prove that a literal enforcement of the act would involve substantial hardship (financial or otherwise) and that desirable relief could be granted without substantial detriment to the public good and without nullifying or significantly derogating the intent of the act."[194]

A developer who disputes the finding that the development meets the DRI criteria or believes that the rules were applied improperly may appeal within 30 days after the Commission has notified the developer of its decision.[195]

The Commission addressed concerns "that decisions were being made on a case-by-case basis, with no clear policy guidance or uniform application of rules" and subsequently adopted provisions that clearly define the DRI thresholds, performance standards and methods for calculating mitigation requirements.[196]

Minnesota: Metropolitan Council of the Twin Cities

The Minnesota statutes require that each of the state's 16 Metropolitan Councils establish "standards, guidelines, and procedures for determining whether any proposed project is of metropolitan significance . . . to assure that the total effect of [the] proposed project . . . is considered and the orderly and economic development of the area is promoted."[197] The intent of the Metropolitan Council rules is not "to stop development, but rather to work out differences among parties and arrive at consensus."[198] A proposed project affecting a metropolitan system has metropolitan significance if it:

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[192] *Growing Smart, supra* note 19, at 5-51.

[193] *Id.;* Cape Cod Comm'n Act, *supra* note 186, § 12(k). For example, a 30-acre development proposed for subdivision into three 10-acre parcels may qualify for a standard exemption. *Growing Smart, supra* note 19, at 5-51.

[194] *Id.;* Cape Cod Comm'n Act, *supra* note 186, § 23.

[195] *Growing Smart, supra* note 19, at 5-51.

[196] *Id.*

[197] Minn. R. 5800.0010. *See also* Minn. Stat. § 473.173.

[198] Minn. R. 5800.0010.

A. May result in a substantial change in the timing, staging, and capacity or service area of local facilities in a council-approved local sewer policy plan or comprehensive sewer plan.

B. May result in a wastewater flow that substantially exceeds the flow projection for the local governmental unit as indicated in the Water Resources Management Development Guide/Policy Plan, Part 1. Sewage Treatment and Handling.

C. May require a new national pollution discharge elimination system permit or state disposal system permit or a substantial change to an existing permit.

D. May result in substantially less restrictive standards and conditions to be adopted for the installation or management of private on-site sewer facilities than those described in the comprehensive plan.

E. May have a substantial impact on the use of regional recreation and open space facilities or natural resources within the regional recreation open space system. Impacts on the use of recreation and open space facilities include but are not limited to traffic, safety, noise, visual obstructions (for example, to scenic overlooks), impaired use of the facilities, or interference with the operation or maintenance of the facilities. Impacts on natural resources include but are not limited to the impact on the level, flow, or quality of a facility's water resources (lakes, streams, wetlands) and impact on a facility's wildlife populations or habitats (migration routes, breeding sites, plant communities).

F. May preclude or substantially limit the future acquisition of land in an area identified in the capital improvement program of the council's Recreation Open Space Development Guide/Policy Plan.

G. May substantially affect either the function of a metropolitan airport identified in the council's Aviation Development Guide/Policy Plan or the land use within an airport search area.

H. Is substantially inconsistent with the "Guidelines for Land Use Compatibility with Aircraft Noise" contained in the Aviation Development Guide/Policy Plan.

I. May result in a substantial change to existing or proposed metropolitan highways, highway interchanges, or intersections with metropolitan highways, or to local roadways that have interchanges with metropolitan highways. Substantial changes to the mainline, interchanges, and intersections include an increase in volume that will overload the facility, or a difference in timing, design, or location from that indicated in

the Transportation Guide/Policy Plan. Changes to local roadways include changes in timing, staging, volume, capacity, design, location, or functional classification.

J. May result in a substantial change in transit service or facilities inconsistent with the Transportation Guide/Policy Plan.

K. May have a substantial impact on the use of solid waste facilities identified in the Solid Waste Management Development Guide/Policy Plan. Impacts on the use of these facilities include, but are not limited to, disruption of planned facility staging, facility access, or other interference with the operation and maintenance of the facilities.[199]

Although the Metropolitan Council has the authority to review projects of regionwide significance, the process consists essentially of mediation and dispute resolution "for local governments within the region to use if residents believe that they would be negatively affected by the impacts of a proposed project in a neighboring community."[200] For each proposed project, the Metropolitan Council convenes a new significance review committee, which evaluates the project according to whether it will substantially impact transportation, local or regional sewer and storm water plans, open space, recreational resources and the environment. The committee determines whether to review the project itself or defer to a review and decision by a mediator or administrative law judge. The reviewing entity must submit to the full Council a report that includes findings of the effects of the development and proposed remedies. The developer may agree to the remedies, the local or regional facility plan may be amended to accommodate the development, or the development proposal may be suspended for one year.[201] The Mall of America, a basketball arena and a large gaming facility are several projects that have been subject to this review process.[202]

New Hampshire

New Hampshire defines a "development of regional impact" as any proposal that could reasonably be expected to impact on a neighboring municipality, because of such factors as (1) the relative size or number of dwelling units as compared with existing stock; (2) the proximity to the borders of a neighboring municipality; (3) transportation networks; (4) anticipated emissions such as light, noise, smoke, odors or particles; (5) the proximity to aquifers or surface waters that transcend municipal boundaries and (6) shared facilities such as schools and solid waste disposal facilities.[203] Upon receipt of

[199] *Id.* 5800.0040, Subpt. 2.
[200] *Growing Smart*, *supra* note 19, at 5-52.
[201] *Id.* at 5-53.
[202] *Id.*
[203] N.H. Rev. Stat. Ann. § 36:55 (1991).

a development application, a local land use board "shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact."[204] If the local land use board determines that a proposed development has a potential regional impact, it shall provide to the regional planning commission and the affected municipalities notice of its decision and at least 14-days' notice of the hearing at which they may testify concerning the development.[205] Therefore, this statutory framework is designed to:

> I. Provide timely notice to potentially affected municipalities concerning proposed developments which are likely to have impacts beyond the boundaries of a single municipality.
>
> II. Provide opportunities for the regional planning commission and the potentially affected municipalities to furnish timely input to the municipality having jurisdiction.
>
> III. Encourage the municipality having jurisdiction to consider the interests of other potentially affected municipalities.[206]

Vermont

Because Vermont is a largely rural state, a proposed project does not need to be very large to meet the criteria for a DRI.[207] Under Vermont law,

> [a state-created] district [environmental] commission must measure each proposed development against 10 major criteria and 11 subcriteria. Generally, the commission must find that a proposed development will not cause: pollution; erosion; unreasonable traffic congestion; or school overcrowding. In addition, the development must not have an adverse effect on either scenic or natural beauty or historic sites, and must conform with any statewide plans . . ., as well as any locally adopted plan, capital program, or municipal bylaw.[208]

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[204] *Id.* § 36:56.
[205] *Id.* § 36:57.
[206] *Id.* § 36:54.
[207] *Growing Smart*, *supra* note 19, at 5-52. For example, every housing project of ten or more units and every commercial and industrial project larger than ten acres is subject to regional review under Vermont law. *Id.*
[208] *Id.*; *Accord* Vt. Stat. Ann. tit. 10, § 6086(a).

Although decisions have been made on a case-by-case basis, the review process is applauded for the appointment of lay people to the regional commission. In addition, most approved development applications contain substantial conditions that must be met to mitigate potential negative impacts.[209]

Washington

A county may approve a new fully contained community located outside the initially designated urban growth areas if, among other things, (1) new infrastructure is provided and impact fees are established consistent with law; (2) transit-oriented site planning and traffic demand management programs are implemented; (3) buffers are provided between the community and adjacent urban development; (4) a mix of uses is provided to offer jobs, housing and services to the residents of the community; (5) affordable housing is provided within the new community for a broad range of income levels; (6) environmental protection is provided; (7) development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas and (8) provisions are made to mitigate impacts on designated agricultural lands, forest lands and mineral resource lands.[210]

A county may also permit a master planned resort[211] that constitutes urban growth outside urban growth areas.[212] In addition,

> [c]apital facilities, utilities, and services, including those related to sewer, water, storm water, security, fire suppression, and emergency medical, provided on-site shall be limited to meeting the needs of the master planned resort. Such facilities, utilities, and services may be provided to a master planned resort by outside service providers, including municipalities and special purpose districts, provided that all costs associated with service extensions and capacity increases directly attributable to the master planned resort are fully borne by the resort. A master planned resort and service providers may enter into agreements for shared capital facilities and utilities, provided that such facilities and utilities serve only the master planned resort or urban growth areas.[213]

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[209] *Growing Smart, supra* note 19, at 5-52.

[210] Wash. Rev. Code § 36.70A.350 (1991).

[211] A master planned resort is a "self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities." Id. § 36.70A.360(1).

[212] *Id.*

[213] *Id.* § 36.70A.360(2).

ADVISORY COMMITTEE DELIBERATIONS

The following summarizes the discussions of the Advisory Committee, which met as a group on six different occasions: January 9, 2009; March 12, 2009; March 25, 2010; August 12, 2010; January 13, 2011 and November 17, 2011.

Background Information

Initially, the Advisory Committee outlined a number of issues that deserved specific consideration throughout its deliberations: (1) sovereignty,[214] (2) how a proposed development of regional significance and impact affects the adjacent area,[215] (3) financial incentives and revenue sharing, (4) resources and capacity, (5) the coordination of statutes and (6) case studies.

To provide background information and facilitate discussions, several members of the Advisory Committee prepared PowerPoint presentations on (1) thresholds for developments of regional significance and impact, the review process, the reviewing authority, review criteria, notification requirements, public participation, and exemptions from statutory mandates; (2) the land development process and (3) the Southpointe development in Cecil Township, Washington County, Pennsylvania, an existing development of regional significance and impact.[216]

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[214] The Advisory Committee defined sovereignty to include who may provide input regarding a proposed development of regional significance and impact and who is the ultimate decision-maker regarding the approval, conditional approval or disapproval of a proposed development of regional significance and impact.

[215] The Advisory Committee agreed that consideration should be given to economic impacts, environmental impacts (including an analysis of the impact on storm water management, sanitary sewer systems, geology, agriculture and scenic views), support services (including fire and police protection), social impacts and the effects on the quality of life (including housing) and transportation.

[216] The Advisory Committee discussed the distribution of the application for development, the contents of the plan for development and key items for consideration, including the size and scope of the proposed development, landscaping, lighting, traffic, grading and geotechnical information and storm water management. It also reviewed the sequence of procedures for the submission, review and approval or disapproval of the proposed development, as well as pre-construction meetings, permits and inspections.

The Southpointe PowerPoint presentation revealed that Phase I of the development constituted a 600-acre mixed-use park, with office, flex, industrial, retail and residential space available, employing approximately 6,500 individuals and offering low utility rates and property taxes. Phase I of the development included 160 businesses, such as a private golf club, a hotel and conference center, an ice and soccer arena, a health club and spa, two university extensions, medical service offices, a community bank, several restaurants and eating establishments, two hair salons, a daycare center, apartments, townhomes and

The Advisory Committee agreed that although many believe that Southpointe has changed the region in a positive manner, the development can serve as a lesson for the need to pay closer attention to the impacts from a development of regional significance and impact, in terms of economics, the environment, transportation, community services and quality of life.

Throughout its deliberations, the Advisory Committee reviewed the following as a basis to evaluate how to improve the law in Pennsylvania regarding developments of regional significance and impact:[217]

(1) The Pennsylvania Municipalities Planning Code (MPC), including current provisions regarding land development, comprehensive plans, intergovernmental cooperative planning and implementation agreements, mediation and appeals, in addition to previously proposed amendments to the MPC related to developments of regional significance and impact.

(2) Guidelines from the Pennsylvania Department of Transportation regarding level of service and transportation impact study warrants.

(3) Pennsylvania statutory authority regarding storm water management and sewage facilities.

(4) The Pennsylvania Department of Community and Economic Development's Keystone Principles and Criteria for Growth, Investment and Resource Conservation.

(5) Intergovernmental cooperative implementation agreements for regional planning, including the Centre Region Growth Boundary/Sewer Service Area Implementation Agreement, the Pottstown Metropolitan Region Intergovernmental Cooperative Implementation Agreement for Regional Planning and the

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single family homes. Phase II involved an additional mixed-use development, including a theater, office space, restaurants, retail establishments and residential units.

Southpointe received a five-year real estate tax abatement on all improvements through the Local Economic Revitalization Tax Assistance Act (LERTA), but the host township did not realize significant revenue increases to match the required services due to the tax abatement. There has not been net job growth in the region; instead, jobs have migrated from Allegheny County to Washington County. The initial public investment of $8 million was used to build streets, sidewalks and sewer and water infrastructure, but as the development expanded, infrastructure expansion became necessary. However, current expansion of the system to serve the peripheral development would likely be expensive and disruptive. Overall traffic impacts were inadequately considered during the development stage of Phase I; consequently, significant onsite and offsite improvements were required to develop Phase II, but proper funding was not readily available. Roads within the development were not constructed to township standards, and public recreation was not considered. PowerPoint presentation (Jan. 9, 2009) (on file with the J. State Gov't Comm'n).

[217] *See supra* pp. 4-5.

Phoenixville Region Intergovernmental Cooperative Implementation Agreement for Regional Planning.

(6) The American Law Institute's Model Land Development Code, as discussed in the American Planning Association's *Growing Smart Legislative Guidebook.*

(7) Statutory and regulatory authority from other states and regions, including Colorado, Florida, Georgia, Maine, the Cape Cod Commission in Massachusetts, the Metropolitan Council of the Twin Cities in Minnesota, New Hampshire, Vermont and Washington.

During its review of the background information, the Advisory Committee emphasized the three criteria specified in the statutory definition of a "development of regional significance and impact": the character, magnitude and location of the development. It also recognized the importance of providing financial incentives and assistance and of streamlining the permit process.

Subcommittee Deliberations

As part of its deliberations and to facilitate discussions on specific issues regarding developments of regional significance and impact, the Advisory Committee formed the following five subcommittees in March 2009: Community Services, Economic Impacts, Environmental Impacts, Social Impacts and Transportation. Between March 2009 and February 2010, each subcommittee conducted various teleconferences, researched and discussed relevant issues and presented a report containing findings and recommendations for consideration by the full Advisory Committee.

In March 2010, the Advisory Committee discussed these reports, with the ultimate goal being the incorporation of the subcommittees' findings and recommendations into an integrated statutory framework regarding developments of regional significance and impact.

The following summarizes the discussions of each subcommittee.

Community Services

The Subcommittee on Community Services observed that developments of regional significance and impact may impact such community services as schools, recreational opportunities, health care delivery systems, waste disposal facilities and law enforcement. The subcommittee discussed whether the planning and approval processes should be centralized at the county level and the extent to which local control and autonomy should dictate these processes. It also considered the related issue of whether coordination between municipalities should remain a voluntary cooperative effort or whether municipalities should be compelled to develop and implement cooperative systems. The subcommittee acknowledged the need for regional planners and engineers to be made available to assist smaller communities, with consideration given to how municipalities can share impact fees and revenue. The subcommittee also focused on how to establish thresholds regarding community service impacts and what should constitute a "significant impact." Finally, the subcommittee recognized the importance of a host municipality's consideration of input from contiguous municipalities and other communities regarding a proposed development of regional significance and impact.

Economic Impacts

The Subcommittee on Economic Impacts noted the benefits of an economic impact analysis of a proposed development of regional significance and impact to analyze the effect on the economy of the given area, including the host municipality and contiguous municipalities.[218] The subcommittee commented that economic impacts should be measured in terms of changes in economic growth, with consideration given to (1) net business income diverted from existing, comparable businesses; (2) net change in employment and wages, with consideration of new and shifting employment opportunities and changes in income levels; (3) tax revenue generated by an expanded tax base, with consideration of the effect of business privilege taxes, earned income taxes, property taxes and local sales taxes, such as the regional asset district tax in Allegheny County; (4) the diversity of area development and business competition; (5) the effect on emergency and infrastructure services, including services regarding police, fire, ambulance, medical care, sewer, water, transportation and utilities; (6) tax increment

[218] An economic impact analysis is generally designed to capture the effect of proposed development and determine whether the proposed development will expand market opportunities instead of simply shifting economic benefits from one locality to a nearby locality.

financing,[219] with consideration of the revenue stream for counties and school districts, the effect on blighted areas and the impact on local municipalities; (7) the loss of farmland as a result of the proposed development; (8) the effect on natural resources and tourism and (9) the effect on property values.

The subcommittee emphasized that a proposed development of regional significance and impact may yield several financial benefits to the community: an expanded tax base as a result of new businesses, job growth because of new businesses, opportunities for the redevelopment of vacant retail facilities and increased business opportunities because of increased road and foot traffic. However, it may also yield financial costs, such as the need for additional community services, a decreased tax base if existing stores close because of the development, job losses if existing businesses compete with the development, increased costs for road systems and infrastructure, the creation of blighted areas and the discouragement of certain types of additional development (if, *e.g.*, other businesses do not choose to locate near the development because of the recognized inability to compete for customers). Some financial benefits and costs are subjective and speculative, while others are quantifiable to a certain extent; they may be direct or indirect, temporary or permanent. In any event, they should be considered in determining whether to approve a proposed development of regional significance and impact.

The subcommittee also agreed that a proactive approach to planning is essential to minimize problems and account for the positive and negative aspects of a proposed development. In addition, the effect of the proposed development on contiguous municipalities must be evaluated in a meaningful manner, with input from individuals and local community groups.

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[219] Tax increment financing (TIF) is a public financing method for use by an industrial and commercial development authority or a redevelopment authority in pursuing redevelopment efforts. Act of July 11, 1990 (P.L.465, No.113), known as the Tax Increment Financing Act; 53 P.S. §§ 6930.1 *et seq.* In general, a "tax increment" represents the tax revenues that result from the increase in property values or commercial activity as a result of a project. *Id.* § 3; 53 P.S. § 6930.3.

Despite the efforts of the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, urban communities in Pennsylvania still contain areas that have become blighted because of (1) the unsafe, unsanitary, inadequate or overcrowded condition of the area dwellings; (2) inadequate area planning or excessive land coverage by the buildings; (3) the lack of proper light and air and open space; (4) the defective design and arrangement of the buildings; (5) faulty street or lot layout or (6) economically or socially undesirable land uses. *Id.* § 2(a); 53 P.S. § 6930.2(a).

New employment opportunities are essential to (1) prevent, arrest and alleviate blighted, decayed and substandard area in municipalities; (2) increase the tax base and (3) improve the general economy of the Commonwealth. *Id.* § 2(b); 53 P.S. § 6930.2(b). These opportunities will (1) maintain the public health, safety, morals and welfare of the people of Pennsylvania; (2) increase commerce, welfare and prosperity and (3) further remedy the conditions found to exist in Pennsylvania, as declared in the Urban Redevelopment Law. *Id.*

Therefore, the purpose of the Tax Increment Financing Act is to provide an additional and alternative means to finance public facilities and residential, commercial and industrial development and revitalization, for the public benefit and good. *Id.*

Environmental Impacts

The Subcommittee on Environmental Impacts discussed the importance of a comprehensive and coordinated review by a county and municipality regarding a proposed development of regional significance and impact. Timely, well-communicated and well-coordinated review and decision-making procedures regarding the proposed development should be encouraged, as should planning consistent with the Constitution of Pennsylvania.[220] In addition, cost-effective and reasonable accountability measures should be developed, and a framework should be established to mitigate the impacts on community services, the economy, the environment, the quality of life and transportation as a result of a development of regional significance and impact.

The subcommittee discussed possible thresholds to determine whether a development should be considered a development of regional significance and impact, such as if the proposed development involves (1) an earth disturbance activity[221] of at least 25 acres in total land area, with storm water discharge and capacity exceeding applicable regulatory standards; (2) sanitary sewer capacity in excess of the criteria under the Pennsylvania Sewage Facilities Act;[222] (3) ground water recharge capacity below minimum standards set forth by regulation or (4) a footprint in more than one municipality. The subcommittee suggested that the Conservation District[223] or lead planning agency in the county or counties of the proposed development should identify the thresholds for review. The potential harms and benefits should be analyzed for the proposed development, with consideration given to possible economic impacts, community service impacts, socio-economic and quality of life impacts, public health and safety impacts, environmental impacts and transportation and transportation

[220] Under the Constitution:

> The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Pa. Const. art. I, § 27.

[221] The Subcommittee reviewed proposed 53 Pa.C.S. Subch. B of Part VI, contained in House Bill No. 613 of 2011 (Printer's No. 597). Proposed § 7503 contains the definition of "earth disturbance activity." *Infra* p. 149; *supra* note 1 (explaining House Bill No. 613 and previous legislation).

[222] *Supra* note 16.

[223] The act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law, authorized the creation of county conservation districts. The Department of Environmental Protection may delegate by written agreement the administration and enforcement of erosion and sediment control measures to a conservation district if the district has adequate and qualified staff and is, or will be, implementing the program identified in the delegation agreement. 25 Pa. Code § 102.41(a).

infrastructure impacts.[224] Each project should be consistent with local, county and regional land use planning and local agricultural preservation regulations. Before a proposed development is considered, a geologist and two professional engineers, licensed in Pennsylvania, one of whom is a traffic engineer, should review the development plan and certify that (1) the potential benefits regarding the impacts of the development outweigh the potential harms and (2) any potential harms can be reasonably mitigated by the developer. The developer should incur the costs relating to the review, but financial incentives should be provided to the developer to mitigate the costs paid.

The subcommittee further suggested that following the completion of the professional review of the proposed development, the following process should be implemented. If the municipality in which the proposed development is located has a zoning ordinance and a comprehensive plan, the developer should submit the review to the municipality, which should recommend approval or rejection of the review. The municipality's recommendation, along with the review, should be forwarded to the applicable county planning commission, which should determine whether to approve or reject the review, based on the stated criteria. If the municipality in which the proposed development is located lacks a zoning ordinance and a comprehensive plan, however, the municipality should forfeit its right to make a recommendation, and the professional review should be submitted directly to the county. In addition, if the proposed development lies in more than one municipality, then both municipalities should act as previously described. Similarly, if the proposed development lies in more than one county, then those counties should act.

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[224] Under the Department of Environmental Protection regulations:

> (a) Impacts. Each environmental assessment in a permit application shall include at a minimum a detailed analysis of the potential impact of the proposed facility on the environment, public health and public safety, including traffic, aesthetics, air quality, water quality, stream flow, fish and wildlife, plants, aquatic habitat, threatened or endangered species, water uses, land use and municipal waste plans. The applicant shall consider features such as scenic rivers, recreational river corridors, local parks, State and Federal forests and parks, the Appalachian Trail, historic and archaeological sites, National wildlife refuges, State natural areas, National landmarks, farmland, wetland, special protection watersheds designated under Chapter 93 (relating to water quality standards), airports, public water supplies and other features deemed appropriate by the Department or the applicant. The permit application shall also include all correspondence received by the applicant from any State or Federal agency contacted as part of the environmental assessment.
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> (b) Harms. The environmental assessment shall describe the known and potential environmental harms of the proposed project. The applicant shall provide the Department with a written mitigation plan which explains how the applicant plans to mitigate each known or potential environmental harm identified and which describes any known and potential environmental harms not mitigated. The Department will review the assessment and mitigation plans to determine whether there are additional harms and whether all known and potential environmental harms will be mitigated. In conducting its review, the Department will evaluate each mitigation measure and will collectively review mitigation measures to ensure that individually and collectively they adequately protect the environment and the public health, safety and welfare.

Id. § 271.127(a) & (b).

Social Impacts

The Subcommittee on Social Impacts highlighted a number of the social impacts associated with a development of regional significance and impact, including (1) the changing demographics that may affect the social structure and way of life of the community, such as the changing nature of the workforce (*e.g.*, the temporary and permanent nature of jobs, the need for special skills and the intended market, such as younger individuals, families or retirees); (2) housing inventory, values and affordability, along with the ratio of renters versus homeowners; (3) educational impacts and school capacity, especially if facilities are shared with other municipalities; (4) the impact on historic resources and structures, such as ethnic heritage sites lost, changes in historic areas and the alteration of historic landscapes; (5) the impact on scenic views, as in the case of a waterfront view that may be obstructed by a new development; (6) lifestyle changes and the presence of retail establishments and restaurants, arts and entertainment opportunities, recreation areas, religious and worship facilities, pedestrian-friendly development, transit services and adequate parking facilities; (7) the impact on governmental administration, such as the burdens and benefits to the host municipality and multi-municipal cooperation and (8) socio-economic impacts, such as acres of greenfields[225] disturbed, acres of brownfields[226] or greyfields[227] reutilized, and the impact on agricultural areas, forested areas and parks.

The subcommittee also discussed that the evaluation of social impacts necessarily involves consideration of the municipal and regional policy, goals, standards and programs, as a result of the development of regional significance and impact. In addition, the subcommittee noted that social impacts and quality of life issues are generally more difficult to indentify and quantify than other impacts.

[225] A "greenfield" is "[a] property that has not been previously developed." Brownfields Cent., Envtl. Law Inst., *available at* http://www.brownfieldscenter.org/big/glossary.shtml (last accessed Dec. 6, 2011).

[226] A "brownfield" is "[a]n industrial or commercial property that remains abandoned or underutilized in part because of environmental contamination or the fear of such contamination." *Id.*

[227] A "greyfield" is "a retail-centric term that refers to formerly viable and now derelict commercial shopping sites . . . that have been vacated from lack of reinvestment and have been outdone by larger, better designed, well-known anchored malls or shopping sites." Southwestern Pa. Blighted & Abandoned Props. Solutions Project 50 (Dec. 10, 2009), *available at* http://www.sustainablepittsburgh.org/Pub/SWPABlightedandAbandonedPropertiesSolutionsProjectReport_12909.pdf (last accessed Dec. 6, 2011). In addition, "[i]n contrast to brownfields, greyfields typically do not require remediation, don't have the environmental problems and are ripe for major redevelopment." *Id.* The policy of re-using brownfields and greyfields is generally superior to using greenfields, as public services and other infrastructure are more likely to be already in place.

Transportation

The Subcommittee on Transportation discussed the possible role of transportation impact studies in determining whether to approve a proposed development of regional significance and impact. Triggers should be implemented to define a regional impact, such as trip generation, trip distribution and the number of municipalities impacted. Better traffic estimates should be made in evaluating the demands upon roadway infrastructure and transportation services, with additional consideration given to mass transit opportunities.

The subcommittee also emphasized the importance of the Department of Transportation's involvement in the planning and permitting process and in working with both the host municipality and the developer. A county or regional planning commission should also be involved and empowered to consider feedback from, and implement improvements in, contiguous municipalities regarding transportation matters.

The subcommittee noted that the delegation of costs for highway improvements created by a development of regional significance and impact should fall to the developer, the host municipality, the Commonwealth, the Federal government, the transportation partnership district and the planning organization. In addition, the subcommittee discussed the role of impact fees regarding such development.[228]

The Development of Legislation

The Advisory Committee began developing statutory recommendations during its deliberations, based on the background material reviewed and discussed. Throughout its deliberations, the Advisory Committee generally discussed the issues of municipal authority, capacity, input from governmental entities and others, the approval process, financial considerations, proactive planning, impacts and the location, character and magnitude of a proposed land development.

After reviewing the statutory frameworks from other states and multimunicipal implementation agreements in Pennsylvania, the Advisory Committee discussed various thresholds that should require an impact analysis (*i.e.*, an analysis of the effect of the

[228] An "impact fee" is "a charge or fee imposed by a municipality against new development in order to generate revenue for funding the costs of transportation capital improvements necessitated by and attributable to new development." MPC, *supra* note 3, § 502-A; 53 P.S. § 10502-A. The term "transportation capital improvements" is defined as "those offsite road improvements that have a life expectancy of three or more years, not including costs for maintenance, operation or repair." *Id.* The governing body of a municipality may enact, amend or repeal an impact fee ordinance and "may establish, at the time of municipal approval of any new development or subdivision, the amount of an impact fee for any offsite public transportation capital improvements" as a condition to final approval of a map or plan for subdivision or land development. *Id.* § 503-A(a); 53 P.S. § 10503-A(a).

proposed development on the host municipality and other municipalities): (1) depending on the type and character of development proposed, regardless of the location or magnitude of the development, an applicant should be required to submit an impact analysis to the municipality in which the proposed development will be located and (2) additional thresholds should be established for other specific developments, thereby triggering an impact analysis, based on the location and magnitude of the proposed development. The Advisory Committee also reviewed the need for a coordinated and expedited land development review process by governmental entities, a framework for municipal review and determinations, and financial considerations.

After considerable review and deliberation, the Advisory Committee settled on a statutory framework that adds a new Article VI-A to the MPC concerning developments of regional significance and impact. The proposed new sections of Article VI-A are as follows: purpose, definitions, applicability, scope, compliance, thresholds, impact analysis, classification as development of regional significance and impact, mitigation plan, coordinated and expedited review, municipal review and determination, additional standards and criteria, financial considerations, notice generally and appeals.

The following summarizes the topics discussed and conclusions reached by the Advisory Committee.

Proactive Planning

Proactive planning is an essential tool that can be instituted without additional mandates that may unduly curtail development. A comprehensive plan that considers the overall effect of development on a municipality, county or region is an important component to proactively plan. Although a host municipality must ultimately decide whether to approve a proposed development within its own boundary, it should still consider regional issues and problems and should participate with other municipalities in the region to help resolve these issues and problems.[229]

Proactive planning can assist with situations involving (1) a small development that may have a significant impact on smaller communities, (2) several small developments that may cumulatively have a significant effect on surrounding municipalities and (3) a development that may spur other development or yield unintended consequences.

[229] Each of the five subcommittees acknowledged the importance of communication and coordination among contiguous municipalities, as well as an analysis of regional impacts. The Subcommittee on Economic Impacts specifically discussed the need to proactively plan.

The location, character and magnitude of a proposed development are the key components in evaluating whether the development should be classified as a "development of regional significance and impact" and ultimately approved.[230] Several specific factors impact these key components: municipal population, development type, vehicle trip generation and the impact on highway safety and traffic flow.

Purposes

Proposed legislation regarding developments of regional significance and impact should contain a comprehensive, coordinated, timely and well-communicated review and approval process, where potentially adverse impacts as a result of the development are appropriately evaluated and mitigated and where cost-effective and reasonable accountability measures are implemented. Consistent with the Pennsylvania Constitution, proposed legislation should (1) preserve the natural, scenic, historic and aesthetic values of the environment and (2) conserve the Commonwealth's public natural resources.[231]

Definitions

The proposed legislation recommended by the Advisory Committee regarding developments of regional significance and impact defines several key terms concerning land development: earth disturbance activity, intermodal terminal, petroleum storage facility, quarry, truck stop facility and waste handling facility.[232]

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[230] The Advisory Committee extensively discussed such factors as (1) the host municipality's population and population density; (2) the distance from the proposed development to the boundary of the host municipality; (3) the land use associated with the proposed development (such as farming, industrial or retail); (4) the gross square footage, acreage or number of units associated with the proposed development; (5) the estimated number of trips generated; (6) the anticipated number of workers to be employed at the proposed development and (7) specific characteristics of the proposed development. The Advisory Committee analyzed numerous types of developments, including airports, commercial developments, hospitals and health care facilities, hotels, industrial parks, intermodal terminals, mixed use developments, office complexes, petroleum storage facilities, quarries, schools, truck stop facilities, waste handling facilities, wastewater treatment facilities, water supply intake facilities and reservoirs, wholesale and distribution facilities, and other developments with specific characteristics. During its discussions, the Advisory Committee developed a matrix to specify the thresholds that require an impact analysis, accounting for the location, magnitude and character of the proposed development. These particular thresholds and criteria, however, yielded to a simpler, more focused approach, as outlined in the proposed legislation set forth in this report.

[231] Proposed section 601-A. *Infra* p. 111. *See supra* note 220 for Pa. Const. art. I, § 27. The purpose statement is directly attributable to the Subcommittee on Environmental Impacts.

[232] Proposed section 602-A. *Infra* pp. 112-113. Because the MPC defines the terms "development of regional significance and impact" and "land development," those terms, along with several other terms that are contained in the definitions of "development of regional significance and impact" and "land development," are not defined in the proposed legislation. *See supra* pp. 13-14 for the relevant MPC definitions. In addition, the term "airport," which is referenced in the proposed section regarding thresholds, is not defined in the proposed legislation, since the term is defined in 1 Pa.C.S. § 1991 as "[a]ny place, either water or land, which is designed and used for the taking off and landing of aircraft including the facilities connected therewith." That same section defines "aircraft" as "[a]ny contrivance used or

Applicability

Unless specifically provided to the contrary, the proposed article regarding developments of regional significance and impact supplements the MPC and does not supersede any provision of the MPC or any other law.[233]

Scope

The scope of the proposed legislation is limited. The proposed article regarding developments of regional significance and impact does not apply to any person or legal entity that is regulated by the Surface Mining Conservation and Reclamation Act, The Bituminous Mine Subsidence and Land Conservation Act, the Coal Refuse Disposal Control Act, the Coal and Gas Resource Coordination Act, the Noncoal Surface Mining Conservation and Reclamation Act, or the Oil and Gas Act.[234] In addition, the proposed legislation does not affect any matter regarding Marcellus shale development and drilling impact fees.[235]

Compliance

Under the proposed legislation, a municipal, multimunicipal or county comprehensive plan must include provisions consistent with the proposed statutory framework for developments of regional significance and impact. If a host municipality is not governed by a municipal or multimunicipal comprehensive plan, the county

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designated for navigation of, or flight in, or to ascent into, the air, except a parachute or other contrivance designed and used primarily as safety equipment." House Bill No. 613 of 2011 (Printer's No. 597) and House Bill No. 1450 of 2009 (Printer's No. 4013), which contain the proposed Geologically Hazardous Areas Act, provide a different definition of "earth disturbance activity" from the one proposed in this report. *See generally supra* note 1 and *infra* p. 149. The proposed definitions are also based on several of the definitions from the Rules of the Georgia Department of Community Affairs, *supra* pp. 77-78.

[233] Proposed section 603-A. *Infra* p. 113. A comment specifies that proposed Article VI-A will work in conjunction with the definitions and procedures set forth in the MPC. Therefore, (1) unless there is a provision in the article specifically providing for a change in current practice, it is not intended that the article will supersede any existing statutory or regulatory provision or overturn any case law authority and (2) except as otherwise provided in the article, an applicant is not obligated to assume or enforce any measure to preserve and protect the safety, health, welfare and morals of the host municipality or the community in general. *Infra* p. 113.

[234] Proposed section 604-A. *Infra* pp. 113-114. This proposed section is based on proposed § 7517 of House Bill No. 613 of 2011 (Printer's No. 597) and House Bill No. 1450 of 2009 (Printer's No. 4013), which provide that the proposed Geologically Hazardous Areas Act does not apply to any person or legal entity regulated by the Noncoal Surface Mining Conservation and Reclamation Act, the Surface Mining Conservation and Reclamation Act, The Bituminous Mine Subsidence and Land Conservation Act or the Coal Refuse Disposal Control Act. *See generally supra* note 1 and *infra* p. 157.

[235] Since the Advisory Committee began its deliberations, House Bill No. 1950 of 2011 and Senate Bill No. 1100 of 2011 were introduced, with each amending Title 58 of the Pennsylvania Consolidated Statutes (Oil and Gas). House Bill No. 1950 was approved by the Governor on February 14, 2012 and became Act No. 13 of 2012. Senate Bill No. 1100, which passed the Senate on November 15, 2011, was referred to the House Finance Committee on November 28, 2011.

comprehensive plan for the county in which the host municipality is located governs and must be consistent with respect to the provisions in the new article concerning developments of regional significance and impact.[236]

Thresholds

The Advisory Committee recommends that the MPC contain a section specifying thresholds for a development of regional significance and impact.[237]

Thresholds trigger an impact analysis under the proposed legislation. In some cases, an impact analysis must occur based on the type of proposed development itself, without regard to the location or magnitude of the development (*e.g.*, airports, intermodal terminals, petroleum storage facilities, certain waste handling facilities, certain quarries, certain truck stops, certain land developments in a watershed that is unstudied under the Storm Water Management Act and certain land developments in an area with insufficient sanitary sewer capacity). In other cases, an impact analysis must occur only if certain criteria are met. Accordingly, different thresholds are created, based on the size of the municipality in which the proposed development will be located.

Two categories of municipalities (those with a population of at least 10,000 and those with a population under 10,000) are created, with specific criteria regarding trip generation or significant impact on highway safety or traffic flow as the result of development or redevelopment, as determined by standards established by the Department of Transportation. As noted in the comment to this proposed section, a development in either of these categories of municipalities could be an attraction, a recreational facility, a commercial development, a hospital, a health care facility, a hotel, an industrial park, a mixed use development (*e.g.*, a commercial development, residential development and office complex), a residential development, an office complex, a facility providing post-secondary educational services (*e.g.*, a public or private vocational or technical school, college or university) or a wholesale and distribution facility.

A municipality may adjust any numerical threshold if the revised numerical threshold is adopted in a county plan or multimunicipal plan and the host municipality has (1) adopted the plan and conformed its local plans and ordinances to the plan or (2) entered into an implementation agreement to carry out the plan. The intent of this type of provision is to foster local control over implementing numerical thresholds, while protecting the interests of affected municipalities.

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[236] Proposed section 605-A. *Infra* p. 114. These provisions are analogous to those discussed by the Subcommittee on Environmental Impacts.

[237] Proposed section 606-A. *Infra* pp. 114-119. This section accounts for the magnitude and character of a proposed development of regional significance and impact. Comment, *infra* p. 117. The recommendations in this proposed section are the result of integrating the suggestions from each of the five subcommittees. In addition, the Florida statutes incorporate the concept of adjusting numerical thresholds. *See, e.g.*, *supra* p. 63.

Incorporated into the statutory framework are (1) the concept of significant degradation in the level of service with respect to traffic impact and (2) trip generation and significant impact on highway safety or traffic flow. Both of these matters are contained in *Policies and Procedures for Transportation Impact Studies*.[238] The calculation of trip generation concerns the total number of vehicular trips occurring at the border of the host municipality, thereby maintaining the focus on the proposed land development's impact on a contiguous municipality and not on the impact within the host municipality.

The proposed legislation is consistent with (1) 25 Pa. Code § 102.5, which provides that a person proposing road maintenance activity involving 25 acres or more of earth disturbance must obtain an erosion and sediment control permit prior to commencing the earth disturbance activity and (2) The Clean Streams Law, as referenced in the Pennsylvania Sewage Facilities Act.[239]

Impact Analysis

The proposed legislation provides that if specified thresholds are met, then the applicant must submit an impact analysis to the host municipality and be responsible for any costs involving its preparation and review. The impact analysis must analyze the effect of the proposed land development on the host municipality and other affected municipalities, and it must address such matters as (1) the financial impact on emergency and infrastructure services;[240] (2) the disturbance of farmland, agricultural areas, forested areas and greenfields; (3) the effect on natural resources, historic resources and tourism; (4) the effect on residential housing opportunities; (5) the redevelopment of brownfields or greyfields; (6) the likelihood that the proposed development will spur other land development in the area and (7) the effect on transportation and transportation infrastructure (which includes an analysis of the impacts on public transportation).[241]

As noted in the comment to this proposed section, this section is intended to provide specific information to a host municipality during its consideration of a proposed development of regional significance and impact. A proposed development may yield financial benefits to a community, but it may also create financial costs and adversely affect the community. Although a harms-benefit analysis may be subjective and speculative in some matters, it may reveal certain objective and quantifiable information in the nature of direct, indirect, temporary or permanent effects concerning the proposed

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[238] *Supra* p. 29.

[239] *See supra* pp. 33-35.

[240] The comment to this proposed section specifies that an analysis of the financial impact regarding any expanded emergency and infrastructure services should include consideration of the public revenue generated by the proposed development, with attention given to business privilege taxes, earned income taxes, real estate taxes, occupation taxes and local sales taxes (including, *e.g.*, the regional asset district tax in Allegheny County). Tax increment financing could also be noted. *Infra* p. 120.

[241] Proposed section 607-A. *Infra* pp. 119-121. These recommendations are based on the discussions of the Subcommittee on Economic Impacts regarding an economic impact analysis and the Subcommittee on Social Impacts regarding quality of life matters.

development. Ultimately, this information may serve as a basis for a proactive approach to planning, in order to minimize problems and account for the positive and negative aspects of a proposed development. For example, a host municipality may require that an impact analysis consider the effects on floodplains or floodways. In addition, an impact analysis should be done at the same time as an application for a highway occupancy permit.

Under the proposed legislation, the host municipality must also consider any other matter that is (1) required by an applicable provision in the municipal or multimunicipal ordinance that governs the host municipality or (2) covered by an applicable provision in the municipal, multimunicipal or county comprehensive plan for the host municipality. The comment specifies that section 301(a)(5) of the MPC provides that the municipal, multimunicipal or county comprehensive plan must include a statement indicating (1) that the existing and proposed development is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities or (2) measures taken to provide buffers or other transitional devices between disparate uses. There must also be "a statement indicating that the existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan."

Although requiring an impact analysis places a financial burden on an applicant, the new statutory framework specifies that the host municipality may provide for financial incentives to the applicant to mitigate costs.[242]

Classification as Development of Regional Significance and Impact

After the specific thresholds have been met and an impact analysis submitted, the host municipality must determine whether the proposed land development is a development of regional significance and impact.[243] The host municipality must provide timely written notice to each contiguous municipality and each municipality that is potentially impacted by the proposed land development and identified in the impact analysis. A representative from a municipality receiving notice may provide public comment to the host municipality regarding the issue of whether to classify the proposed development as a development of regional significance and impact. In determining whether to classify the proposed development as a development of regional significance and impact, the host municipality must specifically consider the direct potential impacts on other municipalities, as set forth in the impact analysis. The host municipality must then provide specific reasons for its determination.

[242] In reviewing the subject of an economic impact analysis, it was discussed whether the host municipality, instead of the developer, should hire an entity to analyze the economic impact of the proposed development as a way to further assure a more objective analysis.

[243] Proposed section 608-A. *Infra* pp. 121-122.

The host municipality, however, is not bound by any position taken by the other municipalities. Although the position of another municipality serves as a factor in the host municipality's determination, another municipality may not dictate the ultimate determination by the host municipality.

As noted in the comment to this proposed section, the classification of a proposed land development as a development of regional significance and impact is not subject to court appeal, since an appeal of such a determination would result in unnecessary delay and expenses.[244]

Mitigation Plan

In addition to evaluating the potentially adverse impacts on the host municipality and other municipalities, the statutory framework provides for the mitigation of these impacts.[245] An applicant must submit to the host municipality a written mitigation plan that explains the nature and extent of mitigation efforts to address any known or potential harm or negative effect cited by the host municipality in the classification of the proposed development as a development of regional significance and impact. At a minimum, a traffic engineer and a licensed qualified professional (*e.g.*, a professional engineer, a geologist or a municipal or regional land use planner) must review the mitigation plan and prepare written comments to the host municipality regarding the effect of the proposed mitigation measures on the public health, safety and welfare. However, the host municipality must balance the need for review against the costs that will be incurred by the applicant, who is responsible for all costs involving the preparation and review of the mitigation plan. Therefore, the host municipality must act reasonably in requiring review by additional experts.

Notwithstanding the foregoing, it should be noted that not every impact described in the impact analysis may need to be subject to mitigation. If no mitigation effort is anticipated for a particular impact, the applicant should so specify in the mitigation plan.

Coordinated and Expedited Review

Numerous agencies may be involved in the land development process, including the following:

(1) The Pennsylvania Department of Environmental Protection regarding a sewage planning module under the Pennsylvania Sewage

[244] The ultimate decision regarding the approval, approval with conditions or disapproval of the proposed development of regional significance and impact, however, is appealable to the court of common pleas. Proposed section 615-A. *Infra* pp. 130-131.

[245] Proposed section 609-A. *Infra* pp. 122-123. The Subcommittee on Economic Impacts initially discussed the mitigation of impacts, while the Subcommittee on Environmental Impacts initially discussed the nature and extent of professional review of the development plans.

Facilities Act,[246] wetlands, floodplains, National Pollutant Discharge Elimination System (NPDES) permits and stream enclosures or encroachments.

(2) The Army Corps of Engineers regarding wetlands.

(3) The Federal Emergency Management Agency regarding floodplains.

(4) The Pennsylvania Fish Commission regarding stream enclosures.

(5) The Pennsylvania Department of Transportation regarding highway occupancy permits (as in the cases of new or altered driveways on state roads, new roads entering state roads, sidewalks on state roads or storm water into state inlets) and traffic impact studies to determine peak travel times, new traffic signals and new lanes.

(6) The Federal Highway Administration regarding limited access highways.

Developers may become frustrated at the overall approval and permitting process, both in terms of time and the need to deal with multiple governmental agencies. A coordinated and expedited review of development plans by the Department of Transportation, the Department of Environmental Protection and other governmental entities would greatly benefit the administrative process. Such a review could result in an evaluation of all the environmental impacts at the same time, thereby leading to the quicker approval of development plans (or at least the quicker assessment of environment concerns, for example) and affording the host municipality the ability to more effectively evaluate "the big picture" and avoid piecemeal consideration of issues regarding the proposed development.[247]

The statutory provisions regarding developments of regional significance and impact allow an applicant to request a coordinated and expedited review by such governmental entities as the Department of Transportation and the Department of Environmental Protection.[248] As part of this coordinated and expedited process, the governmental entities must ensure adequate communication and cooperation by and

[246] *Supra* note 16.

[247] For example, although environmental impacts are currently well-regulated, the reviews are performed at different times and in different settings, without a fully integrated process so that the totality of the impacts can be assessed properly. Environmental impacts should be evaluated at the same time, thereby assisting the developer through a streamlined and better coordinated process. In addition, an expedited review process will work effectively only if those individuals specifically reviewing the environmental impacts for a particular development have decision-making authority to issue a recommendation for the host municipality, without the need to continually consult with other departmental representatives.

[248] Proposed section 610-A. *Infra* pp. 124-125. The Subcommittee on Environmental Impacts and the Subcommittee on Transportation initially discussed the matters regarding administrative review and approval and the permit process.

between them, and an applicant must submit to a governmental entity the necessary information for review of the proposed development. Within 45 days after submission of all the necessary information for a coordinated and expedited review, the governmental entity receiving the information must prepare a written report of findings, comments and recommendations regarding the proposed development and send the report to the applicant and host municipality. This time period may be extended upon the written consent of the applicant or the governmental entity.

However, a governmental entity is not required to conduct a coordinated and expedited review. The comment to this proposed section notes that a governmental entity may decline to do so, given the required time period or limited resources. If a governmental entity agrees to conduct such a review, it may charge an additional fee for this service, in light of the necessary additional resources and staff.

The applicant is responsible for all fees involving any coordinated and expedited review of a proposed development of regional significance and impact (although the host municipality may provide financial incentives), and unless the applicant agrees otherwise, if the governmental entity is unable to complete the coordinated and expedited review and submit the report within the stated time period, the governmental entity must refund the full amount of the fee collected.

Municipal Review and Determination

Statutory amendments regarding developments of regional significance and impact should maintain the local authority of a municipality to approve, approve with conditions or disapprove a proposed development. Preserving this role for local governments recognizes Pennsylvania's diversity and allows municipalities to interpret differently what constitutes a proposed development of regional significance and impact. Although a proposed development may have a regional impact (whereby additional input should be sought from county and state officials, land use planners and engineers), the approval process of a host municipality should not be impaired. A streamlined municipal approval process would eliminate unnecessary delays and costs, while still maintaining an appropriate level of review and oversight. Collaborative efforts between municipalities and developers should be encouraged to help facilitate the review process.

The proposed legislation specifies the process for a host municipality to determine whether to approve a proposed development of regional significance and impact.[249] At the hearing to review the proposed development, consideration must be given to testimony and other information from governmental entities, the county in which the host municipality is located, contiguous municipalities, municipalities and area school districts potentially impacted by the proposed development, concerned individuals, municipal and regional planners, engineers, persons potentially impacted by the proposed development

[249] Proposed section 611-A. *Infra* pp. 126-129. The Subcommittee on Environmental Impacts, the Subcommittee on Social Impacts and the Subcommittee on Transportation each discussed specific component suggestions, which were integrated into these proposed recommendations.

and other persons as the host municipality determines. In addition, the host municipality must consider (1) the required impact analysis; (2) the required mitigation plan; (3) whether the proposed development is consistent with applicable comprehensive plans, ordinances and regulations and (4) the totality of impacts regarding the proposed development and the cumulative effect of development on the host municipality and affected municipalities. The host municipality may limit the testimony to be presented at the hearing if it is repetitive in nature. In addition, the host municipality must provide specific reasons for its determination to approve, approve with conditions or disapprove the proposed development.

If the host municipality approves the proposed development with conditions attached, those conditions must be reasonable and necessary and bear a direct relationship to the burden being imposed by the proposed development. A condition may not involve (1) the correction of an existing deficiency in the environment or public infrastructure, (2) a contribution or payment for the acquisition of land or expansion of public facilities unless the host municipality's municipal ordinance contains the same or a similar condition for development that is not subject to the proposed new MPC article or (3) the contribution or payment associated with the cost of a municipal improvement that exceeds the proposed development's proportionate share of the cost established under the proposed new MPC article or any applicable provision of the MPC or other law or ordinance.[250] The host municipality's acceptance of the proposed development's proportionate share assures that the municipal improvement will be made without any additional contribution or payment from the applicant for that purpose.

As specified in the comment to this proposed section, in determining whether to approve a proposed development of regional significance and impact, the host municipality should consider environmental impacts, analogous to an environmental assessment under 25 Pa. Code § 271.127. The host municipality could review the potential effects on aesthetics, air quality, water quality, stream flow, fish and wildlife, plants, aquatic habitat, threatened or endangered species, water uses, land use and municipal waste plans, with consideration of such features as scenic rivers, recreational river corridors, local parks, State and Federal forests and parks, the Appalachian Trail, historic and archaeological sites, National wildlife refuges, State natural areas, National landmarks, farmland, wetland, special protection watersheds, airports and public water supplies.

The host municipality should also consider the changing trends in population demographics as a result of the proposed development, which could challenge the municipality's social structure and way of life, particularly with respect to certain segments of the population, such as younger individuals, families and retirees. As a result of the proposed development, there could be changes in preferences regarding shopping and eating establishments, the arts, recreation, religious worship and pedestrian walkways.

[250] These provisions are analogous to Fla. Stat. § 380.06(15)(e) and (16). *Supra* p. 68.

Costs regarding highway improvements could be shared among several entities, including the developer, the host municipality, the Commonwealth, the Federal government, the transportation partnership district and planning organizations.

The host municipality may choose to base its review on the Keystone Principles & Criteria for Growth.[251] Accordingly, it may prefer a proposed development that (1) represents the redevelopment or reuse of a previously developed site; (2) is compact, conserves land and is integrated with existing or planned transportation, water and sewer services and schools; (3) provides efficient infrastructure regarding transportation, water and sewer systems; (4) increases job opportunities; (5) fosters sustainable businesses; (6) restores and enhances the environment; (7) enhances recreational and heritage resources; (8) expands housing opportunities; (9) represents the notion of planning regionally and implementing locally and (10) supports the equitable sharing of the benefits and burdens of development.

The host municipality could also consider avoiding or mitigating development in high-hazard locations (such as floodplains, subsidence-prone areas and landslide prone areas) or that adversely impacts environmentally sensitive areas, productive agricultural lands or significant historic resources.

Additional Standards and Criteria

Under the proposed legislation, a municipality may establish additional standards and criteria regarding such matters as thresholds, the contents of an impact analysis, the classification of a development of regional significance and impact, and considerations for determining whether to approve a development of regional significance and impact. These additional standards and criteria, however, must be in conformity with the proposed new MPC article.[252]

Financial Considerations

Municipalities sometimes struggle to maintain services because of tax abatements used as an incentive to develop. Although a municipality cannot control a developer's decision where to build (as that decision is based on market conditions and business judgment if done in compliance with valid municipal law), tax abatements and other financial incentives are powerful tools used to entice businesses to locate or relocate in a particular municipality.

[251] *Supra* note 17 and *supra* pp. 37-43.
[252] Proposed section 612-A. *Infra* p. 129.

An applicant may need financial incentives to mitigate the costs associated with an impact analysis, a mitigation plan or a coordinated and expedited review of a proposed development of regional significance and impact. Therefore, the host municipality or the county in which the host municipality is located may want to provide these financial incentives, and the proposed new MPC article recognizes this matter.[253]

Under the proposed legislation, tax sharing must be implemented to account for contiguous municipalities' additional expenses incurred for police and fire protection, medical services, road maintenance and infrastructure as a result of the development of regional significance and impact.[254]

Many municipalities, and even some counties, lack the resources and capacity for a detailed analysis of regional impacts. The capacity of municipalities should be considered, such that regional planners and engineers are made available to smaller municipalities that lack financial resources and technical expertise. Under the proposed legislation, if a host municipality lacks capacity regarding the professional review of the proposed land development plans, the impact analysis or the mitigation plan, the county in which the host municipality is located must determine whether, and the extent to which, the county can assist the host municipality with such professional review.

Notice Generally

Under the proposed legislation, written notice of any public hearing, hearing or determination must be given to the applicant, any owner of property that is contiguous to the proposed land development and any person requesting a copy of the notice. As appropriate, a municipality must provide timely written notification to any contiguous municipality or any municipality or area school district potentially impacted by the proposed land development.[255]

Appeals

The proposed legislation provides that an appeal of a host municipality's determination of whether to approve a development of regional significance and impact is appealable to the court of common pleas of the county in which the host municipality which made the determination is located, with the parties to the appeal limited to those who appeared before the host municipality at the hearing. The common law principles of standing still apply: for example, the appellant's interest must be adequately sufficient,

[253] Proposed section 613-A. *Infra* pp. 129-130.

[254] The Subcommittee on Community Services and the Subcommittee on Economic Impacts initially addressed the matters of tax sharing and additional expenses for expanded public services as a result of the proposed development.

[255] Proposed section 614-A. *Infra* p. 130.

substantial, direct and immediate. The existing MPC provisions govern the review of the determination. Parties to a contested case may use mediation as an aid to a formal appeal, in which case the existing provisions of the MPC regarding mediation govern.[256]

Conforming Amendments

In light of the addition of the proposed new MPC article, section 909.1 of the MPC is amended to address applications for proposed land developments relating to developments of regional significance and impact. Therefore, "the governing body . . . shall have exclusive jurisdiction to hear and render final adjudications in . . . [a]pplications for a proposed land development under Article VI-A."[257]

Effective Date

The addition of Article VI-A and the amendment of section 909.1 will take effect in six months, thereby providing adequate opportunity for municipalities, counties, land developers, governmental entities, engineers and other professionals, and concerned individuals to become acquainted with the new law before it becomes effective.[258]

[256] Proposed section 615-A. *Infra* pp. 130-131.
[257] *Infra* p. 133.
[258] *Infra* p. 135.

PROPOSED LEGISLATION

The act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, reenacted and amended December 21, 1988 (P.L.1329, No.170), is amended by adding an article to read:

ARTICLE VI-A.

DEVELOPMENTS OF REGIONAL SIGNIFICANCE AND IMPACT

Section 601-A. Purposes.

The purposes of this article are:

(1) To authorize a comprehensive and coordinated review by a municipality regarding a proposed development of regional significance and impact.

(2) To evaluate and mitigate potentially adverse impacts on community services, the economy, the environment, community character, transportation and infrastructure as a result of a development of regional significance and impact.

(3) To develop cost-effective and reasonable accountability measures regarding a development of regional significance and impact.

(4) To encourage timely, well-communicated and well-coordinated procedures to consider and authorize a development of regional significance and impact.

(5) To encourage planning consistent with section 27 of Article 1 of the Constitution of Pennsylvania.

Section 602-A. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Transportation of the Commonwealth.

"Earth disturbance activity." A construction or other human activity, done for the purpose of land development, that disturbs the surface of the land.

"Host municipality." A municipality in which a proposed land development will be located.

"Intermodal terminal." An area or building where the transportation mode for freight or passengers changes.

"Petroleum storage facility." A facility used to store gasoline, motor fuel or other petroleum products with a capacity of more than:

(1) 50,000 barrels if the facility is within 1,000 feet of any water supply; or

(2) 200,000 barrels.

"Quarry." An open excavation used for extracting minerals, rock, stone, sand, gravel or building materials.

"Truck stop facility." An establishment that provides fuel, parking and related goods and services to primarily support truck transportation with at least:

(1) six diesel pumps;

(2) five acres of truck parking; or

(3) 20 truck parking spaces.

"Waste handling facility." A structure or system designed for the collection, processing or disposal of solid waste, including hazardous wastes. The term includes transfer stations, processing plants, recycling plants and disposal systems.

Section 603-A. Applicability of article.

Unless this article specifically provides to the contrary, the provisions of this article supplement this act and do not supersede any provision of this act or any other law.

Comment

It is intended that this article will work in conjunction with the definitions and procedures set forth in the Pennsylvania Municipalities Planning Code. Unless there is a provision in this article specifically providing for a change in current practice, it is not intended that this article will supersede any existing statutory or regulatory provision or overturn any case law authority. Except as otherwise provided in this article, an applicant under this article is not obligated to assume or enforce any measure to preserve and protect the safety, health, welfare and morals of the host municipality or the community in general.

Section 604-A. Scope.

This article shall not apply to any person or legal entity that is regulated by any of the following acts:

(1) The act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

(2) The act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act.

(3) The act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act.

(4) The act of December 18, 1984 (P.L.1069, No.214), known as the Coal and Gas Resource Coordination Act.

(5) The act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act.

(6) The act of December 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act.

Section 605-A. Compliance.

Each municipal, multimunicipal or county comprehensive plan shall include provisions consistent with the provisions contained in this article. If a host municipality is not governed by a municipal or multimunicipal comprehensive plan, the provisions of the county comprehensive plan of the county in which the host municipality is located shall govern and shall be consistent with respect to the provisions contained in this article.

Section 606-A. Thresholds.

(a) General rule.--If an applicant submits to a host municipality an application for land development that meets the thresholds under this section, the applicant shall also submit an impact analysis under section 607-A to the host municipality.

(b) All municipalities.--An impact analysis under section 607-A is required if a proposed land development consists of any of the following:

(1) an airport;

(2) an intermodal terminal;

(3) a petroleum storage facility;

(4) a waste handling facility or the cumulative expansion of an existing waste handling facility that occurs during any three-year period and creates a significant degradation in the level of service with respect to traffic impact, as determined by regulations established by the department;

(5) a quarry or the cumulative expansion of an existing quarry that occurs during any three-year period and creates a significant degradation in the level of service with respect to traffic impact, as determined by regulations established by the department;

(6) a truck stop facility that creates a significant degradation in the level of service with respect to traffic impact, as determined by regulations established by the department;

(7) a land development in a watershed that is unstudied under the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act, and involves at least 100 acres of contributory watershed that is upstream from the land development and at least 25 acres in total land area of earth disturbance activity associated with the land development;

(8) a land development in which the permittees of the receiving sewerage facilities for the development have submitted information that documents that the existing collection, conveyance and treatment system has an existing hydraulic or organic overload or five-year projected overload; or

(9) a land development in which the permittees of the collection, conveyance and treatment system receiving facilities have certified to the host municipality that there is not capacity to receive and treat sewage flows from the development or that the additional wasteload from the development will create a hydraulic or organic

overload or five-year projected overload.

(c) Municipalities with population of 10,000 or more.--An impact analysis under section 607-A is required if a proposed land development is within a host municipality with a population of 10,000 or more, as determined by the most current decennial census, and will result in:

(1) the generation of 3,000 or more average daily trips or 1,500 vehicles per day; or

(2) a significant impact on highway safety or traffic flow, as determined by standards established by the department.

(d) Municipalities with population of less than 10,000.--An impact analysis under section 607-A is required if a proposed land development is within a host municipality with a population of less than 10,000, as determined by the most current decennial census, and will result in:

(1) a significant impact on highway safety or traffic flow, as determined by standards established by the department;

(2) the generation of 3,000 or more average daily trips or 1,500 vehicles per day;

(3) the generation of 100 or more vehicle trips entering or exiting the development during any one-hour time period of any day of the week; or

(4) for existing sites being redeveloped, the generation of 100 or more additional vehicle trips entering or exiting the development during any one-hour time period of any day of the week.

(e) Comprehensive plan.--A host municipality may increase or decrease any numerical threshold in subsection (c) or (d) to apply to the municipality if a revised numerical threshold is adopted in a county plan or multimunicipal plan under Article XI and the host municipality has:

(1) adopted the county plan or multimunicipal plan and conformed its local plans and ordinances to the county plan or multimunicipal plan by implementing a cooperative agreement and adopting appropriate resolutions and ordinances; or

(2) entered into an implementation agreement to carry out the county plan or multimunicipal plan.

Comment

This section accounts for the magnitude and character of a proposed development of regional significance and impact in different municipalities based on population. A development under subsection (c) or (d) could be an attraction, a recreational facility, a commercial development, a hospital, a health care facility, a hotel, an industrial park, a mixed use development (*e.g.*, a commercial development, residential development and office complex), a residential development, an office complex, a facility providing post-secondary educational services (*e.g.*, a public or private vocational or technical school, college or university) or a wholesale and distribution facility. Subsection (e) is intended to foster local control over implementing numerical thresholds, while protecting the interests of affected municipalities.

The *Policies and Procedures for Transportation Impact Studies* by the Bureau of Highway Safety and Traffic Engineering of Pennsylvania Department of Transportation (January 28, 2009) defines the terms "level of service" and "significant degradation," which are referenced in subsection (b)(4) and (5). The transportation impact study warrants set forth in the publication serve as the basis for the criteria under subsections (c)(1) and (2) and (d)(1) and (2).

The calculation of trip generation referenced in this section concerns the total number of vehicular trips occurring at the border of the host municipality as a result of the proposed land development. Therefore, the focus remains on the proposed land development's impact on a contiguous municipality and not on the impact within the host municipality.

The following chart summarizes the text of subsections (b)-(d) and reflects when an impact analysis is required for a particular type of development:

Type of Development	Municipalities with 10,000 or More Residents	Municipalities with Less Than 10,000 Residents
Airport	All	All
Development in an area with insufficient sanitary sewer capacity	All	All
Development in a watershed unstudied under the Storm Water Management Act and involving (1) at least 100 acres of contributory watershed upstream from the development and (2) at least 25 acres in total land area, with earth disturbance activity	All	All
Development involving (1) specific criteria for trip generation or (2) significant impact on highway safety or traffic flow as the result of development or redevelopment, as determined by standards established by the department	3,000+ daily trips or 1,500 vehicles per day	Any of the following: (1) 3,000+ daily trips or 1,500 vehicles per day (2) 100+ vehicle trips entering or exiting during any one-hour time period of any day of the week (3) For existing sites being redeveloped, 100+ additional vehicle trips entering or exiting during any one-hour time period of any day of the week
Intermodal terminal	All	All
Petroleum storage facility	All	All
Quarry	All, including the cumulative expansion of an existing quarry that (1) occurs during any one three-year period and (2) creates a significant degradation in the level of service with respect to traffic impact	All, including the cumulative expansion of an existing quarry that (1) occurs during any one three-year period and (2) creates a significant degradation in the level of service with respect to traffic impact
Truck stop facility	All, if there is a significant degradation in the level of service with respect to traffic impact	All, if there is a significant degradation in the level of service with respect to traffic impact

Type of Development	Municipalities with 10,000 or More Residents	Municipalities with Less Than 10,000 Residents
Waste handling facility	All, including the cumulative expansion of an existing facility that (1) occurs during any one three-year period and (2) creates a significant degradation in the level of service with respect to traffic impact	All, including the cumulative expansion of an existing facility that (1) occurs during any one three-year period and (2) creates a significant degradation in the level of service with respect to traffic impact

Section 607-A. Impact analysis.

(a) Submission.--An applicant shall submit an impact analysis to the host municipality as required by section 606-A.

(b) Costs.--An applicant shall be responsible for all costs involving the preparation and review of the impact analysis.

(c) Purpose.--An impact analysis under this section shall analyze the effect of the proposed land development on the host municipality and other affected municipalities and shall address all of the following:

(1) The financial impact regarding any expanded emergency and infrastructure services, including services regarding police, fire, ambulance, medical care, sewer, water, transportation and utilities.

(2) The disturbance of agricultural areas, forested areas and greenfields.

(3) The effect on natural resources, historic resources and tourism, including parks, open spaces, historic structures, ethnic heritage sites, the character of neighborhoods and areas, historic landscapes, scenic views and wildlife habitats.

(4) The effect on residential housing opportunities, including property values and the potential number and character of new housing units.

(5) The redevelopment of brownfields or greyfields.

(6) The likelihood that the proposed land development will spur other land development in the area.

(7) Subject to traffic impact guidelines developed by the department, the effect on transportation and transportation infrastructure. Consideration shall be given to trip generation, trip distribution and area municipalities.

(8) Any other matter that is required by an applicable provision in the municipal or multimunicipal ordinance that governs the host municipality or that is covered by an applicable provision in the municipal, multimunicipal or county comprehensive plan for the host municipality.

Comment

This section is intended to provide specific information to a host municipality during its consideration of a proposed development of regional significance and impact. A proposed development may yield financial benefits to a community, but it may also create financial costs and adversely affect the community. Although a harms-benefit analysis may be subjective and speculative in some matters, it may reveal certain objective and quantifiable information in the nature of direct, indirect, temporary or permanent effects concerning the proposed development. Ultimately, this information may serve as a basis for a proactive approach to planning, in order to minimize problems and account for the positive and negative aspects of a proposed development. An impact analysis under this section should be done at the same time as an application for a highway occupancy permit.

An analysis of the financial impact regarding any expanded emergency and infrastructure services under subsection (c)(1) should include consideration of the public revenue generated by the proposed development, with attention given to business privilege taxes, earned income taxes, real estate taxes, occupation taxes and local sales taxes (including, *e.g.*, the regional asset district tax in Allegheny County). Tax increment financing could also be noted.

A host municipality may require that an impact analysis consider the effects on floodplains or floodways.

Subsection (c)(7) includes an analysis of the impacts on public transportation.

With respect to subsection (c)(8), section 301(a)(5) provides that the municipal, multimunicipal or county comprehensive plan shall include a statement indicating: (1) that the existing and proposed development is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities or (2) measures taken to provide buffers or other transitional devices between disparate uses. There must also be "a statement indicating that the existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan."

Although this section places a financial burden on an applicant, section 613-A(a) specifies that the host municipality may provide for financial incentives to the applicant to mitigate costs.

Section 608-A. Classification as development of regional significance and impact.

(a) Notice of public hearing.--The following shall apply to a notice of public hearing:

(1) In addition to any other notice requirement under this act, a host municipality shall provide timely written notice of the public hearing under this section to:

(i) each contiguous municipality; and

(ii) each municipality that is potentially impacted by the proposed land development and identified in the impact analysis under section 607-A.

(2) The notice shall specify that the host municipality is considering whether to classify the proposed land development as a development of regional significance and impact.

(b) Public hearing.--The following shall apply to a public hearing:

(1) A host municipality shall conduct a public hearing to review the impact analysis under section 607-A and determine whether the proposed land development is a development of regional significance and impact.

(2) A representative from a municipality receiving notice under subsection (a) may provide public comment to the host municipality regarding the issue of whether to classify the proposed land development as a development of regional significance and impact.

(c) Determination.--The following shall apply to a process by which a host municipality determines whether to classify a proposed land development as a development of regional significance and impact:

(1) The host municipality shall specifically consider the potential direct impacts on other municipalities.

(2) The host municipality shall provide specific reasons supporting its determination.

(d) Effect.--Once a proposed land development is classified as a development of regional significance and impact, it shall be subject to the provisions of this article.

Comment

In determining whether to classify the proposed land development as a development of regional significance and impact, the host municipality must consider the potential direct impacts on other municipalities, as set forth in the impact analysis. However, the host municipality is not bound by any position taken by the other municipalities. The position of another municipality serves as a factor in the host municipality's determination; another municipality may not dictate the ultimate determination by the host municipality. The classification of a proposed land development as a development of regional significance and impact is not a determination subject to court appeal.

Section 609-A. Mitigation plan.

(a) Submission.--An applicant shall submit to the host municipality a written mitigation plan that explains the nature and extent of mitigation efforts to address any

known or potential harm or negative effect cited by the host municipality in the classification of the proposed land development as a development of regional significance and impact under section 608-A.

(b) Professional review.--At a minimum, all of the following shall review the mitigation plan submitted under this section and prepare written comments to the host municipality regarding the effect of the proposed mitigation measures on the public health, safety and welfare:

(1) A traffic engineer.

(2) An individual who is:

(i) licensed in this Commonwealth to perform services or activities related to the provisions of this article; and

(ii) qualified by training and experience to perform such services or activities with technical competence.

(c) Costs.--An applicant shall be responsible for all costs involving the preparation and review of the mitigation plan.

Comment

Not every impact described in the impact analysis may need mitigation. If no mitigation is anticipated for a particular impact, the applicant should so specify in the mitigation plan. This section requires a minimum of two experts to review the mitigation plan. The host municipality must balance the need for review against the costs that will be incurred by the applicant. As such, the host municipality must act reasonably in requiring review by additional experts pursuant to subsection (b). An individual described in subsection (b)(2) may include a professional engineer, a geologist or a municipal or regional land use planner.

Section 610-A. Coordinated and expedited review.

(a) Request.--An applicant may request a coordinated and expedited review of any aspect of a proposed development of regional significance and impact by the department, the Department of Environmental Protection or any other governmental entity whose approval is required for the proposed development.

(b) Governmental cooperation.--The department, the Department of Environmental Protection and any other governmental entity whose approval is required for the proposed land development shall ensure adequate communication and cooperation by and between the governmental entities.

(c) Submission of information.--In consultation with the department, the Department of Environmental Protection and any other governmental entity whose approval is required for the proposed land development, an applicant shall submit to each such governmental entity the necessary information for review of the proposed land development.

(d) Report.--Within 45 days after submission of all the necessary information under subsection (c) for a coordinated and expedited review, each governmental entity receiving the information shall prepare a written report of findings, comments and recommendations regarding the proposed land development and send the report to the applicant and host municipality.

(e) Discretion of governmental entity.--The following shall apply to the discretion of a governmental entity under this section:

(1) Nothing in this section shall require the department, the Department of Environmental Protection or any other governmental entity whose approval is

required for the proposed land development to conduct a coordinated and expedited review.

(2) Upon the written consent of the applicant, the department, the Department of Environmental Protection or any other governmental entity whose approval is required for the proposed land development may extend the time period under subsection (d).

(f) Fees.--The following shall apply to fees under this section:

(1) An applicant shall be responsible for all fees involving any coordinated and expedited review of a proposed development of regional significance and impact under this section.

(2) Unless the applicant agrees otherwise, if the department, the Department of Environmental Protection or any other governmental entity whose approval is required for the proposed land development cannot complete the coordinated and expedited review and submit the report within the time period under subsection (d), the governmental entity shall return to the applicant the full amount of the fee collected under this section.

Comment

Subsection (e) specifies that the Department of Transportation, the Department of Environmental Protection or any other governmental entity whose approval is required for the proposed land development may decline to conduct a coordinated and expedited review, given the time period under subsection (d) or limited resources. If any of these governmental entities does agree to conduct such a review, it may charge an additional fee for this service, in light of the necessary additional resources and staff.

Section 611-A. Municipal review and determination.

(a) Hearing generally.--The host municipality shall conduct a hearing to review a proposed development of regional significance and impact.

(b) Considerations.--At the hearing under this section, the host municipality shall consider all of the following:

(1) Subject to subsection (c), testimony and other information from:

(i) The department.

(ii) The Department of Environmental Protection.

(iii) Any other governmental entity whose approval is required for the proposed land development.

(iv) The county in which the host municipality is located.

(v) Contiguous municipalities.

(vi) Municipalities that are potentially impacted by the proposed land development.

(vii) Area school districts potentially impacted by the proposed land development.

(viii) Concerned individuals, municipal and regional planners, engineers, persons potentially impacted by the proposed land development and other persons as determined by the host municipality.

(2) The impact analysis under section 607-A and other reports concerning the proposed land development.

(3) The mitigation plan under section 609-A.

(4) Whether the proposed land development is consistent with an applicable provision in:

(i) a municipal, multimunicipal or county comprehensive plan; and

(ii) a municipal or multimunicipal ordinance or regulation.

(5) The totality of impacts regarding the proposed land development and the cumulative effect of development on the host municipality and affected municipalities.

(c) Testimony.--The host municipality may limit the testimony to be presented at the hearing under this section if it is repetitive in nature.

(d) Determination.--Based on the testimony and other information received with respect to a proposed development of regional significance and impact, the host municipality may:

(1) Approve the proposed development.

(2) Approve the proposed development with conditions attached. A condition shall be reasonable and necessary to mitigate any impact or additional impact attributable to the proposed development and shall bear a direct relationship to the burden being imposed by the proposed development. A condition may not involve:

(i) the correction of an existing deficiency in the environment or public infrastructure;

(ii) a contribution or payment for the acquisition of land or expansion of public facilities unless the host municipality's municipal ordinance contains the same or a similar condition for development that is not subject to this article; or

(iii) the contribution or payment associated with the cost of a municipal improvement that exceeds the proposed development's proportionate share of the cost established under this article or any applicable provision of this act or other law or ordinance. By accepting the proposed development's proportionate share, the host municipality is assuring that the municipal improvement be made without any additional contribution or payment from the applicant for that purpose.

(3) Disapprove the proposed development.

(e) Reasons.--The host municipality shall provide specific reasons supporting its determination under subsection (d).

Comment

In determining whether to approve a proposed development of regional significance and impact, the host municipality should consider the following:

(1) Environmental impacts, analogous to an environmental assessment under 25 Pa. Code § 271.127. The host municipality could review the potential effects on aesthetics, air quality, water quality, stream flow, fish and wildlife, plants, aquatic habitat, threatened or endangered species, water uses, land use and municipal waste plans, with consideration of such features as scenic rivers, recreational river corridors, local parks, State and Federal forests and parks, the Appalachian Trail, historic and archaeological sites, National wildlife refuges, State natural areas, National landmarks, farmland, wetland, special protection watersheds, airports and public water supplies.

(2) Changing trends in population demographics as a result of the proposed development, which could challenge the municipality's social structure and way of life, particularly with respect to certain segments of the population, such as younger individuals, families and retirees. As a result of the proposed development, there could be changes in preferences regarding shopping and eating establishments, the arts, recreation, religious worship and pedestrian walkways.

Costs regarding highway improvements could be shared among several entities, including the developer, the host municipality, the Commonwealth, the Federal government, the transportation partnership district and planning organizations.

The host municipality may choose to base its review on the Keystone Principles & Criteria for Growth, Investment & Resource Conservation, developed by the Interagency Land Use Team and adopted by the Economic Development Cabinet on May 31, 2005. Accordingly, it may prefer a proposed development that (1) represents the redevelopment or reuse of a previously developed site; (2) is compact, conserves land and is integrated with existing or planned transportation, water and sewer services and schools; (3) provides efficient infrastructure regarding transportation, water and sewer systems; (4) increases job opportunities; (5) fosters sustainable businesses; (6) restores and enhances the environment; (7) enhances recreational and heritage resources; (8) expands housing opportunities; (9) represents the notion of planning regionally and implementing locally and (10) supports the equitable sharing of the benefits and burdens of development.

The host municipality could consider avoiding or mitigating development in high-hazard locations (such as floodplains, subsidence-prone areas and landslide prone areas) or that adversely impacts environmentally sensitive areas, productive agricultural lands or significant historic resources.

Section 612-A. Additional standards and criteria.

Nothing in this article shall restrict a municipality from establishing additional standards and criteria under this article, in conformity with this act, including, but not limited to, thresholds under subsection 606-A, the contents of an impact analysis under section 607-A(c), the classification of a development of regional significance and impact under section 608-A and considerations under section 611-A(b).

Section 613-A. Financial considerations.

(a) Applicant costs.--The host municipality or the county in which the host municipality is located may provide financial incentives to an applicant to mitigate the costs regarding an impact analysis, a mitigation plan or a coordinated and expedited

review of a proposed development of regional significance and impact.

(b) Tax sharing.--The host municipality shall develop a tax sharing plan for contiguous municipalities adversely affected by an approved development of regional significance and impact, as a result of additional expenses incurred for police, fire, medical services, road maintenance and infrastructure.

(c) Professional review.--If a host municipality lacks capacity regarding the professional review of the proposed land development plans, the impact analysis or the mitigation plan, the county in which the host municipality is located shall determine whether and the extent to which the county can assist the host municipality with such professional review.

Section 614-A. Notice generally.

Except as otherwise provided in this article, the other provisions of this act shall govern notice of any public hearing, hearing or determination. Written notice shall be given to the applicant, any owner of property that is contiguous to the proposed land development and any person requesting a copy of the notice. As appropriate, a municipality shall provide timely written notification to any contiguous municipality or any municipality or area school district potentially impacted by the proposed land development.

Section 615-A. Appeals.

(a) Jurisdiction.--An appeal of a determination under section 611-A shall be heard by the court of common pleas of the county in which the host municipality which made the determination is located.

(b) Parties.--An appeal under this section shall be limited to those parties who appeared before the host municipality at the hearing.

(c) Review.--The review of the determination under section 611-A shall be governed by Article X-A.

(d) Mediation.--Parties to a contested case may use mediation as an aid to a formal appeal, in which case the provisions of section 908.1 shall govern.

Comment

Although subsection (b) grants standing to those parties who appeared before the host municipality, the common law principles of standing still apply: for example, the appellant's interest must be adequately sufficient, substantial, direct and immediate.

CONFORMING AMENDMENTS

Section 909.1(b) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, reenacted and amended December 21, 1988 (P.L.1329, No.170), is amended by adding a paragraph to read:

Section 909.1. Jurisdiction.

* * *

(b) The governing body or, except as to clauses (3), (4) and (5), the planning agency, if designated, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

* * *

(8) Applications for a proposed land development under Article VI-A.

EFFECTIVE DATE

The following amendments to the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, reenacted and amended December 21, 1988 (P.L.1329, No.170), shall take effect in six months:

(1) The addition of Article VI-A.

(2) The amendment of section 909.1.

APPENDIX

House Bill No. 613 of 2011 (Printer's No. 597) 139

House Resolution No. 845 of 2008..... 159

PRINTER'S NO. 597

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 613 Session of 2011

INTRODUCED BY DEASY, MUSTIO, MATZIE, VULAKOVICH, CALTAGIRONE, COHEN, D. COSTA, HARKINS, KIRKLAND, KORTZ, KOTIK, MARSHALL, MURPHY, MURT, READSHAW AND WAGNER, FEBRUARY 10, 2011

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 10, 2011

AN ACT

Amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, transferring provisions relating to environmental advisory councils; providing for the designation and regulation of geologically hazardous areas throughout this Commonwealth to protect people and limit property damage and the disruption of commerce from the possible dangers associated with land development in areas that are prone to landslides, sinkholes or other geologic hazards; imposing duties and conferring powers on the Department of Environmental Protection, the Department of Conservation and Natural Resources and municipalities; and providing for enforcement and remedies.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Subchapter B of Chapter 23 of Title 53 of the Pennsylvania Consolidated Statutes is repealed:

[SUBCHAPTER B

ENVIRONMENTAL ADVISORY COUNCILS

Sec.

2321. Scope of subchapter.

2322. Establishment of environmental advisory council.

2323. Composition and organization of council.

2324. Powers and duties of council.
2325. Records and reports.
2326. Appropriations for expenses of council.
2327. Status of existing agencies unaffected.
2328. Assistance from State Conservation Commission.
2329. Assistance from Department of Community and Economic Development.

§ 2321. Scope of subchapter.

This subchapter applies to all municipal corporations.

§ 2322. Establishment of environmental advisory council.

The governing body of any municipal corporation or group of two or more municipal corporations may by ordinance establish an environmental advisory council to advise other local governmental agencies, including, but not limited to, the planning commission, park and recreation boards and elected officials, on matters dealing with protection, conservation, management, promotion and use of natural resources, including air, land and water resources, located within its or their territorial limits.

§ 2323. Composition and organization of council.

(a) Composition.--An environmental advisory council shall be composed of no less than three nor more than seven residents of the municipal corporation establishing the council, who shall be appointed and all vacancies filled by the governing body. Where two or more municipal corporations jointly establish an environmental advisory council, the members shall be appointed in the same manner by each of the respective municipal corporations establishing the council, each constituent municipal corporation to have equal membership on the joint council.

(b) Term of office.--Council members shall serve for three years except that initial appointments shall be so staggered that the terms of approximately one-third of the membership shall expire each year, the terms of their successors to be of three years each.

(c) Compensation and expenses.--Members shall receive no compensation for their services but shall be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties.

(d) Chairman.--The appointing authority shall designate the chairman of the council except that in joint councils the chairman shall be elected by the duly selected members. Whenever possible, one member shall also be a member of the municipal planning board.

§ 2324. Powers and duties of council.

(a) General rule.--An environmental advisory council shall have the power to:

(1) Identify environmental problems and recommend plans and programs to the appropriate agencies for the promotion and conservation of the natural resources and for the protection and improvement of the quality of the environment within its territorial limits.

(2) Make recommendations as to the possible use of open land areas of the municipal corporations within its territorial limits.

(3) Promote a community environmental program.

(4) Keep an index of all open areas, publicly or privately owned, including flood-prone areas, swamps and other unique natural areas, for the purpose of obtaining information on the proper use of those areas.

(5) Advise the appropriate local government agencies, including the planning commission and recreation and park board or, if none, the elected governing body or bodies within its territorial limits, in the acquisition of both real and personal property by gift, purchase, grant, bequest, easement, devise or lease, in matters dealing with the purposes of this subchapter.

(b) Limitation.--An environmental advisory council shall not exercise any powers or perform any duties which by law are conferred or imposed upon a Commonwealth agency.

§ 2325. Records and reports.

An environmental advisory council shall keep records of its meetings and activities and shall make an annual report which shall be printed in the annual report of the municipal corporation or, if none, otherwise made known and available.

§ 2326. Appropriations for expenses of council.

The governing body of any municipal corporation establishing an environmental advisory council may appropriate funds for the expenses incurred by the council. Appropriations may be expended for those administrative, clerical, printing and legal services as may be required and as shall be within the limit of funds appropriated to the council. The whole or any part of any funds so appropriated in any year may be placed in a conservation fund and allowed to accumulate from year to year or may be expended in any year.

§ 2327. Status of existing agencies unaffected.

This subchapter shall not be construed to require a municipal corporation to abolish an existing commission with a related responsibility or to prevent its establishment.

§ 2328. Assistance from State Conservation Commission.

The State Conservation Commission shall establish a program of assistance to environmental advisory councils that may include educational services, exchange of information, assignment of technical personnel for natural resources planning assistance and the coordination of State and local conservation activities.

§ 2329. Assistance from Department of Community and Economic Development.

The Department of Community and Economic Development shall establish a program of assistance to environmental advisory councils in planning for the management, use and development of open space and recreation areas.]

Section 2. Title 53 is amended by adding a part to read:

PART VI

ENVIRONMENTAL MATTERS

Subpart

A. Environmental Planning

B. Special Considerations

SUBPART A

ENVIRONMENTAL PLANNING

Chapter

71. Environmental Advisory Councils

CHAPTER 71

ENVIRONMENTAL ADVISORY COUNCILS

Sec.

7101. Scope of chapter.

7102. Establishment of environmental advisory council.

7103. Composition and organization of council.

7104. Powers and duties of council.

7105. Records and reports.

7106. Appropriations for expenses of council.
7107. Status of existing agencies unaffected.
7108. Assistance from State Conservation Commission.
7109. Assistance from Department of Community and Economic Development.

§ 7101. Scope of chapter.

This chapter applies to all municipal corporations.

§ 7102. Establishment of environmental advisory council.

The governing body of any municipal corporation or group of two or more municipal corporations may by ordinance establish an environmental advisory council to advise other local governmental agencies, including, but not limited to, the planning commission, park and recreation boards and elected officials, on matters dealing with protection, conservation, management, promotion and use of natural resources, including air, land and water resources, located within its or their territorial limits.

§ 7103. Composition and organization of council.

(a) Composition.--An environmental advisory council shall be composed of not less than three nor more than seven residents of the municipal corporation establishing the council who shall be appointed and all vacancies filled by the governing body. Where two or more municipal corporations jointly establish an environmental advisory council, the members shall be appointed in the same manner by each of the respective municipal corporations establishing the council, each constituent municipal corporation shall have equal membership on the joint council.

(b) Term of office.--Council members shall serve for three years except that initial appointments shall be so staggered

that the terms of approximately one-third of the membership shall expire each year, the terms of their successors shall be three years each.

(c) Compensation and expenses.--Members shall receive no compensation for their services but shall be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties.

(d) Chairman.--The appointing authority shall designate the chairman of the council, except that in joint councils, the chairman shall be elected by the duly selected members. Whenever possible, one member shall also be a member of the municipal planning board.

§ 7104. Powers and duties of council.

(a) General rule.--An environmental advisory council shall have the power to:

(1) Identify environmental problems and recommend plans and programs to the appropriate agencies for the promotion and conservation of the natural resources and for the protection and improvement of the quality of the environment within its territorial limits.

(2) Make recommendations as to the possible use of open land areas of the municipal corporations within the council's territorial limits.

(3) Promote a community environmental program.

(4) Keep an index of all open areas, publicly or privately owned, including flood-prone areas, swamps and other unique natural areas, for the purpose of obtaining information on the proper use of those areas.

(5) Advise the appropriate local government agencies, including the planning commission and recreation and park

board or, if none, the elected governing body or bodies within the council's territorial limits, in the acquisition of both real and personal property by gift, purchase, grant, bequest, easement, devise or lease, in matters dealing with the purposes of this chapter.

(b) Limitation.--An environmental advisory council shall not exercise any powers or perform any duties which by law are conferred or imposed upon a Commonwealth agency.

§ 7105. Records and reports.

An environmental advisory council shall keep records of its meetings and activities and shall make an annual report which shall be printed in the annual report of the municipal corporation or, if none, otherwise made known and available.

§ 7106. Appropriations for expenses of council.

The governing body of any municipal corporation establishing an environmental advisory council may appropriate funds for the expenses incurred by the council. Appropriations may be expended for those administrative, clerical, printing and legal services as may be required and as shall be within the limit of funds appropriated to the council. The whole or any part of any funds so appropriated in any year may be placed in a conservation fund and allowed to accumulate from year to year or may be expended in any year.

§ 7107. Status of existing agencies unaffected.

This chapter shall not be construed to require a municipal corporation to abolish an existing commission with a related responsibility or to prevent its establishment.

§ 7108. Assistance from State Conservation Commission.

The State Conservation Commission shall establish a program of assistance to environmental advisory councils that may

include educational services, exchange of information, assignment of technical personnel for natural resources planning assistance and the coordination of State and local conservation activities.

§ 7109. Assistance from Department of Community and Economic Development.

The Department of Community and Economic Development shall establish a program of assistance to environmental advisory councils in planning for the management, use and development of open space and recreation areas.

SUBPART B

SPECIAL CONSIDERATIONS

Chapter

75. Geologically Hazardous Areas

CHAPTER 75

GEOLOGICALLY HAZARDOUS AREAS

Subchapter

A. Preliminary Provisions

B. Agency and Municipal Responsibilities

C. Enforcement and Remedies

D. Miscellaneous Provisions

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

7501. Short title of chapter.

7502. Purpose.

7503. Definitions.

§ 7501. Short title of chapter.

This chapter shall be known and may be cited as the Geologically Hazardous Areas Act.

§ 7502. Purpose.

The purpose of this chapter is to:

(1) Protect people and property from the dangers and damage associated with earth disturbance activity in geologically hazardous areas that may be prone to landslides or sinkholes and other hazardous conditions, such as hazardous rock and soil slippage, and other soil management problems.

(2) Recognize and minimize the man-made conditions that increase the potential for:

(i) Landslides and other gravity-driven movements of susceptible rock and soil.

(ii) Sinkhole development and related subsidence in soluble units.

(iii) Degradation of surface and groundwater resources associated with the alteration of geologic conditions.

(3) Authorize a comprehensive and coordinated program to regulate earth disturbance activity in geologically hazardous areas using sound land use practices designed to prevent damage to and destruction of private and public property and structures, to prevent the disruption of commerce and preserve and restore the natural ecological systems.

(4) Encourage administration, management and stewardship of geologically hazardous areas consistent with the obligation to avoid the unnecessary expenditure of public moneys, the Commonwealth's duty as trustee of natural resources and the people's constitutional right to the preservation of the natural, scenic, aesthetic and historic values of the environment.

§ 7503. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Closed depression." Part of the land surface on a site that drains internally, has generally sunk to a variable depth and is generally characterized by a downward movement of soil into bedrock voids without breaking the ground surface.

"Department." The Department of Environmental Protection of the Commonwealth.

"Earth disturbance activity." A construction or other human activity that disturbs the surface of the land, including, but not limited to, land clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling cultivation, operation of animal heavy use areas, timber harvesting activities, road maintenance activities, oil and gas activities, well drilling, oil extraction and the moving, depositing, stockpiling or storing of soil, rock or earth materials, provided, however, the term does not include, and this act does not regulate, any surface or subsurface activities of any person or legal entity that is regulated by the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act, the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, or the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act.

"Geologically hazardous area." An area with geologic

formations or soil conditions, or both, that under natural conditions or when disturbed are documented by a licensed professional to be geologically susceptible to cause, or historically have caused, a hazardous condition.

"Hazardous condition." Any condition that may include, but not be limited to, a mass earth movement, such as a soil and rock slide, acid formation or sinkhole development, that:

(1) has a negative environmental impact;

(2) constitutes a danger or potential danger to life, health or property; or

(3) threatens the safety, use or stability of property, public ways, structures or utilities.

"Karst." A type of topography that is formed over limestone, dolomite or gypsum by bedrock solution and characterized by closed depressions or sinkholes, caves and underground drainage.

"Licensed professional." A person licensed by the Commonwealth in the applicable practice under the act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law.

"Sinkhole." A surface feature that is:

(1) formed in a karst area;

(2) characterized by a roughly circular hole in the ground of variable size and depth; and

(3) the result of the movement of soil, rocks or similar materials down into voids in the limestone bedrock or regolith.

SUBCHAPTER B

AGENCY AND MUNICIPAL RESPONSIBILITIES

Sec.

7511. Duties of Department of Conservation and Natural

Resources.

7512. Geologic reports.

7513. Duties of department.

7514. Inspections.

7515. Liability.

7516. Conditioned approval by municipality.

7517. Scope.

§ 7511. Duties of Department of Conservation and Natural Resources.

(a) General rule.--The Department of Conservation and Natural Resources shall:

(1) Develop techniques and criteria for mapping geologically hazardous areas in this Commonwealth.

(2) Identify and delineate geologically hazardous areas in this Commonwealth.

(3) Analyze:

(i) The type and nature of rock and soil susceptible to acid formation, a landslide, a sinkhole or development of karst that may result in a hazardous condition.

(ii) Other relevant factors determined by the Department of Conservation and Natural Resources.

(4) Create an inventory of data developed under this section that is publicly available.

(5) Notify the municipalities identified as falling within a geologically hazardous area or having within their boundaries a geologically hazardous area.

(b) Report.--Within two years following enactment of this chapter, the Department of Conservation and Natural Resources shall report to the General Assembly the information gathered under subsection (a), including the mapping of geologically

hazardous areas of high priority, as defined by the Department of Conservation and Natural Resources, and a projected plan to continue gathering the information directed by subsection (a).

(c) Review and update.--The Department of Conservation and Natural Resources shall periodically review and update the following, which shall be forwarded to the department:

(1) The techniques and criteria for mapping geologically hazardous areas in this Commonwealth.

(2) The maps of geologically hazardous areas in this Commonwealth.

(d) Performance of duties.--In performing its duties under this section, the Department of Conservation and Natural Resources shall:

(1) Review aerial photographs and maps, soil data and geologic information, which may include:

(i) Data and reports from other departments.

(ii) Geologic reports under section 7512 (relating to geologic reports).

(2) Perform site visits and studies as necessary.

(e) Publication of hazardous areas.--The Department of Conservation and Natural Resources shall publish in the Pennsylvania Bulletin a list of all municipalities that fall within a geologically hazardous area or have geologically hazardous areas within their boundaries, as identified and delineated under subsection (a)(2). The list shall be published at least annually and more often if updated, but at least 30 days prior to the municipality being officially designated.

(f) Regulations.--The Department of Conservation and Natural Resources may promulgate regulations necessary to implement this section.

§ 7512. Geologic reports.

(a) General rule.--A person proposing to undertake earth disturbance activity within a geologically hazardous area shall submit a geologic report, prepared and sealed by a licensed professional, to the municipality and department or its delegated designee, along with:

(1) any application to discharge pollutants or storm water under a National Pollutant Discharge Elimination System Permit for Discharges Associated with Construction Activities or any other authorization relating to earthmoving activities;

(2) a plan to control erosion and sediment required under departmental rules and regulations; or

(3) a plan to manage postconstruction storm water required under departmental rules and regulations.

(b) Additional requirements.--In addition to the application requirements for the items set forth in subsection (a), a geologic report under this section must adequately identify the proposed courses of action and their sequence, to be taken during and after construction to eliminate or reduce the occurrence of a hazardous condition as a result of the proposed earth disturbance activity.

(c) Fees.--A person submitting a geologic report under this section shall be responsible for all fees involving the preparation and review of the report.

(d) Review.--The department, its delegated designee or a municipality may have a geologic report submitted under this section reviewed by a licensed professional independent from the preparer and sealer of the submitted report.

(e) Scope.--This section shall not apply to a municipality

engaging in road construction and maintenance activities.

§ 7513. Duties of department.

(a) Approval.--The department may authorize earth disturbance activity in a geologically hazardous area in accordance with applicable laws and regulations if the department determines that the geologic report under section 7512 (relating to geologic reports) adequately identifies the proposed courses of action to be taken during and after construction to eliminate or reduce the occurrence of a hazardous condition as a result of the proposed earth disturbance activity.

(b) Disapproval.--The department may refuse to authorize earth disturbance activity in a geologically hazardous area if the geologic report under section 7512 fails to adequately identify proposed courses of action to be taken during and after construction to eliminate or reduce the occurrence of a hazardous condition as a result of the proposed earth disturbance activity.

(c) Delegation of permit review.--The department may delegate its permit review, enforcement and inspection authority under this chapter to a county conservation district.

(d) Duties.--In issuing orders or permits, and in taking any other action under this chapter, the department shall:

(1) Review and take appropriate action on all permit applications submitted under this chapter and issue, modify, suspend, limit, renew or revoke permits under this chapter and departmental regulations.

(2) Receive and act upon written complaints.

(3) Issue orders necessary to implement this chapter or departmental regulations.

(e) Regulations.--The Environmental Quality Board may promulgate regulations necessary to implement this chapter.

§ 7514. Inspections.

(a) Condition.--Approval of earth disturbance activity within a geologically hazardous area may be conditioned upon the granting of permission for an agent or employee of a municipality or the department to:

(1) Enter a property to survey a geologically hazardous area or ascertain the location of a structure.

(2) Enter a property or structure to ascertain compliance or noncompliance with this chapter, municipal and Commonwealth law, regulation, approval, conditional approval or order.

(b) Inspection warrant.--If an agent or employee of a municipality or the department charged with the enforcement of the provisions of this chapter has been improperly refused access to the property to survey or inspect as authorized by subsection (a) or reasonably requires access to the property without prior notice to the owner, the agent or employee of the municipality or the department may apply for an inspection warrant to any Commonwealth official authorized by law to issue a search or inspection warrant to permit the agent or employee of the municipality or the department to access and inspect the property. In determining whether to issue an inspection warrant, sufficient probable cause is that the inspection is necessary to properly enforce the provisions of this chapter.

(c) Grounds.--The department shall promptly inspect earth disturbance activity within a geologically hazardous area when the municipality presents information to the department that gives the department probable cause to believe that there is a

violation of this chapter, including a violation of regulation, approval, conditional approval or order issued under this chapter. The department shall notify the municipality of this inspection and allow a municipal inspector from the municipality to accompany the departmental inspector during the inspection. If the department determines that there is insufficient information to give the department probable cause to believe that a violation is occurring or has occurred, the department shall promptly provide a written explanation to the municipality of its decision not to inspect.

§ 7515. Liability.

(a) General rule.--Approval, conditional approval or issuance of a permit under this chapter does not:

(1) relieve a person from liability for damage to persons or property resulting from the issuance or compliance, or as otherwise imposed by law; or

(2) impose any liability for damages to persons or property on the municipality or Commonwealth or its officers, employees or agents.

(b) Costs.--Any person conducting earth disturbance activity in violation of this chapter or a regulation or order under this chapter is liable for the costs of abatement of any pollution and any public nuisance caused by the violation.

§ 7516. Conditioned approval by municipality.

A municipality may not finally approve a proposal involving earth disturbance activity under this chapter unless and until the department approves the earth disturbance activity, but a municipality may conditionally approve a proposal involving earth disturbance activity under this chapter, subject to approval or conditional approval by the department.

§ 7517. Scope.

This chapter shall not apply to any person or legal entity that is regulated by the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act, the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, or the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act.

SUBCHAPTER C

ENFORCEMENT AND REMEDIES

Sec.

7521. Enforcement and remedies.

§ 7521. Enforcement and remedies.

(a) Unlawful conduct.--It is unlawful to:

(1) Fail to comply with any departmental rule, regulation, order, permit or license.

(2) Violate this chapter or any rule or regulation adopted under this chapter.

(3) Hinder, obstruct, prevent or interfere with the department, its personnel or any delegated designee in the performance of any duty under this chapter.

(b) Remedies and enforcement under The Clean Streams Law.--Except as provided in subsection (c), for purposes of enforcement of this chapter and remedies under this chapter, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, shall govern.

(c) Scope.--Nothing in subsection (b) is intended to broaden the scope of persons that must comply with the provisions of

this chapter.

(d) Construction.--An offense that constitutes a violation of this chapter and The Clean Streams Law shall not result in dual penalties.

SUBCHAPTER D

MISCELLANEOUS PROVISIONS

Sec.

7531. Administration.

7532. Effect on other law.

§ 7531. Administration.

The General Assembly shall appropriate the funds necessary to implement this chapter.

§ 7532. Effect on other law.

Nothing contained in this chapter shall be construed to create additional review powers already regulated by other law.

Section 3. The addition of 53 Pa.C.S. Ch. 71 is a continuation of 53 Pa.C.S. Ch. 23 Subch. B. The provisions of this act shall not affect any act done, liability incurred, right accrued or vested or any suit or prosecution pending or to be instituted under the authority of 53 Pa.C.S. Ch. 23 Subch. B.

Section 4. This act shall take effect immediately.

PRINTER'S NO. 4204

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 845 Session of 2008

INTRODUCED BY PETRONE, MUSTIO, RAMALEY AND VULAKOVICH, JULY 9, 2008

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JULY 9, 2008

A RESOLUTION

Directing the Joint State Government Commission to conduct an in-depth study of the subject of developments of regional significance and impact; and requiring a report.

WHEREAS, On September 19, 2006, a massive landslide occurred in Kilbuck Township, Allegheny County; and

WHEREAS, On October 24, 2006, the House of Representatives adopted House Resolution 897, which directed the Joint State Government Commission to conduct an in-depth investigation into the September 19, 2006, landslide and compile a report on its findings and recommendations; and

WHEREAS, House Resolution 897 authorized the appointment of a four-member legislative task force and an advisory committee to assist the task force in this undertaking; and

WHEREAS, The advisory committee established under House Resolution 897 represented a broad range of expertise and interests and included attorneys, geologists, engineers, land use planners, representatives of local and county governments, representatives of community development organizations,

environmental advocates, representatives of Communities First!, the executive director of the Joint Legislative Air and Water Pollution Control and Conservation Committee, a representative from the Department of Conservation and Natural Resources, a representative from the Department of Environmental Protection and a representative from the Department of Transportation; and

WHEREAS, The task force and advisory committee noted that possible issues contributing to the Kilbuck landslide included geologically hazardous conditions at the site, inadequate coordination among regulatory decisionmakers and lack of capacity by some municipalities, particularly with respect to approvals of large, complex developments; and

WHEREAS, The task force and advisory committee agreed to address the following seven subject areas that could help prevent the occurrence of such landslides:

(1) revisions to the Pennsylvania Municipalities Planning Code;

(2) regional planning and review;

(3) resources to local governments;

(4) the permitting and inspection process;

(5) coordination of agencies' actions;

(6) standing and jurisdiction; and

(7) disclosure of geologic concerns;

and

WHEREAS, The task force and advisory committee reached consensus on findings and recommendations as contemplated by House Resolution 897; and

WHEREAS, On June 9, 2008, the task force authorized the release of the report of the task force and advisory committee and the introduction of the legislation contained in the report;

and

WHEREAS, As part of the findings and recommendations contained in the report, the task force and advisory committee acknowledged that further consideration, discussion and analysis should be given to the subject of developments of regional significance and impact, which was addressed only briefly in the report; and

WHEREAS, The members of the task force and advisory committee desired to continue their work regarding the subject of development of regional significance and impact; and

WHEREAS, The task force recommended that further consideration, discussion and analysis regarding the subject of developments of regional significance and impact should be authorized by a new resolution; therefore be it

RESOLVED, That the Joint State Government Commission be authorized to reconstitute the task force and advisory committee established under House Resolution 897 to conduct an in-depth study of the subject of developments of regional significance and impact; and be it further

RESOLVED, That the composition of the reconstituted advisory committee be modified as necessary and that additional persons may be appointed as members of the advisory committee; and be it further

RESOLVED, That the Joint State Government Commission compile a report based on the findings and recommendations of the reconstituted task force and advisory committee and submit the report to the House of Representatives as soon as possible but no later than two years following the adoption of this resolution.