COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

DAR-30542

Appeals Court Case No. 2025-P-0954

Town of Marshfield and Lynne Fidler, Stephen Darcy, and Eric Kelley as they constitute the Town of Marshfield Select Board,

Plaintiffs-Appellants,

v.

Commonwealth of Massachusetts and Executive Office of Housing and Livable Communities,
Defendants-Appellees.

On Appeal from the Superior Court Department, Plymouth County

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Application For Direct Appellate Review

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APPLICATION FOR DIRECT APPELLATE REVIEW BY THE PLAINTIFFS-APPELLANTS, TOWN OF MARSHFIELD AND LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD

NOW COME the plaintiffs-appellants, Town of Marshfield and Lynne Fidler, Stephen Darcy, and Eric Kelley as they constitute the Town of Marshfield Select Board (collectively the "Town") and hereby request/make application that the Supreme Judicial Court grant, pursuant to Mass. R. App. P., Rule 11, the Town of Marshfield direct appellate review of the decision and judgment of the Plymouth County Superior Court dismissing the Town's complaint against the Commonwealth of Massachusetts and the Executive Office of Housing and Livable Communities concerning the MBTA Communities Act (Mass. Gen. L. c. 40A §3A).

REQUEST FOR DIRECT APPELLATE REVIEW

The Town respectfully asks this Court to grant direct appellate review of this appeal pursuant to Mass. R. App. P., Rule 11 as this matter presents issues arising under Mass. Gen. L. c. 40A §3A (the "Act") and its implementing regulations that are (1) novel questions of law, left unanswered by prior precedent, which should be submitted for final determination to the Supreme Judicial Court; (2) important questions of law

concerning the Constitution of the Commonwealth (and laws of the Commonwealth) which have been raised in a court of the Commonwealth; and/or, (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court. This appeal and underlying litigation here raise virtually every remaining issue that is likely to arise in future litigation concerning what the Act means, whether a Town Meeting can be ordered to comply with the Act, and how trial courts should adjudicate disputes arising under the Act. These questions strike at the core of the Act and of municipal rights and duties. If the questions raised by the decision and judgment are left unresolved by this Court, there will be further litigation regarding the remaining issues under the Act and its implementing regulations.

STATEMENT OF PRIOR PROCEEDINGS[1]

On February 27, 2025, the Town filed its underlying lawsuit against the Commonwealth of Massachusetts (the "Commonwealth") and Executive Office of Housing and Livable Communities ("HLC")

[1] A copy of the docket entries for the Superior Court proceedings are appended hereto. See Addendum ("Add.").

concerning the Act.[2] In Count I, the Town alleged that the Act impermissibly compelled Town Meeting voters to approve a zoning compliant district under Mass. Gen. L. c. 40A §5 and sought damages, costs and expenses for withholding grant funding that the Town had been awarded but had since been denied and would in the future be withheld from it under all discretionary funding programs. Add. at 0051. In Count II, the Town sought a determination that it be exempted from complying with the MBTA Communities Act and regulations absent the provision of a funding mechanism under Mass. Gen. L. c. 29 §27C. *Id*. at 0052. In Count III, the Town sought a determination that the MBTA Communities Act and regulations infringed on the rights of Town Meeting voters to approve or reject the proposed law and resulting in a suspension of grant funding. *Id*. at 0053. In Count IV, the Town alleged that it had incurred costs and expenses and would continue to incur costs and expenses to comply with and as a direct result of the MBTA Communities Act and regulations and seeking preliminary injunctive relief. *Id*. at 0055. By way of relief, the Town requested a preliminary injunction, sought payments due to it under awarded grants,

[2] The Town subsequent to its filing filed an affidavit of Michael Maresco, its Town Administrator attesting by verification the allegations of the town's complaint. Add. at 84.

declaratory judgments in its favor, costs and expenses and other equitable relief. *Id*.

In response, after a status conference and an order for special assignment[3], the Commonwealth and HLC filed on or about March 18, 2025, Motions to Dismiss and an Opposition to the Town's Motion for Preliminary Injunction. Add. at 57-383. The Town filed its opposition to the Commonwealth and HLC's Motion to Dismiss on March 31, 2025 and Replied to the Opposition to Motion for a Preliminary Injunction on March 28, 2025 in anticipation of a hearing on said matters on April 2, 2025. Add. at 418, 478. The day prior to the hearing, an interested party, Citizens Housing and Planning Association ("CHAPA"), filed for leave to submit and submitted an Amicus Brief which was further the subject of Town written opposition on April 9, 2025 after the Superior Court allowed leave. Add. at 0505.

After oral argument on April 2, 2025, on June 6, 2025, the Superior Court issued a Memorandum of Decision denying Marshfield's request for a preliminary injunction and allowing

[3] Following the commencement of the underlying lawsuit by Marshfield, additional complaints were filed in Plymouth County and in other counties in Massachusetts. These cases by the Towns of Duxbury, Hanson, Holden, Middleton, Wenham, Weston and Wrentham and Ten Taxable Inhabitants of Hamilton were specially assigned by the Chief Justice of the Superior Court to Justice Mark C. Gildea on March 7, 2025. See Add. at 26. The Town of Middleborough also filed suit but that case was resolved prior to the April 2, 2025 motion hearings.

the Commonwealth's motion to dismiss concluding that Marshfield, *inter alia*, (1) had not pled costs for infrastructure nor provided timelines for anticipated construction costs and therefore determined that its allegations were mere "labels and conclusions" and did not raise a "right to relief above the speculative level" under the *Iannacchio* standard' (2) that Marshfield misinterpreted the scope of a prior Division of Local Mandate ("DLM") determination that the MBTA Communities Act and regulations constituted an unfunded mandate; (3) concluded that Marshfield would be entitled funding under after-enacted programs for specific infrastructure costs too speculative under Mass. Gen. L. c. 29 §27C, and held that Mass Gen. L. c. 40A §3A was not a unfunded mandate. Add. at 0540. The Superior Court also rejected the claim that municipal costs associated with the designating a 3A district did not constitute an unfunded mandate. *Id.* The Superior Court next rejected and dismissed Marshfield's claims that it was denied when in compliance with two monetary grants that it had been awarded in writing since the Town was not in compliance with the Act before the contracts were executed. *Id.* Lastly, the Superior Court held that Marshfield was a "subordinate agency of state government" and that "the powers of a town are subject to the will of the Legislature" and Marshfield's contention in enacting the by-law is a "judicially unreviewable act is an astonishing contention"

and that Marshfield's Town Meeting rights are subordinate to the Legislature's enactment of §3A and Marshfield is subject to the terms of §3A.". Add. at 0540. On June 9, 2025, the Superior Court entered judgment dismissing the Town's case. Add. at 0580. On July 1, 2025, the Town filed a Notice of Appeal and the case was entered in the Appeals Court on August 4, 2025. Add. at 0581.

SHORT STATEMENT OF THE FACTS

The "MBTA Communities Act" (the "Act") now codified in Mass. Gen. L. c. 40A §3A was added by § 18 of Chapter 358 of the Acts of 2020, effective January 14, 2021, amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§2, 2B, and 20-26 of Chapter 234 of the Acts of 2024, effective November 20, 2024. The Act created a new zoning requirement, requiring that all MBTA communities, including the Town of Marshfield, which is considered an "adjacent [MBTA] community", zone at least one district in which multi-family housing is permitted as of right, subject to other requirements.

The MBTA Communities Act was designed to address the ongoing housing crisis in the Commonwealth of Massachusetts.

Under the Act, noncompliant MBTA communities are expressly ineligible for funds from certain State funding sources. Mass. Gen. L. c. 40A, §3A(b). The last paragraph of § 3A directs the Executive Office of Housing and Livable Communities ("HLC"), in consultation with three other state agencies, to "promulgate guidelines" to determine if an MBTA community has complied with the Act. Mass. Gen. L. c. 40A, § 3A (c).

On February 14, 2024, and the voters in Milton rejected by way of referendum a proposed zoning bylaw reportedly by a margin of approximately eight percentage points. Shortly after the referendum, the Attorney General filed before a single justice of the Supreme Judicial Court, a complaint against the Town of Milton and its building commissioner seeking declaratory and injunctive relief to enforce compliance with Mass. Gen. L. c. 40A, § 3A, as set forth in HLC's guidelines. See Mass. Gen. L. c. 231A, § 1; Mass. Gen. L. c. 214, § 1. Milton filed an answer denying that it was in violation of § 3A and filed a counterclaim against the Attorney General and HLC seeking declaratory relief. The single justice (Georges, J.) reserved and reported the case to the full Supreme Judicial Court.

During the pendency of the matter involving the Attorney General and Town of Milton, in furtherance of the HLC's final

guidelines that required the town to adopt a compliant zoning bylaw prior to December 31, 2024, the Town of Marshfield, and its Planning Department and Select Board, proposed zoning bylaws that the Attorney General had reviewed and approved for its April 22, 2024 Special Town Meeting in Articles 18 and 19. Articles 18 and 19 were defeated by Town Meeting by more than a majority vote. In a further effort to allow the Town Meeting to consider again whether to adopt a compliant zoning bylaw, the Town of Marshfield proposed updated zoning bylaws at a further Special Town Meeting, Articles 12-14 on December 16, 2024. Once again, the Articles 12-14 were soundly defeated by Town Meeting by a more than majority vote.

At no point did the Town of Marshfield ever ask for or receive any grant or other type funding of any nature or type from the Commonwealth or HLC following the passage of the Act, guidelines or regulations associated with its attempt to study, analyze, draft, map, explain and/or conduct public learning sessions or otherwise or gain approval of its proposed bylaw changes from the Commonwealth or HLC. Add. at 0050. Marshfield was; however, given written notice that certain approved grants were at risk should it fail to comply with the MBTA Communities Act and HLC guidelines.

Also, during the pendency of the matter of the Attorney General and Town of Milton, the Towns of Wrentham, Middleborough

and Methuen filed written requests with the Office of the State Auditor's ("OSA") Division of Local Mandates ("DLM") seeking a determination that MBTA Communities Act imposed an "unfunded mandate" on these cities and towns by requiring them to enact a zoning ordinance creating a reasonably-sized district in which multifamily residential use is allowed as of right," within the meaning of Mass. Gen. L. c. 29, § 27C (the Local Mandate Law). Add. at 0014. In response to these original requests, DLM originally sent correspondence to these cities and towns, stating that it was unable to issue a determination due to the pending litigation in connection with the MBTA Communities Act that was before the Supreme Judicial Court involving the Attorney General and the Town of Milton. Add. at 0014-0015.

On January 8, 2025, the Supreme Judicial Court issued its decision in the matter of *Attorney General v. Town of Milton, 495 Mass. 183 (2025*) and held that the MBTA Communities Act was constitutional, could be enforced by the Attorney General in addition to the withholding of specified grant approvals, but nullified the HLC's guidelines which the court determined had not been adopted in compliance with the APA. See *Attorney General v. Town of Milton, 495 Mass. 183 (2025*). In response to the decision of the Supreme Judicial Court, six days after the decision in the *Milton* case, HLC filed emergency regulations with the Secretary of the Commonwealth to support ongoing

implementation of the MBTA Communities Act and committed to adopt new regulations in compliance with the APA within ninety days which it has also since done. Add. at 0049. Communities like the Town of Marshfield were afforded by the emergency regulations and new regulations an additional six months to adopt compliant zoning bylaws provided they filed an interim action plan with HLC prior to February 14, 2025.

On February 10, 2025, during a public meeting, the Town of Marshfield Select Board discussed a proposed interim action plan and voted unanimously not to approve and submit an interim action plan as required by HLC's emergency regulations since Marshfield Town Meeting had repeatedly rejected proposed zoning bylaws intended to bring the town into compliance with the MBTA Communities Act and due to concern over asking voters yet a third time. Add. at 0049. In making this determination, the Select Board understood that the grant programs identified in the MBTA Communities Act were at risk and that the town would likely be subjected to potential litigation by the Attorney General seeking to enforce compliance with the MBTA Communities Act. Add. at 0050.

On February 19, 2025, HLC notified the Town of Marshfield in writing that the town was indeed noncompliant with Section 3A of Chapter 40A, that the consequences of its noncompliance were significant, that compliance with the MBTA Communities Law was

mandatory, and stated that, in addition to the grant programs set forth in the MBTA Communities Act, all discretionary grant programs across the Healey-Driscoll Administration take compliance with the MBTA Communities Act into consideration when making funding decisions causing the town to conclude that all state grant programs were at risk. Add. at 0050. Marshfield has since lost a Seaport Economic Counsel ("SEC") grant for a dredging project that it was awarded in early December 2024 when it was in compliance with the Act and for which the SEC refused to sign a contract as well a FY2025 Coordinated Family and Community Engagement Grant offered by the MA Department of Early Education and Care in the amount of $45,700 for which it applied and was otherwise eligible for and enables the town to pay for staff and supplies for preschool education.[4] Add. at 0067.

On February 21, 2025, the DLM then issued three mandate determinations to the City of Methuen, Town of Middleborough, and Town of Wrentham, finding that MBTA Communities Act constituted an "unfunded mandate" reserving additional time to perform a more thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined. DLM's mandate determinations issued under Gen. L. c. 29 §27C, in the view of the Town of Marshfield, enabled it, as a similarly

[4] The Town has since been denied other grant funds as a result of its noncompliance with the Act.

situated community, to petition the Superior Court for a determination of deficiency and an exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act. Add. at 0050.

On Monday, February 24, 2025, the Marshfield Select Board discussed HLC's letter dated February 19, 2025 and the "unfunded mandate" determinations and voted by a majority vote to ask its legislators to file legislation asking the Commonwealth of Massachusetts to provide the town funding to comply with the MBTA Communities Act and/or seeking an exemption from compliance until the Commonwealth of Massachusetts provides funding for compliance with the MBTA Communities Act and further, to authorize a petition to be filed with the Plymouth County Superior Court pursuant to Gen. L. c. 29 §27C for exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act and related issues. Add. at 0051. In the underlying Superior Court and the subject of this appeal, the Town also sought a preliminary injunctive relief, damages and various types declaratory relief concerning the implementation of the Act and HLC's regulations. Add. at 0035.

Prior to the hearing on the Commonwealth of Massachusetts' motion to dismiss in April of 2025, the Town learned of a grant program being administered by HLC known as the MBTA Communities

Catalyst Fund, a new grant program[5] for FY26 of the Healey-Driscoll Administration intended to support its efforts to increase housing production in the Commonwealth and recognize local efforts by MBTA Communities with an approved 3A district compliant with Mass. Gen. L. Chapter 40A §3A. Grant funds under this program may be used for a variety of activities related to housing construction and infrastructure projects associated with multi-family housing development.

STATEMENT OF ISSUES OF LAW

The Town seeks Direct Appellate Review of the following issues that were properly raised and preserved in the Superior Court:

1. Whether, consistent with Mass. Gen. L. c. 40A §5 and the Massachusetts Constitution, Town Meeting voters in Marshfield can be compelled to vote to approve MBTA compliant zoning amendments and/or Marshfield's Town Meeting voting rights are subordinate to the Legislature's enactment of §3A and Marshfield is therefore subject to the terms of §3A.".

[5] The Town was aware that HLC outside of the Act offered other technical grant assistance to cities and towns that were subject to the requirements of Act.

2. Whether the MBTA Communities Law (Act) and regulations constitute an "unfunded mandate" within the meaning of Mass. Gen. L. c. 29 §27C.

3. Whether the Superior Court erred by granting the Commonwealth and HLC's motion to dismiss where Marshfield had pled in its complaint direct service cost and obligations not funded by the Act.

ARGUMENT

I. The Court should clarify whether the Legislature can enact a law that obligates Town Meeting voters to vote "yes" to a zoning amendment without disenfranchising them of their constitutional and statutory rights.

This Court has repeatedly ruled that the right to vote is a fundamental constitutional right protected by the Massachusetts Constitution and specifically arts. 1 to 9 of the Massachusetts Declaration of Rights and in art. 3 of the Amendments to the Massachusetts Constitution, *see Dane v. Registrars of Voters of Concord, 374 Mass. 152, 160 (1978) (right to vote is protected as "natural, essential, and unalienable right[]" under art. 1 of*

Declaration of Rights [citation omitted]); Swift v. Registrars of Voters of Quincy, 281 Mass. 271, 276 (1932) ("The right to vote is a precious personal prerogative to be sedulously guarded" under "[a]rts. 4, 7, 8, [and] 9 of the Declaration of Rights"); Attorney Gen. v. Suffolk County Apportionment Comm'rs, 224 Mass. 598, 601 (1916) ("The right to vote is a fundamental personal and political right" protected under arts. 1 through 9 of Declaration of Rights). Under the Zoning Act, including Mass. Gen. L. c. 40A §5, passed in 1975 after the Home Rule Amendment (Mass. Const. amend. LXXXIX) and consistent therewith, the Legislature further empowered municipalities, like Marshfield, to adopt, amend or repeal zoning bylaws for the protection of the public health, safety and welfare and every municipality that has adopted a zoning district that is compliant with the Act has done so in accordance with the process set forth in Mass. Gen. L. c. 40A §5.

The MBTA Communities Act provides as follows:

> Section 3A. (a)(1) ***An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children***. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station,

> subway station, ferry terminal or bus station, if applicable.
>
> Mass. Gen. L. c. 40A sec. 3A.

While the Act allows a municipality to choose where, subject to limitations, in a city or town a compliant zoning district may be located, the Act does not permit a city council or town meeting acting pursuant to its delegated authority under Mass. Gen. L. c. 40A §5 to reject such a zoning district. Stated succinctly, voters must vote "yes" and cannot vote "no". Rather than exempting the required multi-family use under Mass. Gen. L. c. 40A §3, in order to effectuate compliance the Act requires adoption by the municipality in accordance with Mass. Gen. L. c. 40A §5 which is Town Meeting in Marshfield.

Marshfield submits that any statute like Section 3A that purports to override the ability of a voter to decide whether or not to adopt a zoning district cannot withstand any level of review as an untenable infringement of the constitutional right to vote and that its Town Meeting voters are disenfranchised in the free exercise of their voting rights if compelled to vote "yes". *See Grossman v. Sec'y of the Commonwealth, 485 Mass. 541, 546. 547 (2020) (disenfranchising voting rights subject to strict scrutiny); Chelsea Collaborative, Inc. v. Sec'y of Commonwealth, 480 Mass. 27, 33–34, (2018); Langone v. Secretary*

of the Commonwealth, 388 Mass. 185, 196 (1983) (strict scrutiny is required for a substantial infringement of a fundamental right).

The Commonwealth and HLC argued that under *Commonwealth v. Hudson, 315 Mass. 335 (1943)* the town is merely a creature of the Commonwealth from which its existence and all of its powers and those of its voters and officers are derived and that Marshfield voters cannot therefore lawfully refuse to establish a compliant zoning bylaw.

The Superior Court, agreeing with the Commonwealth and HLC, ruled that Marshfield was a "subordinate agency of state government" and that "the powers of a town are subject to the will of the Legislature". Inexplicably, the Superior Court misconstrued Marshfield's argument to be that enacting the by-law is a "judicially unreviewable act" and stated that was "an astonishing contention" prior to ultimately concluding that "Marshfield's Town Meeting rights are subordinate to the Legislature's enactment of §3A and Marshfield is subject to the terms of §3A.".

Marshfield contends on this appeal that the Commonwealth and HLC as well Superior Court have erred by likening the issues to those in *Commonwealth v. Hudson.* *Hudson* was a decided during a then present state of war (World War II), under a

legislative act intended to prevent pollution of public water supply by sabotage then viewed as an exigent risk to public health, prior to the adoption of the Home Rule Amendment, prior to the Zoning Act that delegated great latitude in the exercise of local power and a meaningful opportunity to determine local zoning by voting. Not surprisingly, in time of war, the order in *Hudson* issued under that war time law was deemed to be a constitutional exercise of police power of the state and Hudson officials were ordered to place the matter back on the warrant for appropriation.

In the case of Marshfield and the Act, there is obviously no war time exigency, but more importantly, object of the Act, multi-family housing, could have been made exempt from the zoning under Mass. Gen. L. c. 40A §3 altogether avoiding the need for local approval under Mass. Gen. L. c. 40A §5 or the Act itself could have included language exempting itself from the substantive approval process laid out in Mass. Gen. L. c. 40A §5 or otherwise amending Mass. Gen. L. c. 40A §5 to avoid the issues created by obligating Town Meeting voters to vote "yes". Under the Act, Town Meeting voters are in Marshfield's disenfranchised of their fundamental voting rights assured to them under the post Home Rule Amendment era and Zoning Act and

the Court committed error by failing to acknowledge the conflict with those rights and dismissing the complaint.

II. The Court should clarify whether the Act and regulations constitute an "unfunded mandate" within the meaning of Mass. Gen. L. c. 29 §27C.

In general terms, the Local Mandate Law provides that any state law, rule, or regulation taking effect on or after January 1, 1981 that imposes additional costs, excluding incidental local administration expenses, upon any city or town is conditional on local acceptance or being fully funded by the Commonwealth. Mass. Gen. L. c. 29 §27C(a). The law further provides that the appropriation of money must occur in the same session that the law is enacted and in each successive year for such assumption. *Id*. On February 21, 2025, the Office of the State Auditor's Office Division of Local Mandates issued three so-called unfunded mandate determinations to the City of Methuen, Town of Middleborough, and Town of Wrentham, finding that MBTA Communities Act constituted an unfunded mandate reserving additional time to perform a more thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined. DLM's mandate determinations issued under Gen. L. c. 29 §27C enables the Town of Marshfield, a

similarly situated community, to petition the Superior Court for a determination of deficiency and an exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act. Mass. Gen. L. c. 29 §27C.

Marshfield brought suit under Mass. Gen. L. c. 29 §27C(e) seeking a determination of deficiency and exemption alleging that the Act and regulations resulted in the imposition of additional costs, excluding incidental local administration expenses, upon it and that the Commonwealth did not provide money in the same session that the law was enacted and in each successive year. The Commonwealth and HLC moved to dismiss said claims alleging that Marshfield had not pled any qualifying additional costs, asserting that adopting the law did not cause any additional costs within the meaning of the statute, and all that was required by the Act was to zone an area of the town for multi-family housing and not to construct any housing. The complexity[6] of the Act's requirements and formerly compliance with the now stricken guidelines far exceeded the ordinary, incidental administration expenses of the town of Marshfield

[6] On Page 20 of the Commonwealth and HLC's memorandum, the Attorney General detailed several options for towns to develop a compliant district that significantly increased the complexity of developing a compliant district but was euphemistically characterized as "flexibility".

resulting in additional approval phase costs and, were alleged to cause direct impacts from by-right projects to town resources, including staffing of police, fire, public works and education as well as public infrastructure expenses. That the Act caused such direct costs and expense is confirmed by the fact that the Commonwealth and HLC, independent of the legislation, subsequently offered technical assistance grants and infrastructure grants to municipalities willing to seek approval of the Act and that have approved the Act.

The Commonwealth and HLC argued that the implementation costs pled by Marshfield were either incidental administration expenses or not "imposed" by the Act since it had a zoning bylaw and had the periodic need to amend its zoning bylaws and what Marshfield did was "far more necessary to satisfy [the Act and regulations]". The Commonwealth and HLC also asserted that additional costs of staffing and infrastructure are speculative and at most indirect costs that do not implicate the mandate law.

Absent guidance from this Court, there will be future trial court decisions on the issues of whether the type of expenses incurred by Marshfield and the additional staffing, service and infrastructure expenses that flow from having to accommodate dense multi-family housing constitute an unfunded mandate as

determined by DLM and which the state is now funding independently.

III. The Court should review whether the Superior Court properly granted the Commonwealth and HLC's motion to dismiss.

The standard pursuant to which a trial court may grant a motion to dismiss is well-settled; however, the Superior Court when assessing the sufficiency of a complaint on a motion to dismiss must accept as true all well-pleaded factual allegations in the complaint and all reasonable inferences in the [plaintiff's] favor. *Fairhaven Hous. Authority v. Commonwealth, 493 Mass. 27, 30 (2023).* The Superior Court was also permitted to consider any attached exhibits, public records, items in the record of the case, and any documents cited and relied upon in the complaint. *See Eigerman v. Putnam Invs. Inc., 450 Mass. 281, 285 n.6 O(2007); Marram v. Kobrick Offshore Fund, Ltd., 442 Mass. 43, 54 n. 4 (2004).*

Marshfield asserts that the Superior Court disregarded the appropriate legal standard applicable to a motion to dismiss and ignored the allegations of its complaint, the public records referenced in the complaint, the affidavit of Mr. Maresco, at al., attesting to facts, as well as the reasonable inferences taken therefrom and charactering these allegations as

generalized comments about large scale issues they foresee and speculation not sufficient to survive a motion to dismiss.

Absent further review and guidance from this Court, a procedural error unduly narrowing the right of a plaintiff to plead a prima facie case will stand and this error should be overturned.

Statement on Why Direct Appellate Review is Appropriate

Direct appellate review is appropriate where an appeal presents (1) questions of first impression or novel questions of law; (2) state constitutional questions; or (3) questions of substantial public interest. See Mass. R. App. P. 11(a). This case presents at least two and maybe three of these kinds of questions.

First, this case involves multiple an issue that was not decided on *Attorney General v. Town of Milton* and the issue raised extensively during oral argument by this Court in the *Milton* case but not fully developed as to whether obligating approval under Act disenfranchises fundamental rights of voters under procedural rights afforded to them under Mass. Gen. L. c. 40A §5. Marshfield has not located any post Home Rule Amendment and Zoning Act lawsuit addressing this issue. This issue is also one of public importance to Marshfield voters, and likely many other towns, with open town meeting.

This case also presents unresolved legal questions and/or substantial importance to the public interest as they involve whether the Act and regulations constitute an unfunded mandate.

Lastly, this case also affords this Court, while reviewing the other more significant issues to take an ancillary look at whether, as Marshfield contends, the Superior Court prematurely dismissed its complaint that asserts contained sufficient allegations that should have been presumed to be true along with all reasonable inferences therefrom.

Conclusion

The issues raised in this petition implicate the fundamental constitutional right of a Town Meeting voter to vote "yes" or "no", a right protected by the Massachusetts Constitution and specifically arts. 1 to 9 of the Massachusetts Declaration of Rights. The Act could have been drafted to avoid disenfranchising voters by adding the use as an exempt use under Mass. Gen. L. c. 40A §3 or providing in the Act an amendment modifying the approval process afforded to a city council or town meeting under Mass. Gen. L. c. 40A §5. While there is undoubtedly an urgent need in Massachusetts for multi-family housing, the Legislature cannot consistent with law adopt a new law that is not narrowly tailored to achieve that interest in the least restrictive way possible.

The Act also raises unresolved legal questions and/or substantial importance to the public interest as to whether the Act and regulations constitute an unfunded mandate. Finally, this Court can address the ancillary issue of whether the Superior Court applied the correct standard on a motion to dismiss when it dismissed Marshfield's complaint.

Town of Marshfield and Lynne Fidler, Stephen Darcy, and Eric Kelley as they constitute the Town of Marshfield Select Board
By its Counsel,

/s/ Robert W. Galvin

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CERTIFICATE OF COMPLIANCE

I, Robert W. Galvin, hereby certify that, to the best of my knowledge, this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs, including but not limited to those rules specified in Mass. R. App. P. 16(k). This brief complies with the length limit of Mass. R. App. P. 11 and 20(4): it consists of 10 pages of argument in 12-point Courier New font and does not exceed 10 characters per inch.

/s/ Robert W. Galvin

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CERTIFICATE OF SERVICE

I, Robert W. Galvin, counsel for the Town of Marshfield, hereby certify that I served a copy of the foregoing document on counsel for the Commonwealth of Massachusetts counsel this 2nd day of September 2025 by e-filing and email. They are:

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_____
Robert W. Galvin

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2583CV00184 Town of Marshfield et al vs. Commonwealth of Massachusetts et al

- Case Type:
- Actions Involving the State/Municipality
- Case Status:
- Open
- File Date
- 02/27/2025
- DCM Track:
- A - Average
- Initiating Action:
- Equity Action involving the Commonwealth, Municipality, MBTA, etc.
- Status Date:
- 02/27/2025
- Case Judge:
-
- Next Event:
-

All Information | Party | Event | Tickler | Docket | Linked Case | Disposition

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02/27/2025	Complaint electronically filed.	1	Image
02/27/2025	Civil action cover sheet filed.	2	Image
02/27/2025	Demand for jury trial entered.		
02/27/2025	Attorney appearance On this date Robert W Galvin, Esq. added as Private Counsel for Plaintiff Eric Kelley		
02/27/2025	Attorney appearance On this date David A Henig, Esq. added as Private Counsel for Plaintiff Eric Kelley		
02/27/2025	Attorney appearance On this date David A Henig, Esq. added as Private Counsel for Plaintiff Stephen Darcy		
02/27/2025	Attorney appearance On this date David A Henig, Esq. added as Private Counsel for Plaintiff Lynne Fidler		
03/03/2025	Case assigned to: DCM Track A - Average was added on 03/03/2025		
03/07/2025	ORDER: REGARDING MBTA COMMUNITIES ACT By Order for Special Assignment from the Chief Justice of the Superior Court (see attached) the above matters have been specially assigned to me. The Middleboro matter was before me on March 6, 2025 for scheduling issues and is scheduled for further hearing on Monday, March 10, 2025 at 3:00 p.m. at the Plymouth County Superior Court in Plymouth. Middleboro has moved to bifurcate its challenge to the Massachusetts Executive Office of Housing and Living Communities (EOHLC) finding that Middleboro is not compliant with G.L. c. 40A, § 3A, the "MBTA Communities Act" (the "Act") and EOHLC's regulations. I am aware that there is a pending action by Marshfield that has been filed in the Plymouth County Superior Court but that no requests for injunctive relief have been filed. I am also aware that the actions filed by Hanson, Wrentham, and Middleton involve claims for injunctive relief. Counsel in the Hanson, Marshfield, Wrentham, and Middleton matters are invited to appear on Monday if they are available. Such appearances would give the Court the opportunity to hear from the various parties as to: 1. Consolidation of all matters; 2. Whether the Court shall conduct a hearing on any motions for preliminary injunction on the issues of: a) Whether the Act imposes an unfunded mandate; and b) The validity of the regulations set forth in 760 CMR 72.00 are invalid, through a preliminary injunction hearing or one consolidated with a hearing on the merits.	3	Image

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03/10/2025	Attorney appearance On this date Meredith Fierro, Esq. added as Attorney for the Commonwealth for Defendants Commonwealth of Massachusetts and Executive Office of Housing and Livable Communities	4	Image
03/10/2025	Attorney appearance On this date Eric A Haskell, Esq. added as Attorney for the Commonwealth for Defendants Commonwealth of Massachusetts and Executive Office of Housing and Livable Communities	5	Image
03/10/2025	Attorney appearance On this date Carlos E Cousins, Esq. added as Attorney for the Commonwealth for Defendants Commonwealth of Massachusetts and Executive Office of Housing and Livable Communities	6	Image
03/10/2025	Event Result:: Conference to Review Status scheduled on: 03/10/2025 03:00 PM Has been: Held as Scheduled Comments:FTR - Court orders parties to frame the issues and submit them to the court by the end of the day on 3/13/25. Hearing on the preliminary injunction to be heard on April 2, 2025 at 9:00am Hon. Mark Gildea, Presiding		
03/12/2025	ORDER: For Special Assignment (Judge Gildea) copies sent March 12,2025 Judge: Ricciuti, Hon. Michael D	7	Image
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03/13/2025	Service Returned for Defendant Executive Office of Housing and Livable Communities: Service through person in charge / agent;	10	Image
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03/18/2025	Defendants Commonwealth of Massachusetts, Executive Office of Housing and Livable Communities's Notice of Service of Cross-Motion to Dismiss	16	Image
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06/09/2025	JUDGMENT on Defendants, Commonwealth of Massachusetts, Executive Office of Housing and Livable Communities 12(b) motion to dismiss against Plaintiff(s) Town of Marshfield, Lynne Fidler, Stephen Darcy, Eric Kelley. It is ORDERED and ADJUDGED: The complaint of the Plaintiffs, Town of Marshfield, Lynne Fidler, Stephen Darcy, and Eric Kelley, is hereby dismissed. Judge: Gildea, Hon. Mark	28	Image
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08/20/2025	Attorney appearance On this date Eric A Haskell, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Defendant Commonwealth of Massachusetts and Executive Office of Housing and Livable Communities	37	Image

Due to the system maintenance, MassCourts.org (including the Attorney Portal) will be unavailable between 2PM on Friday, August 29 and 6AM Tuesday, September 2. All case search, calendar functionality, and ePay, will be unavailable during this time. ✖

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.	SUPERIOR COURT DEPARTMENT OF TRIAL COURT DOCKET NO.

****

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD,
Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS and EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Defendants.

****

COMPLAINT

INTRODUCTION

This lawsuit by the Town of Marshfield and its duly elected Select Board arises from and is connected to the so-called "MBTA Communities Act" contained in Mass. Gen. L. c. 40A §3A added by § 18 of Chapter 358 of the Acts of 2020, effective January 14, 2021, amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§2, 2A, 2B, and 20-26 of Chapter 234 of the Acts of 2024, effective November 20, 2024. The MBTA Communities Act creates a new zoning requirement, requiring that all MBTA communities, including the Town of Marshfield, which is considered an "adjacent [MBTA] community", zone at least one district in which multi-family

housing is permitted as of right, subject to other requirements.[1] The MBTA Communities Act was designed to address the ongoing housing crisis in the Commonwealth of Massachusetts.

The MBTA Communities Act further defines "a district of reasonable size" and specifies that any such district must be situated within one-half mile of an MBTA facility. Noncompliant MBTA communities are ineligible for funds from certain State funding sources. Mass. Gen. L. c. 40A, § 3A (b). The last paragraph of § 3A directs the Executive Office of Housing and Livable Communities ("HLC"), in consultation with three other state agencies, to "promulgate guidelines" to determine if an MBTA community has complied with the act. Mass. Gen. L. c. 40A, § 3A (c).

Shortly after the act was passed, HLC issued a preliminary announcement describing the MBTA Communities Act and giving notice of its intention to produce detailed guidelines. Over the next two years, HLC issued draft guidelines, conducted community presentations, and solicited feedback directly from affected communities. HLC also consulted with other agencies, including the Massachusetts Department of Transportation (MassDOT) and the MBTA in preparing the final guidelines. It did not, however, file with the Secretary of the Commonwealth a notice of public hearing, a notice of proposed adoption or amendment of a regulation, or a small business impact statement within the meaning of the State Administrative Procedures Act ("APA"). See Mass. Gen. L. c. 30A, §§ 2, 3. HLC issued its final guidelines on August 17, 2023.

On December 11, 2023, the Town of Milton, approved at special town meeting, a proposed zoning bylaw (Article 1) that would have complied with HLC's guidelines; however, pursuant to the

---

[1] An MBTA community is defined as "a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority." The Town of Marshfield is specified as one of the other served communities in clause (iii).

Milton town charter, a sufficient number of the town's voters petitioned to have Article 1 submitted to a town-wide referendum vote; so, less than three weeks after the initial vote approving the bylaw, the Milton select board voted to schedule a referendum on the article for February of 2024. Before the vote was held, both HLC and the Attorney General sent letters to Milton town officials, giving notice that they would enforce the funding penalties listed in § 3A and take legal action should the town fail to comply with the act. Nevertheless, the Town of Milton held the referendum on February 14, 2024, and the voters in Milton rejected the proposed zoning bylaw reportedly by a margin of approximately eight percentage points. Shortly after the referendum, the Attorney General filed before a single justice of the Supreme Judicial Court, a complaint against the Town of Milton and its building commissioner seeking declaratory and injunctive relief to enforce compliance with G. L. c. 40A, § 3A, as set forth in HLC's guidelines. See G. L. c. 231A, § 1; G. L. c. 214, § 1. Milton filed an answer denying that it was in violation of § 3A and filed a counterclaim against the Attorney General and HLC seeking declaratory relief. The single justice (Georges, J.) reserved and reported the case to the full Supreme Judicial Court.

During the pendency of the matter involving the Attorney General and Town of Milton, in furtherance of the HLC's final guidelines that required the town to adopt a compliant zoning bylaw prior to December 31, 2024, the Town of Marshfield proposed zoning bylaws that the Attorney General had reviewed and approved for its April 22, 2024 Special Town Meeting in Articles 18 and 19. Articles 18 and 19 were defeated by Town Meeting by more than a majority vote. In a further effort to allow the Town Meeting to consider again whether to adopt a compliant zoning bylaw, the Town of Marshfield proposed updated zoning bylaws at a further Special Town Meeting, Articles 12-14 on December 16, 2024. Once again, the Articles 12-14 were soundly defeated by Town Meeting by a more than majority vote. Marshfield was also given written notice that certain

approved grants were at risk should it fail to comply with the MBTA Communities Act and HLC guidelines.

Also, during the pendency of the matter of the Attorney General and Town of Milton, the Towns of Wrentham, Middleborough and Methuen filed written requests with the Office of the State Auditor's (OSA) Division of Local Mandates (DLM) seeking a determination that MBTA Communities Act imposed an unfunded mandate on these cities and towns by requiring them to enact a zoning ordinance creating a reasonably-sized district in which multifamily residential use is allowed as of right," within the meaning of Gen. L. c. 29, § 27C (the Local Mandate Law). In response to these requests, DLM sent correspondence to these cities and towns, stating that it was unable to issue a determination due to the pending litigation in connection with the MBTA Communities Act that was before the Supreme Judicial Court involving the Attorney General and the Town of Milton.

On January 8, 2025, the Supreme Judicial Court issued its decision in the matter of Attorney General v. Town of Milton, 495 Mass. 183 (2025) and held that the MBTA Communities Act was constitutional, could be enforced by the Attorney General, but nullified the HLC's guidelines which the court determined had not been adopted in compliance with the APA. In response to the decision of the Supreme Judicial Court, six days after the decision in the Milton case, HLC filed emergency regulations with the Secretary of the Commonwealth to support ongoing implementation of the MBTA Communities Act and committed to adopt new regulations in compliance with the APA within ninety days. Communities like the Town of Marshfield were afforded by the emergency regulations an additional six months to adopt compliant zoning bylaws provided they filed an interim action plan with HLC prior to February 14, 2025.

On February 10, 2025, during a public meeting, the Town of Marshfield Select Board discussed a proposed interim action plan and voted unanimously not to approve and submit an

interim action plan as required by HLC's emergency regulations since Marshfield Town Meeting had repeatedly rejected proposed zoning bylaws intended to bring the town into compliance with the MBTA Communities Act. In making this determination, the Select Board understood that the grant programs identified in the MBTA Communities Act were at risk and that the town would likely be subjected to potential litigation by the Attorney General seeking to enforce compliance with the MBTA Communities Act.

On February 19, 2025, HLC notified the Town of Marshfield in writing that the town was noncompliant with Section 3A of Chapter 40A, that the consequences of its noncompliance were significant, that compliance with the MBTA Communities Law was mandatory, and stated that, in addition to the grant programs set forth in the MBTA Communities Act, all discretionary grant programs across the Healey-Driscoll Administration take compliance with the MBTA Communities Law into consideration when making funding decisions causing the town to conclude that all state grant programs were at risk.

On February 21, 2025, the DLM issued three mandate determinations to the City of Methuen, Town of Middleborough, and Town of Wrentham, finding that MBTA Communities Act constituted an unfunded mandate reserving additional time to perform a more thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined. DLM's mandate determinations issued under Gen. L. c. 29 §27C enables the Town of Marshfield, a similarly situated community, to petition the Superior Court for a determination of deficiency and an exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act.

On Monday, February 24, 2025, the Marshfield Select Board discussed HLC's letter dated February 19, 2025 and the unfunded mandate determinations and voted by a majority vote to ask its legislators to file legislation asking the Commonwealth of Massachusetts to provide the town

funding to comply with the MBTA Communities Act and/or seeking an exemption from compliance until the Commonwealth of Massachusetts provides funding for compliance with the MBTA Communities Act and further, to authorize a petition to be filed with the Plymouth County Superior Court pursuant to Gen. L. c. 29 §27C for exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act.

This action, that also seeks preliminary injunctive relief and declaratory relief concerning the implementation of the MBTA Communities Act and the HLC's regulations follows.

PARTIES

1. The plaintiff, Town of Marshfield, is a body politic and corporate organized and existing under the laws of the Commonwealth of Massachusetts with a usual place of business at 870 Moraine Street, Marshfield, Plymouth County, Massachusetts.

2. The plaintiffs, Lynne Fidler, Stephen Darcy and Eric Kelley are the duly elected members of the Marshfield Select Board, the executive office of the Town of Marshfield, and have an office address within the Marshfield Town Hall located at 870 Moraine Street, Marshfield, Massachusetts.

3. The defendant, the Commonwealth of Massachusetts is a state organized and existing under the laws of the United States of America and in accordance with a State Constitution with a usual place of business c/o of the Secretary of the Commonwealth, One Ashburton Place, Boston, Suffolk County, Massachusetts.

4. The Executive Office of Housing and Livable Communities (EOHLC) is a state agency created in 2023 intended, inter alia, to create more homes and lower housing costs for Massachusetts residents with a usual business address at 100 Cambridge Street, Suite 300, Boston, Suffolk County, Massachusetts.

JURISDICTION AND VENUE

5. The Superior Court in and within the County of Plymouth has jurisdiction and is the proper venue for this action in accordance with Gen. L. c. 214 §1, Gen. L. c. 231A §1, and/or Gen. L. c. 29 §27C.

FACTS

6. Effective or about January 14, 2021, the so-called "MBTA Communities Act" codified in Mass. Gen. L. c. 40A §3A was added by § 18 of Chapter 358 of the Acts of 2020. The MBTA Communities Act was thereafter amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§2, 2A, 2B, and 20-26 of Chapter 234 of the Acts of 2024, effective November 20, 2024.

7. The MBTA Communities Act creates a new zoning requirement, requiring that all MBTA communities, including the Town of Marshfield, which is considered an "adjacent [MBTA]

community", zone at least one district in which multi-family housing is permitted as of right, subject to other requirements.

8. The MBTA Communities Act was designed to address the ongoing housing crisis in the Commonwealth of Massachusetts.

9. The MBTA Communities Act further defines "a district of reasonable size" and specifies that any such district must be situated within one-half mile of an MBTA facility, if feasible.

10. Noncompliant MBTA communities are ineligible for funds from certain State funding sources. Mass. Gen. L. c. 40A, § 3A (b).

11. The last paragraph of § 3A directs the defendant, Executive Office of Housing and Livable Communities ("HLC"), in consultation with three other state agencies, to "promulgate guidelines" to determine if an MBTA community has complied with the act. Mass. Gen. L. c. 40A, § 3A (c).

12. Shortly after the MBTA Communities Act was passed, HLC issued a preliminary announcement describing the MBTA Communities Act and giving notice of its intention to produce detailed guidelines. Over the next two years, HLC issued draft guidelines, conducted community presentations, and solicited feedback directly from affected communities. HLC also consulted with other agencies, including the Massachusetts Department of Transportation (MassDOT) and the MBTA in preparing the final guidelines.

13. HLC did not, however, file with the Secretary of the Commonwealth a notice of public hearing, a notice of proposed adoption or amendment of a regulation, or a small business impact statement within the meaning of the State Administrative Procedures Act ("APA"). See Mass. Gen. L. c. 30A, §§ 2, 3.

14. Notwithstanding these deficiencies, HLC issued its final guidelines on August 17, 2023.

15. On December 11, 2023, the Town of Milton, approved at special town meeting, a proposed zoning bylaw (Article 1) that would have complied with HLC's guidelines; however, pursuant to the Milton town charter, a sufficient number of the town's voters petitioned to have Article 1 submitted to a town-wide referendum vote; so, less than three weeks after the initial vote approving the bylaw, the Milton select board voted to schedule a referendum on the article for February of 2024.

16. Before the vote was held, both HLC and the Attorney General sent letters to Milton town officials, giving notice that they would enforce the funding penalties listed in § 3A and take legal action should the town fail to comply with the act. Nevertheless, the Town of Milton held the referendum on February 14, 2024, and the voters in Milton rejected the proposed zoning bylaw reportedly by a margin of approximately eight percentage points.

17. Shortly after the referendum, the Attorney General filed before a single justice of the Supreme Judicial Court, a complaint against the Town of Milton and its building commissioner seeking declaratory and injunctive relief to enforce compliance with G. L. c. 40A, § 3A, as set forth in HLC's guidelines. See G. L. c. 231A, § 1; G. L. c. 214, § 1.

18. Milton filed an answer denying that it was in violation of § 3A and filed a counterclaim against the Attorney General and HLC seeking declaratory relief. The single justice (Georges, J.) reserved and reported the case to the full Supreme Judicial Court.

19. During the pendency of the matter involving the Attorney General and Town of Milton, in furtherance of the HLC's final guidelines that required the town to adopt a compliant zoning bylaw prior to December 31, 2024, the Town of Marshfield proposed zoning bylaws that the Attorney General had reviewed and approved for its April 22, 2024 Special Town Meeting in Articles 18 and 19. Articles 18 and 19 were defeated by Town Meeting by more than a majority vote.

20. In a further effort to allow the Town Meeting to consider again whether to adopt a compliant zoning bylaw, the Town of Marshfield proposed updated zoning bylaws at a further Special Town Meeting, Articles 12-14 on December 16, 2024. Once again, the Articles 12-14 were soundly defeated by Town Meeting by a more than majority vote.

21. Also, during the pendency of the matter of the Attorney General and Town of Milton, the Towns of Wrentham, Middleborough and Methuen filed written requests with the Office of the State Auditor's (OSA) Division of Local Mandates (DLM) seeking a determination that MBTA Communities Act imposed an unfunded mandate on these cities and towns by requiring them to enact a zoning ordinance creating a reasonably-sized district in which multifamily residential use is allowed as of right," within the meaning of Gen. L. c. 29, § 27C (the Local Mandate Law).

22. In response to these requests, DLM sent correspondence to these cities and towns, stating that it was unable to issue a determination due to the pending litigation in connection with the

MBTA Communities Act that was before the Supreme Judicial Court involving the Attorney General and the Town of Milton.

23. On January 8, 2025, the Supreme Judicial Court issued its decision in the matter of Attorney General v. Town of Milton, 495 Mass. 183 (2025) and held that the MBTA Communities Act was constitutional, could be enforced by the Attorney General, but nullified the HLC's guidelines which the court determined had not been adopted in compliance with the APA.

24. In response to the decision of the Supreme Judicial Court, six days after the decision in the Milton case, HLC filed emergency regulations with the Secretary of the Commonwealth to support ongoing implementation of the MBTA Communities Act and committed to adopt new regulations in compliance with the APA within ninety days.

25. Communities like the Town of Marshfield were afforded by the emergency regulations an additional six months to adopt compliant zoning bylaws provided they filed an interim action plan with HLC prior to February 14, 2025.

26. On February 10, 2025, during a public meeting, the Town of Marshfield Select Board discussed a proposed interim action plan and voted unanimously not to approve and submit an interim action plan as required by HLC's emergency regulations since Marshfield Town Meeting had repeatedly rejected proposed zoning bylaws intended to bring the town into compliance with the MBTA Communities Act.

27. In making this determination, the Select Board understood that the grant programs identified in the MBTA Communities Act were at risk and that the town would likely be subjected to potential litigation by the Attorney General seeking to enforce compliance with the MBTA Communities Act.

28. On February 19, 2025, HLC notified the Town of Marshfield in writing that the town was noncompliant with Section 3A of Chapter 40A, that the consequences of its noncompliance were significant, that compliance with the MBTA Communities Law was mandatory, and stated that, in addition to the grant programs set forth in the MBTA Communities Act, all discretionary grant programs across the Healey-Driscoll Administration take compliance with the MBTA Communities Law into consideration when making funding decisions causing the town to conclude that all state grant programs were at risk.

29. On February 21, 2025, the DLM issued three mandate determinations to the City of Methuen, Town of Middleborough, and Town of Wrentham, finding that MBTA Communities Act constituted an unfunded mandate reserving additional time to perform a more thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined.

30. DLM's mandate determinations issued under Gen. L. c. 29 §27C enables the Town of Marshfield, a similarly situated community, to petition the Superior Court for a determination of deficiency and an exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act.

31. On Monday, February 24, 2025, the Marshfield Select Board discussed HLC's letter dated February 19, 2025 and the unfunded mandate determinations and voted by a majority vote to ask its legislators to file legislation asking the Commonwealth of Massachusetts to provide the town funding to comply with the MBTA Communities Act and/or seeking an exemption from compliance until the Commonwealth of Massachusetts provides funding for compliance with the MBTA Communities Act and further, to authorize a petition to be filed with the Plymouth County Superior Court pursuant to Gen. L. c. 29 §27C for exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act.

COUNT I

MARSHFIELD v. COMMONWEALTH & HLC

32. The Town of Marshfield and Marshfield Select Board (the "Marshfield Parties") repeat and reallege paragraphs 1 to 31 above, as if expressly set forth and incorporated herein by reference.

33. The requirement contained within the MBTA Communities Act that voters of the Town of Marshfield be compelled to vote to approve a zoning district compliant with the requirements of the MBTA Communities Act violates Gen. L. c. 40A sec. 5 that delegates the right to approve zoning amendments to the cities and towns.

34. As the direct and proximate result of the Town Meeting votes conducted by the Town of Marshfield Town Meetings in which votes were cast against the adoption of zoning bylaw that was compliant with the MBTA Communities Act, the Commonwealth and the HLC have withheld and

intend to continue to withhold specific grant funds identified in the MBTA Communities Act and have threatened to withhold or consider compliance with the MBTA Communities Act as a factor in all other state grant programs.

35. As the direct and proximate result of the actions of the Commonwealth and HLC, the Town of Marshfield has suffered monetary damages, costs and expenses.

COUNT II

MARSHFIELD v. COMMONWEALTH & HLC

36. The Marshfield Parties repeat and reallege paragraphs 1 to 35 above, as if expressly set forth and incorporated herein by reference.

37. Based on an analysis by the Office of the State Auditor's Division of Local Mandates under Gen. L. c. 29 §27C of the MBTA Communities Act and its enabling regulations, the MBTA Communities Act constitutes an unfunded mandate and the DLM has so determined in writing as to the City of Methuen and Towns of Middleborough and Wrentham. Said determinations dated February 21, 2025 are incorporated herein by reference.

38. The MBTA Communities Act and its enabling regulations constitute an unfunded mandate within the meaning of Gen. L. c. 29 §27C since because the Commonwealth did not assume the costs of the MBTA Communities Act by general law and by appropriation in the 2021 session contemporaneously with the effective date of the MBTA Communities Act.

39. The MBTA Communities Act does not provide a funding mechanism for compliance with its provisions.

40. The statutory language of § 3A and the original enacting legislation of Chapter 358 of the Acts of 2020 fail to provide for the assumption by the Commonwealth of the costs imposed by the MBTA Communities Act and did not contain an appropriation for § 3A.

41. The FY 2022 budget, passed during the same annual session as when the MBTA Communities Act became effective (the first annual session of the 2021–2022 biennial legislative session), and all other appropriations bills passed during the same annual session, likewise did not contain an appropriation for § 3A.

42.. The MBTA Communities Act was also not specifically exempted from application of the Local Mandate Law by the Commonwealth.

43. Based on the foregoing, the Town of Marshfield is entitled to seek an exemption from compliance with the MBTA Communities Act and its enabling/implementing regulations pursuant to Gen. L c. 29 §27C(e) until and unless the Commonwealth and/or HLC as an agency of the Commonwealth provide funding to the Town of Marshfield to comply with the requirements of the law and regulations.

COUNT III

MARSHFIELD v. COMMONWEALTH & HLC

44. The Marshfield Parties repeat and reallege paragraphs 1 to 43 above, as if expressly set forth and incorporated herein by reference.

45. There is an actual controversy and dispute by and between the Town of Marshfield and the Commonwealth and HLC as to the validity of the MBTA Communities Act and its emergency regulations since the Town of Marshfield has been deemed to be noncompliant with the laws and regulations since the law requires residents to vote to adopt a compliant zoning bylaw and they have elected not adopt said zoning bylaws as is the right of any voters under Gen. L. c. 40A §5.

46. There is an actual controversy and dispute by and between the Town of Marshfield and the Commonwealth and HLC as to the validity of the MBTA Communities Act and its emergency regulations since the law requires residents to vote to adopt a compliant zoning bylaw rather than creating a statutory exemption from zoning for multi-family housing within Gen. L. c. 40A §3.

47. There is an actual controversy and dispute by and between the Town of Marshfield and the Commonwealth and HLC as to the validity of the MBTA Communities Act and its emergency regulations since the law and regulations constitute an unfunded mandate within the meaning of Gen. L. c. 29 §27C.

48. The Marshfield Parties seek a determination by the Superior Court that the rights of Marshfield Town Meeting to vote have been infringed on by the application and implementation of the MBTA Communities Act and its emergency regulations and resulting in the suspension of grant funds including those not enumerated in the MBTA Communities Act and an order exempting

Marshfield from compliance and or exempting Marshfield from compliance pending the receipt of sufficient funding to cover the cost of compliance.

COUNT IV

MARSHFIELD v. COMMONWEALTH & HLC

49. The Marshfield Parties repeat and reallege paragraphs 1 to 48 above, as if expressly set forth and incorporated herein by reference.

50. Since the MBTA Communities Act and its emergency regulations violate federal and/or state law and/or constitute an unfunded mandate, the Commonwealth and HLC should be equitably restrained from withholding any state grant funds to the Town of Marshfield.

51. Marshfield Parties have incurred costs and expenses in evaluating and drafting proposed zoning bylaws and presenting them to Town Meetings that have not been paid by the Commonwealth and/or HLC;

52. Marshfield Parties expect to incur additional costs as the direct result of the mandatory requirements of the MBTA Communities Act and HLC's emergency regulations.

53. Marshfield Parties have been informed that their ability to access approved state grants determined prior to the effective date of the HLC's emergency regulations and all other discretionary grant programs are at risk.

54. Without preliminary relief, the Marshfield Parties will suffer a loss of rights that cannot be recovered absent an order preserving the status quo.

WHEREFORE the Marshfield Parties request the following relief:

(a) That judgment enter in favor of the Marshfield Parties on Counts I to IV of the Complaint;

(b) That the Marshfield Parties be awarded damages, compensatory damages, costs and reasonable counsel fees associated with the infringement of the rights of Town Meeting and its members to vote to approve zoning amendments in violation of state laws;

(c) That MBTA Communities Act be declared an unfunded mandate consistent with the determinations by the DLM;

(d) That the Town of Marshfield be exempted from compliance with the provisions of the MBTA Communities Act and emergency regulations pending receipt of sufficient funding to comply with the requirements of the law and regulations since they constitute an unfunded mandate in violation of state law;

(e) That Commonwealth and HLC be preliminary and then permanently restrained from suspending or withholding state grant funds pending a final judgment on the issues and preserving the status and/or a final judgment exempting Marshfield from compliance;

(f) That the Town of Marshfield be awarded its costs of action and reasonable counsel fees; and,

(g) That this Court order such other and further relief as this Court deems just and equitable.

JURY DEMAND

The Marshfield Parties demand a jury trial on all issues for which they are entitled to a jury trial.

Respectfully submitted,
Town of Marshfield and
by their Town Counsel,

Dated: February 27, 2025

/s/ Robert W. Galvin
/s/ David A. Henig

Robert W. Galvin, BBO # 561397
David A. Henig BBO # 710360
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rwgalvin@galvin-legal.com
dhenig@galvin-legal.com

3-7-25

3

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION

PLYMOUTH, ss.

TOWN OF MARSHFIELD

vs. **NO. 2583CV00184**

COMMONWEALTH OF MASSACHUSETTS

TOWN OF MIDDLEBOROUGH

vs. **NO. 2583CV00188**

COMMONWEALTH OF MASSACHUSETTS

TOWN OF HANSON

vs. **NO. 2583CV00209**

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

TOWN OF WRENTHAM

vs. **NO. 2582CV00259**

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

TOWN OF MIDDLETON

vs. **NO. 2577CV00249**

COMMONWEALTH OF MASSACHUSETTS

By Order for Special Assignment from the Chief Justice of the Superior Court (see attached) the above matters have been specially assigned to me.

The Middleboro matter was before me on March 6, 2025 for scheduling issues and is scheduled for further hearing on Monday, March 10, 2025 at 3:00 p.m. at the Plymouth County Superior Court in Plymouth.

Middleboro has moved to bifurcate its challenge to the Massachusetts Executive Office of Housing and Living Communities (EOHLC) finding that Middleboro is not compliant with G.L. c. 40A, § 3A, the "MBTA Communities Act" (the "Act") and EOHLC's regulations.

I am aware that there is a pending action by Marshfield that has been filed in the Plymouth County Superior Court but that no requests for injunctive relief have been filed. I am also aware that the actions filed by Hanson, Wrentham, and Middleton involve claims for injunctive relief.

Counsel in the Hanson, Marshfield, Wrentham, and Middleton matters are invited to appear on Monday if they are available. Such appearances would give the Court the opportunity to hear from the various parties as to:

1. Consolidation of all matters;
2. Whether the Court shall conduct a hearing on any motions for preliminary injunction on the issues of:
    a) Whether the Act imposes an unfunded mandate; and
    b) The validity of the regulations set forth in 760 CMR 72.00 are invalid,

through a preliminary injunction hearing or one consolidated with a hearing on the merits.

Mark C. Gildea

March 7, 2025

Mark C. Gildea
Justice of the Superior Court

3-1225

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
CIVIL ACTION

TOWN OF MARSHFIELD

vs.

NO. 2583CV00184

COMMONWEALTH OF MASSACHUSETTS

TOWN OF MIDDLEBOROUGH

vs.

NO. 2583CV00188

COMMONWEALTH OF MASSACHUSETTS

TOWN OF HANSON

vs.

NO. 2583CV00209

COMMONWEALTH OF MASSACHUSETTS

ORDER FOR SPECIAL ASSIGNMENT

It is hereby **ORDERED** that the above-captioned cases, and any future case that challenges the application of the MBTA Communities Act, G.L. c. 40A, § 3A, to a city or town, are specially assigned to the Honorable Mark C. Gildea, Associate Justice of the Superior Court, for pre-trial purposes. In future filings, the parties shall note prominently in the caption that a case is specially assigned to Judge Gildea. The Clerk's office will notify all counsel of record.

MDRicciuti.cs

Michael D. Ricciuti
Chief Justice

DATED: March 7, 2025

cc: AG ECC MF
3-1225

THE TRIAL COURT OF MASSACHUSETTS
SUPERIOR COURT

Suffolk County Courthouse
Three Pemberton Square, 13th Floor
Boston, MA 02108

Michael D. Ricciuti
Chief Justice

Elaina M. Quinn
Deputy Court Administrator

March 7, 2025

Robert S. Creedon, Jr.
Clerk of Courts
Plymouth County Courthouse
72 Belmont Street
Brockton, MA 02301

Re: *Marshfield* v. *Commonwealth of Massachusetts*, Civil Action No. 2583CV00184
Middleborough v. *Commonwealth of Massachusetts*, Civil Action No. 2583CV00188
Hanson v. *Commonwealth of Massachusetts*, Civil Action No. 2583CV00209

Dear Mr. Creedon:

Enclosed please find an order for special assignment appointing the Honorable Mark C. Gildea to hear the above-captioned cases for pre-trial purposes. I would appreciate it if your office would docket this order and notify counsel.

Thank you very much for your assistance.

Sincerely,

Michael D. Ricciuti

MDR/aeo
Enc.

Date Filed 3/13/2025 3:46 PM
Superior Court - Plymouth
Docket Number 2583CV00184

3-13-25

11

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS:

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
DOCKET NO. 2583CV00184

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD,
Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Defendants.

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY
MAR 13 2025
Clerk of Court

MOTION FOR PRELIMINARY INJUNCTION

NOW COME the plaintiffs, the Town of Marshfield and Lynne Fidler, Stephen Darcy and Eric Kelley, as they constitute the Town of Marshfield Select Board (collectively the "Marshfield Parties"), by their counsel, and hereby move this Honorable Court grant them a Preliminary Injunction enjoining the defendants, Commonwealth of Massachusetts and Executive Office of Housing and Livable Communities, from enforcement of G.L. c. 40A, §3A, the so-called "MBTA Communities", and emergency regulations enacted by the Executive Office of Housing and Livable Communities (the EOHLC") pursuant thereto and to require the Commonwealth to release any grant funds that had previously been promised to Marshfield now being withheld despite the State Auditor's determination that the Act constitutes an unfunded mandate in violation of Gen. L. c. 29 §27C and, further, to preclude the Commonwealth, Attorney General, EOHLC or any other State agency from refusing to consider the Town of Marshfield for other grant funds pending a determination on the merits.

As grounds for this Motion, the Town states that, since the passage of the Act, the Governor, the Attorney General, EOHLC and other state agencies have suspended grants awarded to the town and notified the town that failure to adopt the Act may result in the town not obtaining other discretionary grant funds. Namely, the on December 12, 2024, when the Town was in compliance with the Act, the Town of Marshfield was awarded a $261,600 Seaport Economic Counsel grant associated with the permitting and implementation of a North/South River Dredging Project needed to maintain navigable rivers in the Town (see Exhibit A). The town has never heard back from the state since the award letter even though it was in compliance through February 14, 2025. The Town believes that it is ineligible for further a $400,000 grant from the State Dredge Grant Program for which it the Town has permits in hand for the completion of dredging of Green Harbor which is home to the town's commercial fishing fleet for Atlantic Bluefin Tuna, American Lobsters and Scallops for which the Harbormaster has sought a local share. The Town School Department is advised that it also will not be eligible for a FY2025 Coordinated Family and Community Engagement Grant offered by the MA Department of Early Education and Care in the amount of $45,700 for which it applied and was otherwise eligible for and enables the town to pay for staff and supplies for preschool education. If the Act is determined to be an unfunded mandate, which the State Auditor has already determined on February 21, 2025, the Commonwealth and EOHLC's actions would arbitrary and capricious and based on errors of law.

Ironically, the penalties imposed on Marshfield is contrary to the Commonwealth's stated goal of increasing multi-family housing because the Town will be unable to accommodate such housing without the funding promised by the State, and without the promised funding, the Town faces potential budget cuts across all departments, which will result in a reduction in public safety and social services. As indicated by other counsel, in the words of Massachusetts Attorney General Campbell-Joy in a

similar case, "[i]mperiling this funding even for a temporary period is unquestionable irreparable harm."

Therefore, the Town moves this Honorable Court for a Preliminary Injunction enjoining/staying the Commonwealth, the Attorney General, EOHLC and any other State agency from enforcing the MBTA Communities Act against Marshfield, from penalizing Marshfield in any way, including but not limited to revoking or rescinding previously committed grant funds or deeming it ineligible for other grant funds that it is otherwise qualified for, and ordering the Commonwealth and all of its agencies to immediately release all previously dedicated grant funds that have denied on the basis of an arbitrary and capricious determination that Marshfield does not comply with the Act.

Respectfully submitted,
Town of Marshfield and
by their Town Counsel,

Dated: March 12, 2025

/s/ Robert W. Galvin
/s/ David A. Henig

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David A. Henig BBO # 710360
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10 Enterprise Street, Suite 3
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rwgalvin@galvin-legal.com
dhenig@galvin-legal.com

CERTIFICATE OF SERVICE

I, Robert Galvin, counsel for the Town of Marshfield, hereby certify that I served a copy of the foregoing document on counsel for the Commonwealth of Massachusetts counsel this 12th day of March 2025 by filing and email. They are:

Eric A. Haskell, Esq,
Carlos Cousins, Esq.
Assistant Attorney Generals
Government Bureau
One Ashburton Place
Boston, MA 02108
(617) 963-2855
eric.haskell@mass.gov
Carlos.Cousins@mass.gov

Copies were also emailed to counsel for the Town of Middleborough, Hanson and Middleton as follows:

Counsel for Hanson and Middleton:

Jason R. Talerman
Mead, Talerman & Costa, LLC
730 Main Street · Suite 1F · Millis, Massachusetts · 02054
Phone: (978) 463-7700 ext. 201
Direct Dial: (978) 572-2190
jay@mtclawyers.com

Counsel for
Middleborough:

Gregg J. Corbo, Esq.
KP Law
101 Arch Street, 12th
Floor
Boston, MA 02110
617-654-1764
GCorbo@k-plaw.com

/s/ Robert W. Galvin

Robert W. Galvin

Commonwealth of Massachusetts

Seaport Economic Council

93 State Pier
New Bedford, Massachusetts 02740
508-999-3030

MAURA T. HEALEY
GOVERNOR

KIMBERLEY DRISCOLL
LIEUTENANT GOVERNOR
COUNCIL CHAIR

ASHLEY STOLBA
VICE CHAIR

December 12, 2024

Town of Marshfield
Town Administrator
Michael Maresco
870 Moraine Street
Marshfield, MA 02050

Dear Town Administrator Maresco:

Congratulations! On behalf of the Seaport Economic Council, I am pleased to inform you that the Council has conditionally approved the Town of Marshfield's application for a grant in the amount of $261,600 for the Permitting North/South River Dredging project. The Executive Office of Economic Development (EOED), as the lead state agency for the Council, will administer the funding.

Please note that this grant award is contingent on the Town of Marshfield being in compliance with the multifamily zoning requirements set forth in section 3A of chapter 40A of the Massachusetts General Laws. Compliance is determined by the Executive Office of Housing and Livable Communities. If you have questions about the Town's compliance status, you may contact the Executive Office of Housing and Livable Communities at EOHLC3A@mass.gov.

The grant award is not final until the Town of Marshfield has executed a contract with EOED. A contract must be executed no later than December 31, 2025. You should not proceed with any purchases or construction work until a contract is in place. In order to begin preparing a contract for this grant, please email a completed Pre-Contract Information Worksheet (template attached) no later than June 30, 2025 to Ellen Cebula, Director of the Seaport Economic Council, at ellen.cebula@mass.gov. Ms. Cebula will contact you to discuss any additional conditions or requirements related to this grant award and next steps.

Sincerely,

Kimberley Driscoll

Kimberley Driscoll
Chair, Seaport Economic Council
Lieutenant Governor, Commonwealth of Massachusetts

cc Ellen Cebula, Director, Seaport Economic Council

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS: SUPERIOR COURT DEPARTMENT
DOCKET NO. 2583CV00184

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD,
Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION (ASSIGNED TO GILDEA J.)

NOW COMES the plaintiffs, the Town of Marshfield and Lynne Fidler, Stephen Darcy and Eric Kelley as they constitute the Town of Marshfield Select Board (collectively the "Marshfield Parties"), by their counsel, and hereby move this Honorable Court grant a preliminary injunction enjoining the defendants, Commonwealth of Massachusetts and Executive Office of Housing and Livable Communities, from enforcement of G.L. c. 40A, §3A, the so-called "MBTA Communities Act", and emergency regulations enacted by the Executive Office of Housing and Livable Communities ("EOHLC") pursuant thereto and to require the Commonwealth to release any grant funds that had previously been promised to Marshfield now being withheld despite the State Auditor's determination that the Act constitutes an unfunded

mandate in violation of Gen. L. c. 29 §27C and, further, to preclude the Commonwealth, Attorney General, EOHLC or any other State agency from refusing to consider the Town of Marshfield for other grant funds pending a determination on the merits. The Town of Marshfield has a substantial likelihood of success on the merits, and the irreparable harm that the Town will face by enforcement of the provisions of G.L. c. 40A, §3A, and the corresponding regulations promulgated by EOHLC, and the potential loss of funding from previously awarded and potential grant money substantially outweighs any interest on the part of the Commonwealth, Attorney General, EOHLC, or any other State agency, in the enforcement of them or the withholding of funding. Furthermore, the public's interest favors the entry of injunctive relief.

FACTS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

The Town of Marshfield brings this action, through Lynne Fidler, Stephen Darcy and Eric Kelley as they constitute the Town of Marshfield Select Board (collectively the "Marshfield Parties"). The defendant, Commonwealth of Massachusetts, is a sovereign state formed by the Massachusetts Constitution, with a business address of Massachusetts State House, Boston, Massachusetts. The defendant, Massachusetts Executive Office of Housing and Livable Communities, an agency of the Commonwealth, established pursuant to Chapter 7 of the Acts of 2023 (Article LXXXVII of the Amendments to the Constitution, Reorganization Plan #1 of 2023), with a business address of 100 Cambridge Street, # 300, Boston, Massachusetts. This lawsuit by the Town of Marshfield and its duly elected Select Board arises from and is connected to the so-called "MBTA Communities Act" contained in Mass. Gen. L. c. 40A, §3A added by §18 of Chapter 358 of the Acts of 2020, effective January 14, 2021, amended by §10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§152-153 of

Chapter 8 of the Acts of 2023, effective May 30, 2023, further amended by §9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§2, 2A, 2B, and 20-26 of Chapter 234 of the Acts of 2024 effective November 20, 2024.

The MBTA Communities Act creates a new zoning requirement, requiring that all MBTA communities, including the Town of Marshfield, which is considered an "adjacent [MBTA] community", zone at least one district of reasonable size in which multi-family housing is permitted as of right without age restrictions and that is suitable for families with children, that a minimum gross density of 15 units per acre, and is located not more than 0.5 miles from a public transportation station.[1] G.L. c. 40A, §3A. In total, 177 communities qualify as "MBTA Communities." The MBTA Communities Act further defines a district of reasonable size as one that shall: "(i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable." G.L. c. 30A, §3A.

Shortly after the act was passed, HLC issued a preliminary announcement describing the MBTA Communities Act and giving notice of its intention to produce detailed guidelines. Over the next two years, HLC issued draft guidelines, conducted community presentations, and solicited feedback directly from affected communities. HLC also consulted with other agencies, including the Massachusetts Department of Transportation (MassDOT) and the

[1] An MBTA community is defined as "a city of town that is: (i) one of the 1 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority." The Town of Marshfield is specified as one of the other served communities.

MBTA in preparing the final guidelines. It did not, however, file with the Secretary of the Commonwealth a notice of public hearing, a notice of proposed adoption or amendment of a regulation, or a small business impact statement within the meaning of the State Administrative Procedures Act ("APA"). See Mass. Gen. L. c. 30A, §§ 2, 3.

HLC issued its final guidelines on August 17, 2023. The enacted guidelines imposed significant substantive and procedural obligations on municipalities and provided far more substantive and procedural detail than the Act itself. EOHLC did not conduct an analysis of the financial impact of the guidelines and it did not file with the Secretary of the Commonwealth an "estimate of its fiscal effect including that on the public and private sector, for its first and second year, and a projection over the first five-year period, or a statement of no fiscal effect has been filed with said state secretary." G.L. c. 30A, §5.

On December 11, 2023, the Town of Milton, approved at special town meeting, a proposed zoning bylaw (Article 1) that would have complied with HLC's guidelines; however, pursuant to the Milton town charter, a sufficient number of the town's voters petitioned to have Article 1 submitted to a town-wide referendum vote; so, less than three weeks after the initial vote approving the bylaw, the Milton select board voted to schedule a referendum on the article for February of 2024. Before the vote was held, both HLC and the Attorney General sent letters to Milton town officials, giving notice that they would enforce the funding penalties listed in § 3A and take legal action should the town fail to comply with the act. Nevertheless, the Town of Milton held the referendum on February 14, 2024, and the voters in Milton rejected the proposed zoning bylaw reportedly by a margin of approximately eight percentage points. Shortly after the referendum, the Attorney General filed before a single justice of the Supreme Judicial Court, a complaint against the Town of Milton and its building commissioner seeking

declaratory and injunctive relief to enforce compliance with G. L. c. 40A, § 3A, as set forth in HLC's guidelines. See G. L. c. 231A, § 1; G. L. c. 214, § 1. Milton filed an answer denying that it was in violation of § 3A and filed a counterclaim against the Attorney General and HLC seeking declaratory relief. The single justice (Georges, J.) reserved and reported the case to the full Supreme Judicial Court.

During the pendency of the matter involving the Attorney General and Town of Milton, in furtherance of the HLC's final guidelines that required the town to adopt a compliant zoning bylaw prior to December 31, 2024, the Town of Marshfield proposed zoning bylaws that the Attorney General had reviewed and approved for its April 22, 2024 Special Town Meeting in Articles 18 and 19. Articles 18 and 19 were defeated by Town Meeting by more than a majority vote. In a further effort to allow the Town Meeting to consider again whether to adopt a compliant zoning bylaw, the Town of Marshfield proposed updated zoning bylaws at a further Special Town Meeting, Articles 12-14 on December 16, 2024. Once again, the Articles 12-14 were soundly defeated by Town Meeting by a more than majority vote.

Marshfield was also given written notice that certain approved grants were at risk should it fail to comply with the MBTA Communities Act and HLC guidelines. Namely, on December 12, 2024, when the Town was in compliance with the Act, the Town was awarded $261,000 Seaport Economic Counsel grant associated with the permitting and implementation of a North/South River Dredging Project needed to maintain navigable rivers in the Town. ***See Affidavit of Michael Maresco.*** The town has never head back from the state since the award letter even though it was in compliance at the time. *Id*. The Town believes that it is ineligible for further a $400,000 grant from the State Dredge Grant Program for which it the Town has permits in hand for the completion of dredging of Green Harbor which is home to the town's

commercial fishing fleet for Atlantic Bluefin Tuna, American Lobsters and Scallops for which the Harbormaster has sought a local share. *Id.* The Town School Department is advised that it also will not be eligible for a FY2025 Coordinated Family and Community Engagement Grant offered by the MA Department of Early Education and Care in the amount of $45,700 for which it applied and was otherwise eligible for and enables the town to pay for staff and supplies for preschool education. *Id.*

Also, during the pendency of the matter of the Attorney General and Town of Milton, the Towns of Wrentham, Middleborough and Methuen filed written requests with the Office of the State Auditor's (OSA) Division of Local Mandates (DLM) seeking a determination that MBTA Communities Act imposed an unfunded mandate on these cities and towns by requiring them to enact a zoning ordinance creating a reasonably-sized district in which multifamily residential use is allowed as of right," within the meaning of Gen. L. c. 29, § 27C (the Local Mandate Law). In response to these requests, DLM sent correspondence to these cities and towns, stating that it was unable to issue a determination due to the pending litigation in connection with the MBTA Communities Act that was before the Supreme Judicial Court involving the Attorney General and the Town of Milton.

On January 8, 2025, the Supreme Judicial Court issued its decision in the matter of Attorney General v. Town of Milton, 495 Mass. 183 (2025) and held that the MBTA Communities Act was constitutional, could be enforced by the Attorney General, but nullified the HLC's guidelines which the court determined had not been adopted in compliance with the APA. The Supreme Judicial Court has not reviewed or ruled upon any substantive provision of the MBTA Communities Act or the HLC Regulations. In response to the decision of the Supreme Judicial Court, six days after the decision in the Milton case, HLC filed emergency

regulations with the Secretary of the Commonwealth to support ongoing implementation of the MBTA Communities Act and committed to adopt new regulations in compliance with the APA within ninety days. Communities like the Town of Marshfield were afforded by the emergency regulations an additional six months to adopt compliant zoning bylaws provided they filed an interim action plan with HLC prior to February 14, 2025. The emergency regulations generally mimic the unenforceable Guidelines, and just days after that, they issued "Draft Regulations" that were identical to the emergency regulations.

On February 10, 2025, during a public meeting, the Town of Marshfield Select Board discussed a proposed interim action plan and voted unanimously not to approve and submit an interim action plan as required by HLC's emergency regulations since Marshfield Town Meeting had repeatedly rejected proposed zoning bylaws intended to bring the town into compliance with the MBTA Communities Act. In making this determination, the Select Board understood that the grant programs identified in the MBTA Communities Act were potentially at risk and that the town would likely be subjected to potential litigation by the Attorney General seeking to enforce compliance with the MBTA Communities Act.

Since the passage of the emergency regulations, on February 19, 2025, HLC notified the Town of Marshfield in writing that the town was noncompliant with Section 3A of Chapter 40A, that the consequences of its noncompliance were significant, that compliance with the MBTA Communities Law was mandatory, and stated that, in addition to the grant programs set forth in the MBTA Communities Act, all discretionary grant programs across the Healey-Driscoll Administration take compliance with the MBTA Communities Law into consideration when making funding decisions causing the town to conclude that all state grant programs were at risk.

On February 21, 2025, the DLM issued three mandate determinations to the City of Methuen, Town of Middleborough, and Town of Wrentham, finding that MBTA Communities Act constituted an unfunded mandate reserving additional time to perform a more thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined. DLM's mandate determinations issued under Gen. L. c. 29 §27C enables the Town of Marshfield, a similarly situated community, to petition the Superior Court for a determination of deficiency and an exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act.

On Monday, February 24, 2025, the Marshfield Select Board discussed HLC's letter dated February 19, 2025 and the unfunded mandate determinations and voted by a majority vote to ask its legislators to file legislation asking the Commonwealth of Massachusetts to provide the town funding to comply with the MBTA Communities Act and/or seeking an exemption from compliance until the Commonwealth of Massachusetts provides funding for compliance with the MBTA Communities Act and further, to authorize a petition to be filed with the Plymouth County Superior Court pursuant to Gen. L. c. 29 §27C for exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act. This suit follows.

By this motion, the Town is seeking a stay of enforcement including the suspension of grants pending a determination on the merits on the issue of the unfunded mandates.

APPLICABLE LAW

A. The Standard for Preliminary Injunction.

The decision to grant a preliminary injunction is left to the sound discretion of the trial judge. *Commonwealth v. Mass. CRINC,* 392 Mass. 79, 86-87 (1984); *Packaging Indus. Group, Inc. v. Cheney*, 38- Mass 609, 616 (1980). A party moving for a preliminary injunction must show that in the absence of injunctive relief, it will suffer a loss of rights that is not capable of remediation by a final judgment in law or equity. *Cheney*, at 616. The purpose of a preliminary injunction is to preserve the status quo pending a final determination on the merits. *Id.*

To obtain preliminary injunctive relief, the moving party must show that "(1) success is likely on the merits; (2) irreparable harm will result from the denial of the injunction; and (3) the risk of irreparable harm to the moving party outweighs any similar risk of harm to the opposing party." *Massachusetts Port Authority v. Turo, Inc.*, 487 Mass. 235 247 (2021). (quoting, *Cote-Whitacre v. Department of Pub. Health*, 446 Mass. 350, 357 (2006)). "A plaintiff experiences irreparable injury if there is no adequate remedy at final judgment." *Id.* (quoting, *GTE Prods. Corp. v. Stewart*, 44 Mass. 721, 724 (1993)).

However, when weighing injunctive relief sought by a public entity, the ordinary standard does not apply. Instead, "[w]hen the government acts to enforce a statute or a declared policy of [the Legislature], the standard of public interest and not the requirements of private litigation measure the need for injunctive relief." *Mass. CRINC*, 392 Mass. at 89 (internal quotation marks removed).

B. The Unfunded Mandate Law

G.L. c. 29, §27(C)(a) provides that no "law taking effect on or after January 1, 1981 imposing any direct service or cost obligation upon any city or town shall be effective in any city or town… unless the general court, at the same session in which such law is enacted,

provides by general law and by appropriation, for the assumption by the commonwealth of such cost". *G.L. c. 29,* §27(C)(a). G.L. c. 29, §(C)(c) provides that no "administrative rule or regulation taking effect on or after January 1, 1981 which shall result in the imposition of additional costs upon any city or town shall [...] be effective until the general court has provided by general law and by appropriation for the assumption by the commonwealth of such cost". *G.L. c. 29,* §27(C)(c). Absent funding for direct costs imposed by an act of the Legislature or by regulation, a municipality's remedy is excusal from compliance. *City of Worcester v. The Governor*, 416 Mass. 751, 754, 762 (1994).

ARGUMENT

The Plaintiffs have a likelihood of success on the merits. As the DLM Determination and Supreme Judicial Court's holding in *Town of Milton* establishes, there is a mandate imposed on the Town of Marshfield by virtue of the application and enforcement of the provisions of G.L. c. 40A, §3A and the EOHLC regulations contained in 760 CMR 72.00, *et seq*. Furthermore, the DLM Determination clearly establishes that not only is there a mandate, but also that it will more likely than not impose substantial direct costs on the Town of Marshfield for which no appropriation has been made. ***See Affidavit of Michael Maresco.*** Non-compliance with this unfunded mandate results in the Town of Marshfield already losing and/or standing to lose significant funding from the Seaport Economic Counsel Grant, the State Dredge Grant Program and FY2025 Coordinated Family and Community Engagement Grant offered by the MA Department of Early Education and Care.

Here, the DLM's Determinations are entitled to deference. The Legislature has delegated to DLM the responsibility for determining the existence and financial impact of mandates

imposed by statutes and regulations. *G.L. c. 11,* §6B*; G.L. c. 29, §27C.* "We give great deference to the [agency's] expertise and experience in areas where the Legislature has delegated to it decision-making authority". *Teamsters Joint Counsel No. 10 v. Director of Dep't of Labor*, 447 Mass. 100, 106 (2006) (quoting, *Box Pond Ass'n v. Energy Facilities Sitting Bd.*, 435 Mass. 08, 412 (2001); *Wolf v. Dep't of Public Utilities*, 407 Mass. 363, 367 (1990)). Interpretations adopted by an agency as "the official position of the agency" are entitled to deference by a Court. *Sidell v. Commissioner of Internal Revenue*, 225 F.3d 103, 111 (1st Cir. 2000); *Silva v. Todisco Services, Inc.*, 2019WL2234173, at *8 (Mass.Super., Apr. 4, 2019, Salinger, J.).

Here, because the Legislature has delegated the function of determining the existence and extent the function of determining the existence and extent of an unfunded mandate, the DLM Determination is entitled to deference. Furthermore, the DLM Determination is the official position of the Office of the State Auditor, and again, is entitled to deference. See, *Interview D. DiZoglio, Boston Public Radio Live at the Boston Public Library, February 26, 2025*, https://www.youtube.com/live/sxnwBFr0nr0?t=8163s (last accessed 3/14/2025); *Open Letter to M. Healey and A. Campbell from D. DiZoglio*, March 4, 2025. As such, the DLM Determination establishes the Town of Marshfield's likelihood of success on the merits that the MBTA Communities Act and EOHLC Regulations constitute an unfunded mandate.

Furthermore, there is no question that the Town of Marshfield will suffer irreparable harm through the enforcement of the unfunded mandate. The entire purpose of the statutory scheme of G.L. c. 29, §29C is to avoid the imposition of direct and substantial costs to municipalities resulting from state-imposed mandates for which no appropriation is contemporaneously made and no reimbursement provided. *G.L. c. 29, §27C(a).* Here, in the

absence of an appropriation contemporaneous with the passage of G.L. c. 40A, §3A, and absent any reimbursement for the direct costs which may be incurred by the Town of Marshfield, the Town's irreparable harm resulting from the imposition of costs for substantial infrastructure impacts to the Town, the Town's navigable water ways, its water system, public safety services, educational services and buildings, roads and other governmental services is manifest and is clearly demonstrated in the refusal of the Commonwealth to release any grant funds that had previously been promised to Marshfield now being withheld. As such, preliminary injunctive relief is appropriate.

The risk of harm to the Town of Marshfield far outweighs any harm to the Commonwealth, EOHLC, the Attorney General, or any other State Agency should an injunction issue. The grants that were approved will be reallocated and there is no ability to recover the funds that were awarded to the town when the town was in compliance.

Pursuant to G.L. c.29, §27C, the Commonwealth has the authority and resources to appropriate funding to cover the substantial, significant, and direct costs incurred by municipalities in connection with mandatory legislation such as G.L. c. 40A, §3A. The Town is unable to raise resources itself without incurring significant debt or the sacrifice of other important programs to meet the direct costs of the MBTA Communities Act and EOHLC Regulations. The Town's applications for funding for had previously been promised to Marshfield and is now being withheld despite the State Auditor's determination the legislation is in unfunded mandate in violation of Gen. L. c. 29 §27C. It is the Commonwealth's burden and obligation to fund a statute at its inception. It is also EOHLC's burden to provide a fiscal impact statement in accordance with any rulemaking. Any perceived hardship is brought on by the Commonwealth and EOHLC's own actions and Marshfield should not be burdened due to their

failures to properly fund the legislation. The statutory scheme governing the DLM clearly recognizes the balance of harms weighing heavily in favor of the Town of Marshfield. Moreover, the public interest of the residents of Marshfield clearly supports the issuance of injunctive relief as demonstrated in their concerns raised and votes on the issues during Town Meetings. The public has an interest in seeing state-imposed mandates funded from a more resourceful pool than the limited resources available to the Town, and that interest is served by enjoining the operation and enforcement of an unfunded mandate until such time as the requisite appropriation and/or reimbursement is made. Additionally, the public interests of the residents of Marshfield are also served by releasing the previously promised grant funds including the Seaport Economic Counsel Grant, State Dredge Grant Program and FY2025 Coordinated Family and Community Engagement Grant offered by the MA Department of Early Education and Care.

In addition to the foregoing, the Act compels the Town Meeting in Marshfield to adopt a by-right zoning district and, has been interpreted as being mandatory and for which the Town Meeting can be compelled to approve. This violates the provisions of the Zoning Act in Gen. L. c. 40A §5 that provide the Town Meeting with the sole authority to approve local zoning.

Finally, there is no harm to the Commonwealth or EOHLC by the delays that may be associated with the issuance of a preliminary injunction. The Town of Marshfield is seeking that the statute be properly funded before it pursues the process of compliance. Similarly, there is no harm to the Commonwealth in the issuance of an injunction. The grant funds have been allocated and there is no reason for the Commonwealth to withhold funding.

CONCLUSION

For the reasons stated above, the Plaintiffs respectfully request this honorable Court issue an injunction preserving the *status quo* pending an adjudication on the merits and restraining and enjoining the Commonwealth, the Attorney General, EOHLC and any other State agency from enforcing the MBTA Communities Act against Marshfield, from penalizing Marshfield in any way, including but not limited to revoking or rescinding previously committed grant funds or deeming it ineligible for other grant funds that it is otherwise qualified for, and ordering the Commonwealth and all of its agencies to immediately release all previously dedicated grant funds that have been denied on the basis of an arbitrary and capricious determination that Marshfield does not comply with the act.

Respectfully submitted,
Town of Marshfield and
by their Town Counsel,

Dated: March 17, 2025

/s/ Robert W. Galvin
/s/ David A. Henig

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CERTIFICATE OF SERVICE

I, Robert Galvin, counsel for the Town of Marshfield, hereby certify that I served a copy of the foregoing document on counsel for the Commonwealth of Massachusetts counsel this 17th day of March 2025 by filing and email. They are:

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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS:

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
DOCKET NO. 2583CV00184

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD,
Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Defendants.

AFFIDAVIT OF MICHAEL MARESCO, TOWN ADMINISTRATOR OF THE TOWN OF MARSHFIELD

I, Michael Maresco, hereby depose and state under oath as follows:

1. My name is Michael A. Maresco. I am the duly appointed Town Administrator of the Town of Marshfield. I have served in this role since October of 2017. I have personal knowledge of all of the facts stated in this Affidavit excepting for those facts that I have stated to be on information and belief which I believe to be true.

2. I have read the allegations of the original Complaint and I believe after reading them that they are true, accurate and complete to the best of my knowledge, information and belief. I have also read

the Town's Motion for a Preliminary Injunction and the related attachment. I believe that also is true accurate and complete to the best of my knowledge.

3. The construction of 1185 housing units, which is the number of additional multi-family housing units that Marshfield is obligated to allow by right, will result in substantial infrastructure impacts to the Town of Marshfield, including to the Town's public water supply system, public safety, including police and fire, educational services, and also the buildings, roadways and other governmental services. Without funding for these expenses, the Town of Marshfield will need to appropriate hundreds of thousands of dollars to address these impacts and service these additional units.

4. I have also read the so-called unfunded mandate determinations by the State Auditor's Division of Local Mandates (DLM) for Methuen, Middleborough and Wrentham. According to DLM, even without the required financial impact analysis required for DLM to complete its work, DLM has concluded that the mandate upon communities like Marshfield will cause material impacts to municipal infrastructure requiring local community investment.

5. This is consistent with the projections by the Marshfield Town Planner, Greg Guimond, who attempted to analyze the fiscal impact of 1185 housing units on the Town of Marshfield as well as the fiscal impact of an area that he and the Town Planning Board proposed to rezone in an effort to bring Marshfield into compliance with the Act.

6. Prior to the former deadline for the Town of Marshfield to come into compliance, after an extended application process, the Town of Marshfield was awarded a $261,600 Seaport Economic Counsel grant associated with the permitting and implementation of a North/South River Dredging

Project needed to maintain navigable rivers in the Town (see Exhibit A). The navigable portions of these two rivers in Marshfield are essential to the ability of hundreds of commercial and recreational fishermen and boaters who utilized the North and South Rivers for access to Cape Cod Bay and many water dependent business and residential properties that are dependent on access. Since the date of the award, the Seaport Economic Counsel has refused to communicate with the Town of Marshfield Harbormaster and even though it was prepared to finalize the grant agreement and even though the Town of Marshfield was in compliance with the Act through February 14, 2025. I am informed and believe that it is also now ineligible for further a $400,000 grant from the State Dredge Grant Program for which it the Town has permits in hand for the completion of dredging of Green Harbor which is home to the state's third largest commercial fishing fleet for Atlantic Bluefin Tuna, American Lobsters and Scallops for which the Harbormaster has sought a local share. I am informed also that the Town School Department was also informed that it also will not be eligible for a FY2025 Coordinated Family and Community Engagement Grant offered by the MA Department of Early Education and Care in the amount of $45,700 for which it applied and was otherwise eligible for and enables the town to pay for staff and supplies for preschool education and for which the Town recently acquired a new preschool building on Furnace Street. If the Act is determined to be an unfunded mandate, which the State Auditor has already determined on February 21, 2025, the Commonwealth and EOHLC's actions have deprived the Town of the right to obtain these awarded grant funds and grant funds that the Town would ordinarily receive.

7. It is unreasonable to expect that if the Town prevails that these grant funds would be held in escrow and will be offered to other communities.

8. The town is also at risk of developers claiming a by right ability to permit projects throughout the Town of Marshfield due to the lack of a by-right multi-family housing district compliant with the Act.

9. The Town of Marshfield will be irreparably harmed if it is deprived of the grant funds committed to the Town in the form of a loss of funding for critical programs and that irreparable harm outweighs any harm to the Commonwealth, EOHLC, the Seaport Economic Counsel or MA Department of Early Education and Care.

10. The Act is also inconsistent with Gen. L. c. 40A sec. 5 which delegates to the Town and in Marshfield its Town Meeting the right to approve zoning amendments. The Commonwealth could have, but elected not to, exempt projects like it is demanding Marshfield accommodate under Gen. L. c. 40A §3. Instead to effectuate the Act, the Town and its Town Meeting are required by the law to adopt a zoning district that the state has designed for the town under the promise to deprive the town's of needed grant funding and further enforcement action by the Attorney General.

SIGNED UNDER THE PENALTIES OF PERJURY

Dated: March 17, 2025

Michael A. Maresco, Town Administrator

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	**CASES SPECIALLY ASSIGNED TO HON. MARK C. GILDEA** No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)\	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

COMMONWEALTH AND OTHER DEFENDANTS'[1] CROSS-MOTION TO DISMISS

[1] Specifically, the Commonwealth, Governor Maura Healey, the Executive Office of Housing and Livable Communities, the Executive Office of Economic Development, and the Massachusetts Development Finance Agency.

Pursuant to Massachusetts Rules of Civil Procedure 12(b)(1) and 12(b)(6), defendants Commonwealth of Massachusetts, Governor Maura Healey, the Executive Office of Housing and Livable Communities, the Executive Office of Economic Development, and the Massachusetts Development Finance Agency (collectively "Movants") respectfully request that this Court dismiss:

- Counts I, II, III, and VI of the Verified Complaint in Town of Hanson et al. v. Commonwealth of Massachusetts et al., No. 2583 CV 00209 (Plymouth Superior Court), for failure to state a claim upon which relief can be granted;
- Count IV of the Verified Complaint in Town of Hanson et al. v. Commonwealth of Massachusetts et al., No. 2583 CV 00209 (Plymouth Superior Court), as moot;
- All counts of the Complaint in Town of Marshfield et al. v. Commonwealth of Massachusetts et al., No. 2583 CV 00184 (Plymouth Superior Court), for failure to state a claim upon which relief can be granted;
- All counts of the Verified Complaint in Town of Middleborough v. Commonwealth of Massachusetts et al., No. 2583 CV 00188 (Plymouth Superior Court), for failure to state a claim upon which relief can be granted;
- Counts I, II, III, and VI of the Verified Complaint in Town of Middleton et al. v. Commonwealth of Massachusetts et al., No. 2577 CV 00249 (Essex Superior Court), for failure to state a claim upon which relief can be granted;
- Count IV of the Verified Complaint in Town of Middleton et al. v. Commonwealth of Massachusetts et al., No. 2577 CV 00249 (Essex Superior Court), as moot;
- Counts I, II, and V of the Verified Complaint in Town of Wrentham et al. v. Commonwealth of Massachusetts et al., No. 2582 CV 00259 (Norfolk Superior Court), for failure to state a claim upon which relief can be granted; and
- Count III of the Verified Complaint in Town of Wrentham et al. v. Commonwealth of Massachusetts et al., No. 2582 CV 00259 (Norfolk Superior Court), as moot.

As grounds, the Movants rely on their Memorandum in Opposition to Plaintiffs' Motions for Preliminary Injunction and in Support of Commonwealth's Cross-Motion to Dismiss.

WHEREFORE, the Movants respectfully request that the Court dismiss the specified counts of the complaints in these actions.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS, GOVERNOR MAURA HEALEY, EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES, and EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT,

By their attorneys:

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March 18, 2025

Certificates

Pursuant to Superior Court Rule 9C(a), I certify this motion was the subject of conferral with counsel for each plaintiff on March 17, 2025. Pursuant to Mass. R. Civ. P. 5(b), I further certify that I caused a copy of this Motion to be served on Mach 18, 2025, by hand, on all counsel of record in the captioned cases, specifically:

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March 18, 2025

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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	**CASES SPECIALLY ASSIGNED TO HON. MARK C. GILDEA** No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
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TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

COMMONWEALTH AND OTHER DEFENDANTS'[1] MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION AND IN SUPPORT OF THEIR CROSS-MOTION TO DISMISS

[1] Specifically, the Commonwealth, Governor Maura Healey, the Executive Office of Housing and Livable Communities, the Executive Office of Economic Development, and the Massachusetts Development Finance Agency.

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In these related matters, five municipalities—the Towns of Hanson, Marshfield, Middleborough, Middleton, and Wrentham—have sued the Commonwealth, the Governor, and various state agencies concerning their compliance with G.L. c.40A, § 3A, the MBTA Communities Act. Each plaintiff seeks preliminary injunctive relief.

The Commonwealth, the Governor, the Executive Office of Housing and Livable Communities, the Executive Office of Economic Development, and the Massachusetts Development Finance Agency (collectively "Movants") have cross-moved to dismiss all of the plaintiffs' claims against them, on grounds that most counts fail to state a claim and several counts are moot.

As set forth below, every claim asserted against the Movants is fatally deficient as a matter of law, and thus presents no likelihood of success on the merits. Accordingly, this Court should deny preliminary relief and instead dismiss the plaintiffs' claims against the Movants.

Background

A. Facts for the Movants' Motion to Dismiss

On a motion to dismiss, the Court credits the non-conclusory factual allegations of the complaint as true. Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000). The Court may consider matters of public record, id., as well as documents referenced in, attached to, or relied-upon in the complaint. Chang v. Winklevoss, 95 Mass. App. Ct. 202, 208 (2019). Here, those materials, and pertinent law, reveal the following.

The Legislature Enacts the MBTA Communities Act

In late 2020, "the Legislature passed G.L. c. 40A, § 3A, the Massachusetts Bay Transportation Authority (MBTA) Communities Act . . . which was designed to address the ongoing housing crisis in the Commonwealth." Att'y Gen'l v. Town of Milton, 495 Mass. 183, 185 (2025). Section 3A(a) requires "MBTA communities"—defined as the 177 municipalities

within the MBTA's service area, see G.L. c. 40A, § 1A; G.L. c. 161A, § 1—to "have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right," which district must "(i) have a minimum gross density of 15 units per acre . . . ; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable." Section 3A(c) requires the Executive Office of Housing and Livable Communities ("HLC") to "promulgate guidelines to determine if an MBTA community is in compliance" with § 3A(a).

On August 10, 2022, HLC enacted such guidelines. Middleborough Compl. Exh. E.[2] But, on January 8, 2025, the SJC held that, because the guidelines had not been promulgated as regulations, they "must be repromulgated in accordance with [Chapter 30A]." Town of Milton, 495 Mass. at 196.

HLC Promulgates Regulations

HLC swiftly did so, promulgating 760 CMR 72.00 on an emergency basis on January 14, 2025. Middleborough Compl. ¶ 40; Marshfield Compl. ¶ 24. As HLC noted in its "Regulation Filing" submission to the Secretary of the Commonwealth,[3] it intends to make 760 CMR 72.00 permanent through a non-emergency promulgation process. A268.[4] Meanwhile, the emergency regulations remain in effect through April 14, 2025. See G.L. c. 30A, § 3. Three aspects of 760 CMR 72.00 are particularly pertinent to the issues now before the Court:

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[2] This brief cites the complaint / verified complaint in each action as "[Plaintiff] Compl."

[3] This document is properly considered on the Commonwealth's Motion to Dismiss both because it is referenced in the complaints (Middleborough Compl. ¶¶ 40-42; Marshfield Compl. ¶ 24) and because it is a matter of public record.

[4] The Commonwealth's affidavits relating to the plaintiffs' motions for preliminary injunction—along with certain documents that are properly considered in connection with the Commonwealth's Motion to Dismiss—have been compiled into an Appendix to this brief and filed with the Court. This brief cites that Appendix as "A [page]."

1. *Categorization of MBTA Communities.* 760 CMR 72.00 categorizes each MBTA community as either "rapid transit," "commuter rail," "adjacent community," or "adjacent small town," based in part on the type of transit facilities within or adjacent to that municipality's borders. See 760 CMR 72.02. Hanson and Middleborough are categorized as "commuter rail" communities, while Marshfield, Middleton, and Wrentham are categorized as "adjacent communities." As set forth below, a municipality's categorization affects both the size of the multi-family district it must have to be deemed compliant with § 3A(a) and the deadline by which it must achieve compliance.

2. *Clarification of Meaning of "Reasonable Size."* 760 CMR 72.00 provides that a § 3A(a)-compliant district must satisfy a minimum threshold for both land area and zoned capacity for multi-family units (i.e., "unit capacity"). 760 CMR 72.05. The land area required of a given district depends on the municipality's categorization: For both commuter rail and adjacent communities (i.e., all of the plaintiffs here), it is generally the lesser of 50 acres or 1.5% of the municipality's developable land. 760 CMR 72.05(1)(a)(1). The multi-family unit capacity required of a given district is calculated pursuant to a regulatory formula that considers the municipality's categorization, its quantity of preexisting housing units, the applicable minimum land area requirement, and the statutorily required gross density of 15 units per acre, with required multi-family unit capacity capped at 25% of the municipality's preexisting housing units.[5] 760 CMR 72.05(1)(b). HLC has published a table specifying the minimum land area and minimum multi-family unit capacity that each MBTA community's § 3A(a)-compliant district

[5] As the regulations acknowledge, zoned multi-family unit capacity is "not a requirement to produce housing units" and should not "be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target." 760 CMR 72.05(d)(2).

must have in order to be deemed "of reasonable size." See https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities.

3. *Process for Achieving Compliance With § 3A(a).* 760 CMR 72.00 specifies two steps toward § 3A compliance. First, a municipality may achieve "interim compliance" if it provides HLC with an "action plan" proposing, among other things, a schedule for adopting § 3A(a)-compliant zoning. 760 CMR 72.09(4)(a). Submission of an action plan that "is reasonable and will lead to district compliance in a timely manner" will result in HLC deeming that municipality to be in "interim compliance." 760 CMR 72.09(4)(b). Failure to submit an action plan, in contrast, will result in HLC deeming that municipality noncompliant. 760 CMR 72.09(4)(d). All five plaintiffs here faced a February 13, 2025, deadline to submit such an Action Plan. 760 CMR 72.09(3).

Second, a municipality that believes it has a § 3A(a)-compliant district must apply to HLC for a determination of "district compliance." 760 CMR 72.09(6). Based on that application and any additional submissions required by HLC, HLC will deem the municipality either compliant, conditionally compliant (subject to specified conditions), or noncompliant (in which case HLC will identify "the steps that must be taken to achieve compliance"). See 760 CMR 72.09(6)-(7). Failure to apply for district compliance will result in the municipality being deemed noncompliant. A municipality's deadline to apply for district compliance depends on its categorization. 760 CMR 72.09(3) (Table 3). All five plaintiffs here face a July 14, 2025, deadline to do so. Hanson Compl. ¶ 22; Middleborough Compl. ¶ 174; Middleton Compl. ¶ 22; Wrentham Compl. ¶ 22.

The Plaintiffs' Current Compliance Status

Marshfield, and Middleborough failed to submit Action Plans by February 13, 2025. Marshfield Compl. ¶¶ 26-27; Middleborough Compl. Exh. S. HLC deemed them noncompliant with § 3A on February 19, 2025. Marshfield Compl. ¶ 28; Middleborough Compl. Exh. S.

Although neither Hanson, Middleton, nor Wrentham makes any allegations in about their current compliance statuses, materials on which those plaintiffs relied in framing their complaint reveal that Hanson and Wrentham submitted action plans and have been deemed in interim compliance, while Middleton did not and has been deemed noncompliant. A59-60,82-101,233.

The State Auditor's Division of Local Mandates Issues Letters Concerning § 3A

On February 21, 2025, the State Auditor's Division of Local Mandates ("DLM") issued letters to Middleborough and Wrentham suggesting that § 3A "imposes direct service or cost obligations on municipalities . . . that amount to more than incidental local administration expenses" and that the Commonwealth's method of funding such costs "does not satisfy the requirements of the Local Mandate Law." Middleborough Compl. Exh. K; Wrentham Compl. Exh. 1. Those letters "caution[ed]" that DLM's conclusions "are subject to . . . judicial determination." Id. DLM did not actually "determine whether the costs imposed by [G.L. c. 40A, § 3A(a)] have been paid in full by the commonwealth in the preceding year and, if not, the amount of any deficiency in such payments" as contemplated by G.L. c. 29, § 27C(d); instead, DLM noted that such analysis is ongoing, and "will include review of the required fiscal impact statements by EOHLC." Middleborough Compl. Exh. K; Wrentham Compl. Exh. 1.

B. Additional Facts for the Movants' Motion to Dismiss as Moot and Plaintiffs' Motions for Preliminary Injunction

On a motion for a preliminary injunction, this Court may consider facts asserted by affidavit. Alexander & Alexander, Inc. v. Danahy, 21 Mass. App. Ct. 488, 493-94 (1986).

Affidavits are also "the proper way to raise a question of mootness." Branch v. Com. Employment Relations Bd., 481 Mass. 810, 817 n.13 (2019).

The Commonwealth Offers "Technical Assistance" Funds to Municipalities to Help Their § 3A Zoning Efforts

The Commonwealth offers multiple technical assistance grant programs to assist municipalities in complying with § 3A, programs of which most of the plaintiffs have availed themselves. See A57, 102, 161.

First, HLC offers funding for MBTA Communities compliance activities through its Community Planning Grant Program. A57. This program is funded by money appropriated by the Legislature in 2022 and 2024. See St. 2022, c. 140 (line item 7004-00667); St. 2024, c. 150, § 2A (line item 7004-0077). Middleton applied for a Community Planning Grant of $75,000 to retain a planning consultant to do a comprehensive zoning bylaw update related to the MBTA Communities Law, which was awarded. A59. To date, Middleton has requested and received reimbursement under the grant for $13,250, and the remainder of the grant is available to fund expenses incurred until June 30, 2025. Id.

Second, the Metropolitan Area Planning Counsel ("MAPC") offers its Technical Assistance Program ("TAP"), a funding program that assists municipalities in implementing projects beneficial to the community, including advancing compliance with the MBTA Communities Law. A103-104. A significant share of the TAP if funded by District Local Technical Assistance ("DLTA") funds appropriated annually by the Legislature to regional planning agencies, with additional funds directed to TAP by MAPC management from the annual municipal assessment paid to MAPC by member municipalities. Id. From April to September 2024, Wrentham requested and received technical assistance services from MAPC staff in the form of GIS mapping services and consultant services to assist the town planner

prepare for upcoming public meetings relating to the MBTA Communities Law. A104-105. The cost of these total services to Wrentham was approximately $3,500, which was paid for by DLTA funds. A105. MAPC has never received a request for technical assistance from members Middleton or Marshfield. Id.

Third, the Massachusetts Housing Partnership Fund Board ("MHP") offers an MBTA Communities Technical Assistance Program, which provide technical assistance to planning staff and municipal officials with activities directly related to the development and/or documentation of multi-family zoning districts to comply with the MBTA Communities Law. A162. Under the 3A-TA Program, work is performed by pre-qualified consultants, including the Regional Planning Agencies, who are under contract with and paid directly by MHP. Id. These consultants work directly with municipal representatives to develop a scope of work for review by MHP, which must be completed within one year of the grant award. Id. Although awards are capped at $25,000 per project, municipalities may request assistance multiple times. Id. Middleborough, Hanson, and Wrentham were each awarded two grants under this program, with Middleborough receiving $60,000 for its first grant and $5,352 for its second grant, Hanson receiving $18,326 for its first grant and $19,400 for its second grant, and Wrentham receiving $20,000 for its first grant and $20,000 for its second grant. A163-165. MHP has never received a request for its program from Middleton or Marshfield. A166.

DLM's Request to HLC

On March 3, 2025, DLM requested that HLC provide "the fiscal impact statements in connection with the MBTA Communities Act referenced in the SJC's Milton decision." A262. On March 6, 2025, HLC provided DLM with the "Regulation Filing" packet filed with the Secretary of the Commonwealth on January 14, 2025, which included both a statement of no fiscal effect pursuant to G.L. c. 30A, § 5, and a small business impact statement. A262-89.

The Healey-Driscoll Administration's Policy Regarding Award of Discretionary State Grants to MBTA Communities

It is the policy of the Healey-Driscoll Administration that all discretionary state grants shall be subject to compliance with § 3A. A261. For each grant opportunity, an awardee's compliance status is evaluated at the time of award and at the time of contracting. Id. If, at either of these points, a municipality is found to be out of compliance with § 3A, it will not receive that grant unless it comes into compliance with the law. Id. If a municipality falls out of compliance with § 3A after contracting, the award and related funds will not be rescinded. Id. Grants or funds where the awarding agency does not have discretion as to recipient selection, such as Chapter 70 state aid for public schools or federal grants where the state is considered a pass-through mechanism, are not subject to this policy. However, grants where the state has discretion on recipient selection, or any state matching funds, are subject to the policy. Id.

Status of the Grants Identified by Plaintiffs

In its motion for a preliminary injunction (p. 2), Marshfield identifies three state grants that it believes have been imperiled by its noncompliance with § 3A:

- *FY25 Coordinated Family and Community Engagement Grant*. Marshfield contracted for this grant in July 2023. A200. In accordance with administration policy, Marshfield's noncompliance with § 3A has not resulted in rescission of the grant, nor will it render Marshfield ineligible for a related continuation grant. Id.

- *Seaport Economic Council Grant*. Marshfield was notified in December 2024 of its selection for this grant in the amount of $261,600, with the express contingencies that the "award is not final until [Marshfield] has executed a contract" for the grant and that Marshfield "be[] in compliance with the multi-family zoning requirements set forth in [§ 3A]." A235,259. Marshfield fell out of compliance with § 3A before any such contract was executed. A235. SEC stands ready to execute a contract with Marshfield for that grant award if HLC deems Marshfield to be compliant with G.L. c. 40A, § 3A, reasonably in advance of the applicable contracting deadline of December 31, 2025. Id.

- *Dredging Grant*. The relevant state agency is currently accepting applications for this grant; Marshfield has not applied, let alone been awarded a grant. A235-36

Middleton's Verified Complaint (¶ 30) identifies one such grant:

- *MassWorks Infrastructure Program*. Middleton was notified in October 2024 of it selection for this grant in the amount of $2 million, with the express contingencies that the "award is not final until [Middleton] has executed a contract" for the grant and that "a contract will not be executed if [Middleton] is noncompliant with [§ 3A] as determined by EOHLC." A233. Middleton fell out of compliance with § 3A before any such contract was executed. Id. EOED stands ready to execute a contract with Middleton for that grant award if EOHLC deems Middleton to be compliant with G.L. c. 40A, § 3A, reasonably in advance of the applicable contracting deadline of June 30, 2025. A233-34.

Middleborough's Verified Complaint (¶¶ 124-25) identifies six grants as to which, it avers, "reimbursement is being withheld as a result of Middleborough's perceived noncompliance with [§ 3A]." Specifically:

- *Municipal Vulnerability Preparedness (MVP) FY25 Action Grant*. Middleborough contracted for this grant in July 2024, A108, when it was still in interim compliance with § 3A. In accordance with administration policy, Middleborough's noncompliance with § 3A has not resulted in rescission of this grant and Middleborough has not yet requested any reimbursement under this grant. Id.

- *Parkland Acquisitions & Renovations to Communities (PARC) Grant*. Middleborough contracted for this grant in October 2024, id., when it was still in interim compliance with § 3A. In accordance with administration policy, Middleborough's noncompliance with § 3A has not resulted in rescission of this grant and Middleborough has not yet requested any reimbursement under this grant. Id.

- *MassTrails Grant*. Middleborough contracted for this grant in April 2024, id., when it was still in interim compliance with § 3A. In accordance with administration policy, Middleborough's noncompliance with § 3A has not resulted in rescission of this grant and Middleborough has not yet requested any reimbursement under this grant. Id.

- *Municipal Local Cybersecurity Grant Program, Creation of CIRT and TTX*. Middleborough contracted for this grant in December 2024 A204, when it was still in interim compliance with § 3A. In accordance with administration policy, the town's noncompliance with § 3A has not resulted—and will not result—in rescission of this grant and Middleborough has not yet requested any reimbursement under this grant. Id.

- *Drinking Water Supply Protection Grant*. Middleborough contracted for this grant in May 2024, A108, when it was still in interim compliance with § 3A. In accordance with administration policy, Middleborough's noncompliance with § 3A has not resulted in rescission of this grant and final reimbursement to Middleborough is scheduled to be transmitted later this month. Id.

- *Safe Routes to Schools*. This program, despite Middleborough's averments, is not a reimbursement grant; rather, MassDOT contracts with appropriate vendors to complete the work on the project proposed by the town. A183-86. Middleborough's project remains a participant in this program, despite Middleborough's noncompliance with § 3A. Id.

Middleborough's Verified Complaint (¶ 126) also identifies one state grant as to which, it avers, the Commonwealth is "withholding previously committed . . . funds . . . due to Middleborough's perceived noncompliance," specifically:

- *MassWorks Infrastructure Program*. Middleborough was notified in October 2024 of its selection for this grant in the amount of $2.8 million, with the express contingencies that the "award is not final until [Middleborough] has executed a contract" for the grant and that "a contract will not be executed if [Middleborough] is noncompliant with [§ 3A] as determined by EOHLC." A232-255. Middleborough fell out of compliance with § 3A before any such contract was executed. A233. EOED stands ready to execute a contract with Middleborough for that grant award if EOHLC deems Middleborough to be compliant with G.L. c. 40A, § 3A, reasonably in advance of the applicable contracting deadline of June 30, 2025. Id.

Middleborough's Verified Complaint (¶¶ 117-18) also identifies one grant that the state allegedly has rescinded, specifically:

- *Supporting Students' SEL, Behavioral & Mental Health and Wellness Grant*. Middleborough was notified in November 2024 that its district's grant application was awarded pending funding approval. A196-97. DESE informed Middleborough that "[y]our grant has been awarded with a start date of 11/21/24 so any grant expenditures may be incurred as of this date. Once DESE's grants office reviews, a Grant Award Notice will be generated by GEM$ and available in your grant record. We are also currently waiting for the approval to release the funding. Once approved, an official award letter will be available through GEM$. Once final approvals are received, funds will be available to draw down to reimburse those expenses." Id.; Middleborough Compl. Exh. U.

  Although DESE informed Middleborough on February 24, 2025, that it is not eligible to receive the grant because of its noncompliance with § 3A, A197, DESE soon updated Middleborough that it would be allowed to access grant funds for expenses incurred between November 21, 2024, and February 20, 2025, the project duration of the grant. A196-97.

And Middleborough's Verified Complaint (¶¶ 119-21) identifies one state grant that it allegedly was denied "as a consequence of [its] perceived failure to comply with [§ 3A]." In truth, the

town's application for that grant was denied on August 29, 2024, when Middleborough was still in interim compliance with § 3A, because it did not score highly enough. A229.

Argument

I. The Plaintiffs Fail to State a Claim in Their Counts Regarding "Local Mandate"; an Accounting; the Validity of 760 CMR 72.00; HLC's Application of 760 CMR 72.00 to Middleborough and Middleton; and Breach of Contract

A motion to dismiss for failure to state a claim under Mass. R. Civ. P. 12(b)(6) must be granted unless the complaint's factual allegations are "enough to raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact) . . . ." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008). "[A] plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions . . . ." Id., quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). In determining whether to grant a motion to dismiss, a court "draw[s] on its judicial experience and common sense." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

Here, nearly all of the plaintiffs' counts against the Movants fail to state a claim. First, each count premised on a "local mandate" violation fails to state a claim because the plaintiffs plead no direct service or cost obligation imposed by § 3A, outside of local administration expenses. See pp. 15-23 below. And the claims of Hanson, Middleton, and Wrentham for an accounting must be dismissed because such relief is not available under the "Local Mandate" statute. See pp. 23-24 below.

The plaintiffs' other counts fare no better. Middleborough's Count 2, which asserts a facial challenge to 760 CMR 72.00, fails because the regulations are valid and enforceable. See pp. 24-26 below. Middleborough's Count 3, which challenges HLC's application of § 3A and 760 CMR 72.00 to Middleborough, must be dismissed because HLC appropriately determined that Middleborough is noncompliant with § 3A. See pp. 26-28 below. Middleborough's Count 4

must be dismissed because the complaint alleges no breach of any enforceable contract. See pp. 29-31 below.

Marshfield's Count 1, which claims that G.L. c. 40A, § 3A, is invalid because it conflicts with G.L. c. 40A, § 5, misunderstands the relationship between those two statutes and must be dismissed as a matter of law. See pp. 31-32 below. Finally, Middleton's Count 1 must be dismissed because Middleton was properly classified as an "Adjacent Community." See pp. 32-33 below.

A. Each Count Premised on a "Local Mandate" Violation Fails to State a Claim Because No Plaintiff Has Pled Any Direct Service or Cost Obligation Imposed by § 3A, Outside of Local Administration Expenses.

The "Local Mandate" statute addresses state laws taking effect after January 1, 1981, that "impos[e] any direct service or cost obligation upon any city or town." G.L. c. 29, § 27C(a). Absent a municipality's acceptance, such a law is effective only if accompanied by contemporaneous state legislative appropriation to cover such costs, "exclusive of incidental local administration expenses." Id.; Town of Lexington v. Comm'r of Educ., 393 Mass. 693, 698-701 (1985). As discussed below, "direct" costs, "impos[ition]," and "incidental local administration expenses" are all terms of art that limit the reach of the Local Mandate statute.

A municipality's "only available remedy under G.L. c. 29, § 27C, is a court order exempting the municipality from compliance" with the challenged law. City of Worcester v. Governor, 416 Mass. 751, 761 (1994); G.L. c. 29, § 27C(e). Such an order is effective only "until the Commonwealth shall reimburse such city or town the amount of . . . deficiency" between the direct service or cost obligations imposed by the law and any payment provided the municipality by the Commonwealth. G.L. c. 29, § 27C(e).

Prior to filing suit, a municipality may (but need not) request that DLM "determine whether the costs imposed by [the challenged law] have been paid in full by the Commonwealth

in the preceding year and, if not, the amount of any deficiency in such payments." G.L. c. 29, § 27C(d). DLM's determination of the amount of deficiency is "prima facie evidence of the amount necessary" to reimburse the municipality. G.L. c. 29, § 27C(e).

Here, the plaintiff towns all rely on DLM's view that § 3A imposes a direct service or cost obligation. But this Court owes no deference to that view. See pp. 16-17 below. Instead, this Court should independently conclude that the costs alleged by Hanson, Middleborough, Middleton, and Wrentham are not "direct" ones subject to the Local Mandates statute, see pp. 17-19 below, and that the costs alleged by Marshfield are incidental local administrative expenses or are optional and not "impos[ed]" by § 3A. See pp. 19-23 below.

1. This Court Owes No Deference to DLM's View that § 3A Imposes a Direct Service or Cost Obligation.

Under the Local Mandate statute, DLM's factual determination of the amount of any deficiency between municipal costs and state payments is treated as "prima facie evidence." But, here, DLM has purported to opine on something entirely different: Not the factual amount of any deficiency, but rather the legal question of whether § 3A imposes a direct service or cost obligation within the meaning of § 27C.

This Court owes no deference to DLM's view for at least four reasons. First, whether a state law imposes such an obligation is a "question[] of law for th[e] court to resolve," Worcester, 415 Mass. at 754, and the SJC historically has extended no deference to similar decisions by DLM. Id. (concluding that state law does not impose direct service or cost obligations beyond incidental administrative expenses, without even discussing DLM's reasons for concluding that it does); Town of Norfolk v. Dep't of Env't'l Quality Eng'g, 407 Mass. 233 (1990) (same). Second, DLM has addressed only a question that the Legislature did not charge DLM with answering. Cf. Goldberg v. Bd. of Health of Granby, 444 Mass. 627, 634 (2005)

(deference to agency regulation interpreting statute is most appropriate where Legislature has granted agency "explicit, broad" authority to make such rules). Third and relatedly, DLM is not the "agency charged with primary responsibility for administering [§ 27C]," id. at 633—rather, the judiciary is. See G.L. c. 29, § 27C(e); cf. Mass. Teachers' Ret. Sys. v. Contributory Ret. App. Bd., 466 Mass. 292, 296-97 (2013) (where one agency is charged by statute with promulgating regulations to interpret statute, another agency's interpretation of statute not entitled to deference). Fourth, DLM's letters resulted from a process that was non-public and non-adversarial—indeed, the Commonwealth was given no opportunity to participate in DLM's proceedings—and thus contrasts sharply with other contexts in which courts might defer to agency action. See id. (extending deference to agency regulation, which typically must undergo public comment under Chapter 30A); G.L. c. 30A, § 14 (providing deferential standard of review for agency decision after adjudicatory proceeding at which aggrieved party has opportunity to be heard).

Thus, this Court must address the question of whether § 3A imposes any direct service or cost obligation de novo, without deference to DLM. Because that is a "question[] of law," Worcester, 415 Mass. at 754, it is properly resolved on a motion to dismiss under Rule 12(b)(6).

2. The Infrastructure and Operational Costs Pled by the Non-Marshfield Plaintiffs Are Not Direct Service or Cost Obligations.

The Local Mandate statute reaches only state laws that impose "direct" service or cost obligations on a municipality. G.L. c. 29, § 27C(a). "Indirect" obligations, including those that are speculative, are "insufficient" to state a claim. Kennedy v. Commonwealth, 92 Mass. App. Ct. 644, 651 (2018) (affirming dismissal); see also Norfolk, 407 Mass. at 240 (to interpret § 27C to reach indirect costs "would widen the scope of [§ 27C] beyond that which was intended").

Here, Hanson, Middleton, and Wrentham each allege that construction of multi-family housing units equal to their required multi-family unit capacity "will result in substantial infrastructure impacts to the Town, including, without limitation, impacts to the Town's water system, public safety services, educational services and buildings, roads, and other general governmental services"; "[m]itigating such impacts," those towns speculate, "will require a substantial appropriation of funds for the expenses and improvements necessary to service [such newly-constructed] housing." Hanson Compl. ¶ 28, Middleton Compl. ¶ 29, Wrentham Compl. ¶ 27. Middleborough similarly alleges that construction of additional multi-family housing units will result in expenses for infrastructure improvements, as well as in "significant increases across all operating budgets due to the need for additional services" that, it speculates, "will be ongoing and escalating from year-to-year." Middleborough Compl. ¶¶ 24, 67-72, 143-44.

But such costs are at most an indirect consequence of § 3A, which by its terms mandates only zoning—not construction. See 760 CMR 72.05(d)(2) ("Nothing in G.L. c. 40A, § 3A or 760 CMR 72.00 should be interpreted as a mandate to construct a specified number of housing units . . . ."). Such costs also are inherently speculative: Nobody can yet know what construction might occur in a given town's § 3A district; see id. (acknowledging that construction of multi-family housing in a § 3A district "may be unlikely to occur soon"), nobody can know what expenses of this type might be borne by developers or other private entities, and nobody can know the value of the property tax revenue the municipality will realize from such new construction, or whether it might exceed any increased costs to the municipality of providing services to those residents. The inherent speculativeness of these costs explains why such indirect costs are not cognizable under § 27C: If they were, it would be impossible to appropriate

for them annually as the statute requires. It also explains why DLM found itself unable to determine the amount of any deficiency associated with the alleged shortfall.

Thus Hanson's Counts 1-3, Middleborough's Count 1, Middleton's Counts 1-3, and Wrentham's Counts 1-2 state no claim for violation of § 27C and must be dismissed.

3. The Implementation Costs Pled by Marshfield Are Either Incidental Administration Expenses or Are Not "Imposed" by § 3A.

Alone among the plaintiffs,[6] Marshfield alleges that it has "incurred costs and expenses in evaluating and drafting proposed zoning bylaws and presenting them to Town Meetings." Marshfield Compl. ¶ 51. But this fails to state a claim for two independent reasons: (1) such costs comprise incidental administration expenses; and (2) such costs are not "imposed" by § 3A.

To see why, one must first analyze exactly what § 3A and 760 CMR 72.00 require of a municipality. Specifically, § 3A requires only that a municipality "have a zoning ordinance or by-law" that "provides for at least 1 district of reasonable size in which multi-family housing is

[6] The non-Marshfield plaintiffs refrain from pleading costs of this type for good reason: Each of them were awarded extensive "technical assistance" funds and in-kind services from HLC and other sources, totaling approximately $170,000 for the four, to defray their costs to prepare § 3A-related zoning by-law amendments for presentation at Town Meeting. A59, 105, 163-166. Even if a non-Marshfield plaintiff were to amend its pleading to claim that costs of this type violated § 27C(a), their receipt of such technical assistance likely would preclude them from obtaining relief under § 27C(e), which provides as an exclusive remedy exemption from the challenged law "until the commonwealth shall reimburse such city or town the amount of [its] deficiency or additional costs." The Commonwealth reserves its rights to introduce additional evidence and argument if any non-Marshfield plaintiff seeks to so amend its complaint or otherwise to assert such an argument.

permitted as of right." That district must, in turn, have a minimum gross density of 15 units/acre and be located "not more than 0.5 miles" from transit "if applicable."

The regulation provides additional details to assist compliance, in a way that offers municipalities numerous options, including:

- The option to divide its § 3A-compliant district into geographically noncontiguous sub-districts, 760 CMR 72.06(3);
- The option to locate a portion of its § 3A-compliant district more than 0.5 miles away from an "applicable" transit station, 760 CMR 72.08(1);
- The option to require certain percentages of the units in new multi-family developments to be deed-restricted as affordable, 760 CMR 72.04(1)(b);
- The option to reduce the minimum required size of its § 3A-compliant district by relying on a different district that allows mixed-use development, but not multi-family housing, as of right, 760 CMR 72.05(c); and
- The option to require site plan review procedures, site development standards, dimensional standards, and other procedures/requirements in its § 3A-compliant district. 760 CMR 72.04(1)(a).

Further, 760 CMR 72.00's use of dual metrics to define "reasonable size" (i.e., acreage and multi-family unit capacity) allows a municipality the option to choose a balance between a district with more land area and less density, and one with less land area and more density. And the statutory definition of "multi-family housing"—that is, "a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building," G.L. c. 40A, § 1A—enables a municipality to design its district to encourage its choice of townhouses, garden apartments, large apartment complexes, or things in between. Thus the overall § 3A scheme affords each municipality significant flexibility in designing its § 3A-compliant district.

Marshfield Town Meeting twice voted on proposals to amend the Town's Zoning Bylaws to seek compliance with § 3A. Marshfield Compl. ¶ 19. The first was at the Special Town

Meeting held on April 22, 2024, id., where Article 18 proposed an overlay district in which multi-family housing would be allowed as of right, subject to extensive dimensional standards, site design and building standards, and special affordability requirements, all subject to detailed requirements for site plan review by the Planning Board, and Article 19 proposed related amendments to the zoning map. A4-20 (STM warrant).[7] The second was at the Special Town Meeting held on December 16, 2024, Marshfield Compl. ¶ 20, where Articles 12, 13, and 14 proposed a similar overlay district, in the same location as the April proposal and subject to only modest changes from the standards proposed in April, such as imposition of administrative and consultant fees for the required site plan review. A21-35 (STM warrant). Both Town Meetings voted down these articles. Marshfield Compl. ¶¶ 19-20.

The costs now alleged by Marshfield to "evaluat[e] and draft[] proposed zoning bylaws and present[] them" to these two Town Meetings are not cognizable under § 27C for two independent reasons.

First, they represent "incidental local administration expenses," a category comprised of those "relatively minor expenses related to the management of municipal services" that "are subordinate consequences of a municipality's fulfilment of primary obligations." Worcester, 416 Mass. at 758. In the context of § 3A, a municipality's "primary obligation" is to "have a zoning ordinance or by-law." And, while a town that lacked a zoning by-law when § 3A was enacted in 2021 might well argue that § 3A's mandate to adopt one triggers the Local Mandate law, Marshfield is not such a town: It voluntarily adopted its zoning by-law in 1926. See https://ecode360.com/30026317; see also St. 1920, c. 601 (authorizing, but not requiring, towns

[7] The warrants for Marshfield's April and December 2024 Special Town Meetings are properly considered on a motion to dismiss both because they are matters of public record, and because they are referenced and relied upon in the complaint. See Marshfield Compl. ¶¶ 19-20.

to adopt zoning). A subordinate consequence of having a zoning by-law is the need to periodically amend that by-law. But the time and expense required to do so is an overhead administrative cost that is routinely incurred by every municipality with zoning; indeed, since 2013, Marshfield Town Meeting has enacted 73 distinct amendments to its zoning by-law. As such, the enactment of § 3A has not required Marshfield to do anything that it was not already doing; it merely has required Marshfield's zoning program to culminate in a multi-family residential district that displays the characteristics set forth in § 3A and 760 CMR 72.00. As such, the costs alleged by Marshfield are best understood as incidental administration expenses. See City of Worcester, 416 Mass. at 758 (where municipality already bears "primary obligation" of identifying children in need of special education, any additional costs to comply with new state regulation requiring written notification to parents of such children "is a subordinate administrative task and therefore need not be funded by the Commonwealth").

Second, Marshfield's alleged costs to "evaluat[e] and draft[] proposed zoning bylaws and present[] them to Town Meetings" are not "imposed" by § 3A. The Local Mandate statute covers state laws "imposing" a direct service or cost obligation. G.L. c. 29, §§ 27C(a), 27C(c).[8] "The word 'imposition' connotes compulsion and involuntariness. . . . [T]he section at issue applies to regulatory obligations in which the municipality has no choice but to comply and to pay the costs. It is from these mandatory obligations which [§ 27C] grants relief." Norfolk, 407 Mass. at 239. Costs of a voluntary activity, in contrast, do not implicate the Local Mandate statute. Id. at 239-41.

[8] Where § 27C(a) addresses costs imposed by legislative action, § 27C(c) addresses costs imposed by regulatory action. The SJC has interpreted the two subsections to share the same scope, notwithstanding differences in language between them. Norfolk, 407 Mass. at 240-41.

Here, § 3A and 760 CMR 72.00 assuredly compel Marshfield to have a multi-family residential district that displays certain characteristics in its zoning by-law. Milton, 495 Mass. at 193 (describing § 3A(a) as "a legislative mandate"). But § 3A and 760 CMR 72.00 afford Marshfield significant flexibility, and give it numerous options, in designing that district. And the designs submitted to Marshfield Town Meeting (which were substantially similar) took broad advantage of those options, proposing an overlay district accompanied by new dimensional standards, new site design and building standards, special affordability requirements, and special requirements for mixed-use development, all subject to detailed requirements for site plan review by the Planning Board. The resulting proposal, while perhaps suiting those who proposed it, was far more complex than necessary to satisfy § 3A and 760 CMR 72.00. By contrast, the Town of Pembroke met its § 3A obligations by simply adding "residential multifamilv housing" as a permitted use in two preexisting districts, and making very modest conforming changes to other aspects of its zoning by-law. A36-44; https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities ("Submission Statuses"). Rather than attempt something as limited as Pembroke, such as rezoning one of its preexisting districts, Marshfield chose to design a complex, bespoke § 3A district. That choice was permitted by § 3A because of the implementation-related discretion it affords municipalities. But that choice was not "imposed" or "mandated" by § 3A.

B. All Claims for Accounting and Reimbursement Must Be Dismissed Because Such Relief Is Not Available Under the Local Mandate Statute.

In their respective Counts VI, VI, and V, Hanson, Middleton, and Wrentham each seek an order compelling the Commonwealth "to assume the costs of and reimburse the Town" for costs they associate with § 3A. But the SJC long ago held that § 27C "does not provide that reimbursement is required, but only that, in the absence of reimbursement, the 'mandates' are not

mandates." Worcester, 416 Mass. at 762. Thus, the only "correct remedy" under the Local Mandate statute would "not be an order of reimbursement but rather an order exempting [the municipality] from the mandate." Id. at 762. For this reason, Hanson, Wrentham and Middleton's respective claims for accounting and reimbursement must be dismissed.

C. Middleborough's Count 2 Must Be Dismissed Because 760 CMR 72.00 Is Valid and Enforceable.

Middleborough's Count 2 asserts that 760 CMR 72.00 is invalid on two theories, but neither has merit. First, 760 CMR 72.00 was properly promulgated. See p. 24 below. Second, 760 CMR 72.00—not any "computer model"—appropriately uses both land area and multi-family unit capacity to measure a district's "reasonable size." See pp. 25-26 below.

1. 760 CMR 72.00 Was Properly Promulgated.

Middleborough alleges (Compl. ¶ 162) that 760 CMR 72.00 was improperly promulgated because it was not accompanied by a good faith fiscal estimate or small business impact statement. Section 5 of Chapter 30A indeed requires a promulgating agency to file an estimate of the regulation's "fiscal effect including that on the public and private sector, for its first and second year, and a projection over the first five-year period, or a statement of no fiscal effect." But a "statement of no fiscal effect" is precisely what HLC filed in connection with 760 CMR 72.00. See A267. Similarly, HLC's filing package for 760 CMR 72.00 included a completed Small Business Impact Statement form, in accordance with G.L. c. 30A, § 3. A269-70. Middleborough criticizes (Compl. ¶ 42) these filings for being "unaccompanied by any factual support for the determination," but no such thing is required by either G.L. c. 30A, §§ 3 or 5. And Middleborough's allegation (Compl. ¶ 42) that "there [could not] have been a good faith determination of the impact in the 6 days between the [Milton] decision and the issuance of [760 CMR 72.00]" depends on speculation; as such, it is not credited on a Rule 12 motion.

2. 760 CMR 72.00 Appropriately Uses Both Acreage and Minimum Multi-family Unit Capacity to Measure a District's "Reasonable Size."

Middleborough also claims (Compl. ¶ 161) that 760 CMR 72.00's tandem use of acreage and multi-family unit capacity to measure a district's "reasonable size" is inconsistent with § 3A.[9] The test for assessing the substantive legality of a regulation consists of two sequential inquiries. First, the Court "determine[s], using conventional tools of statutory interpretation, whether the Legislature has spoken with certainty on the topic in question"; if it has, the Legislature's intent controls. Goldberg, 444 Mass. at 632-33. If, however, the Legislature has not done so, the Court inquires whether the agency's pronouncement may "by any reasonable construction be interpreted in harmony with the legislative mandate." Id. at 633.

Here, as to the first inquiry, the Legislature has not spoken with certainty about how a district's size is to be measured. To the contrary, the statutory term "size" is unavoidably ambiguous in this context: It may refer to physical area, population, both, or something else. Section 3A's other reference to "size" offers no context, just that a "district of reasonable size" must exhibit a certain level of density and "be located not more than 0.5 miles from a [transit station], if applicable"—criteria that could describe a district of any "size," however defined.

[9] Middleborough also alleges (Compl. ¶ 156-57) that the minimum acreage and multi-family unit capacity for each affected municipality was the arbitrary product of a computer model. In reality, however, HLC's methodologies for calculating the minimum acreage and multi-family unit capacity applicable to each affected municipality are set forth in 760 CMR 72.05(1)(a) and 760 CMR 72.05(1)(b)(1), respectively. In making allegations about a "computer model," Middleborough appears to be referring to the "compliance model" Excel spreadsheet described at 760 CMR 72.05(d)(1), a tool that HLC has made available to municipalities to help them calculate the multi-family unit capacity of a proposed district, and thus feel confident that the district will pass muster when HLC reviews it for compliance with 760 CMR 72.05(1)(b)(1). Because Middleborough's allegations on this score purport to characterize 760 CMR 72.00—and, in fact, mischaracterize it—they are the type of conclusory legal allegations that this Court does not credit on a Rule 12 motion.

The second inquiry requires the Court to defer to the "statutory interpretation of the agency charged with primary responsibility for administering [the] statute" unless it "cannot by any reasonable construction be interpreted in harmony with the legislative mandate." Goldberg, 444 Mass. at 633. It is "unimportant" whether this Court would have interpreted the statute the same way as the agency: "Administrative agencies are more suited to the task of clarifying the Legislature's plan through specific rules, and more able to provide for 'consistency and coherence,' than are courts." Id. at 633-34 (citation omitted). Here, 760 CMR 72.00's use of both land area and multi-family unit capacity to measure a district's "size" is consistent with the text of § 3A. It is also reasonably takes advantage of HLC's substantive expertise in order to "tailor the [regulations] to fit the 'real-world' conditions of each MBTA community affected by the act by, for example, taking into account a community's land area, population, existing housing stock, or other relevant factors." Milton, 495 Mass. at 190. And it fits comfortably within the § 3A(c)'s "explicit and broad" grant of authority to HLC. Goldberg, 444 Mass. at 634.

D. Middleborough's Count 3 Must Be Dismissed Because HLC Appropriately Determined that Middleborough Is Not In Compliance with § 3A.

Middleborough's Count 3 claims that HLC, in deeming Middleborough noncompliant with § 3A, acted arbitrarily and capriciously in three ways. First, Middleborough claims (¶¶ 167-68) that it already "complies with the Act" based on a preexisting 40-acre "40R" zoning district in which multi-family housing is permitted as of right. Second, it claims (Compl. ¶¶ 170-74) that, having submitted an action plan in 2023, it cannot be deemed noncompliant for failing to submit an action plan in 2025. Third, it claims (Compl. ¶ 175) that HLC's determination of

noncompliance contravened G.L. c. 30A, § 11(8), because it did not notify Middleborough of any opportunity to seek judicial review. Each of these theories fails as a matter of law.

As to the first theory, Middleborough's preexisting 40-acre district manifestly does not satisfy 760 CMR 72.00, which requires Middleborough's § 3A-compliant district to comprise at least 50 acres. See https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities ("MBTA Community Categories and Requirements"). Middleborough responds by suggesting (Compl. ¶ 167) that it can comply with § 3A independent of 760 CMR 72.00. But it is HLC that the Legislature has directed "to determine if an MBTA Community is in compliance with [§ 3A]." G.L. c. 40A, § 3A(c). To do so, HLC has directed municipalities to submit an application for "district compliance," based on which HLC will deem the municipality either compliant, conditionally compliant (subject to specified conditions), or noncompliant (in which case HLC will identify "the steps that must be taken to achieve compliance"). See 760 CMR 72.09(6)-(7). Middleborough does not allege that it has attempted to follow these steps. It instead invites this Court to substitute HLC's judgment with its own, an invitation that must be declined in view of the SJC's recent affirmance of § 3A(c)'s delegation of authority to HLC in this area. Milton, 495 Mass. at 190.

As to the second theory, Middleborough did submit an action plan under the guidelines on June 6, 2023. See Middleborough Compl. Exh. O. But that action plan committed to a series of deadlines that culminated in submission of a district compliance application by December 31, 2024, id.—which manifestly did not come to pass. Contrary to Middleborough's conclusory legal allegation (Compl. ¶ 173), 760 CMR 72.00 assuredly does require some MBTA communities that previously submitted an action plan under the guidelines to re-submit a valid action plan in 2025. See 760 CMR 72.09(3) (Table 3) (requiring "commuter rail community that

has not submitted a district compliance application to EOHLC as of December 31, 2024," to "submit action plan" by February 13, 2025"); 760 CMR 72.09(4) (requiring action plan to specify "timeline for various actions needed to create a compliant Multi-family zoning district"). Indeed, shortly after promulgating 760 CMR 72.00, HLC informed Middleborough by letter that it had "**an opportunity to come into interim compliance by submitting a new Action Plan by February 13, 2025.**" Middleborough Compl. Exh. R. (bolding in original). And Middleborough's conclusory legal allegation (Compl. ¶ 177) that its 2023 action plan was sufficient is not to be credited, especially where the 2023 action plan specified a compliance timeline that had already passed as of February 2025.

As to Middleborough's third theory, the provisions of G.L. c. 30A, § 11(8), by their terms apply only to decisions in agency "adjudicatory proceedings." "Adjudicatory proceeding" is a term of art defined as a hearing "before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing." G.L. c. 30A, § 1; cf. Reid v. Acting Comm'r of Dep't of Cmty. Affairs, 362 Mass. 136, 144 (1972) ("Unless an opportunity for an agency hearing is required by constitutional right or by statute we are not authorized to require the agency to comply with the formal procedural requirements prescribed for adjudicatory proceedings."). Middleborough alleges no statutory or constitutional provision requiring HLC to conduct a hearing before determining Middleborough's compliance with § 3A and there is none. See Spence v. Boston Edison Co., 390 Mass. 604, 608 (1983) (recognizing "basic principle" that political subdivisions of the state, such as municipalities, "do not enjoy the constitutional guarantees of due process"). As such, HLC's noncompliance determination was not subject to G.L. c. 30A, § 11(8), and Middleborough's Count 3 must be dismissed.

E. Middleborough's Count 4 Must Be Dismissed Because the Complaint Alleges No Breach of Any Enforceable Contract.

A breach of contract claim requires the plaintiff to demonstrate: (1) the existence of a valid and binding contract between the plaintiff and the defendant; (2) the plaintiff's willingness to perform or actual performance under the contract; (3) a breach by the defendant of the terms of the contract; and (4) damages to the plaintiff caused by the breach. Singarella v. City of Boston, 342 Mass. 385, 387 (1961). Contract formation requires a manifestation of mutual assent, sometimes called a "meeting of the minds," which occurs when "there is an offer by one [party] and an acceptance of it by the other." Sea Breeze Estates LLC v. Jarema, 94 Mass. App. Ct. 210, 215 (2018). Here, Middleborough has failed to plead at least one of these elements with respect to each of the grant-related contractual breaches it alleges.

First, Middleborough fails to plausibly allege any breach as to all of the grants identified in paragraphs 124-25 of its complaint. Each of those grants except "MassDOT/Safe Routes to Schools" is governed by a contract that contemplates that the Commonwealth will reimburse Middleborough for covered expenses.[10] But, although Middleborough alleges (¶ 124) that "reimbursement has not been provided," it nowhere alleges that it has actually requested reimbursement under these contracts. And the MassDOT/Safe Routes to Schools grant, in contrast, is not a reimbursement program, but rather obligates MassDOT to undertake certain work at its own expense. A183-86. As such, Middleborough cannot plausibly allege that MassDOT breached any contractual obligation of reimbursement.

Second, Middleborough fails to plausibly allege the existence of any contract with respect to the MassWorks grant identified in paragraphs 126-27. Indeed, Middleborough's entire

[10] These contracts, which appear at A111-16, 118-23, 125-29, 131-60, and 226, are properly considered on a Motion to Dismiss because they were relied-upon in framing the complaint.

allegation on that point is that "[t]he Commonwealth is also withholding previously committed MassWorks Grant funds," accompanied by the conclusory allegation that, "[a]lthough these agreements are described as 'grants', they constitute binding obligations on the part of the Commonwealth." This is insufficient to plausibly allege the existence of an enforceable contract, especially in view of the principle that "[a] promise made with an understood intention that it is not to be legally binding, but only expressive of a present intention, is not a contract."[11] Nahant Preservation Trust, Inc. v. Northeastern Univ., 104 Mass. App. Ct. 698, 714-15 (2024).

Third, Middleborough alleges that the TIF agreement described in paragraphs 129-30 of its complaint was between "the Town and a private developer." As such, Middleborough has alleged no contract between itself and the Commonwealth that would support a claim of breach.

Finally, as to the Safe and Supportive Schools application described in paragraphs 119-20 and the two private-party applications described in paragraph 131, Middleborough alleges only

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[11] Similarly, as to the DESE grant described in paragraphs 117-18 of its complaint, Middleborough appears to proceed on a theory that the Commonwealth is promissorily estopped from withholding reimbursement, due to DESE's November 21, 2024, statement that "[y]our grant has been awarded with a start date of 11/21/24 so any grant expenditures may be incurred as of this date. Once DESE's grants office reviews, a Grant Award Notice will be generated by GEM$ and available in your grant record. We are also currently waiting for the approval to release the funding. Once approved, an official award letter will be available through GEM$. Once final approvals are received, funds will be available to draw down to reimburse those expenses." Middleborough Compl. Exh. U.

But such a theory requires the Town to allege not just that it detrimentally relied on DESE's statement, but that it reasonably did so. Salamon v. Terra, 394 Mass. 857, 859 (1985). Given the unavoidable qualifiedness of DESE's statement—contemplating, as it did, at least five future steps before the grant award would be "final" (i.e., review by DESE's grants office, generation of a Grant Award Notice, procurement of approval to release the funding, provision of an official award letter, and procurement of other unspecified "final approvals")—any reliance Middleborough placed on that statement cannot be deemed reasonable. Cf. Gustafson v. Wachusett Reg'l Sch. Dist., 64 Mass. App. Ct. 802, 808 (2005) ("[A] mere prediction or anticipation of future events . . . [is] distinguishable from a manifestation of intention to be bound or an enforceable promise or agreement.")

that applications for state funding were denied, which falls far short of alleging the existence of an enforceable contract.

F. Marshfield's Count 1 Must Be Dismissed Because § 3A Is Entirely Consistent with G.L. c. 40A, § 5.

Marshfield claims that § 3A "violates Gen. L. c. 40A sec. 5 that delegates the right to approve zoning amendments to the cities and towns." Marshfield Compl. ¶ 33. This claim misconstrues the municipal zoning power and must be dismissed as a matter of law.

Contrary to Marshfield's contention, § 5 is not a delegation of substantive zoning power to municipalities. Rather, § 5 merely "dictates the process a municipality must follow in amending its zoning bylaws." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 52 (2003) (emphasis added). Section 3A, in contrast, does govern the substance of municipal zoning, as the Legislature is empowered to do on the basis of its "supreme power in zoning matters." Bd. of App. of Hanover v. Housing App. Comm., 363 Mass. 339, 360 (1973). The SJC recently upheld § 3A as "constitutional" and "creat[ing] an affirmative duty for each MBTA community to have a zoning bylaw that allows for at least one district of reasonable size where multi-family housing is permitted as of right." Milton, 495 Mass. at 196. The two statutes thus form wholly consistent parts of a harmonious whole: Section 3A specifies what MBTA communities must do by way of zoning, and § 5 specifies how they must do it. See Bd. of Educ. v. Assessor of Worcester, 368 Mass. 511, 513-514 (1975) ("W]here two or more statutes relate to a common subject matter, they should be construed together to constitute an harmonious whole consistent with the legislative purpose.").

Marshfield's claim might be read to suggest that Marshfield cannot be penalized for failing to comply with § 3A because it cannot control how town meeting votes. But the SJC long ago held that a municipality can indeed be penalized for failing to comply with mandatory state

law, regardless of how town meeting votes. Commonwealth v. Town of Hudson, 315 Mass. 335 (1943); see also Del Duca v. Town Administrator of Methuen, 368 Mass. 1, 8 (1975) ("The defendants . . . suggest that a vote of the representatives of a town which has adopted a home rule charter can some how negate the force of a mandatory general law whenever this vote concerns 'local' issues. We reject this contention for reasons which should be obvious"). That a vote of town meeting is required for Marshfield to comply with § 3A in no way relieves Marshfield of its obligation to comply with § 3A, and Marshfield's Count 1 accordingly must be dismissed.

G. Middleton's Count 1 Must Be Dismissed Because Middleton Was Properly Classified as an "Adjacent Community."

Middleton is classified under 760 CMR 72.00 as an "adjacent community." See https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities ("MBTA Community Categories and Requirements"). Middleton claims (Compl. ¶¶ 24, 43), however, that it "does not meet the definition of any one of the four (4) categories of MBTA communities" set forth in 760 CMR 72.00 because it "contains no MBTA facilities and is not immediately adjacent to any communities with mass transit services." This contention must fail as a matter of law, as it rests on a basic misunderstanding of 760 CMR 72.00.

The four categories of MBTA community set forth in the regulation are defined with reference to one another:

- A "rapid transit community" is defined as one that has within its borders at least 100 acres of developable land associated with a subway or Silver Line station(s), 760 CMR 72.02;
- A "commuter rail community" is defined as one that has within its borders at least 100 acres of developable land associated with a commuter rail station(s) and is not a "rapid transit community," id.;
- An "adjacent small town" is defined as one that has less than 100 acres of developable land in proximity to any transit station, if the municipality's population and/or density fall below certain thresholds, id.; and

- An "adjacent community" is defined as one that has less than 100 acres of developable land in proximity to a transit station and is not an "adjacent small town", id.

As such, "adjacent community" functions as a residual category for MBTA communities that do not fit in to any of the other three categories.

Contrary to Middleton's claim, there is no requirement that an adjacent community actually be "immediately adjacent to [a] community with mass transit services." To the extent Middleton claims that it is not subject to § 3A at all, such a contention is plainly contrary to the Legislature's intent. See G.L. c. 40A, § 1A (defining "MBTA community" to include "the 51 cities and towns as defined in [G.L. c. 161A, § 1]"); G.L. c. 161A, § 1 (defining "51 cities and towns" to include Middleton).

II. The Counts Seeking Mandamus Relief Against HLC Must Be Dismissed as Moot.

In their respective Counts IV, IV, and III, Hanson, Middleton, and Wrentham each seek mandamus relief to compel HLC to provide DLM with a statement of fiscal effect required by G.L. c. 30A, § 5. But HLC filed that statement with the Secretary of the Commonwealth on January 14, 2025 (where it was held as a public record), and shared it with DLM on March 6, 2025, shortly after DLM first requested it. See A260-89. Counsel for DLM acknowledged at the March 10, 2025, hearing in these cases that DLM had no outstanding unfulfilled requests to HLC. As such, this "court can order no further effective relief" in the nature of mandamus, Branch, 481 Mass. at 817, and these claims must be dismissed as moot.

III. The Plaintiffs Are Not Entitled to Preliminary Injunctive Relief.

A preliminary injunction "is an extraordinary remedy never awarded as of right." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). To the contrary, such relief "should not be granted unless the plaintiffs [make] a clear showing of entitlement thereto." Student No. 9 v. Bd. of Educ., 440 Mass. 752, 762 (2004). To make such a showing, the plaintiffs must

establish both that they are likely to succeed on the merits of their claims and that they will likely suffer irreparable harm absent an injunction. Packaging Indus. Group v. Cheney, 380 Mass. 609, 617 (1980). If they do so, the Court then considers the harm an injunction would inflict on the Commonwealth, and, because any injunction would restrain the government, its impact on the public interest. Tri-Nel Mgmt., Inc. v. Bd. of Health of Barnstable, 433 Mass. 217, 219 (2001).

Here, the plaintiffs enjoy no likelihood of success on the merits of their claims. See p. 34 below. Nor can any of them establish that denial of preliminary relief will likely cause irreparable harm. See pp. 34-36 below. Finally, entry of preliminary relief would be detrimental to the public interest. See pp. 36-37 below.

A. The Plaintiffs Enjoy No Likelihood of Success on the Merits of Their Claims.

Likelihood of success on the merits is the "touchstone" of the preliminary injunction inquiry. Foster v. Commissioner of Correction, 484 Mass. 698, 712 (2020). If plaintiffs cannot satisfy this factor, the remaining factors become matters of "idle curiosity." Id.; accord Student No. 9 v. Bd. of Educ., 440 Mass. 752, 767 (2004) (declining to consider other preliminary-injunction factors where plaintiff had no likelihood of success on the merits). But, for the reasons set forth at pages 14-34 above, each of the plaintiffs' counts fails to state a claim as a matter of law. As such, they do not support issuance of any preliminary injunction.

B. No Plaintiff Can Establish that Denial of Preliminary Relief Would Likely Cause Irreparable Harm.

Hanson, Middleborough, Middleton, and Wrentham, in their respective briefs in support of preliminary relief, cite unquantified infrastructure costs associated with hypothetical multi-family development as the irreparable harm they will suffer absent an injunction. But such costs are not imminent—as the standard for preliminary relief requires—nor are they even likely. Instead, they are wholly conjectural at this point.

Hanson (p. 8) also points to two grants that, it alleges, MassDevelopment has refused to execute absent Hanson's compliance with § 3A. But because Hanson submitted an Action Plan to HLC last month, it is currently in interim compliance with § 3A. A82-92. And interim compliance is not non-compliance. Cf. 760 CMR 72.09(3). Accordingly and unsurprisingly, representatives of MassDevelopment have attested that one of those grant contracts was recently executed, A48, and the other is on track to be executed soon. A192. Once those contracts are executed, the conjectural possibility of Hanson falling out of compliance with § 3A will not result in rescission of those awards or related funds. A261.

Middleborough (p. 17) and Middleton (p. 9) identify grants that they have been awarded, but for which contracts have not been executed due to noncompliance with § 3A. But "economic loss alone does not usually rise to the level of irreparable harm" unless the loss is so great as to threaten the plaintiff's very existence or unless the plaintiff introduces evidence that the defendant would be unable to pay a final judgment. Hull Mun. Lighting Plant v. Mass. Mun. Wholesale Elec. Co., 399 Mass. 640, 643 (1987); Packaging Indus. Group, Inc., 380 Mass. at 621. Neither Middleborough nor Middleton argue that those circumstances are present here. In addition, the Commonwealth's affidavits attest that EOED stands ready to execute contracts for the two affected MassWorks grants if the towns come into compliance with § 3A reasonably in advance of the contracting deadline of June 30, 2025.[12] And while it is true that Middleborough has already expended funds without an executed contract, DESE has committed to reimbursing Middleborough for previously incurred expenses. See A197.

[12] Middleborough also identifies numerous other contracted grants that, it alleges, are at risk due to its being deemed noncompliant with § 3A. But, as set forth in the Commonwealth's affidavits, those grants simply are not imperiled as Middleborough alleges. See A108-09, 186, 204.

In its motion for a preliminary injunction (p. 2), Marshfield identifies three grants that, it claims, are at risk due to its being deemed noncompliant with § 3A. But, as the Commonwealth's affidavits attest, the FY2025 Coordinated Family and Community Engagement Grant is not actually at risk, see A200, and Marshfield has not even applied for the Dredging Grant. A236. As to the Seaport Economic Council grant, Marshfield has indeed been awarded the grant and its § 3A noncompliance has prevented a contract from being executed. A235. The SEC grant, however, is subject to a contracting deadline of December 31, 2025, A259, and SEC stands ready to execute a contract with Marshfield for that grant award if HLC deems Marshfield to be compliant with G.L. c. 40A, § 3A, reasonably in advance of that date. A235. As a result, no preliminary injunction is necessary to preserve Marshfield's ability to realize that grant.

C. **Entry of Preliminary Relief Would Be Detrimental to the Public Interest.**

There is an "ongoing housing crisis in the Commonwealth," which the Legislature "designed [§ 3A] to address." Milton, 495 Mass. at 185. It is indisputable that "the public has an interest in the enforcement of § 3A." Id. at 192.

The need for relief from the statewide crisis is urgent. The Legislature has continued to respond with policy changes, including additional zoning reforms, aimed at stimulating housing production. The Affordable Homes Act of 2024 authorized $5.16 billion in state housing spending over the next five years and made a variety of changes to Chapter 40A to eliminate local barriers to housing production, incentivize production-friendly zoning, and streamline litigation that might slow construction of permitted housing. St. 2024, c. 150. Allowing municipalities to continue to postpone multi-family zoning that the Legislature mandated four years ago, when it enacted § 3A in 2021, would not only undermine this statewide effort but also harm both individual citizens of the Commonwealth who desperately need relief from unaffordable housing and the majority of municipalities who have stepped up to zone for it.

Finally, the equities weigh in favor of denial of preliminary relief. Most of the plaintiffs have accepted funds from the Commonwealth to implement § 3A, which they now assail as an unfunded mandate. A58-80,102-05,161-66. The one plaintiff that did not accept such funds, Marshfield, never availed itself of the opportunity to request them. A166. And all of the noncompliant plaintiffs can seek interim compliance simply by submitting an action plan. 760 CMR 72.09(4). Under the circumstances, the plaintiffs have no claim in equity to preliminary injunctive relief.

Conclusion

For all of the foregoing reasons, this Court should deny preliminary injunctive relief and should instead dismiss the identified counts for failure to state a claim.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS, GOVERNOR MAURA HEALEY, EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES, and EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT,

By their attorneys:

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March 18, 2025

Certificates

Pursuant to Mass. R. Civ. P. 5(b), I certify that I caused a copy of this Motion to be served on Mach 18, 2025, by hand, on all counsel of record in the captioned cases, specifically:

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March 18, 2025

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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	**CASES SPECIALLY ASSIGNED TO HON. MARK C. GILDEA** No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)\	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

APPENDIX TO COMMONWEALTH AND OTHER DEFENDANTS'[1] MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION AND IN SUPPORT OF COMMONWEALTH'S CROSS-MOTION TO DISMISS

[1] Specifically, the Commonwealth, Governor Maura Healey, the Executive Office of Housing and Livable Communities, the Executive Office of Economic Development, and the Massachusetts Development Finance Agency.

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Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS, GOVERNOR MAURA HEALEY, EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES, and EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT,

By their attorneys:

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March 18, 2025

Certificate of Service

Pursuant to Mass. R. Civ. P. 5(b), I hereby certify that I caused a copy of this Appendix to be served on Mach 18, 2025, by hand, on all counsel of record in the captioned cases, specifically:

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March 18, 2025

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Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

TOWN OF MARSHFIELD

SPECIAL AND ANNUAL TOWN MEETING

MONDAY, APRIL 22, 2024 at 7:00 P.M.

at

MARSHFIELD HIGH SCHOOL AUDITORIUM

Please bring this report to Town Meeting.

SPECIAL TOWN MEETING WARRANT

MONDAY, APRIL 22, 2024

TABLE OF CONTENTS Special Town Meeting April 22, 2024

Article	Title
1	Unpaid Bills
2	Personnel Bylaw Compensation
3	Change Funding Source from Stabilization to Free Cash
4	Amend Funding Source for Article 8 of the Fall 2023 STM
5	Creation of Special Revenue Accounts
6	Free Cash
7	Borrowing for School Roof Repairs
8	Addition of Alternate Members to Council on Aging
9	Addition of Associate Members to Conservation Commission
10	Collective Bargaining Agreements
11	Funding for Library Electric Generator and Gear Project
12	Community Preservation Article
13	Increase Appropriation for FY24 Solid Waste Budget
14	Replace of Sewer Main in West Brook Street
15	Transfer of Funds from Retained Earnings
16	Funding for Aquifer Studies and Groundwater Investigation
17	Increase Appropriation for FY24 Wastewater Residual Waste
18	Amend Zoning Bylaws – Multi Family Dwellings
19	Amend Zoning Map – Multi Family Overlay District
20	Petition of Diane Jordan et al
21	Petition of Narice Casper et al

Waste (Account 7100 5200 528000) funding, with said expense being deferred by Wastewater Enterprise Retained Earnings or take any other action relative thereto.

Board of Public Works

Recommendations: At Town Meeting

Article 17 Explanation: The Wastewater Division has incurred additional cost due to the fact that the cost of disposal has increased significantly while the amount of disposal sites has diminished.

ARTICLE 18 Will the Town vote to amend the Marshfield Town Code, Division 3, Zoning Bylaws by adding a new Article XVI MBTA Communities Multi-family Overlay District as set forth below, or take any other action relative thereto.

Article XVI
MBTA Communities Multi-family Overlay District

305-16.01. Purpose

The purpose of the MBTA Communities Multi-family Overlay District (MCMOD) is to comply with Section 3A of MGL Chapter 40A and promotes the use of public transportation.

305-16.02. Establishment and Applicability

This MBTA Communities MCMOD is an overlay district having a land area of approximately 84 acres in size that is superimposed over the underlying zoning districts as shown on the Zoning Map.

A. Applicability of MCMOD. An applicant after filing a complete site plan review application to the Planning Board may develop multi-family housing located within a MCMOD in accordance with the provisions of this section [Article XVI, MBTA Communities Multi-family Overlay District].
B. Underlying Zoning. The MCMOD is an overlay district superimposed on underlying zoning districts as shown on the MBTA Communities Multi-Family Overlay District (MCMOD) dated December 8, 2023. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the respective underlying zoning district(s) shall remain in full force, except for uses allowed as of right or by special permit in the MCMOD. Uses that are not identified in Article XVI [MBTA Communities Multi-family Overlay District] are governed by the requirements of the underlying zoning district(s).

305-16.03. Definitions

For purposes of Article XVI [MBTA Communities Multi-family Overlay District] the following definitions shall apply.

A. **Affordable unit.** A multi-family housing unit that is subject to a use restriction recorded in its chain of title limiting the sale price or rent or limiting occupancy to an individual or household of a specified income, or both.
B. **Affordable housing.** Housing that contains Affordable Units as defined by this section 16.03.
C. **Applicant.** A person, business, or organization that applies for a building permit, Site Plan Review, or Special Permit.

D. **Area Median Income (AMI).** The median family income for the metropolitan statistical region that includes the Town of Marshfield, as defined by the U.S. Department of Housing and Urban Development (HUD).
E. **As of right.** Development that may proceed under the Article [XVI] after site plan review by the Planning Board. Site Plan review under Article [XVI] may place conditions on a development proposal but cannot deny or require a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.
F. **Building coverage.** The maximum area of the lot that can be attributed to the footprint of the buildings (principal and accessory) on that lot. Building Coverage does not include surface parking.
G. **Development standards.** Provisions of **Article [XVI], section 305-16.08 General Development Standards** made applicable to projects within the MCMOD.
H. **EOHLC.** Executive Office of Housing and Livable Communities or its successors.
I. **Lot.** An area of land with definite boundaries that is used or available for use as the site of a building or buildings.
J. **Lot Coverage.** The percentage of the lot covered by impervious surface. This includes any surface that does not allow surface water to penetrate into the soil.
K. **MBTA.** Massachusetts Bay Transportation Authority.
L. **Mixed-use development.** Development containing a mix of residential uses and non-residential uses, including, commercial, institutional, industrial, or other uses.
M. **Multi-family housing.** A building with three or more residential dwelling units or two or more buildings on the same lot with more than one residential dwelling unit in each building.
N. **MBTA Communities Multi-family Overlay District (MCMOD).** An overlay district, in which multi-family housing is allowed as of right (see 305-16 of the Zoning By-Law).
O. **Open space.** Contiguous undeveloped land within a parcel boundary.
P. **Parking, structured.** A structure in which vehicle parking is accommodated on multiple stories; a vehicle parking area that is underneath all or part of any story of a structure; or a vehicle parking area that is not underneath a structure, but is entirely covered, and has a parking surface at least eight feet below grade. Structured Parking does not include surface parking or carports, including solar carports.
Q. **Parking, surface.** One or more parking spaces without a built structure above the space. A solar panel designed to be installed above a surface parking space does not count as a built structure for the purposes of this definition.
R. **Residential dwelling unit.** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
S. **Section 3A.** Section 3A of the Zoning Act.
T. **Site plan review authority.** The Planning Board shall be responsible for Site plan review under Article XVI.
U. **Special permit granting authority.** The Planning Board shall be Special Permit Granting Authority for the issuance of any special permits under Article XVI.
V. **Subsidized Housing Inventory (SHI).** A list of qualified Affordable Housing Units maintained by EOHLC used to measure a community's stock of low-or moderate- income

housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law.

W. **Transit station.** An MBTA subway station, commuter rail station, or ferry terminal.
   i. **Commuter rail station.** Any MBTA commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service.
   ii. **Ferry terminal.** The location where passengers embark and disembark from regular, year-round MBTA ferry service.
   iii. **Subway station**. Any of the stops along the MBTA Red Line, Green Line, Orange Line, or Blue Line.

305-16.04. Permitted Uses

A. Uses Permitted As of Right. The following uses are permitted as of right within the MCMOD.

1. Multi-family housing at a maximum of 16 units per acre.
2. **Mixed-use development.** As of right uses in a mixed-use development are as follows:

Ground Floor
Community space.
Educational uses.
Personal services.
Retail [with a maximum floor area limitation of 10,000 SF for a single establishment].
Experiential retail, including retail associated with dance or exercise studios, music studios, photography studios, or other combination of education, services, and retail.
Restaurant, café, and other eating establishments without a drive-through.
Office, professional office, medical and dental offices, and co-working space
Artists' studios, maker space, and small-scale food production [no more than 5,000 SF], and retail associated with each use.
Any Floor
Residential (required component).

B. Uses Permitted by Special Permit. The following uses [and accessory uses] requires a Special Permit from the Planning Board.

Ground Floor
Retail [greater than 10,000 SF]
Restaurant, café, and other eating establishments with a drive-through

C. Prohibited Uses. Uses that are prohibited in the WRPD Overlay district and in Section 13.03. E. (2) are also prohibited in the MCMOD overlay district.

D. Accessory Uses. The following uses are considered accessory as of right to any of the

permitted uses in Section D.1.

Home office with no non-resident employees or clients /customers coming to the accessory office within a residential unit.
Parking, including surface parking and parking within a structure such as an above ground or underground parking garage or other building on the same lot as the principal use.

305-16.05 Dimensional Standards

Table of Dimensional Standards. Notwithstanding anything to the contrary in this Zoning, the dimensional requirements applicable in the MCMOD are as follows:

Standard	**MCMOD**
Lot Size	
Minimum (SF)	30,000 SF
Height	
Stories (Maximum)	4 Stories (with a 10 foot deep front and side wall step-back for the 4th floor)
Feet (Maximum)	48 Feet
Standard	**MCMOD**
Minimum Open Space	
	40% (WRPD Requirement)
Maximum Building Coverage	
	40%
Maximum Lot Coverage	
	60% (WRPD Requirement)
Minimum Width and Frontage	150 feet
Minimum Lot Depth	150 feet
Front Yard Setback	40 feet
Side Yard Setbacks	
Min. Side yard	30 feet
Min. Side when Abutting a residential zone	40 feet
Min. Interior to another property within in the MCMOD	15 feet

Rear Yard Setbacks	
Min. Rear Yard	35 feet

A. Multi-Building Lots. In the MCMOD, lots may have more than one principal building. Where multiple principal buildings are built on the same lot there shall be a minimum 40 foot setback between the principal buildings. Single story garage structures are exempt from this requirement.

B. Exceptions. The limitation on height of buildings shall not apply to chimneys, ventilators, towers, silos, spires, or other ornamental features of buildings, which features are in no way used for living purposes and do not constitute more than 25% of the ground floor area of the building.

C. Exceptions: Renewable Energy Installations. The Planning Board may waive the height and setbacks in Section 305-16.05 Dimensional Standards to accommodate the installation of solar photovoltaic, solar thermal, living, and other eco-roofs, energy storage, and air-source heat pump equipment. Such installations shall not create a significant detriment to abutters in terms of noise or shadow and must be appropriately integrated into the architecture of the building and the layout of the site. The installations shall not provide additional habitable space within the development.

305-16.06 Water Resource Protection Standards

MCMOD Developments shall meet the Performance and Design Standards in 305-130.03 (F) and 305-130.03 (G).

305-16.07 Off-Street Parking

These parking requirements are applicable to development in the MCMOD.

A. Number of (Auto) parking spaces. The following minimum numbers of off-street parking spaces shall be permitted by use, either in surface parking or within garages or other structures:

Use	Minimum Spaces
Multi-family	2.0 spaces per Residential Dwelling Unit
Mixed-Use (Non-residential)/ Commercial	Sum of uses computed separately using 305-8.01 Off Street Parking requirements

B. Number of bicycle parking spaces. For a multi-family development or mixed use buildings with 10 units or more shall provide the minimum number of covered parking bicycle parking spaces as shown in the table below. Said covered spaces may be integrated into the structure of the building(s) or covered by other means on site.

The following **minimum** numbers of covered bicycle storage spaces shall be provided by use:

Use	Minimum Spaces
Multi-family or Mixed use buildings	[2 space per Residential Dwelling Unit]

C. **Shared Parking within a Mixed-Use Development.** Parking requirements for a mix of uses on a single site may be reduced by 10% through the Site Plan Review process, if the applicant can demonstrate to the Board that shared spaces will meet parking demands.

D. **GATRA Accessibility.** Parking requirements can be reduced by 10% if pull off and shelter is provided along frontage of the GATRA Route. Pull off area must be a minimum 8 feet wide and 30 feet long to allow busses to get completely out of the right lane travel lane along Route 139. An alternative is to provide an easy access onsite location for the Bus to pick up passengers or a yearly contribution (based on the number of units in the development) towards the GATRA service.

305-16.08 General Development Standards

The following development standards in the MCMOD are applicable to all multi-family or Mixed Use in the MCMOD. These standards are also components of the Site Plan Review process in Section 305-16.10 Site Plan Review. The Planning Board may waive some of the requirements of this section in the interest of design flexibility for the enhancement of the overall project for all residents of the Town.

A. **Site Design**.

1. **Connections.** Sidewalks shall be a minimum of 5 feet wide and provide a direct connections among building entrances, the public sidewalk (if applicable), bicycle storage, and parking.
2. **Connections with public transportation.** Developments shall provide physical (bus shelters, designated bus pull off areas, shuttle/ride share service or financial assistance to GATRA to connect to a MBTA Transit Station and promote the use of public transportation.
3. **Vehicular access.** Curb cuts onto Route 139 shall be minimized, and shared driveways encouraged.
4. **Open space**. Green Roofs with roof top common areas for residents can be counted towards the lots required open space.
5. **Screening for parking. Residential** surface parking adjacent to a public sidewalk (Plain & School Streets) shall be screened by a landscaped buffer of sufficient width to allow the healthy establishment of trees, shrubs, and perennials, but no less than ten (10) feet. The buffer may include a fence or a wall of no more than three feet in height.
6. **Parking materials.** The parking surface may be concrete, asphalt, decomposed granite, bricks, or pavers, including pervious materials but not including grass or soil not contained within a paver or other structure.
7. **Plantings.** Plantings shall include species that are native or adapted to the region. Plants on the Massachusetts Prohibited Plant List, as may be amended, shall be prohibited.

8. **Lighting.** Light levels shall meet or exceed the lighting requirements in 305-8.09 general exterior lighting design standards.
9. **Mechanicals.** Mechanical equipment at ground level shall be screened by a combination of fencing and plantings. Rooftop mechanical equipment shall be screened if adjacent to roof top common areas or visible from a public right-of-way.
10. **Dumpsters.** Dumpsters shall be screened by a combination of fencing and plantings or where possible, dumpsters or other trash and recycling collection points shall be located within the building(s).
11. **Storm-water management.** Strategies that demonstrate compliance of the construction activities and the proposed project with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Storm-water Handbook, Massachusetts Erosion Sediment and Control Guidelines, and, if applicable, additional requirements under the Marshfield MS4 Permit for projects that disturb more than one acre and discharge to the Marshfield municipal stormwater drainage system, and an Operations and Management Plan for both the construction activities and ongoing post-construction maintenance and reporting requirements.

B. Buildings: General.

1. **Position relative to the principal street.** The primary mixed -use building shall have its principal façade and entrance facing the principal street (see also Section F., Buildings: Corner Lots).
2. **Entries.** Where feasible, entries shall be clearly defined and linked to a paved pedestrian network that includes the public sidewalk.

C. Buildings: Multiple buildings on a lot.

1. For a mixed-use development, uses may be mixed within the buildings or in separate buildings. Drive through operations allowed by special permit in 305-16.04 should be located in a separate building to limit conflicts with parking and access to the residential units.
2. Parking and circulation on the site shall be organized so as to reduce the amount of impervious surface. Where possible curb cuts onto Plain Street (Route 139) should be combined.
3. A paved pedestrian network shall connect parking to the entries to all buildings and the buildings to each other and amenities such as sitting areas, recreational features, play grounds and dog park-walk areas, etc.
4. The orientation of multiple buildings on a lot should reinforce the relationships among the buildings. All building façade(s) shall be treated with the same care and attention in terms of entries, fenestration, and materials.
5. The building(s) adjacent to the public street shall have a pedestrian entry facing the public street.
6. Commercial storage in Mixed Use buildings shall be inside or under cover and shall not be accessible to residents of the development. Said materials shall be screened from view from the residential units.

D. Buildings: Single building Mixed-use development.

1. In a single mixed-use building, access to and egress from the residential component shall be clearly differentiated from access to other uses. Such differentiation may occur by using separate entrances or egresses from the building or within a lobby space shared among different uses.
2. Paved pedestrian access from the residential component shall be provided to residential parking and amenities such as sitting areas, recreational features, play grounds and dog park-walk areas, etc. and to the public sidewalk, as applicable.
3. Commercial storage in Mixed Use buildings shall be inside or under cover and shall not be accessible to residents of the development. Said materials shall be screened from view from the residential units.
4. Parking and circulation on the site shall be organized so as to reduce the amount of impervious surface. Where possible, parking and loading areas shall be connected to minimize curb cuts onto Plain Street (Route 139).

E. Buildings: Shared Outdoor Space. Multi-family housing and mixed-use development shall have common outdoor space that all residents can access. Such space (except for play grounds) may be located in any combination of ground floor, courtyard, rooftop, or terrace. Play grounds shall not be located on rooftops. Rooftop shared outdoor space when designed as part of a green roof shall count towards the project's minimum Open Space requirement.

F. Buildings: Corner Lots. A building on a corner lot shall indicate a primary entrance either along one of the street-facing façades or on the primary corner as an entrance serving both streets.

1. Such entries shall be connected by a paved surface to the public sidewalk, if applicable.
2. All façades visible from a public right-of-way shall be treated with similar care and attention in terms of entries, fenestration, and materials.
3. Fire exits serving more than one story shall not be located on either of the street-facing façades.

G. Buildings: Principal Façade and Parking. Parking shall be subordinate in design and location to the principal building façade.

1. **Surface parking.** Residential Surface parking shall be located to the rear or side of the principal building.
2. **Integrated garages.** The principal pedestrian entry into the building shall be more prominent in design and placement than the vehicular entry into the garage.
3. **Parking structures.** Building(s) dedicated to structured parking on the same lot as one or more multi-family buildings or mixed-use development shall be subordinate in design and placement to the multi-family or mixed-use buildings building(s) on the lot.

305-16.09 Affordability Requirements.

A. Purpose.

1. Encourage a diversity of housing opportunities for people of different income levels;
2. Provide for a wider range of housing choices for households of all incomes, ages,

and sizes;

3. Increase the production of affordable housing units to meet existing and anticipated housing needs; and

B. Applicability. This requirement is applicable to all residential and mixed-use developments with ten (10) or more dwelling units, whether new construction, substantial rehabilitation, expansion, reconstruction, or residential conversion. No project may be divided or phased to avoid the requirements of this section.

C. Affordability requirements. All Affordable housing units created through Section 305-16 MBTA Communities Multi-family Overlay District shall meet the State's (EOHLC) eligibility requirements to be added to EOHLC's Subsidized Housing Inventory for the Town of Marshfield.

D. Provision of Affordable Housing. In Applicable Projects, not fewer than ten percent (10%) of housing units constructed shall be Affordable Housing Units. For purposes of calculating the number of units of Affordable Housing required within a development project, a fractional unit less than .5 shall be rounded down to the next whole number. A fractional unit .5 or higher shall be rounded up to the next whole number. The Affordable Units shall be available to households earning income up to eighty percent (80%) of the AMI.

E. Marketing Plan requirements.

The applicant shall submit a marketing plan which describes the number of affordable housing units, their approximate sales price or rent level, the means for selecting buyers or tenants of affordable units, how the applicant will accommodate local preference requirements and the method of affirmatively marketing the affordable units (including the marketing of such units) to minority households, in a manner that complies with the EOHLC requirements. The applicant shall hire a lottery agent to hold the lottery process. The marketing plan and the proposed lottery agent shall be forwarded by the Town to EOHLC for approval. The applicant shall comply with the requirements of the lottery agent and certify their acceptance and willingness to comply with the lottery process or other requirements of the lottery agent for the selection of qualified housing buyers or renters for affordable units.

F. Fee in Lieu.

1. As an alternative to the requirements of paragraph (D) of this section, and at the sole discretion and majority vote of Planning Board upon a recommendation of the Planner and Housing Coordinator, the developer or property owner shall contribute a fee to the Marshfield Affordable Housing Trust Fund in lieu of providing all or a portion of the required Affordable Housing Units within the proposed development.
2. The fee in lieu of providing one or more Affordable Housing Units shall be a minimum of $ 450,000.00 per required Affordable Housing Units not provided within the development. This fee may be adjusted upward by a majority vote of Select Board.
3. Any payment to the Marshfield Affordable Housing Trust Fund as an in lieu contribution for Affordable Housing Units shall be made as follows: at least 50 percent of the total owed prior to the issuance of a building permit; and the remaining total owed prior to the issuance of an occupancy permit.

G. Development Standards. Affordable Units shall be:

1. Integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of exterior and interior materials with the other units and/or lots;
2. Dispersed throughout the development;
3. Located such that the units have equal access to shared amenities, including light and air, and utilities (including any bicycle storage and/or Electric Vehicle charging stations) within the development;
4. Located such that the units have equal avoidance of any potential nuisances as [market-rate units] within the development;
5. Distributed proportionately among unit sizes; and
6. Distributed proportionately across each phase of a phased development.
7. Occupancy permits may be issued for market-rate units prior to the end of construction of the entire development provided that occupancy permits for Affordable Units are issued simultaneously on a pro rata basis.

H. Administration. After review and approval by EOHLC the applicant shall hire a lottery agent to hold the lottery process for the selection of the qualified home buyers or renters for the affordable units. The Marshfield Housing Coordinator shall assist the lottery agent, the applicant and the Marshfield Affordable Housing Trust. The Town's Building Commissioner shall be responsible for enforcement of Article 16 of the Zoning By-law.

305-16.10 Site Plan Review

Applicability. Site Plan Review is required for a project proposed under Section 305- 16. An application for Site Plan Review shall be reviewed by the Planning Board for consistency with the purpose of Section 305- 16.01 and Section 305-16.09.D. Site Plan Review is limited to the regulation of the use: the Permitting Authority may "impose reasonable terms and conditions" on the as of right use.

The Permitting Authority does not have "discretionary power" to deny the as of right use; in other words, it may not prohibit the use.

A. Submission Requirements. As part of any application for Site Plan Review for a project within the MCMOD the Applicant shall submit the following documents to the Planning Board:

1. Application, description of the project, and fees for MCMOD Site Plan Review.

2. Site plans that show the position of the building on the site, points of vehicular access to and from the site and vehicular circulation on the site, storm-water management, utilities, and landscape treatments, including any screening of adjacent properties, and other information commonly required under 305-12.02 (I) of the zoning by-laws.

3. Elevations of the building(s) showing the architectural design of the building.

4. All site plans shall be prepared by a certified Land Surveyor, architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in

the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of [one inch equals forty feet (1"=40') or larger], or at a scale as approved in advance by the Permitting Authority.

5. Information that shows the proposed development meets the Town's WRPD Nitrogen loading requirement of 5ppm as required under 305-13.03 of the Zoning By-Law.

6. Narrative of compliance with the applicable design standards of this Section[x.

B. Timeline. Site Plan Review should be commenced no later than 30 days from the submission of a complete application and should be completed expeditiously. The Planning Board may, when appropriate, seek the input of other municipal boards or officials. Those boards and officials shall have 30 days after the referral to send comments to the Planning Board for consideration. In general, site plan review should be completed no more than 4 months after the submission of a complete application.

C. Approval of the Site Plan. Approval of the site plan for uses listed in Section 305-16.04 Permitted Uses shall be granted upon determination by the Planning Board that the following conditions have been satisfied. The Planning Board may impose reasonable conditions, at the expense of the applicant, to ensure that these conditions have been satisfied.

1. The Applicant has submitted the required fees and information as set forth in Municipality's requirements for a Building Permit and Site Plan Review.
2. The project as described in the application meets the development standards set forth in following Sections: 305-16.6 Water Resource Protection Standards, 305-16.07 Off-Street Parking, 305-16.08 General Development Standards and 305-16.09 Affordability Requirements.

D. Project Phasing. An Applicant may propose, in a Site Plan Review submission, that a project be developed in phases subject to the approval of the Site Plan Review Authority, provided that the submission shows the full buildout of the project and all associated impacts as of the completion of the final phase. However, no project may be phased solely to avoid the provisions of Section 305-16.08 Affordability Requirements.

305-16.11 Severability.

If any provision of this Section 305-16 is found to be invalid by a court of competent jurisdiction, the remainder of Section 305-16 shall not be affected but shall remain in full force. The invalidity of any provision of this Section 305-16 shall not affect the validity of the remainder of the Marshfield's Zoning By-laws.

Planning Board

Recommendations: At Town Meeting

Article 18 Explanation: This article is to zone an area of Town to allow multi-family dwellings at up to 16 units per acre by right under site plan review and to comply with Section 3A of MGL Chapter 40A and promotes the use of public transportation.

ARTICLE 19 Will the Town vote to amend the Marshfield Town Code, Division 3, Zoning Bylaw, Article III, §305.3.03 Zoning Map by adding a new overlay district as shown on the map entitled "MBTA Communities Multi-Family Overlay District (MCMOD), dated December 8, 2023" (and attached as Appendix G), adding said overlay district to the list of superimposed zoning districts in §305.3.02, and which said district is described as follows:

The new overlay district as shown on the map entitled "MBTA Communities Multi-Family Overlay District (MCMOD), dated December 8, 2023" is placed over the B-2 district on the north side of Plain Street (Route 139) running east from School Street to the Town owned land E10-02-09 containing the Marshfield High School, Martinson Elementary School and the Furnace Brook Middle School. Said overlay district shall also overlay an area zoned R-1 in order not to split lots within the MCMOD as required by the State.

Planning Board

Recommendations: At Town Meeting

Article 19 Explanation: This overlay zoning district meets the minimum requirements for the Town to comply with Section 3A of MGL Chapter 40A as outlined by EOHLC.

ARTICLE 20 Will the Town vote to prohibit the following; any and all excavation, development, dumping, filling, transferring of earth, uprooting of existing vegetation, importing of gravel, stone dust or any other top fill, moving of earth or cutting down of trees, within the district known as the "Dredge Spoils Area" located on Joseph Driebeck Way, Marshfield, MA. (Assessors map plat number M07, parcel/lot number 03-01); with the exception only of the following: this area to receive dredge spoils, future expansion of the Marshfield Waste Water Treatment plant, or restoration of the area to a salt marsh or wetland condition, (as defined by both Federal and State law and regulations and in conjunction with applicable planned and approved Federal and State processes for such restoration to salt marsh or wetland condition).

Petition of Diane Jordan et al

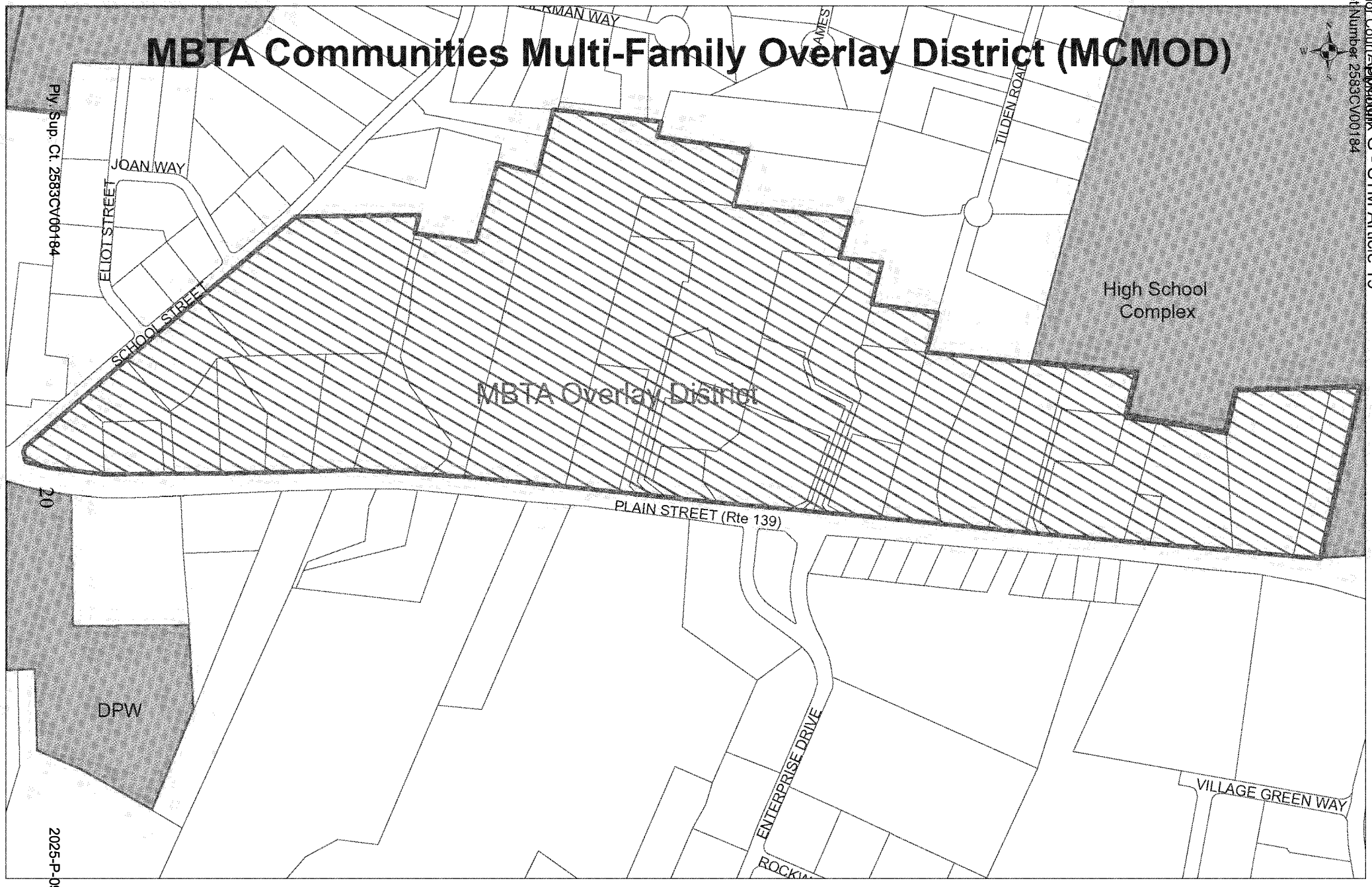
ARTICLE 21 Will Town Meeting instruct the Select Board to order the Town Administrator to reorganize the Town Clerk's Office to provide the services required under Massachusetts General Law by creating the position of Assistant Town Clerk under the Personnel Bylaw at grade 11 Step 2, a Confidential Administrative Assistant at grade 10 and a part-time receptionist at 15 hours a week directing telephone inquiries for Town Hall. To be funded from free cash.

Petition of Narice Casper et al

APPENDIX – G

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

MBTA Communities Multi-Family Overlay District (MCMOD)



Ply. Sup. Ct. 2583CV00184

2025-P-0954

Legend

MBTA Overlay District

Town Owned Land and Conservation Land

0.15 0.075 0 0.15 Miles

December 8, 2023

Plymouth Superior Court 2583CV00184

2025-P-0954

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

TOWN OF MARSHFIELD

SPECIAL TOWN MEETING

MONDAY, DECEMBER 16, 2024 at 7:00 P.M.

at

MARSHFIELD HIGH SCHOOL AUDITORIUM

Please bring this report to Town Meeting.

TABLE OF CONTENTS Special Town Meeting December 16, 2024

Article		Title
1		Unpaid Bills
2		Collective Bargaining Agreements
3		Personnel Bylaw Schedule A Compensation
4		Budget Transfers to Cover Certain Items and Capital Expenses
5		Lease of Space for Photovoltaics on Rooftops and/or Carports
6		Funding for Design of Martinson School Roof Replacement
7		Amend General Bylaw Regarding Alcohol on Public Ways/Property
8		Amend General Bylaw Regarding Playground Construction
9		Disposition of Town Owned Land – 1929 Main Street
10		CPC Funding for South River Park Landscape Design
11		CPC Funding for Title Searches
12		Amend Zoning Bylaws – Multi-Family Dwellings
13		Amend Zoning Map – Multi Family Overlay District
14		Amend Zoning Bylaws – Table of Use MBTA Communities
15		Amend Zoning Bylaws – Residential Accessory Apartments
16		Amend Zoning Bylaws – Accessory Dwelling Unit Definitions
17		Amend Zoning Bylaws – Table of Use Accessory Dwelling Units
18		Amend Zoning Bylaws – WRPD Special Permit
19		Amend Zoning Bylaws – Table of Use Battery Energy Storage Systems
20		Amend Zoning Bylaws – Definitions Battery Energy Storage Systems
21		Amend Zoning Bylaws – Table of Use Protection of Solar Installations
22		Increased Funding for Two New Pick-Up Trucks
23		Increased Funding for Plymouth Avenue Pump Station Upgrade
24		Purchase of 829 Old Main Street Ext. for Water Resource Protection
25		Amend General Bylaw Regarding PFAS Notification
26		Amend General Bylaws Regarding Mooring Permits
27		Amend General Bylaws Regarding Mooring Language
28		Amend South Shore Regional Vocational School Agreement

parcel of vacant town-owned land located at 2160 Ocean Street, Marshfield., Massachusetts and identified on the Marshfield Assessor's Maps as Parcel G08-05-02, acquired by the Town in December of 2023, or take any other action relative thereto.

Open Space Committee/Community Preservation Committee

Recommendations: At Town Meeting.

Article 10 Explanation: This article will provide funding to hire a qualified Landscape Design firm to prepare design plans for the park expansion. The expanded space will extend the Universal Access walking path to the river and be designed consistent with ecologically sensitive land use. The funds will be used for required engineering, permitting, preparation of bid documents and construction cost estimates. Funding for park construction will be sought at a later date.

ARTICLE 11 Will the Town vote to act upon the recommendation of the Community Preservation Committee and the Open Space Committee to appropriate a sum of $50,000 from Community Preservation Fund Open Space reserves for Unknown Owner Title Searches, or take any other action relative thereto.

Open Space Committee/Community Preservation Committee

Recommendations: At Town Meeting.

Article 11 Explanation: This article will provide funding for professional title examination and probate services to complete 20 title searches on properties for which there are no known owners totaling 376 + acres of land. Many of the properties lie within the flood-plain. Increasing the Town owned land inventory in these areas will improve the Town's standing in the National Flood Insurance Program (NFIP) Community Rating System (CRS), reducing the cost of flood insurance for residents and will also help to bring the Town closer to meeting the General Land Area Minimum (GLAM) calculations required to reach the threshold necessary to avoid future 40-B developments.

ARTICLE 12 Will the Town vote to amend the Marshfield Town Code, Division 3: Zoning Bylaw, Chapter 305, to add a new Article XVI MBTA Communities Multi-family Overlay District, as set forth below, or take any other action relative thereto.

Article XVI
MBTA Communities Multi-family Overlay District

305-16.01. Purpose

The purpose of the MBTA Communities Multi-family Overlay District (MCMOD) is to comply with Section 3A of MGL Chapter 40A and promotes the use of public transportation.

305-16.02. Establishment and Applicability

This MBTA Communities MCMOD is an overlay district having a land area of approximately 84 acres in size that is superimposed over the underlying zoning districts as shown on the Zoning Map.

A. Applicability of MCMOD. An applicant after filing a complete site plan review

application to the Planning Board may develop multi-family housing located within a MCMOD in accordance with the provisions of this section [Article XVI, MBTA Communities Multi-family Overlay District]. Under Section 3A of MGL Chapter 40A the Planning Board does not have discretionary power to deny the residential "as of right" use. Under 305-16.10 Site Plan Review the Planning Board may impose reasonable terms and conditions on the proposed development. This site plan review (Section 305-16.10) is separate and exempt from the Site Plan Approval requirements of Section 305-12.02 of the Zoning Bylaw.

B. Underlying Zoning. The MCMOD is an overlay district superimposed on underlying zoning districts as shown on the MBTA Communities Multi-Family Overlay District (MCMOD) dated September 12, 2024. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the respective underlying zoning district(s) shall remain in full force, except for uses allowed as of right or by special permit in the MCMOD. Uses that are not identified in Article XVI [MBTA Communities Multi-family Overlay District] are governed by the requirements of the underlying zoning district(s).

305-16.03. Definitions

For purposes of Article XVI MBTA Communities Multi-family Overlay District the following definitions shall apply.

A. **Affordable unit.** A multi-family housing unit that is subject to a use restriction recorded in its chain of title limiting the sale price or rent or limiting occupancy to an individual or household of a specified income, or both.
B. **Affordable housing.** Housing that contains Affordable Units as defined by this Section 16.03.
C. **Applicant.** A person, business, or organization that applies for a building permit, Site Plan Review, or Special Permit.
D. **Area Median Income (AMI).** The median family income for the metropolitan statistical region that includes the Town of Marshfield, as defined by the U.S. Department of Housing and Urban Development (HUD).
E. **As of right.** Multi-family Residential Development that may proceed under the Article XVI MBTA Communities Multi-family Overlay District after site plan review by the Planning Board. Site Plan Review under Article XVI may place reasonable conditions on a development proposal but cannot deny or require a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.
F. **Building coverage.** The maximum area of the lot that can be attributed to the footprint of the buildings (principal and accessory) on that lot. Building Coverage does not include surface parking.
G. **Development standards.** Provisions of Article XVI, Section 305-16.08 General Development Standards made applicable to projects within the MCMOD.
H. **EOHLC.** Executive Office of Housing and Livable Communities or its successors.
I. **Lot.** An area of land with definite boundaries that is used or available for use as the site of a building or buildings.
J. **Lot Coverage.** The percentage of the lot covered by impervious surface. This includes any surface that does not allow surface water to penetrate into the soil.

K. **MBTA.** Massachusetts Bay Transportation Authority.
L. **Mixed-use development.** Development containing a mix of residential uses and non-residential uses, including, commercial, institutional, industrial, or other uses.
M. **Multi-family housing.** A building with three or more residential dwelling units or two or more buildings on the same lot with more than one residential dwelling unit in each building.
N. **MBTA Communities Multi-family Overlay District (MCMOD).** An overlay district, in which multi-family housing is allowed as of right with Site Plan Review by the Planning Board under 305-16 of the Zoning Bylaw.
O. **Open space**. Contiguous undeveloped land within a parcel boundary. Rooftop common outdoor space when designed as part of a green roof shared shall count as open space.
P. **Parking, structured**. A structure in which vehicle parking is accommodated on multiple stories; a vehicle parking area that is underneath all or part of any story of a structure; or a vehicle parking area that is not underneath a structure, but is entirely covered, and has a parking surface at least eight feet below grade. Structured Parking does not include surface parking or carports, including solar carports.
Q. **Parking, surface.** One or more parking spaces without a built structure above the space. A solar panel designed to be installed above a surface parking space does not count as a built structure for the purposes of this definition.
R. **Residential dwelling unit.** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
S. **Section 3A.** Section 3A of the Zoning Act.
T. **Site plan review authority.** The Planning Board shall be the responsible for Site plan review under Article XVI.
U. **Special permit granting authority.** The Planning Board shall be Special Permit Granting Authority for the issuance of any special permits under Article XVI.
V. **Subsidized Housing Inventory (SHI).** A list of qualified Affordable Housing Units maintained by EOHLC used to measure a community's stock of low-or moderate-income housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law.
W. **Transit station.** An MBTA subway station, commuter rail station, or ferry terminal.
    i. **Commuter rail station.** Any MBTA commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service.
    ii. **Ferry terminal.** The location where passengers embark and disembark from regular, year-round MBTA ferry service.
    iii. **Subway station**. Any of the stops along the MBTA Red Line, Green Line, Orange Line, or Blue Line.

305-16.04. Permitted Uses

Uses under a MBTA Communities Multi-family Overlay District (MCMOD) application are governed by section 305-16.04 and are exempt from the Table of Use contained in Section 30S-S.04.

A. Uses Permitted As of Right. The following uses are permitted as of right within the MCMOD.

1. Multi-family housing at a maximum of 16 units per acre.
2. **Mixed-use development.** As of right uses in a mixed-use development are as follows:

Ground Floor
Community space.
Educational uses.
Personal services.
Retail [with a maximum floor area limitation of 10,000 SF for a single establishment].
Experiential retail, including retail associated with dance or exercise studios, music studios, photography studios, or other combination of education, services, and retail.
Restaurant, café, and other eating establishments without a drive-through.
Office, professional office, medical and dental offices, and co-working space
Artists' studios, maker space, and small-scale food production [no more than 5,000 SF], and retail associated with each use.
Any Floor
Residential (is allowed on the first floor and required on upper floors of mixed-use buildings).

B. **Uses Permitted by Special Permit.** The following uses [and accessory uses] requires a Special Permit from the Planning Board.

Ground Floor
Retail [greater than 10,000 SF]
Restaurant, café, and other eating establishments with a drive-through

C. **Prohibited Uses.** Uses that are prohibited in the WRPD Overlay District and in Section 13.03. E. (2) are also prohibited in the MCMOD Overlay District.

D. **Accessory Uses.** The following uses are considered accessory as of right to any ofthe permitted uses in Section D.1.

Home office with no non-resident employees or clients /customers coming to the accessory office within a residential unit.
Parking, including surface parking and parking within a structure such as an above ground or underground parking garage or other building on the same lot as the principal use.

305-16.05 Dimensional Standards

Table of Dimensional Standards. Notwithstanding anything to the contrary in this Zoning, the dimensional requirements applicable in the MCMOD are as follows:

Standard	MCMOD
Lot Size	
Minimum (SF)	30,000 SF
Height	
Stories (Maximum)	4 Stories (with a 10 foot deep front and side wall step-back for the 4th floor)
Feet (Maximum)	48 Feet
Standard	**MCMOD**
Minimum Open Space	
	40% (WRPD Requirement)

Maximum Building Coverage	
	40%

Maximum Lot Coverage	
	60% (WRPD Requirement)

Minimum Width and Frontage	150 feet
Minimum Lot Depth	150 feet
Front Yard Setback	40 feet
Side Yard Setbacks	
Min. Side yard	30 feet
Min. Side when Abutting a residential zone	40 feet
Min. Interior to another property within in the MCMOD	15 feet
Rear Yard Setbacks	
Min. Rear Yard	35 feet

A. **Multi-Building Lots.** In the MCMOD, lots may have more than one principal building. Where multiple principal buildings are built on the same lot there shall be a minimum 40 foot setback between the principal buildings (single story garage structures are exempt from this requirement).

B. **Exceptions.** The limitation on height of buildings shall not apply to chimneys, ventilators, towers, silos, spires, or other ornamental features of buildings, which features are in no way used for living purposes and do not constitute more than 25% of the ground floor area of the building.

C. **Exceptions: Renewable Energy Installations.** The Planning Board may waive the height in Section 305-16.05 Dimensional Standards to accommodate the installation of solar photovoltaic, solar thermal, living, and other eco-roofs, energy storage, and air-source heat pump equipment. Such installations shall not create a significant detriment to abutters in terms of noise or shadow and must be appropriately integrated into the architecture of the building and the layout of the site. The installations shall not provide additional habitable space within the development.

305-16.06 Water Resource Protection Standards

MCMOD Developments shall meet the Performance and Design Standards in 305-130.03 (F) and 305-130.03 (G).

305-16.07 Off-Street Parking

These parking requirements are applicable to development in the MCMOD.

A. **Number of auto parking spaces.** The following minimum numbers of off-street parking spaces shall be permitted by use, either in surface parking or within garages or other structures:

Use	Minimum Spaces
Multi-family	2.0 spaces per Residential Dwelling Unit
Mixed-Use (Non-residential)/ Commercial	Sum of uses computed separately using 305-8.01 Off Street Parking requirements

B. **Number of bicycle parking spaces.** For a multi-family development or mixed use buildings with 10 units or more shall provide the minimum number of covered parking bicycle parking spaces as shown in the table below. Said covered spaces may be integrated into the structure of the building(s) or covered by other means on site.

The following **minimum** numbers of covered bicycle storage spaces shall be provided by use:

Use	Minimum Spaces
Multi-family or Mixed use buildings	[2 space per Residential Dwelling Unit]

C. **Shared Parking within a Mixed-Use Development.** Parking requirements for a mix of uses on a single site may be reduced by 10% through the Site Plan Review process, if the applicant can demonstrate to the Board that shared spaces will meet parking demands.

305-16.08 General Development Standards

The following development standards in the MCMOD are applicable to all multi-family or Mixed Use in the MCMOD. These standards are also components of the Site Plan Review process in Section 305-16.10 Site Plan Review. The Planning Board may waive some of the requirements of this section in the interest of design flexibility for the enhancement of the overall project for all residents of the Town.

A. **Site Design.**

1. **Connections.** Sidewalks shall be a minimum of 5 feet wide and provide a direct connection among building entrances, the public sidewalk (if applicable), bicycle storage, and parking.
2. **Connections with public transportation.** Developments shall provide physical onsite bus shelters, designated bus pull off areas along route 139 or shuttle/ride share service or financial assistance to GATRA to connect to the commuter rail station at Greenbush and promote the use of public transportation. A pull off area along Route 139 must be a minimum 8 feet wide and 30 feet long to allow busses to get completely out of the right lane travel lane along Route 139 while still providing ADA acceptable sidewalk along Route 139. This sidewalk may be located within the front yard setback of the development. An alternative is to provide an easy access onsite location for the Bus to pick up passengers. The financial assistance alternative could be either providing a shuttle/ride share service or a yearly contribution (based on the number of units in the development) towards the creation of a GATRA route from Marshfield to the MBTA commuter rail station at Greenbush.
3. **Vehicular access.** Curb cuts onto Route 139 shall be minimized, and shared driveways encouraged.
4. **Open space**. Green Roofs with roof top common areas for residents can be counted towards the lots required open space.
5. **Screening for parking.** Residential surface parking adjacent to a public sidewalk (Plain & School Streets) shall be screened by a landscaped buffer of sufficient width to allow the healthy establishment of trees, shrubs, and perennials, but no less than ten (10) feet. The buffer may include a fence or a wall of no more than three feet in height.
6. **Parking materials.** The parking surface may be concrete, asphalt, decomposed granite, bricks, or pavers, including pervious materials but not including grass or soil not contained within a paver or other structure.
7. **Plantings.** Plantings shall include species that are native or adapted to the region. Plants on the Massachusetts Prohibited Plant List, as may be amended, shall be prohibited.
8. **Lighting.** Light levels shall meet or exceed the lighting requirements in 305-8.09 general exterior lighting design standards.
9. **Mechanicals.** Mechanical equipment at ground level shall be screened by a combination of fencing and plantings. Rooftop mechanical equipment shall be screened if adjacent to roof top common areas or visible from a public right-of-way.
10. **Dumpsters.** Dumpsters shall be screened by a combination of fencing and plantings or where possible, dumpsters or other trash and recycling collection points shall be located within the building(s).
11. **Storm-water management.** Strategies that demonstrate compliance of the construction activities and the proposed project with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Storm-water Handbook,

Massachusetts Erosion Sediment and Control Guidelines, and, if applicable, additional requirements under the Marshfield MS4 Permit for projects that disturb more than one acre and discharge to the Marshfield municipal stormwater drainage system, and an Operations and Management Plan for both the construction activities and ongoing post-construction maintenance and reporting requirements.

B. Buildings: General.

1. **Position relative to the principal street.** The primary mixed -use building shall have its principal façade and entrance facing the principal street (see also Section F, Buildings: Corner Lots).
2. **Entries.** Where feasible, entries shall be clearly defined and linked to a paved pedestrian network that includes the public sidewalk.

C. Buildings: Multiple buildings on a lot.

1. For a mixed-use development, uses may be mixed within the first floor of buildings or in separate buildings. Drive through operations allowed by special permit in 305-16.04 should be located in a separate building to limit conflicts with parking and access to the residential units.
2. Parking and circulation on the site shall be organized so as to reduce the amount of impervious surface. Where possible curb cuts onto Plain Street (Route 139) should be combined.
3. A paved pedestrian network shall connect parking to the entries to all buildings and the buildings to each other and amenities such as sitting areas, recreational features, play grounds and dog park areas, etc.
4. The orientation of multiple buildings on a lot should reinforce the relationships among the buildings. All building façade(s) shall be treated with the same care and attention in terms of entries, fenestration, and materials.
5. The building(s) adjacent to the public street shall have a pedestrian entry facing the public street.
6. Commercial storage in mixed use buildings shall be inside or under cover and shall not be accessible to residents of the development. Said materials shall be screened from view from the residential units.

D. Buildings: Single building mixed-use development.

1. In a single mixed-use building, access to and egress from the residential component shall be clearly differentiated from access to other uses. Such differentiation may occur by using separate entrances or egresses from the building or within a lobby space shared among different uses.
2. Paved pedestrian access from the residential component shall be provided to residential parking and amenities such as sitting areas, recreational features, play grounds and dog park-walk areas, etc. and to the public sidewalk, as applicable.
3. Commercial storage in Mixed Use buildings shall be inside or under cover and shall not be accessible to residents of the development. Said materials shall be screened from view from the residential units.

4. Parking and circulation on the site shall be organized so as to reduce the amount of impervious surface. Where possible, parking and loading areas shall be connected to minimize curb cuts onto Plain Street (Route 139).

E. **Buildings: Shared Outdoor Space.** Multi-family housing and mixed-use development shall have common outdoor space that all residents can access. Such space (except for play grounds) may be located in any combination of ground floor, courtyard, rooftop, or terrace. Play grounds shall not be located on rooftops. Rooftop common outdoor space when designed as part of a green roof shall count towards the project's minimum Open Space requirement.

F. **Buildings: Corner Lots.** A building on a corner lot shall indicate a primary entrance either along one of the street-facing façades or on the primary corner as an entrance serving both streets.
   1. Such entries shall be connected by a paved surface to the public sidewalk, if applicable.
   2. All façades visible from a public right-of-way shall be treated with similar care and attention in terms of entries, fenestration, and materials.
   3. Fire exits serving more than one story shall not be located on either of the street-facing façades.

G. **Buildings: Principal Façade and Parking.** Parking shall be subordinate in design and location to the principal building façade.
   1. **Surface parking.** Residential Surface parking shall be located to the rear or side of the principal building.
   2. **Integrated garages.** The principal pedestrian entry into the building shall be more prominent in design and placement than the vehicular entry into the garage.
   3. **Parking structures.** Building(s) dedicated to structured parking on the same lot as one or more multi-family buildings or mixed-use development shall be subordinate in design and placement to the multi-family or mixed-use buildings building(s) on the lot.

305-16.09 Affordability Requirements.

A. **Purpose**.
   1. Encourage a diversity of housing opportunities for people of different income levels;
   2. Provide for a wider range of housing choices for households of all incomes, ages, and sizes;
   3. Increase the production of affordable housing units to meet existing and anticipated housing needs; and

B. **Applicability.** This requirement is applicable to all residential and mixed-use developments with ten (10) or more dwelling units, whether new construction, substantial rehabilitation, expansion, reconstruction, or residential conversion. No project may be divided or phased to avoid the requirements of this section.

C. **Affordability requirements.** All affordable housing units created through Section 305-16 MBTA Communities Multi-family Overlay District shall meet the State's (EOHLC) eligibility requirements to be added to EOHLC's Subsidized Housing Inventory for the Town of Marshfield.

D. **Provision of Affordable Housing.** In applicable projects, not fewer than ten percent (10%) of housing units constructed shall be affordable housing units. For purposes of calculating the number of units of affordable housing required within a development project, a fractional unit less than .5 shall be rounded down to the next whole number. A fractional unit .5 or higher shall be rounded up to the next whole number. The affordable units shall be available to households earning income up to eighty percent (80%) of the Area Median Income (AMI).

E. **Marketing Plan requirements.**
The applicant shall submit to the Housing Coordinator a marketing plan which describes the number of affordable housing units, their approximate sales price or rent level, the means for selecting buyers or tenants of affordable units, how the applicant will accommodate local preference requirements and the method of affirmatively marketing the affordable units, including the marketing of such units to minority households, in a manner that complies with the EOHLC requirements. The applicant shall hire a lottery agent to hold the lottery process. After review by the Housing Coordinator and Town Planner the marketing plan and the proposed lottery agent shall be forwarded by the applicant to EOHLC for approval. The applicant shall comply with the requirements of the lottery agent and certify their acceptance and willingness to comply with the lottery process or other requirements of the lottery agent for the selection of qualified housing buyers or renters for affordable units.

F. **Development Standards.** Affordable units shall be:
1. Integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of exterior and interior materials with the other units and/or lots;
2. Dispersed throughout the development;
3. Located such that the units have equal access to shared amenities, including light and air, and utilities (including any bicycle storage and/or Electric Vehicle charging stations) within the development;
4. Located such that the units have equal avoidance of any potential nuisances as [market-rate units] within the development;
5. Distributed proportionately among unit sizes; and
6. Distributed proportionately across each phase of a phased development.
7. Occupancy permits may be issued for market-rate units prior to the end of construction of the entire development provided that occupancy permits for Affordable Units are issued simultaneously on a pro rata basis.

G. **Administration.** The Town's Building Commissioner shall be responsible for enforcement of the requirements of this section.

305-16.10 Site Plan Review

Applicability. Site Plan Review is required for a project proposed under Section 305- 16. The Site Plan Review under Section 305-16.10 is separate and exempt from the requirements of Section 305-12.02 of the Zoning bylaws. An application for Site Plan Review shall be reviewed by the Planning Board for consistency with the purpose of Section 305- 16.01 and Section 305-16.09.D. Site Plan Review is limited to the regulation of the use: the Permitting Authority may "impose reasonable terms and conditions" on the as of right use.

The Planning Board under 305.16.10 does not have "discretionary power" to deny the as of right use; in other words, it may not prohibit the use.

A. **Submission Requirements.** As part of any application for Site Plan Review for a project within the MCMOD, the Applicant shall submit the following documents to the Planning Board:
   1. Application, description of the project, and fees for MCMOD Site Plan Review.
   2. Site plans that show the position of the building on the site, points of vehicular access to and from the site and vehicular circulation on the site, stormwater management, utilities, and landscape treatments, including any screening of adjacent properties, and other information commonly required under 305-12.02 (I) of the Zoning Bylaws.
   3. Elevations of the building(s) showing the architectural design of the building.
   4. All site plans shall be prepared by a certified land surveyor, architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of [one inch equals forty feet (1"=40') or larger], or at a scale as approved in advance by the Planning Board.
   5. Information that shows the proposed development meets the Town's WRPD Nitrogen loading requirement of 5ppm as required under 305-13.03 of the Zoning By-Law.
   6. Narrative of compliance with the applicable design standards of this Section 305-16.

B. **Timeline.** Site Plan Review should be commenced no later than 30 days from the submission of a complete application and should be completed expeditiously. The Planning Board may, when appropriate, seek the input of other municipal boards or officials. Those boards and officials shall have 30 days after the referral to send comments to the Planning Board for consideration. In general, site plan review should be completed no more than 4 months after the submission of a complete application.

C. **Approval of the Site Plan.** Approval of the site plan for uses listed in Section 305-16.04 Permitted Uses shall be granted upon determination by the Planning Board that the following conditions have been satisfied. The Planning Board may impose

reasonable conditions, at the expense of the applicant, to ensure that these conditions have been satisfied.

1. The Applicant shall submit an application administrative fee of $500 and a review consultant fee of $1,000. The unused review consultant funds will be returned to the applicant.
2. The project as described in the application meets the development standards set forth in following Sections: 305-16.6 Water Resource Protection Standards, 305-16.07 Off-Street Parking, 305-16.08 General Development Standards and 305-16.09 Affordability Requirements.

D. **Project Phasing.** An Applicant may propose, in a Site Plan Review submission, that a project be developed in phases subject to the approval of the Site Plan Review Authority, provided that the submission shows the full buildout of the project and all associated impacts as of the completion of the final phase. However, no project may be phased solely to avoid the provisions of Section 305-16.08 Affordability Requirements.

305-16.11 Severability.
If any provision of this Section 305-16 is found to be invalid by a court of competent jurisdiction, the remainder of Section 305-16 shall not be affected but shall remain in full force. The invalidity of any provision of this Section 305-16 shall not affect the validity of the remainder of the Marshfield's Zoning By-laws.

Planning Board

Recommendations: At Town Meeting.

Article 12 Explanation: This article is to zone an area of Town to allow multi-family dwellings at up to 16 units per acre by right under site plan review and to comply with Section 3A of MGL Chapter 40A and promotes the use of public transportation.

ARTICLE 13 Will the Town vote to amend the Marshfield Town Code, Division 3, Zoning Bylaw, Chapter 305 Zoning, Article III, Establishment of Zoning Districts, §305-3.03 Zoning Map.by adding a new overlay district as shown on the map entitled "MBTA Communities Multi-Family Overlay District (MCMOD), dated September 12, 2024" on file with the Town Clerk and described as set forth below, or take any other action relative thereto.

The new overlay district as shown on the map entitled "MBTA Communities Multi-Family Overlay District (MCMOD), dated September 12, 2024" is placed over the B-2 district on the north side of Plain Street (Route 139) running east from School Street to the Town owned land E10-02-09 containing the Marshfield High School, Martinson Elementary School and the Furnace Brook Middle School. Said overlay district shall also overlay an area zoned R-1 in order not to split lots within the MCMOD as required by the State.

Planning Board

Recommendations: At Town Meeting.

Article 13 Explanation: This overlay zoning district meets the minimum requirements for the Town to comply with Section 3A of MGL Chapter 40A as outlined by EOHLC.

ARTICLE 14 Will the Town vote to amend the Marshfield Town Code, Division 3, Zoning Bylaw, Chapter 305 Zoning, §305, Article V, Use Regulations, §305-5.04 Table of Use Regulations, to add a new residential use category #9. Attached Residential Units under MBTA Communities to the 305-5.04 Table of Use Regulations, as set forth below, or take any other action relative thereto.

Use	Residential				Business					Industrial		Overlay		
Residential	R-1	R-2	R-3	RB	B-1	B-2	B-3	B-4	OP	I-1	A	PMUD	WRPD	aRVO
9. Attached Residential units under MBTA Communities	See Article XVI MBTA Communities Multi-family Overlay District													

Planning Board

Recommendations: At Town Meeting.

Article 14 Explanation: This article is to provide a reference in the table of use where information on the MBTA Communities zoning can be found in the zoning bylaws.

ARTICLE 15 Will the Town vote to amend the Marshfield Town Code, Division 3, Zoning Bylaw, Chapter 305 Zoning, §305, Article XI, Special Permit Conditions, §305-11.09 Residential Accessory Apartments, by deleting the current §305-11.09 Residential Accessory Apartment and replacing the current language and inserting a new §305-12.07 Residential Accessory Dwelling Unit as set forth below, or take any other action relative thereto.

Section 305-12.07 Residential Accessory Dwelling Unit

A. **Purpose:** The creation of an Accessory Dwelling Unit (ADU) within either a single family detached principal dwelling or an accessory building located in a single-family residential district may be authorized by-right through Site Plan Review in order to achieve the following objectives:
   (1) To enable home owners who wish to remain in their homes and neighborhoods to do so.
   (2) To promote more efficient use of the existing housing stock by allowing flexibility in response to changing household size.
   (3) To promote wider price range of rental housing and home ownership for small households.
   (4) To protect and maintain the character of the surrounding neighborhood.

B. **Applicability:** An Accessory Dwelling Unit may be granted by the Planning Board acting as the Site Plan Review Board, in R-1, R-2, R-3 districts:

   (1) Applications for an Accessory Dwelling Unit shall meet the Review Standards. Applications that are deemed complete and meet the by-right review standards below shall be reviewed by the Planning Board under Site Plan Review as an agenda item at a regular meeting.
   (2) Site Plan Review under 305-12.07 is limited to the regulation of the use: the Permitting Authority may "impose reasonable terms and conditions" on the as of right use. The Planning Board does not have "discretionary power" to deny the as of

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

TOWN OF PEMBROKE, MASSACHUSETTS

ADVISORY COMMITTEE
RECOMMENDATIONS

2023

ANNUAL TOWN MEETING WARRANT

ATTEND THE ANNUAL TOWN MEETING
TUESDAY, MAY 9, 2023
7:00 P.M.

PEMBROKE HIGH SCHOOL
LEARNING LANE
PEMBROKE, MA

Pembroke, entitled "Police Regulations," by **adding the words shown in bold**, as follows; or take any other action relative thereto.

SECTION 7.

A. Every owner or keeper of a dog who is three (3) months old or over shall license it with the Town Clerk between the first (1st) day of January and the twenty-eighth (28th) day of February of each year. Every owner or keeper of a dog which becomes three (3) months old subsequent to the first (1st) day of January of any year shall license it with the Town Clerk when it becomes three (3) months old. The license fee shall be twelve dollars ($12.00) for female and male dogs and nine dollars ($9.00) for altered male and spayed female dogs. All licenses must be renewed by the twenty-eighth (28th) day of February or be subject to a late fee charge of fifteen dollars ($15.00). **In accordance with Massachusetts General Law Chapter 140, Section 139, no fee shall be charged for a license for a service animal as defined by the Americans with Disabilities Act and dog(s) owned by a person aged 70 or older.** The owner or keeper of every dog which is so licensed shall cause it to wear at all times a metal license tag issued for this purpose by the Town Clerk. No person shall own or keep in the Town any dog which by biting, barking or howling, or in any other manner disturbs the peace or quiet of any neighborhood or endangers the safety of any person. (Amended by Article 17 of April 22, 2008 ATM and Article 14 of April 24, 2012 ATM)

Submitted by the Town Clerk

ADVISORY COMMITTEE RECOMMENDATION: **Favorable Action**
SELECT BOARD RECOMMENDATION: **Favorable Action**
EXPLANATION:

ARTICLE 12 – AMEND ZONING BYLAWS, MBTA COMMUNITIES (Majority Vote)

To see if the Town will vote to amend the Town of Pembroke Zoning Bylaws Section IV "Use and Dimensional Regulations", sub-sections 5 "Industrial District A" and 5A "Industrial District B" and Section V "Special Provisions, Standards and Procedures", sub-section 14, by deleting the strikethrough text and inserting the bold underlined text as follows, or take any action relative thereto:

SECTION IV
Use and Dimensional Regulations

5. INDUSTRIAL DISTRICT A

In this district, no building, structure, premises or land shall be used except in conformance with the impact standards in Section V. 7 or shall be used for any purposes except:

A. Uses Allowed
1. A church, municipal, or civic use.
2. Institutions for educational, religious, or philanthropic use.
3. Business, financial, governmental, insurance, medical, professional, real estate, assisted living residence, fitness/health centers, or similar office use, hotel, convention center and their ancillary services.
4. Light industry, including fabrication, assembly, finishing, packaging or research, to include the manufacture, assembly, and packaging of merchandise.
5. Sanitary landfill operations and all other methods for the disposal, treatment, or processing of trash, refuse, debris, or other rubbish material are not deemed to

be light industry within the meaning of this bylaw and shall not qualify herein as either an allowed use or as a permitted use.

6. Any use allowed in Business District B except #10 and detached one-family houses and detached two-family houses, which are not allowed in the Industrial District A.

7. **Residential Multifamily Housing Developments, pursuant to Section V.14.**

B. Uses Permitted by Special Permit

The following uses may be permitted only when the applicant clearly establishes that such uses are not noisy, injurious, noxious or offensive to the neighborhood, and do not derogate from the purpose of this bylaw as determined by the board of appeals after due notice and a public hearing, as per Section 6, provided that there be no outside display of goods produced or for sale, and, provided that any grant of a special permit shall be conditioned upon full compliance with off-street parking, site plan approval, and other provisions of this bylaw.

1. Light industrial processing.
2. Warehousing and wholesale merchandise storage.
3. Any use permitted by special permit in Business District B.
4. Restaurants.
5. Office buildings not to exceed four stories in height.
~~6. Residential Affordable Housing Developments, pursuant to Section V.14.~~
~~7.~~ 6. Hobby kennels, pet services facilities or commercial kennels.

D. Dimensional Regulations

1. Lot Sizes: All uses require at least 80,000 square feet of area**, except Residential Multifamily Housing Developments pursuant to Section V.14 which require at least 40,000 square feet of area**. In addition, at least 70,000 square feet of said area shall be exclusive of any and all easements, cranberry bogs, wetlands, flood plains and watershed areas**, except for Residential Multifamily Housing Developments pursuant to Section V.14 in which case at least 36,500 square feet of said area shall be exclusive of any and all easements, cranberry bogs, wetlands, flood plains and watershed areas.**

2. **Residential Multifamily Housing Developments shall have two parking spaces per dwelling unit.**

~~2~~3. Frontage: All uses require at least 200 contiguous feet at the way line.

~~3~~4. Front Yards: All buildings, structures, and paved areas other than parking and access ways shall be set back a minimum of sixty feet from the lot line.

~~4~~5. Side Yards: All building, structure, and paved areas other parking and access ways shall be set back a minimum of 20 feet for the side lot line.

~~5~~6. Rear Yards: All building, structure, and paved areas other than parking and access ways shall be a minimum of 20 feet from the rear lot line.

~~6~~7. Lot Width: At any point between the way line and the rear building line of any building, other than an accessory building, the distance between side lot lines, as measured in any direction, shall not be less than one hundred and thirty-five feet.

~~7~~8. Corner Clearances: No building, no structure, no fence other than a post and rail fence, no sign, and no foliage shall be maintained between a height of two feet and a height of eight feet above the plane through the curb grades of intersecting ways within the area formed by the lines of intersecting ways and lines parallel to and thirty feet in distance from the intersecting way lines, or, in the case of a

rounded comer, within an area which is thirty feet or less in distance from both way lines.

~~8~~9. Projections: Nothing herein shall prevent the projection of steps or stoops not exceeding thirty square feet in area, eaves, cornices, windowsills, or belt courses into any required yard.

~~9~~10. Heights: No building or structure shall be erected or altered to exceed four stories in height. However, chimneys, elevators, poles, spires, tanks, towers and other projections not used for human occupancy may extend a reasonable height above the height limits herein fixed.

~~10~~11. Driveways: Driveways providing a means of access and egress for each individual lot shall not exceed one foot in width for each ten feet of frontage, excluding radii, and there shall not be more than two such driveways. Common driveways providing a means of access and egress for more than one lot shall not be allowed.

~~11~~12. Building Floor Area: The building floor area shall not exceed forty-five percent of the total site area**, except for Residential Multifamily Housing Developments, pursuant to Section V.14, in which case the building floor area shall not exceed one hundred percent of the total site area.**

~~12~~13. Coverage: The sum of the ground area of the lot covered, or to be covered, by all buildings or structures and all paved areas, to include walkways, patios, roadways, access ways, turnarounds, loading areas, and parking areas shall not exceed eighty percent of the total site area.

~~13~~14. Landscaping: At least forty percent of any required yard shall be landscaped or left in a natural state. At least fifty percent of any yard or buffer strip abutting a residential use or district shall be landscaped or left in a natural state. Along any lot line abutting a residential use or district, there shall be planted a dense natural hedge greater than six feet in height and located within ten feet of said lot line. Said natural hedge shall provide a visual screen between any structures or parking area and the residential area.

15. Buffer Strips: Within this district, no building or structure**, with the exception of a Residential Multifamily Housing Development,** shall be placed within one hundred and fifty feet of Residence District A or within one hundred and fifty feet of any existing residential use.

5A. INDUSTRIAL DISTRICT B

In this district, no building, structure, premises or land shall be used except in conformance with the impact standards in Section V.7 or shall be used for any purposes except:

A. Uses Allowed

1. A church, municipal, or civic use.
2. Institutions for educational, religious, or philanthropic use.
3. Business, financial, governmental, insurance, medical, professional, real estate, assisted living residence, fitness/health centers, or similar office use, hotel, convention center and their ancillary services.
4. Light industry, including fabrication, assembly, finishing, packaging or research, to include the manufacture, assembly, and packaging of merchandise.
5. Sanitary landfill operations and all other methods for the disposal, treatment, or processing of trash, refuse, debris, or other rubbish material are not deemed to be light industry within the meaning of the bylaw and shall not qualify herein as either an allowed use or as a permitted use.

6. Retail Sales in the Industrial B Zone west of Route 3.
7. Any use allowed in Business District B except #10 and detached one-family houses and detached two-family houses, which are not allowed in the Industrial District B.
8. **Residential Multifamily Housing Developments, pursuant to Section V.14.**

B. Uses Permitted by Special Permit

The following uses may be permitted only when the applicant clearly establishes that such uses are not noisy, injurious, noxious, or offensive to the neighborhood and do not derogate from the purpose of this bylaw as determined by the board of appeals after due notice and a public hearing, as per Section VI, provided that there be no outside display of goods produced or for sale, and provided that any grant or a special permit shall be conditioned upon full compliance with off-street parking, site plan approval, and other provisions of this bylaw.

1. Light industrial processing.
2. Warehousing and wholesale merchandise storage.
3. Any use permitted by special permit in Business District B.
4. Office buildings not to exceed four stories in height.
5. ~~Residential Affordable Housing Developments, pursuant to Section V.14.~~
6. ~~6.~~ 5. Hobby kennels, pet services facilities or commercial kennels.

D. Dimensional Regulations

1. Lot Sizes: All uses require at least 80,000 square feet of area**, except Residential Multifamily Housing Developments pursuant to Section V.14 which require at least 40,000 square feet of area**. In addition, at least 70,000 square feet of said area shall be exclusive of any and all easements, cranberry bogs, wetlands, flood plains and watershed areas**, except for Residential Multifamily Housing Developments pursuant to Section V.14 in which case at least 36,500 square feet of said area shall be exclusive of any and all easements, cranberry bogs, wetlands, flood plains and watershed areas**.
2. **Residential Multifamily Housing Developments shall have two parking spaces per dwelling unit.**
3. ~~2~~. Frontage: All uses require at least 200 contiguous feet at the way line.
4. ~~3~~. Front Yards: All buildings, structures, and paved areas other than parking and access ways shall be set back a minimum of sixty feet from the lot line.
5. ~~4~~. Side Yards: All buildings, structure or paved areas other than parking and access ways shall be set back a minimum of twenty feet from the side lot line.
6. ~~5~~. Rear Yards: All buildings, structures, and paved areas other than parking and access ways shall be set back a minimum of twenty feet from the rear lot line.
7. ~~6~~. Lot Width: At any point between the way line and the rear building line of any building, other than as accessory building, the distance between side lot lines, as measured in any direction, shall not be less than one hundred thirty-five feet.
8. ~~7~~. Corner Clearances: No building, no structure, no fence other than a post and rail fence, no sign, and no foliage shall be maintained between a height of two feet and a height of eight feet above the plane through the curb grades of intersecting ways within the area formed by the lines of intersecting ways and lines parallel to and thirty feet in distance from the intersecting way lines, or, in the case of a rounded corner, within an area which is thirty feet or less in distance from both way lines.

~~8~~9. Projections: Nothing herein shall prevent the projection of steps or stoops not exceeding thirty square feet in area, eaves, cornices, windowsills, or belt courses into any required yard.

~~9~~10. Heights: No building or structure shall be erected or altered to exceed four stories in height. However, chimneys, elevators, poles, spires, tanks, towers and other projections not used for human occupancy may extend a reasonable height above the height limits herein fixed.

~~10~~11. Driveways: Driveways providing a means of access and egress for each individual lot or shall not exceed one foot in width for each ten feet of frontage, excluding radii, and there shall not be more than two such driveways. Common driveways providing a means of access and egress for more than one lot shall not be allowed.

~~11~~12. Building Floor Area: The building floor area shall not exceed forty-five percent of the total site area**, except for Residential Multifamily Housing Developments, pursuant to Section V.14, in which case the building floor area shall not exceed one hundred percent of the total site area**.

~~12~~13. Coverage: The sum of the ground area of the lot covered, or to be covered, by all buildings or structures and all paved areas, to include walkways, patios, roadways, access ways, turnarounds, loading areas, and parking areas shall not exceed eighty percent of the total site area.

~~13~~14. Landscaping: At least forty percent of any required yard shall be landscaped or left in a natural state. At least fifty percent of any yard or buffer strip abutting a residential use or district shall be landscaped or left in a natural state. Along any lot line abutting a residential use or district there shall be planted a dense natural hedge greater than six feet in height and located within ten feet of said lot line. Said natural hedge shall provide a visual screen between any structure or parking area and the residential area.

SECTION V
Special Provisions, Standards and Procedures

14. RESIDENTIAL ~~AFFORDABLE~~ **MULTIFAMILY** HOUSING DEVELOPMENT ~~SPECIAL PERMIT~~

A. Purpose and Intent. The purpose of this Residential ~~Affordable~~ **Multifamily** Housing Development Bylaw is to create housing opportunities in Pembroke for people of varying ages and income levels; to increase the supply of affordable housing for eligible households with low and moderate income; to promote a mix of geographic distribution of affordable housing throughout the town; to provide housing options for people who work in Pembroke; and to create housing units eligible for listing in the Town of Pembroke's Subsidized Housing Inventory (SHI), as maintained by the Department of Housing and Community Development (DHCD) pursuant to G.L. c.40B. Units created under this Section shall comply with the requirements of G.L. c. 40B and any regulations or guidelines issued by the Department of Housing and Community Development for the purpose of ensuring that such units qualify for inclusion on the Town's Subsidized Housing Inventory. Units created hereunder may be submitted under the DHCD Local Initiative Program, as Local Action Units, or any other eligible program or procedure that will qualify the units for the Town's SHI.

B. ~~Special Permit~~ **Site Plan Approval** Granting Authority

1. A residential ~~affordable~~ **multifamily** housing development may be allowed pursuant to the provisions of this Section through a ~~special permit~~ **Site Plan Approval** from the Planning Board~~, as the Special Permit Granting Authority~~.

C. Applicability.
1. This Section shall apply to residential ~~affordable~~ **multifamily** housing developments that results in the net increase of ~~twenty-five (25)~~ **ten (10)** or more Dwelling Units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential structures and uses, whether on one or more contiguous parcels.
2. Residential ~~affordable~~ **multifamily** housing developments shall not be segmented to avoid compliance with this Section. Segmentation shall mean one or more divisions of land that cumulatively result in a net increase of ~~twenty-five (25)~~ **ten (10)** or more lots or Dwelling Units that could have been developed but for the segmentation of lots over the previous eighteen (18) month period.

D. Definitions.
1. Affordable Housing Unit: A dwelling unit with an Affordability Deed Restriction that is occupied by or available to a Low or Moderate Income Household and is eligible for inclusion on the Town's Subsidized Housing Inventory as maintained by the Department of Housing and Community Development.
2. Affordable Deed Restriction: A covenant agreement, deed restriction, or other legal instrument, acceptable in form and substance to the Town, that effectively restricts occupancy of an affordable housing unit to a qualified purchaser or qualified renter, and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property. An affordable housing restriction shall be enforceable under the provisions of M.G.L. Chapter 184, Section 32, and be approved by the Department of Housing and Community Development.
3. Low- or Moderate-Income Household: A household with income at or below 80% of the Area Median Income, adjusted for household size.
4. Maximum Affordable Purchase Price or Rent: A selling price or monthly rent, exclusive of utilities, that meets the maximum purchase price or rent guidelines of the Massachusetts Department of Housing and Community Development for inclusion on the Subsidized Housing Inventory.
5. Area Median Income: The household income determined annually by the U.S. Department of Housing and Urban Development for the Town or the region that includes the Town.
6. Qualified Purchaser: A low- or moderate-income household that purchases and occupies an affordable housing unit as its principal residence.
7. Qualified Renter: A low- or moderate-income household that rents and occupies an affordable housing unit as its principal residence.
8. Regulatory Agreement: An agreement entered into by the Department of Housing and Community Development, the Town and a developer of a residential ~~affordable~~ **multifamily** housing development or between the Town and a developer of a residential ~~affordable~~ **multifamily** housing development that specifies the rights and responsibilities of the parties for the term of affordability of a residential ~~affordable~~ **multifamily** housing development, including compliance monitoring, enforcement of the affordable housing deed restriction and compliance with an affirmative fair marketing plan.

9. Subsidized Housing Inventory: The Department of Housing and Community Development's Subsidized Housing Inventory as provided in 760 CMR 56.03(2).

E. Application; required submissions.
   1. ~~In addition to an application for a special permit, an~~ An applicant shall submit to the Planning Board the following documents:
      a. A site plan, which complies with the requirements of Section V.7.D.
      b. A Unit mix proposal, proposed rent or subsidy source, and proposed rent schedule.
   2. Copies of the documents required by this subsection shall be forwarded to the Affordable Housing Committee for their comments and suggestions, to be reviewed by the Planning Board prior to rendering a decision on an application ~~for a Special Permit~~ under this Section.
   3. Affirmative Fair Housing Marketing Plan: The Applicant shall select Qualified Purchases and renters via a lottery under an Affirmative Fair Housing Marketing Plan prepared and submitted by the Applicant and approved by the Affordable Housing Committee and incorporated into the ~~special permit~~ **Site Plan Approval** by the Planning Board. The Plan shall comply with DHCD LIP Guidelines and the regulatory agreement with DHCD.
   4. Regulatory Agreement: For both ownership and rental units, the Applicant shall prepare the Regulatory Agreement for approval by the Town and DHCD. The Regulatory Agreement shall be executed by DHCD, the Town and the Applicant and shall be recorded at the appropriate Registry of Deeds or Registry District of the Land Court.
   5. Affordable Housing Deed Restriction: The Applicant is required to submit an affordable housing deed restriction for each affordable unit that is consistent with that used in the Local Initiative Program and Regulatory Agreement approved by DHCD and shall be recorded in the appropriate Registry of Deeds or Registry District of the Land Court.

F. Mandatory Provision of Affordable Housing Units.
   1. In any development subject to this Section, the percentage of Affordable Housing Units required shall be ~~25%~~ **10%** percent of the total number of proposed dwelling units.
   2. A fractional Affordable Housing Unit of 0.5 or higher shall be rounded up to the next whole number. Fractional housing units of less than 0.5 shall require be rounded down to the next whole number.
   3. An affordable housing unit created in accordance with this bylaw shall be subject to an affordable housing deed restriction and regulatory agreement that contains limitations on use, resale and rents.
      a. The affordable housing restriction shall be enforceable under the provisions of M.G.L. Chapter 184.
      b. The Planning Board shall require that the applicant comply with the mandatory provisions of affordable housing units and accompanying restrictions on affordability, including the execution of the affordable housing restriction and regulatory agreement.
      c. All documents necessary to ensure compliance with this bylaw shall be subject to review and approval of the Planning Board and review as to form by Town Counsel.

~~G. Adjustment of Dimensional Requirements.~~
   ~~a. Residential Affordable Housing Developments shall comply with all Dimensional Requirements in Industrial A or Industrial B with the exception of 5.F #11, Building Floor Area and 5A.D.#11 Building Floor Area.~~

H. Location and Comparability of Affordable Housing Units.

a. The permit application for the proposed development shall include a plan showing the proposed locations of the Affordable Housing Units.
b. Affordable Housing Units shall be distributed throughout a development.
c. Affordable Housing Units shall be conveniently located to the development's common amenities as the market rate units.
d. Affordable Housing Units shall be indistinguishable from market-rate units as viewed from the exterior.
e. Affordable Housing Units shall:
    1. Be equivalent to the market-rate units in terms of design, quality of construction, workmanships, mechanical, plumbing, heating and cooling systems, roofing, insulation, windows and energy efficiency.
    2. The Building Inspector may inspect the premises to ensure that the developer has complied with these requirements and if necessary, require reasonable changes to achieve compliance.

I. Timing of Construction of Affordable Housing Units.
    a. Affordable Housing Units shall be constructed in accordance with the schedule approved by the Planning Board, and shall be determined by the number of building permits issued for affordable and market-rate units.
    b. If the development is to be constructed in phases, each phase of construction shall include affordable units in proportion to the completed project.
    c. Affordable Housing Units shall not be the last units to be built in any development that is subject to this Section.

Submitted by the Planning Board

PLANNING BOARD RECOMMENDATION: **Favorable Action**
ADVISORY COMMITTEE RECOMMENDATION: **Town Meeting Floor**
SELECT BOARD RECOMMENDATION: **Favorable Action**
EXPLANATION:

ARTICLE 13 – RECYCLING COMMITTEE NAME AND TASK CHANGE

To see if the town will vote to amend the vote taken under Article 23 of the October 19, 2010 Special Town Meeting to change the name of the Recycling Committee to the Recycling and Sustainability Committee; and further, to strike the words "recommendations regarding the design, operation, record keeping, and contractual obligation related to the Recycling Center" and replace them with "public education and projects aimed at resource management and conservation efforts, with outreach focus areas to include waste reduction and recycling, home efficiency tips including power and water, eco-friendly home and lawn maintenance and gardening, home chemical and pesticide alternatives and home resource conservation education."

Submitted by the Recycling Committee

ADVISORY COMMITTEE RECOMMENDATION: **Favorable Action**
SELECT BOARD RECOMMENDATION: **Favorable Action**
EXPLANATION: *The change in name would better serve the expanding role of other aspects of recycling and sustainability (such as home composting, and water resource protection) in the lives of the town residents, giving the committee the chance to include a much broader educational and informational role. The supervision of the Recycling Center was made the responsibility of the Town Manager in Article 21 of the Annual Town Meeting on May 8, 2018.*

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs,	)	
v	)	No. 2583 CV 00184
COMMONWEALTH OF MASS. et al., Defendants	)	
TOWN OF MIDDLEBOROUGH, Plaintiff,	)	
v	)	No. 2583 CV 00188
COMMONWEALTH OF MASS., et al., Defendants	)	
TOWN OF HANSON, et al., Plaintiffs,	)	
v	)	No. 2583 CV 00209
COMMONWEALTH OF MASS., et al., Defendants	)	
TOWN OF WRENTHAM, et al., Plaintiffs,	)	
v	)	No. 2582 CV 00259
COMMONWEALTH OF MASS., et al., Defendants	)	
TOWN OF MIDDLETON, et al., Plaintiffs,	)	
v	)	No. 2577 CV 00249
COMMONWEALTH OF MASS., et al., Defendants	)	

AFFIDAVIT OF DAVID BANCROFT

I, David Bancroft, hereby depose and say as follows:

1. I am Senior Vice President, Community Investment at the Massachusetts Development Finance Agency ("MassDevelopment"), where I have served since 1999.

2 The facts set forth in this affidavit either are personally known to me or are based on knowledge I have acquired through review of documents kept by MassDevelopment in the ordinary course of its business

The Town of Hanson's
Applications to the Brownfields Redevelopment Fund Program through the FY25 Round of the Community One Stop for Growth

Overview of the Brownfields Redevelopment Fund Grant Program

3 One of my responsibilities at MassDevelopment is to oversee and administer the Brownfields Redevelopment Fund established by G.L c 23G, § 29A (the "Brownfields Program").

4. The Brownfields Program is a competitive grant program that provides funding for the environmental assessment, remediation and redevelopment of sites complicated by real or perceived environmental contamination Municipalities among other entities are eligible to seek and receive Brownfields Program grants

5 MassDevelopment solicits applications for funding from the Brownfields Program both through rolling funding rounds or, specifically for municipalities or municipal entities, through the Commonwealth's Community One Stop for Growth portal, a centralized process through which an applicant can seek grant funds from multiple funding programs.

6 An upcoming municipal Brownfields grant round is publicized through a Community One Stop for Growth "Notice of Funding Availability," which sets forth information about the grantmaking process.

7 A municipality that seeks a Brownfields grant applies using the consolidated "Community One Stop for Growth" application

8. If that municipality is awarded a Brownfields grant, it is notified of that fact, along with the amount of the award, through an award letter The municipality may then be requested to submit additional "pre-contract" information to MassDevelopment such as a scope of services from a Licensed Site Professional or remediation contractor, an estimated project completion date, evidence of site control and other clarifying items that MassDevelopment may request.

9. Following a satisfactory pre-contract submission, MassDevelopment and the municipality then execute a contract that finalizes the grant award MassDevelopment uses a standard contract for Brownfields grants to municipalities; such a contract contemplates that MassDevelopment will, according to the preference of the municipality, either reimburse the municipality for eligible expenses that the municipality has incurred within the scope of the grant award, or pay the contractor directly following approval by the municipality of the invoice and work performed, based upon supporting materials submitted by the municipality.

The Town of Hanson's FY25 Brownfields Grant Application

10. On June 3, 2024, the Town of Hanson ("Hanson") applied for a Brownfields Program grant related to its 100 Hawks Avenue Rear Site Remediation project.

11 In a letter dated October 15, 2024, MassDevelopment notified Hanson that its application had been approved in the amount of Two Hundred Thirty-Seven Thousand and 00/100 Dollars ($237,000). MassDevelopment's award letter, a copy of which is attached as Exhibit A, advised Hanson that "this letter does not constitute an agreement or contract with MassDevelopment or the Commonwealth of Massachusetts. No MassDevelopment funds will be disbursed until the Grant Agreement is fully executed and all disbursement conditions are met."

The letter also advised Hanson that "a Grant Agreement will not be executed if [Hanson] is noncompliant with Section 3A of M G L Chapter 40A as determined by EOHLC [i e , the Commonwealth's Executive Office of Housing and Livable Communities]."

12 On February 15, 2025, MassDevelopment was informed that the Town of Hanson had been determined to be in interim compliance by EOHLC.

13 Between late February and early March 2025, MassDevelopment worked with the Town of Hanson to collect any necessary pre-contract information and draft its Brownfields Grant Agreement in the amount of $237,000.

14. On March 6, 2025, the Town of Hanson returned a signed execution copy of the Grant Agreement to MassDevelopment. MassDevelopment counter-signed the Grant Agreement and subsequently returned a fully executed copy to Hanson

15. MassDevelopment stands ready to disburse funding under the Agreement as soon as Hanson makes request for payment pursuant to the terms of the Grant Agreement. To date, no requests have been forthcoming from Hanson.

I declare under penalty of perjury that the foregoing is true and correct.

March 17, 2025

David Bancroft

EXHIBIT A

MassDevelopment

99 High Street
Boston, MA 02110

Main: 617-330-2000
Fax: 617-330-2001

massdevelopment.com

October 15, 2024

Lisa Green
Town Administrator
Town of Hanson
542 Liberty Street
Hanson, MA 02341

VIA EMAIL

Re: Application: FY25-00932 for Brownfields Site Remediation

Dear Lisa:

Congratulations on the Town of Hanson's successful application to the FY25 Round of the Community One Stop for Growth. On behalf of the Healy-Driscoll Administration, I am pleased to inform you that a grant in the amount of $237,000 from the Brownfields Redevelopment Fund has been approved to support the 100 Hawks Avenue Rear Site Remediation.

Maura Healey
Governor

Kim Driscoll
Lieutenant Governor

Yvonne Hao, Chair
Secretary of Economic Development

If this project is located in an MBTA Community, please note that a Grant Agreement will not be executed if the community is noncompliant with Section 3A of M.G.L. Chapter 40A as determined by EOHLC.

Our Program Manager, David Bancroft, will be in touch to assist you with entering into a Grant Agreement regarding use of the funds and containing the details on the conditions, processes, and timeframe for drawing down funds, and other program requirements during the term of the Grant Agreement including, but not limited to, compliance with MassDevelopment's Contractor Policy and potential recoverability of the award under limited circumstances.

Prior to execution of the Grant Agreement, MassDevelopment will require proof of site ownership or legal authority for you and your Massachusetts Licensed Site Professional ("LSP") or remediation contractor to enter the site and perform the approved site assessment investigations or remediation activity. We will require that you submit a fully executed contract and scope of services with your contractor consistent with the scope submitted with the One Stop application for the work to be performed.

Please be advised that this letter does not constitute an agreement or contract with MassDevelopment or the Commonwealth of Massachusetts. No MassDevelopment funds will be disbursed until the Grant Agreement is fully executed and all disbursement conditions are met. MassDevelopment Funds cannot be used for any site assessment or remediation work undertaken prior to the execution of the Grant Agreement unless such work is approved in the Grant Agreement by MassDevelopment.

MassDevelopment's primary mission is to help build the communities of the Commonwealth by stimulating economic development. We look forward to working with you to make your project a reality for the benefit of the Town of Hanson and all of the people of Massachusetts.

Sincerely,

Marcos Marrero
Deputy Director & Senior Executive Vice President

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF NATHAN CARLUCCI

I, Nathan Carlucci, hereby depose and say as follows:

1. I am the MBTA Communities Compliance Coordinator for the Massachusetts Executive Office of Housing and Livable Communities ("EOHLC").

2. In this role, I lead a team of five regional planners whose primary responsibility is to determine whether municipal zoning is compliant with G.L. c. 40A, § 3A, and 760 CMR 72.00 (together, the "Law"). For the past three years in my role, I have also spent significant time educating stakeholders on the Law's requirements, and providing feedback to municipal staff and technical assistance providers on compliance strategies through direct technical assistance, responses to technical zoning inquiries, and review of draft zoning for compliance before it is brought to local legislative bodies. I have worked professionally in land use planning with a focus on zoning for over fifteen years, including as a consultant to Massachusetts municipalities, and to developers navigating local zoning bylaws and ordinances.

3. The facts set forth in this affidavit are either personally known to me or my knowledge of them has been acquired through review of documents kept in the ordinary course of EOHLC's business.

4. Section 3A states that an MBTA community "shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right" and that meets other criteria set forth in the statute.

5. EOHLC's 760 CMR 72.00 addresses some of those criteria, particularly the meaning of "reasonable size," which 760 CMR 72.00 addresses by establishing separate minimum requirements for the district's land area and its multi-family unit capacity.

6. 760 CMR 72.00 also offers MBTA communities certain flexibilities, including: (1) allowing the MBTA community to require certain percentages of the housing units in new multi-family developments to be deed-restricted as affordable; (2) allowing the MBTA community to reduce the minimum required unit capacity of its district by demonstrating the existence of a different zoning district that allows mixed-use development, but not multi-family housing, as of

right; (3) allowing the MBTA community to use districts that are geographically noncontiguous; (4) allowing an MBTA community with a transit station to locate parts of its district outside of the one-half mile radius surrounding the station; (5) establishing a concept of "excluded land" which relieves MBTA communities of the burden of removing certain undevelopable lands from their district; (6) due to the separate metrics for "reasonable size" described above, allowing an MBTA community the flexibility to choose a balance between more land area with less density and less land area with more density; and (7) allowing MBTA communities to develop nondiscretionary site plan review procedures, site development standards, and other procedures or requirements to handle large scale development proposals in their § 3A-compliant district.

7. The Law does not necessarily require an MBTA community to develop or adopt new zoning. Numerous MBTA communities—including Worcester, Salem, Fall River, Rochester, Northbridge, Framingham, Cambridge, and Haverhill—had compliant zoning in place prior to the enactment of § 3A. According to materials submitted by the MBTA communities listed in this paragraph, each of them achieved compliance with the Law without making any zoning amendments for that purpose.

8. Similarly, an MBTA community without pre-existing compliant zoning may achieve compliance with the Law without making amendments to a zoning map. Such a strategy could consist of modifying the permitted uses in a pre-existing zoning district to include multi-family housing. It could alternatively, or also, consist of amending the applicable by-law to ensure that the district's dimensional or density standards and other features comply with the Law, and/or to ensure that the lots in the district meet the zoning requirements for as of right development and can be developed at the density required by the Law.

9. Pembroke, for example, achieved compliance with the Law by adding multi-family housing as an allowed use in a pre-existing zoning district.

10. Alternatively, an MBTA community may choose to pursue a more complex compliance strategy, such as by developing a new zoning district, or districts, with new mapping, or utilizing one or more of the flexibilities that 760 CMR 72.00 offers as set forth above.

11. An MBTA community that chooses to use the optional flexibilities provided by 760 CMR 72.00 may have a more complex task to demonstrate compliance.

12. EOHLC has developed a tool called the "Compliance Model" that automates the bulk of the analysis and provided that tool to every MBTA community.

13. The Compliance Model is a Microsoft Excel spreadsheet that uses parcel data to calculate or estimate important zoning district metrics. Parcel maps and data were also provided by EOHLC to every MBTA community. A user copies the parcel data from the parcels comprising the district into the spreadsheet, then enters some basic dimensional zoning rules into the sheet. The spreadsheet automatically applies the zoning rules to the selected parcels to calculate or estimate gross density, land area, and multi-family unit capacity.

14. In order to use the Compliance Model, a user must have an entry-level ability to use Geographic Information Systems (GIS). In my experience, most MBTA communities have GIS software and at least one capable user on staff in their planning departments, or in their department of public works or engineering.

15. Regional Planning Agencies have also made themselves available to assist MBTA communities with the basic GIS work.

16. The GIS component can be done with software available for free online. I personally use the free open-source program QGIS when I review districts.

17. A times, MBTA communities have submitted Compliance Models that are incomplete or imperfect. When that happens, EOHLC staff assist the MBTA community in helping it to complete their Compliance Models.

18. In my experience, when zoning amendments are necessary to comply with the Law, those amendments are not more sophisticated than the ordinary zoning amendments that municipalities routinely consider and enact. The documentation required for demonstrating compliance to EOHLC staff requires no special skill or substantial commitment of time as compared to other tasks that are routinely completed in a city or town planning department.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Nathan Carlucci

Mar. 18, 2025 Nathan Carlucci

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
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TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF CAROLINE (CHRIS) KLUCHMAN

I, Caroline (Chris) Kluchman, hereby depose and say as follows:

1. I am the Director of Livable Communities Division for the Massachusetts Executive Office of Housing and Livable Communities ("EOHLC").

2. The facts set forth in this affidavit are either personally known to me or my knowledge of them has been acquired through review of documents kept in the ordinary course of EOHLC's business.

3. In my role, I oversee the implementation of the MBTA Communities Program with the staff of that program to track various elements related to determinations of compliance and determinations of interim compliance. I also oversee several capital grant programs, one of which is the Community Planning Grant Program. Staff within the Livable Communities Division review applications and make recommendations for awards. My role is to oversee the program, review recommendations, and send the recommendations to EOHLC Secretary for his review. Once all required approvals are obtained, EOHLC staff prepares and sends award letters to successful grantees. Then contracts to govern the grant award are prepared, sent to the grantees, and executed by both the grantees and me. Following contract execution, EOHLC staff works with grantees to instruct them on how to meet contractual obligations for reporting and invoicing. Over the course of the grant, I receive periodic reports on the progress of grants and grant spending.

4. The Community Planning Grant Program funds a variety of activities related to community planning, including funding for MBTA Communities compliance activities.

5. The Community Planning Grant Program is part of the Commonwealth's "Community One Stop for Growth" initiative, a centralized process through which a single applicant can seek grant funds from multiple state funding programs. A municipality that seeks a

Community Planning Grant applies using the consolidated "Community One Stop for Growth" application.

6. On June 2, 2023, the Town of Middleton submitted an application for a Community Planning Grant to be used to retain a planning consultant to do a comprehensive zoning bylaw update related to the MBTA Communities Law. The Town's application requested $75,000 for the consultant.

7. On September 25, 2023, EOHLC notified the Town of Middleton that it would be awarded a grant in the amount of $75,000 from the Community Planning Grant Program.

8. On November 17, 2023, the Town of Middleton executed a contract with EOHLC for that grant. The contract included attachment that described the scope of services and additional terms and conditions. A true and correct copy of the contract is attached to this affidavit as Exhibit A.

9. Payments for the grant are made to the Town after receipt of a written request for reimbursement. As of the date of this affidavit, Middleton has requested and received reimbursement under the grant in the amount of $13,250.

10. The remainder of the grant award is still available to Middleton, provided that expenses are incurred by June 30, 2025.

11. On February 12, 2025, the Town of Hanson submitted an Action Plan. A true and correct copy of the Hanson Action Plan is attached to this affidavit as Exhibit B. On February 14, 2025 EOHLC sent a determination of interim compliance to the town. A true and correct copy of the Hanson determination of interim compliance is attached to this affidavit as Exhibit C.

12. On February 12, 2025, the Town of Wrentham submitted an Action Plan. A true and correct copy of the Wrentham Action Plan is attached to this affidavit as Exhibit D. On

February 12, 2025, EOHLC sent a determination of interim compliance to the town. A true and correct copy of the Wrentham determination of interim compliance is attached to this affidavit as Exhibit E.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Caroline "Chris" Kluchman

Mar. 18, 2025 Caroline (Chris) Kluchman

A

COMMONWEALTH OF MASSACHUSETTS – STANDARD CONTRACT FORM

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract terms or invoice terms) to the terms in this published form or to the Standard Contract Form Instructions and Contractor Certifications, the Commonwealth Terms and Conditions for Human and Social Services or the Commonwealth IT Terms and Conditions which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: https://www.mass.gov/ctr-forms. Forms are also posted at OSD Forms: https://www.mass.gov/lists/osd-forms

CONTRACTOR LEGAL NAME: Town of Middleton (and d/b/a):	**COMMONWEALTH DEPARTMENT NAME:** Executive Office of Housing and Livable Communities **MMARS Department Code:** OCD
Legal Address: (W-9, W-4): 48 South Main Street, Middleton, MA 01949, Middleton, MA 01949	**Business Mailing Address:** 100 Cambridge Street, Suite 300 Boston, MA 02114
Contract Manager: Justin Sultzbach — **Phone:** (978) 774-3567	**Billing Address** (if different): Same
E-Mail: justin.sultzbach@middletonma.gov — **Fax:**	**Contract Manager:** Julissa Tavarez — **Phone:** 617-573-1487
Contractor Vendor Code: VC6000191884	**E-Mail:** Julissa.tavarez@mass.gov — **Fax:**
Vendor Code Address ID (e.g. "AD001"): AD 001 (Note: The Address ID must be set up for EFT payments.)	**MMARS Doc ID(s):** SCOCD3210243M0050250 **RFR/Procurement or Other ID Number:** DHCDOneStop2024

x NEW CONTRACT	___ CONTRACT AMENDMENT
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) __ Statewide Contract (OSD or an OSD-designated Department) __ Collective Purchase (Attach OSD approval, scope, budget) x Department Procurement (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) __ Emergency Contract (Attach justification for emergency, scope, budget) __ Contract Employee (Attach Employment Status Form, scope, budget) __ Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)	Enter Current Contract End Date *Prior* to Amendment: _____, 20___ Enter Amendment Amount: $ _____ (or "no change") **AMENDMENT TYPE:** (Check one option only. Attach details of amendment changes.) __ Amendment to Date, Scope or Budget (Attach updated scope and budget) __ Interim Contract (Attach justification for Interim Contract and updated scope/budget) __ Contract Employee (Attach any updates to scope or budget) __ Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)

The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): x Commonwealth Terms and Conditions __ Commonwealth Terms and Conditions For Human and Social Services __ Commonwealth IT Terms and Conditions

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.
__ Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)
x Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or new total if Contract is being amended) $75,000.00

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: x agree to standard 45 day cycle __ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) Middleton will do a comprehensive zoning bylaw update compliant with Section 3A of 40A including a robust public engagement strategy, project webpage, and newsletters to inform the public.

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:
__ 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.
__ 2. may be incurred as of _____, 20___, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.
_X_ 3. were incurred as of 8/29, 2023, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of June 30, 2025, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business as Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lowest cost, or a more cost effective Contract.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: _____ Date: Nov 17 2023 (Signature and Date Must Be Captured At Time of Signature) Print Name: Justin B Sultzbach Print Title: Town Admin	**AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:** X: _____ Date: Nov 17 2023 (Signature and Date Must Be Captured At Time of Signature) Print Name: Caroline "Chris" Kluchman Print Title: Acting Director

Settlement & Release Statement of Expenses

Contractor Legal Name: Town of Middleton

MMARS Doc ID: SCOCD321024330000250

Insert Start Date Here: 9/29/23

Insert latest signature Date Here: Nov 17, 2023

List expenses with amounts and total: ~~25,000~~ $4,800 KBLacey

	Phase I		
Task 1: Project Kickoff	Aug-Sept 2023	completed before contract start date	
Task 2: Gather/analyze information		Aug-Oct 2023	$6,000
Task 3: Preliminary Draft of Zoning bylaw changes		Oct-Dec 2023	$30,000
	Phase II		
Task 4: Draft Zoning Bylaw Amendments		Jan-Feb 2024	$22,000
Task 5: Pursue Zoning Bylaw Amendment		March-May 2024	$5,000
Task 6: Pursue Zoning Bylaw Amendment		June-Nov 2024	$10,000

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

ATTACHMENT A: SCOPE OF SERVICES AND ADDITIONAL TERMS AND CONDITIONS

FY 2024 Community Planning Grant Program Contract

I. CONTRACT

The Contractor is responsible for accessing and reviewing the contents of the documents referenced below, as compliance with each is a binding component of this Contract:

A. This Attachment A is attached to and made a part of the COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM, THE COMMONWEALTH TERMS AND CONDITIONS and the Contractor's Budget, as approved by the Executive Office of Housing and Livable Communities ("EOHLC" or the "Executive Office") are attached hereto as Exhibits.

B. This Attachment A incorporates by reference the Community Planning Grant Program Application as applicable.

C. This Attachment A, all attached Exhibits and other Attachments, and all documents incorporated by reference herein, are referred to, collectively, as the Contract.

D. This Contract represents the entire agreement between the Contractor and EOHLC, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Contract.

E. If any term or condition of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

II. SCOPE OF SERVICES AND COMPLIANCE WITH LAWS

The Community Planning Grant Program provides funding to communities for technical assistance for community planning projects. As these are community planning and zoning revision grants projects must use the funds to produce planning or zoning document(s) and/or related materials in draft, phased, or final product.

The Contractor shall use this contract funding to provide services in accordance with the terms of the attached Budget, the terms of this Contract, and any subsequent Contract amendments. **ALL EXPENSES MUST BE INCURRED ON OR BEFORE JUNE 30TH OF THE FISCAL YEAR IN WHICH THEY OCCUR (FY 2024 – YEAR 1; FY 2025 – YEAR 2).** Any later change in services and activities to be provided by Contractor shall be made only with the prior approval of EOHLC, in accordance with Section III.C. below.

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

The Contractor shall carry out these activities in conformance with all applicable federal and state laws and requirements, including without limitation, statutes, rules, regulations, administrative and executive orders, ordinances, and codes, as they may be issued and amended.

EOHLC reserves the right to issue future administrative guidance. The Contractor shall comply with all applicable guidelines, information memoranda, list serves, or other guidance EOHLC may issue, amend, or supplement from time to time.

III. ADDITIONAL TERMS AND CONDITIONS

A. Reporting Responsibilities of the Contractor

1. The Contractor, and any entity under subcontract, having costs chargeable to Contract funds shall maintain Contract records in accordance with Section 7 of the Commonwealth Terms and Conditions including without limitation, a record of planned activities, a record of activities carried out, and an explanation of any changes in program activities.

2. The Contractor shall comply with all records and reporting requirements set forth in this Contract.

3. The Contractor shall submit to EOHLC in writing a schedule of the Contractor's estimated drawdowns of grant funds per each quarter of the duration of the grant. This proposed schedule must be submitted no later than 30 days following execution of this Contract.

4. The Contractor shall submit written quarterly progress reports to EOHLC in compliance with the following deadlines and requirements using a form provided by EOHLC. Progress reports shall be submitted on or before the 15th day of the month following the last month of the quarter, except in instances when the due date shall fall on a weekend or holiday where reports would be due the following full business day after the deadline. **EOHLC may delay reimbursement to the Contractor if the Contractor consistently fails to submit timely progress reports or other documents required under this Contract.** Any such action by EOHLC shall be preceded by written notification of the intent to delay such reimbursement, which may be done electronically, and allow for the Contractor to make reasonable written explanation regarding the occurrence, and the remedy of the issue. Failure by the Contractor to reply to EOHLC's written notification or to comply with specific instructions from EOHLC shall be treated as a breach herein and under Section 4 of the Commonwealth Terms and Conditions. EOHLC further reserves the right to consider past performance under the Community Planning Grant Program when evaluating an applicant's initial submission. Consistent failure to submit progress reports or to comply with the provisions of this Contract may negatively impact future awards of this grant.

Progress report deadlines are as follows:

FY24		
Q3	Period: 1/1/2024 *to* 3/31/2024	Due: 4/15/2024
Q4	Period: 4/1/2024 *to* 6/30/2024	Due: 7/15/2024
FY25		
Q1	Period: 7/1/2024 *to* 9/30/2024	Due: 10/15/2024
Q2	Period: 10/1/2024 *to* 12/31/2024	Due: 1/15/2025
Q3	Period: 1/1/2025 *to* 3/31/2025	Due: 4/15/2025
Q4	Period: 4/1/2025 *to* 6/30/2025	Due: 7/15/2025

5. The Contractor shall submit a copy of the planning or zoning document(s) produced with grant funding. Document(s) should be delivered by July 31, 2025. If documents cannot be delivered by July 31, 2025, the Contractor must submit written notification via email to the program representative by July 31, 2025, stating when the documents will be submitted. In accordance with Section III.A.4, failure to submit document(s) required under this Contract may (i) result in delayed reimbursement, (ii) may be treated as a breach of the Contract; and (iii) will be considered when evaluating applications for future grant awards.

6. The Contractor shall continually assess its performance of the Contract-supported activities to ensure that the performance objectives outlined in the Contract are achieved. This includes, but is not limited to, the Contractor's monitoring that applicable schedules are met and performance objectives are achieved in accordance with the activities delineated in the Contract. The Contractor shall promptly inform EOHLC in writing, which may be done electronically, of the following conditions which may affect its deliverable objectives and performance as soon as they become known:

   a. Problems, delays, or adverse conditions which will materially affect the Contractor's ability to attain deliverable objectives. This disclosure shall be accompanied by a statement of any actions taken or contemplated by the Contractor, and any assistance needed from EOHLC to resolve the situation. Failure by the Contractor to communicate promptly or to respond promptly to communications from EOHLC may result in the denial by EOHLC of any budget or schedule change requests by the Contractor, as provided in Section III.C.

   b. Favorable developments or events which will enable the Contractor to meet the deliverable Contract objectives sooner than anticipated or at less cost than originally projected.

7. The Contractor shall submit all progress reports electronically to EOHLC's assigned program representative at the following address:

   Filipe Zamborlini

Manager, Community Assistance Unit
filipe.zamborlini@mass.gov

8. EOHLC shall advise the Contractor within thirty (30) days of receiving any report if it is not acceptable to EOHLC. The Contractor shall submit an acceptable report upon receipt of such advice from EOHLC.

9. The Contractor, and any entity under subcontract having costs chargeable to Contract funds, shall maintain Contract records in accordance with Section 7 of the Commonwealth Terms and Conditions, including, without limitation, a record of planned activities, a record of activities carried out, and an explanation of any changes in program activities.

10. Within five business days of receipt, the Contractor shall provide EOHLC with copies of any and all exception reports and written communications of an audit or review of the Contractor and any written final reports of such audits or reviews that the Contractor receives during the Contract term from the state Office of the Inspector General (OIG) and/or the Office of the State Auditor. Such reports or communications may be provided electronically.

11. Within five business days of being served with any pleading in a legal action filed with a court or administrative agency related to this Contract or which may affect the Contractor's ability to perform its obligations hereunder, the Contractor shall notify EOHLC of such action and deliver copies of such pleadings to EOHLC. Such reports or communications may be provided electronically.

12. The Contractor will submit any other reports or information requested by EOHLC by the due date specified in EOHLC's request. The Contractor shall promptly make available to EOHLC or to an auditor or contractor approved by EOHLC such material information regarding the Contractor's activities as may be requested by EOHLC.

B. Payment Mechanism and Fiscal Obligations

EOHLC agrees to provide payment for the services described under this Contract, pursuant to the following payment mechanism.

1. Cost Reimbursement. The Contractor shall submit to EOHLC written requests for cost reimbursement on EOHLC's Community Planning Grant Invoice form (Community Planning Invoice), or other such form as EOHLC may specify.

Only requests for cost reimbursement for authorized capital expenses, pursuant to the capital funds from the state's capital budget, that are completed within the dates of service of an invoice, and that take place within the length of the contract, are authorized for reimbursement.

2. Community Planning Invoices should be submitted **no more than** once a month and should include the range of the dates of service being submitted for reimbursement.

3. All payments are contingent upon receipt of the availability of funds, authorization by the Executive Office of Administration and Finance and the Massachusetts Comptroller, and the provisions of the Commonwealth Terms and Conditions. In accordance with 815 CMR 2.00 and state finance law, EOHLC is under no legal obligation to compensate the Contractor, or to obtain additional funding, for any costs or other commitments which are outside the scope of the executed Contract and which have not been approved by EOHLC.

4. In no event shall the sum of any and all payment by reimbursement exceed the maximum amount payable to the Contractor hereunder. Requests for payment by cost reimbursement will be honored and funds will be released based on submission by the Contractor, with review and acceptance by EOHLC, of required data and reports as detailed in this Contract, the availability of funds, and the Contractor's satisfactory compliance with the terms of this Contract.

   Each request for payment by cost reimbursement must be made on the Community Planning Invoice. By submitting the Community Planning Invoice, the Contractor represents that in accordance with the Contract, including the Contractor's Budget as approved by EOHLC, articles have been furnished, services have been rendered, or obligations have been incurred by a person authorized to incur such obligations.

   EOHLC's fiscal representative will provide additional billing instructions, if necessary, to the Contractor via email.

   When submitted electronically, the Community Planning Invoice should be attached to the email submission in one email attachment. Any other documents, such as vendor invoices, should be submitted as separate attachments.

   In addition to the Community Planning Invoice, requests for payment by cost reimbursement shall also contain sufficient detail, supporting records, and documentation to support payment. Records to substantiate the Contractor's claims hereunder may include, without limitation, payroll records, accounting records, and purchase orders that are sufficient to document the Contractor's program and financial activities under this Contract.

   The request for cost reimbursement shall be submitted electronically to the attention of:

   Brett Morton

Fiscal Representative
brett.morton2@mass.gov

with a copy to:

Filipe Zamborlini
Manager, Community Assistance Unit
filipe.zamborlini@mass.gov

5. All requests for cost reimbursement must be submitted on or before July 15, 2024, if expenses were incurred in FY 2024 – Year 1, and on or before July 15, 2025, if expenses were incurred in FY 2025 – Year 2. Failure to do so may result in delayed reimbursement or denial of the request.

6. The Contractor shall submit the final Community Planning Invoice on or before July 15, 2025. With the submission of the final Community Planning Invoice, the Contractor shall return to EOHLC any unexpended funds that are reflected in the final reconciliation, subject to Section III.B above.

C. Budget or Schedule Changes

1. Any subsequent change in the services and activities to be provided by the Contractor in accordance with the attached Budget, including, but not limited to, extensions of time, requires prior written approval from EOHLC's assigned program representative listed in Section III.A.7. **Requests for any amendments or extensions shall be reviewed on a case-by-case basis by EOHLC, and may be approved or denied by EOHLC at its discretion. Consideration shall only be extended to grantees who are in adherence with Section III.A.6 and other requirements of this Contract. Requests to amend or extend the end date of the Contract must be received by EOHLC on or before January 31, 2025.**

2. Budget Amendments. The Contractor may transfer funds among the line items in the Budget, only with the written permission of EOHLC. No amendment to the Contract shall be required for such change. The Contractor shall submit a request for such change electronically to EOHLC's representatives, listed in Section III.B.4, at least 30 days prior to requesting reimbursement funds under such change. If EOHLC does not respond within 30 days of receipt of the requested change, it will be deemed to have approved of the change.

D. Signage, Acknowledgment, Publicity, and Logos

1. Signage. The Contractor may erect or post a sign at a location where Contract funds have been used indicating that financing is being or has been provided in part by EOHLC as part of the Community Planning

Grant Program, subject to compliance with the zoning by-laws or ordinances of the municipality in which the sign is to be erected or posted. The sign shall include the following statement: "Funds for this Project have been provided by a Community Planning Grant provided by the Massachusetts Executive Office of Housing and Livable Communities."

2. Acknowledgement. If Contract funds are expended by the Contractor on the preparation or production of a brochure or other publication, the brochure or publication shall include the following statement: "This publication was funded by a Community Planning Grant provided by the Massachusetts Executive Office of Housing and Livable Communities."

3. Publicity; Other Materials. The Contractor may disseminate, publish, or reproduce documents produced in whole or in part pursuant to this Contract, provided that the Contractor furnishes to EOHLC copies of any such documents thirty (30) days prior to publication, and provided that such documents include the acknowledgment required under Section III.D.2. The Contractor may copyright any books, publications, or other copyrightable materials produced under this Contract, provided that the Contractor shall provide to the Commonwealth as appropriate an irrevocable, nonexclusive royalty-free right to reproduce, publish, or otherwise use or authorize others to use the copyrighted material.

4. Logos. If the Contractor wishes to include a Department logo on any signage or other materials produced in accordance with this section, it may contact EOHLC's assigned program representative, listed in Section III.A.7. for the appropriate copy of a logo.

5. Submission to EOHLC. Any sign, publication, or other material produced in accordance with this section must be submitted in advance to EOHLC's assigned program representative, listed in Section III.A.7, no later than thirty (30) days before posting or distribution. If EOHLC does not respond within thirty (30) days of receipt of the material, it will be deemed to have approved of the material.

EOHLC reserves the right to require that the Contractor provide to EOHLC photographs, video, or other media and/or documentation, if applicable, or copies of such materials, of any project financed in part by EOHLC under the Community Planning Grant Program.

E. Audit or Financial Review

EOHLC reserves the right under this Contract to secure its own independent audit or financial review of the Contractor's (or Subcontractor, if applicable) records if, in its sole discretion, EOHLC determines that it is necessary for any reason.

F. Monitoring

EOHLC may monitor the Contractor's (or Subcontractor, if applicable) compliance with the Contract. The Contractor shall allow EOHLC and its representatives access to all of its books and records pertaining to this Contract.

G. Conflict of Interest, Licensure, and Debarment

1. The Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Contractor's obligations hereunder.

2. The Contractor shall not knowingly employ or compensate any employee of the Commonwealth during the term of this Contract, unless such arrangement is permitted under the provisions of M.G.L. c. 268A. Employment of former Commonwealth employees shall also be in compliance with the provisions of M.G.L. c. 268A.

3. The Contractor represents and warrants that as of the effective date, it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. The Contractor shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform activities under this Contract, without reimbursement by the Commonwealth or other adjustment in Contract funds. Further, the Contractor warrants that all employees, agents, and subcontractors performing services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities.

4. The Contractor certifies that the Contractor and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency. The Contractor agrees to immediately notify EOHLC if the Contractor becomes suspended or debarred, or if any licenses, certifications, approvals, insurance, permits, or any such similar requirement necessary for the Contractor to properly perform become revoked, withdrawn, or non-renewed during the Contract period.

H. Enforcement, Suspension, and Termination

1. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Contractor and EOHLC, and not to any third party.

2. EOHLC may use increased or additional monitoring and reporting as part of its enforcement actions.

3. This Contract may be terminated pursuant to Sections 4 and 5 of the Commonwealth Terms and Conditions.

4. EOHLC may provide the Contractor with written notice to decrease or cease Contract activity. Effective upon receipt of notice from EOHLC, or a later date specified therein, the Contractor agrees to decrease, suspend, and/or terminate Contract activity in conformance with the terms of such notice.

5. Upon the termination or expiration of this Contract, the Contractor shall continue to cooperate with all audit, records, and monitoring requirements.

6. Within a maximum of 90 days following the date of expiration or termination of this Contract, the Contractor shall submit all reports and data required by this Contract.

I. Non-Discrimination In The Provision of Services

The Contractor shall not deny services or otherwise discriminate in the delivery of services because of race, color, religion, disability, sex, sexual orientation, gender identity, familial status or children, marital status, age, national origin, ancestry, genetic information, receipt of federal, state, or local public assistance or housing subsidies, veteran/military status, or because of any other basis prohibited by law. The Contractor agrees to comply with all applicable federal and state statutes, rules and regulations and administrative and Executive Orders prohibiting discrimination, including without limitation, the Americans with Disabilities Act, as amended (42 U.S.C. §§ 12101 et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.), the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), M.G.L. c. 151B, M.G.L. c. 272 §§ 92A, 98, and 98A, M.G.L. c. 111 § 199A, 42 U.S.C. 9918 (c) and 45 C.F.R. 80.

J. Confidentiality

1. The Contractor certifies that it has established sufficient internal policies to carry out its obligations hereunder.

2. The Contractor shall keep all state records and information, wherever obtained, confidential at all times and comply with all state and federal laws concerning the confidentiality of information. The Contractor shall hold all personal data relating to Contract-supported personnel and applicants or recipients of Contract-supported programs and activities in accordance with Section 6 of the Commonwealth Terms and Conditions, the Standard Contract Form and its Instructions and Contractor Certifications, and all applicable Federal and state privacy and confidentiality laws and regulations, including M.G.L. c. 66A, "Massachusetts Fair Information Practices Act;" M.G.L. c. 93H, Security Breaches; 801 CMR 3.00: Privacy and Confidentiality, and 201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth.

3. Pursuant to the Standard Contract Form and its Instructions and Contractor Certifications and the Commonwealth Terms and Conditions, the Contractor certifies that the Contractor has reviewed and shall comply with all information security programs, plans, guidelines, standards and policies that apply to the work to be performed under this Contract, that the Contractor shall communicate these provisions to and enforce them against its subcontractors, and that the Contractor shall implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access as part of this Contract, from unauthorized access, destruction, use, modification, disclosure, or loss.

4. The Contractor shall notify its agents, employees, subgrantees, and assignees who may come into contact with state records and confidential information that each is subject to the confidentiality requirements set forth herein.

5. The Contractor shall deliver to EOHLC, within 14 days of a written request by EOHLC following termination of this Contract, such personal data relating to this Contract as EOHLC may request; provided, that the Contractor may keep copies of any personal data delivered to EOHLC; and provided further, that for the purposes of this sentence, the term, "personal data", shall not include the Contractor's personnel records.

K. Fraud, Waste, and Abuse

The Contractor shall maintain and use systems and procedures to prevent, detect, and correct fraud, waste, and abuse in activities funded under this Contract.

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

Attachment B Budget
FY2024 Community Planning Grant

Name of Contractor Include name of Subcontractor if applicable	**Project Manager** **Name, phone, and email** *Include name and contact information of person preparing report if different from project manager*
Town of Middleton	Name: katrina oleary Phone: (978) 777-8917 Email: katrina.oleary@middletonma.gov

Project Name
Middleton Zoning Bylaw Update including Section 3A
Project Description *Brief Summary of Project*
Middleton will do a comprehensive zoning bylaw update compliant with Section 3A of 40A including a robust public engagement strategy, project webpage, and newsletters to inform the public.

Project Tasks	**Cost by Task**
Consultants/Prof. Fees	$75,000.00
Meeting Expenses/Events	$-
Project Supplies/Materials	$-
Other/Miscellaneous	$-
TOTAL	**$75,000.00**

(add additional rows as necessary)

rev. 4/7/2023

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

Blanket Bid BD-23-1100-EED01-EED01-83413

Event Item Allocation Responses Posting Qualification(0) Notes Buyers Questions Amendments Q & A Synopsis Summary

Header Information

Bid Number:	BD-23-1100-EED01-EED01-83413	**Description:**	Community One Stop for Growth FY2024 Round	**Status:**
Purchaser:	Juan Vega	**Minor Status:**		
Organization:	Executive Office of Housing and Economic Development			
Fiscal Year:	23	**Department:**	EED01 - Economic Development	**Location:**
Show On Web:	Yes	**Allow Electronic Quote:**	Yes	**Required Date:**
Bid Opening Date:	06/30/2023 12:00:00 AM	**Available Date:**	01/20/2023 12:00:00 AM	
Bid Type:	Open Bid	**Informal Bid:**	No	
Estimated Cost:	$0.00			
Alternate ID:		**Purchase Method:**	Blanket	**Catalog Id (for contract):**
Blanket/Contract Begin Date:	07/01/2023 12:00:00 AM	**Blanket/Contract End Date:**	06/30/2024 12:00:00 AM	**Type Code:**
Info Contact:		**Bulletin Desc:**	The Community One Stop for Growth is a single application portal and collaborative review process for community and economic development grant programs that make targeted investments based on a Development Continuum. Single and multi-year grants awards will be made from various programs through EOHED, DHCD, and/or MassDevelopment via the One Stop NOFA application. Expressions of Interest accepted through March 17, 2023. For the most up to date program information, visit www.mass.gov/onestop.	**Pre-Bid Conference:**
U N S P S C Code Certified Required:	N	**Acknowledge inclusion required:**	No	**Hour of Acknowledge inclusion:**
Subcontractor Info:		**Quote Notification:**	No	
Date Last Updated:	01/19/2023 08:58:37 AM	**User Last Updated:**	juan.vega	**Item Single Award Only:**
Ship-to Address:	Robin Pezzone 1 Ashburton Place Room 2101 Boston, MA 02108 US Email: robin.pezzone@state.ma.us Phone: (617) 788-3623	**Bill-to Address:**	Robin Pezzone 1 Ashburton Place Room 2101 Boston, MA 02108 US Email: robin.pezzone@state.ma.us Phone: (617) 788-3623	**Print Format:**
Solicitation Enabled:	No	**Rolling Enrollment Enabled:**		**Allow vendors to submit multiple**
Invoice Method:	Three Way Match	**Open Enrollment Enabled:**		**Close Q&A For Vendor Date:**
SBPP (Small Business Purchasing Program) Eligible?	NO			
See SBPP requirements and exceptions at www.mass.gov/sbpp				
Procurement Type:	Grant Opportunity			

Attachments

Files:	FY24 One Stop Notice of Funding Availability (NOFA) FY24 Expression of Interest Template FY24 One Stop Full Application Template
Forms:	

Required Quote Attachments

Plymouth Superior Court 2583CV00184 0203 2025-P-0954
75

Item Information

Item # 2 The Community One Stop for Growth is a single application portal and collaborative review process for community and economic development grant progra based on a Development Continuum. Single- and multi-year grants awards will be made from various programs through EOHED, DHCD, and/or MassDevelop Expressions of Interest accepted through March 17, 2023. For the most up to date program information, visit www.mass.gov/onestop.

UNSPSC Code 99.99-09
Grant Opportunity

Disable Pricing On Quote	Qty	Unit Cost	UOM	Total Discount Amt	Tax Rate
No	1.0	MEDI EA - Each		$0.00	

Manufacturer:	Brand:	Model:	
Make:	Package:		
Product Length:	Product Width:	Product Height:	Weight:
UPC/ISBN:	SKU:		
Tags:	URL:		

Account Code

There is no item accounting available for this item.

Item Attachments FY23 One Stop Notice of Funding Availability (NOFA), One Stop - Expression of Interest Template , One Stop - Full Application Template

Pre-Bid Approval Path.

Approval Path - BIDS - (All Bids)

Delete	Order Sequence	Approver	Alternate Approver	Level	Date Requested	Date	Action	Auth
	1	Spencer Cooley Green	Emmanuel Gyasie	1	01/19/2023 08:40 AM	01/19/2023 08:52 AM	Approved (Emmanuel Gyasie)	
	2	Spencer Cooley Green	Emmanuel Gyasie	2	01/19/2023 08:52 AM	01/19/2023 08:52 AM	Approved (Emmanuel Gyasie)	

Cancel Bid Close Bid Print

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Docket Number 2583CV00184

FORM 1.

1.1. Primary Location:

Middleton
Please save the form after selecting Primary Location

EOHED Region	*Northeast*	**MassDOT District**	*District 4*	**Rural or Small Town**	*N/A*
MDFA Regional Office	*North*	**Gateway City**	*N/A*	**Housing Choice**	*No*
Regional Planning Agency	*Metropolitan Area Planning Council*	**MVP Community**	*Yes - MVP*	**MBTA Community**	*Yes - MBTA*

1.2. Organization Type
[X] Public Entity
[X] Municipality
Public Housing Authority
Redevelopment Authority
Regional Planning Agency
Quasi-Governmental Agency (i.e. Economic Development Industrial Corporation, etc.)
Water or Sewer District
Non-Public Entity

1.3. Applicant Organization Name:

Town of Middleton

1.4. Applicant Organization Legal Address:

48 South Main Street, Middleton, MA 01949

1.5. City/Town: *Middleton*

1.6. State: *Massachusetts*

1.7. Zip Code: *01949*

1.8. CEO Name: *Jackie Bresnahan*

1.9 CEO Title: *Interim Town Administrator*

1.10. CEO Tel.: *(978) 774-3617*

1.11. CEO Email: *jackie.bresnahan@middletonma.gov*

1.12. Project Contact Name

katrina cleary

1.13. Project Contact Title

Town Planner

1.14. Contact Tel.: *(978) 777-8917*

1.15. Contact Email *katrina.cleary@middletonma.gov*

1.16. Organization Description – Describe your organization's structure, including staff capacity, and economic development goals.

The Town of Middleton operates under State statutes. The legislative body of Middleton is an Open Town Meeting comprised of all registered voters. The executive authority is the Select Board together with an appointed Town Administrator. The Town is a member of a regional school district for both its elementary schools and high school. The Town employs 260 full-time personnel, not including school personnel.
The town benefits from a high bond rating (Moody's:Aa1, S&P:AA+), a growing economic base, a low tax rate ($12.87 for all classes), an excellent location, an educated population, and highly rated schools, making it a desirable place to locate. The Town is supportive of increasing its stock of affordable housing and at the 2023 Annual Town Meeting, residents voted to identify an affordable housing project on the site of the current Town Hall when it becomes surplus after town offices move to the planned Municipal Complex.
Middleton's economic development goals can be taken almost verbatim from the recently finished Master Plan, Housing Production Plan, and Bicycle/Pedestrian Plan:
• Create opportunities to develop a more diverse housing stock– affordable and market rate – to meet the needs of a changing demographic profile in the town
• Improve traffic flow and pedestrian safety and amenities in downtown area to increase economic vitality
• Create a new Public Facilities Complex as the anchor to a new Mixed-Use District that will connect two existing business districts
• Consider rezoning of land from manufacturing to health care related fields
• Explore options for developable Town-owned parcels to address community and economic development goals

1.17. Is this a joint application between two or more municipalities (and/or entities), which will entail a formal arrangement for a shared scope of work and allocation of funds?

Yes [X]No

MBTA Community Questions

1.19. Chose the option below that best reflects your municipality's compliance status with the Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (MGL c. 40A). Has your municipality:

Submitted an Action Plan to DHCD and NOT YET received a letter confirming Interim Compliance
[X]Submitted an Action Plan to DHCD and HAVE received a letter confirming Interim Compliance
Received a determination of District Compliance from DHCD or
Have not submitted an Action Plan nor application for District Compliance to DHCD in accordance with the Guidelines for Multi-family Zoning Districts

1.19.a. Does the community anticipate any changes to its approved Section 3A Action Plan that may result in delays to the plan's schedule of more than 180 days?

Yes [X]No

Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING & LIVABLE COMMUNITIES
Maura T. Healey, Governor ◆ Kimberley Driscoll, Lieutenant Governor ◆ Edward M. Augustus Jr., Secretary

September 25, 2023

Interim Town Administrator Jackie Bresnahan
Town of Middleton
48 South Main Street
Middleton, MA 01949

Dear Ms. Bresnahan: **RE: Middleton 0663 Application**

Thank you for submitting this application to the FY2024 Community One Stop for Growth which is a platform where the Executive Office of Housing and Livable Communities (EOHLC), Executive Office of Economic Development (EOED), and Massachusetts Development Finance Agency (MassDevelopment) worked together to evaluate all eligible applications and recommended the most ready and highest-impact projects for a grant. This application from Town of Middleton was reviewed by the program(s) that could best serve the project's funding needs.

On behalf of the Healey-Driscoll Administration, I am pleased to inform you that a grant in the amount of **$75,000** from the **Community Planning Grant Program** has been approved to support your project.

This award is contingent the execution of a grant contract between the Town of Middleton and EOHLC and the satisfaction of its special conditions and requirements. We will send an Adobe Sign contract (must be e-signed) to the Municipal CEO and contact person identified in your application, and an invitation to an online training related to grant administration and contract guidance. Please do not proceed with grant activities until the contract is fully executed. If you have any questions, please contact Filipe Zamborlini, Community Assistance Unit Manager at Filipe.Zamborlini@mass.gov.

Finally, please note that public announcement of this award is embargoed until the Administration has had the opportunity to formally announce it through a local event and/or media release. Please refrain from sharing or publicizing news about this award outside of your organization until it is officially announced.

Congratulations once again. We look forward to working with you to address the Town of Middleton's housing and community development needs.

Sincerely,

Edward M. Augustus, Jr.
Secretary, EOHLC

Contract Package – FY24 Community Planning - Town of Middleton

Final Audit Report 2023-11-17

Created:	2023-11-14 (Eastern Standard Time)
By:	Daishawn Riddick (daishawn.riddick@mass.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAuGBshORZZ4WVAp4IeeX9Z4y4_nx3zSQ

"Contract Package – FY24 Community Planning - Town of Middleton" History

Document created by Daishawn Riddick (daishawn.riddick@mass.gov)
2023-11-14 - 3:16:22 PM EST

Document emailed to justin.sultzbach@middletonma.gov for signature
2023-11-14 - 3:17:44 PM EST

Email viewed by justin.sultzbach@middletonma.gov
2023-11-17 - 8:55:21 AM EST

Signer justin.sultzbach@middletonma.gov entered name at signing as Justin B Sultzbach
2023-11-17 - 9:31:21 AM EST

Document e-signed by Justin B Sultzbach (justin.sultzbach@middletonma.gov)
Signature Date: 2023-11-17 - 9:31:23 AM EST - Time Source: server

Document emailed to chris.kluchman@mass.gov for signature
2023-11-17 - 9:31:24 AM EST

Email viewed by chris.kluchman@mass.gov
2023-11-17 - 10:52:16 AM EST

Signer chris.kluchman@mass.gov entered name at signing as Caroline "Chris" Kluchman
2023-11-17 - 10:52:45 AM EST

Document e-signed by Caroline "Chris" Kluchman (chris.kluchman@mass.gov)
Signature Date: 2023-11-17 - 10:52:47 AM EST - Time Source: server

Agreement completed.
2023-11-17 - 10:52:47 AM EST

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Acrobat Sign

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Exported February 12, 2025 1:31 PM

2025 Action Plan for MBTA Communities

Description Area	Please read the Section 3A Regulations before attempting to complete this form.This form must be submitted by Rapid Transit Communities that did not submit a district compliance application by December 31, 2023, and by Commuter Rail or Adjacent Communities that did not submit a district compliance application by December 31, 2024. Adjacent Small Towns, and communities that submitted district compliance applications by the applicable date do not need to submit a new Action Plan. This form must be submitted by a municipal official with authority to act on behalf of the municipality, and it must be accompanied by a signed statement on municipal letterhead including the following language:"It is the full intention of the [Town Administrator/Town Manager/Mayor] to take necessary actions to bring any zoning intended to comply with all requirements of G.L. c. 40A, Section 3A and 760 CMR 72 to a vote of [municipality's legislative body] in the timeframe described in this Action Plan, and to submit a District Compliance Application to EOHLC no later than July 14, 2025"For Towns: The statement must be signed by the Town Manager/AdministratorFor Cities: The statement must be signed by the Mayor

Section 1: Identification

Description Area	The Section 3A regulations establish zoning metrics that apply uniquely to each MBTA community based on its local transit stations, existing housing stock, population, and developable land. This section of the Action Plan helps to identify the transit stations that determined each community's category. The MBTA Community Categories and Requirements sheet lists each municipality's community category, minimum multi-family unit capacity, and other requirements.
1.1 MBTA Community Name	Hanson
1.2. Community Category	Commuter rail community
1.3. Multifamily Unit Capacity Requirement	750
1.4. Does this municipality have any MBTA rapid transit stations within its boundaries?	No

1.5. Does this municipality have any MBTA commuter rail stations within its boundaries?	Yes
1.5a. Please list MBTA commuter rail stations that are located within the municipal boundaries	Hanson
1.6. Does this municipality have any other MBTA transit stations that are located outside of its municipal boundaries that may have "developable station area" within them?	No
1.7. Please provide the name of the person filling out this form	Antonio De Frias
1.7a. Title	Town Planner
1.7b. Email Address	tdefrias@hanson-ma.gov
1.7c. Phone Number	17812939035
1.8 Please provide the name of the municipal CEO	Lisa Green
1.8b Mailing address of municipal CEO	542 Liberty Street Hanson, MA 02341
1.8c Email address of municipal CEO	LGreen@HANSON-MA.gov
1.9. Please briefly describe other members of the core team developing the multi-family zoning district.	The Town of Hanson is utilizing municipal staff, such as the Town Planner, Building Commissioner, Zoning Administrator, Conservation and Board of Health agents in developing the proposed zone and related regulations. The services of Town Counsel have been used to draft appropriate zoning regulations that conform with MGL40A, Section 3A. Additional input has been provided by other various departments and members of the public. Hanson has in the past utilized two Technical Assistance Grants to retain consulting services from the Old Colony Planning Council and VHB in establishing preliminary zone conformance and Pre-Adoption review.

Section 2: Housing Overview

2.1. To the best of your knowledge, does this municipality have any existing zoning districts that allow multi-family housing as of right, at at least 15 units per acre as measured in gross density?	No
2.2. Does this municipality have any established housing related goals or strategies from municipal planning documents, such as a Housing Production Plan, Master Plan, or Economic Development Plan?	Yes
2.2a. Please briefly describe any relevant strategies, goals, or objectives, and the work that has been done to date.	The Town of Hanson completed an update of the Master Plan in June of 2024. The plan will provide strategies and guidance over the next ten (10) year period related to the growth of the community including addressing existing and future housing needs. Hanson is currently in process of updating the Housing Production Plan, which is expected to be completed in June of 2025. Hanson also has an Economic Development Plan that was completed in 2019. Both documents address local housing needs and provide suggestions in the development of 40R zones, the use of 40B and the expansion of existing Flexible Overlay Zones to promote mixed use and affordable housing development. Hanson is striving to achieve its ten percent goal of affordable housing stock. Hanson is also currently examining the development of a Smart Growth 40Y District through a grant funded under the One Stop Program. Hanson currently has projects in various stages of completion that have been approved under the Comprehensive Permit and Flexible Overlay Regulations
2.3. Is this municipality currently working on any other planning for housing?	Yes
2.3a. Please briefly describe the housing work underway.	Hanson has an existing Accessory Dwelling Unit bylaw which is being amended to allow these units As of right within all residential zones.

2.4. Has this municipality's legislative ever voted on whether to adopt a zoning district intended to comply with Section 3A?	Yes
2.5. Has this municipality received state funding or consultant assistance from Massachusetts Housing Partnership (MHP) for technical assistance to support compliance with Section 3A?	Yes

Section 3: Preliminary Zoning Strategies

3.1. To the best of your knowledge, which of the following zoning strategies is this community most likely to use for compliance? (Select all that apply)	b. An existing zoning district or districts that must be amended to comply with the Section 3A Guidelines c. A new 40R or other overlay zoning district
3.1b. Please select the changes that may be necessary for the existing district to comply. Optional: Attach any supporting documents that describe this district.	District boundaries Use schedule Dimensional regulations Parking requirements

Explanation:	A portion of the current Flexible Overlay Zone is located within the 0.5-mile radius of the commuter rail station. Compliance of this zone to Section 3a would require the following: The expansion of this zone to allow for the inclusion of additional properties that would create a zone totaling 50 acres. Adjustments of building setback requirements and dimensional parking requirements. The removal of the Special Permit requirement by the Zoning Board of Appeals. The allowance of affordable housing units within the district. These amendments to the bylaw would require Town Meeting Approval. Attached is a copy of the current regulations. Please refer to Section VI(H) - Flexible Zoning Bylaw/Special District (Section is Highlighted)
File	https://massgov.formstack.com/admin/download/file/17575915901
3.1c. Please briefly describe the potential district and location. Optional: Attach any supporting documents that show planning work the community has already done for this district(s).	The proposed district is located within the 0.5-mile radius as required and is bordered on the west by Phillips Street, on the east by High Street and along the south by Main Street (Route 27). A portion of the area falls within a Zone II Wellhead Protection District, with some individual sites be subject to MGL 131, Section 40 (the Wetlands Protection Act) and all of the district area being subject to Title V of the State Sanitary Code. The proposed district does include a site that is under the control of the Hanson Housing Authority and is currently being reviewed as a possible location for housing through a Technical Assistance Grant by Mass Housing. Hanson did submit a Pre-Adoption Review Application in February of 2024. The EOHLC provided feedback in May of 2024 which outlined issues and concerns with the proposed district. Revisions to the district and bylaws have been made to address these issues. This information is attached.
File	https://massgov.formstack.com/admin/download/file/17575915903

File	https://massgov.formstack.com/admin/download/file/17575915905
3.2. What non-housing characteristics are important for this community to consider in its 3A zoning district?	Hanson is currently in the design phase (60%) for pedestrian improvement along the Main Street corridor from Elm Street to High Street. Additionally, the Town is seeking funding to revise existing design plans for the Main Street corridor from High Street to Monponsett Street (Route 58). The construction of a sidewalk along Main Street will provide a safe passage and connectivity between the residential and business areas. Future improvements to the streetscapes would include the planting of street trees and low maintenance flower beds along with sitting areas. The creation of bike lanes would connect to existing wildlife/recreation areas and trails located within the area of the proposed zone. Outdoor seating areas would be created for any eatery businesses that wish to locate within this area. Economic Development of the area to include several small businesses to address the needs of the community is a goal of the Town. The town would examine the creation of a Railway Quiet Zone within the area to reduce noise pollution created by the commuter rail. The entrance/egress from the existing commuter rail station would require reconfiguring to address current traffic conflicts.

Section 4: Action Plan Timeline

Description Area	This section creates a framework to input preliminary plans for a zoning adoption process. On the table below, please use Column 1 (from the left) to describe a task, Column 2 to input a start date, and Column 3 to input a finish date. Every community must provide a timeline for the below-listed tasks. Additional space is provided for any other tasks that a community wishes to list. EOHLC will review proposed timelines for feasibility before approving an Action Plan. Public outreachDeveloping zoning Applying EOHLC's compliance model to test for density and unit capacityHolding planning board hearings Holding legislative sessions and adopt compliant zoning Submit District Compliance application to EOHLC
Description Area	Task
Description Area	Start

Description Area	Finish
Short Answer	Public outreach
	Jan 13, 2025
	Jan 31, 2025
Short Answer	Developing zoning
	Feb 01, 2025
	Feb 28, 2025
Short Answer	Applying EOHLC's compliance model to test for density and unit capacity
	Mar 01, 2025
	Mar 10, 2025
Short Answer	Holding planning board hearings
	Mar 10, 2025
	Mar 24, 2025
Short Answer	Holding legislative sessions and adopt compliant zoning
	Apr 01, 2025
	May 05, 2025
Short Answer	Submit District Compliance application to EOHLC
	May 06, 2025
	Jul 14, 2025

Section 5: Signatures, Certifications, and Attestations

Description Area	Please attach a signed statement on municipal letterhead, including the following language:"I certify that it is my full intention as [title of official] of [municipality] to take necessary actions to bring any zoning intended to comply with all requirements of G.L. c. 40A, Section 3A and 760 CMR 72 to a vote of [municipality's legislative body] in the timeframe described in this Action Plan, and to submit a District Compliance Application to EOHLC no later than Jul 14, 2025"For Towns: The statement must be signed by the Town Manager/AdministratorFor Cities: The statement must be signed by the Mayor

File	https://massgov.formstack.com/admin/download/file/17575915958
File	https://massgov.formstack.com/admin/download/file/17575915961

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

Town of Hanson

Select Board

542 Liberty Street
Hanson, Massachusetts 02341
(781) 293-2131 FAX (781) 294-0884
www.hanson-ma.gov

Town Administrator
Lisa M. Green, Esq.

January 30, 2025

Edward M. Augustus, Jr.
Executive Office of Housing and Livable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114

Dear Secretary Augustus:

It is the full intention of the Town Administrator to take necessary actions to bring any zoning intended to comply with all requirements of G.L. c. 40A, Section 3A and 760 CMR 72 to a vote of the Town of Hanson in the timeframe described in this Action Plan, and to submit a District Compliance Application to EOHLC no later than July 14, 2025.

Respectfully submitted,

Lisa M. Green

Lisa M. Green
Town Administrator

C

From:	Carlucci, Nathan (EOHLC)
To:	LGreen@hanson-ma.gov
Cc:	tdefrias@hanson-ma.gov; David.DeCoste@mahouse.gov; Ken.Sweezey@mahouse.gov; Michael Brady; Kluchman, Chris (EOHLC); Nadeau, Seth (EOHLC)
Subject:	Hanson - Determination of Interim Compliance under MGL c. 40A, Section 3A
Date:	Friday, February 14, 2025 5:10:31 PM

Dear Town Administrator Green,

Congratulations! The Executive Office of Housing and Livable Communities has approved the Action Plan submitted on 2/12/2025. Thank you for taking this step as outlined in table 3 in the MBTA Communities Regulations (760 CMR 72.00). With the approval of this Action Plan, Hanson has achieved Interim Compliance with the law. This Interim Compliance is valid until the due date for District Compliance, which is July 14, 2025.

EOHLC appreciates submittal of the Action Plan describing Hanson's planning efforts related to Section 3A District Compliance and wishes the Town the best in implementation of its components. If you have any questions regarding this determination, please contact me.

Best,

Nathan Carlucci
MBTA Communities Compliance Coordinator
Executive Office of Housing and Livable Communities
Livable Communities Division
nathan.carlucci@mass.gov

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Exported March 14, 2025 12:06 PM

2025 Action Plan for MBTA Communities

Description Area	Please read the Section 3A Regulations before attempting to complete this form.This form must be submitted by Rapid Transit Communities that did not submit a district compliance application by December 31, 2023, and by Commuter Rail or Adjacent Communities that did not submit a district compliance application by December 31, 2024. Adjacent Small Towns, and communities that submitted district compliance applications by the applicable date do not need to submit a new Action Plan. This form must be submitted by a municipal official with authority to act on behalf of the municipality, and it must be accompanied by a signed statement on municipal letterhead including the following language:"It is the full intention of the [Town Administrator/Town Manager/Mayor] to take necessary actions to bring any zoning intended to comply with all requirements of G.L. c. 40A, Section 3A and 760 CMR 72 to a vote of [municipality's legislative body] in the timeframe described in this Action Plan, and to submit a District Compliance Application to EOHLC no later than July 14, 2025"For Towns: The statement must be signed by the Town Manager/AdministratorFor Cities: The statement must be signed by the Mayor

Section 1: Identification

Description Area	The Section 3A regulations establish zoning metrics that apply uniquely to each MBTA community based on its local transit stations, existing housing stock, population, and developable land. This section of the Action Plan helps to identify the transit stations that determined each community's category. The MBTA Community Categories and Requirements sheet lists each municipality's community category, minimum multi-family unit capacity, and other requirements.
1.1 MBTA Community Name	Wrentham
1.2. Community Category	Adjacent community
1.3. Multifamily Unit Capacity Requirement	750
1.4. Does this municipality have any MBTA rapid transit stations within its boundaries?	No

1.5. Does this municipality have any MBTA commuter rail stations within its boundaries?	No
1.6. Does this municipality have any other MBTA transit stations that are located outside of its municipal boundaries that may have "developable station area" within them?	No
1.7. Please provide the name of the person filling out this form	Rachel Benson
1.7a. Title	Director of Planning & Economic Development
1.7b. Email Address	rbenson@wrentham.gov
1.7c. Phone Number	15083845441
1.8 Please provide the name of the municipal CEO	Michael King
1.8b Mailing address of municipal CEO	79 South Street Wrentham, MA 02093
1.8c Email address of municipal CEO	mking@wrentham.gov
1.9. Please briefly describe other members of the core team developing the multi-family zoning district.	Planning Board

Section 2: Housing Overview

2.1. To the best of your knowledge, does this municipality have any existing zoning districts that allow multi-family housing as of right, at at least 15 units per acre as measured in gross density?	No
2.2. Does this municipality have any established housing related goals or strategies from municipal planning documents, such as a Housing Production Plan, Master Plan, or Economic Development Plan?	Yes

2.2a. Please briefly describe any relevant strategies, goals, or objectives, and the work that has been done to date.	The updated 2022 Master Plan focuses on several key areas, of those there are several housing related strategies established as part of that work. A couple of examples are: Master Plan Housing Goal #3: Encourage a greater variety of housing options in order to better serve residents and the people who work in Wrentham, and to allow greater access to the educational, cultural and community opportunities in Wrentham. Master Plan Housing Goal #4: Thoughtfully promote deed-restricted Affordable Housing in order to stay above the Commonwealth's regulated threshold of 10% to retain local control over development. More specifically, the Planning Board undertook an expansive site selection process to comply with the 3A Law. This work took place from February 2024 right up until the Town Meeting held in December 2024. The plan ultimately failed to pass; however, the Board is confident in its selections and will re-submit them for the upcoming Town Meeting in June 2025.
2.3. Is this municipality currently working on any other planning for housing?	No
2.4. Has this municipality's legislative ever voted on whether to adopt a zoning district intended to comply with Section 3A?	Yes
2.5. Has this municipality received state funding or consultant assistance from Massachusetts Housing Partnership (MHP) for technical assistance to support compliance with Section 3A?	Yes

Section 3: Preliminary Zoning Strategies

3.1. To the best of your knowledge, which of the following zoning strategies is this community most likely to use for compliance? (Select all that apply)	c. A new 40R or other overlay zoning district

3.1c. Please briefly describe the potential district and location. Optional: Attach any supporting documents that show planning work the community has already done for this district(s).	Two district locations were chosen as shown on the attached maps. Please take a look at the Town's MBTA project page for work that was done last year to comply with previous guidelines. See project webpage here: https://www.wrentham.gov/185/MBTA-Communities
3.2. What non-housing characteristics are important for this community to consider in its 3A zoning district?	Wrentham considers it important for the zoning district to align as closely as possible with the recently developed "Vision of Tomorrow Master Plan". The master plan is available to see online at https://www.mapc.org/wp-content/uploads/2023/03/Wrentham-Master-Plan_Final-Document.pdf

Section 4: Action Plan Timeline

Description Area	This section creates a framework to input preliminary plans for a zoning adoption process. On the table below, please use Column 1 (from the left) to describe a task, Column 2 to input a start date, and Column 3 to input a finish date. Every community must provide a timeline for the below-listed tasks. Additional space is provided for any other tasks that a community wishes to list. EOHLC will review proposed timelines for feasibility before approving an Action Plan. Public outreachDeveloping zoning Applying EOHLC's compliance model to test for density and unit capacityHolding planning board hearings Holding legislative sessions and adopt compliant zoning Submit District Compliance application to EOHLC

Description Area	Task
Description Area	Start
Description Area	Finish
Short Answer	Public Outreach
	Feb 18, 2025
	Apr 02, 2025
Short Answer	Developing zoning
	Mar 05, 2025
	Apr 02, 2025

Short Answer	Applying EOHLC's compliance model to test for density and unit capacity
	Mar 05, 2025
	Mar 05, 2025
Short Answer	Holding planning board hearings
	Mar 05, 2025
	Mar 05, 2025
Short Answer	Holding legislative sessions and adopt compliant zoning
	Jun 02, 2025
	Jun 02, 2025
Short Answer	Submit District Compliance application to EOHLC
	Jul 14, 2025
	Jul 14, 2025

Section 5: Signatures, Certifications, and Attestations

Description Area	Please attach a signed statement on municipal letterhead, including the following language:"I certify that it is my full intention as [title of official] of [municipality] to take necessary actions to bring any zoning intended to comply with all requirements of G.L. c. 40A, Section 3A and 760 CMR 72 to a vote of [municipality's legislative body] in the timeframe described in this Action Plan, and to submit a District Compliance Application to EOHLC no later than Jul 14, 2025"For Towns: The statement must be signed by the Town Manager/AdministratorFor Cities: The statement must be signed by the Mayor
File	https://www.formstack.com/admin/download/file/17574922598

February 12, 2025

Edward Augustus, Secretary
Executive Office of Housing and Livable Communities
Commonwealth of Massachusetts
100 Cambridge Street, Suite 300
Boston, MA 02114

I certify that it is my full intention as Interim Town Manager of the Town of Wrentham to take necessary actions to bring any zoning intended to comply with all requirements of G.L. c. 40A, Section 3A and 760 CMR 72 to a vote of Town Meeting in the timeframe described in this Action Plan, and to submit a District Compliance Application to EOHLC no later than Jul 14, 2025.

Sincerely,

Michael J. King, MPA
Interim Town Manager

025044

E

From:	Carlucci, Nathan (EOHLC)
To:	mking@wrentham.gov
Cc:	rbenson@wrentham.gov; Marcus.Vaughn@mahouse.gov; becca.rausch@masenate.gov; Kluchman, Chris (EOHLC); Nadeau, Seth (EOHLC)
Subject:	Wrentham - Determination of Interim Compliance under MGL c. 40A, Section 3A
Date:	Wednesday, February 12, 2025 3:45:45 PM

Dear Town Manager King,

Congratulations! The Executive Office of Housing and Livable Communities has approved the Action Plan submitted on 2/12/2025. Thank you for taking this step as outlined in table 3 in the MBTA Communities Regulations (760 CMR 72.00). With the approval of this Action Plan, Wrentham has achieved Interim Compliance with the law. This Interim Compliance is valid until the due date for District Compliance, which is July 14, 2025.

EOHLC appreciates submittal of the Action Plan describing Wrentham's planning efforts related to Section 3A District Compliance and wishes the Town the best in implementation of its components. If you have any questions regarding this determination, please contact me.

Best,

Nathan Carlucci
MBTA Communities Compliance Coordinator
Executive Office of Housing and Livable Communities
Livable Communities Division
nathan.carlucci@mass.gov

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF ANDREA HARRIS-LONG

I, Andrea Harris-Long, hereby depose and say as follows:

1. I am the Director of Land Use Planning for the Metropolitan Area Planning Council ("MAPC")

2. In my role as Land Use Director, I oversee and coordinate the management of the Department by working with the Managers of the Housing Division, Economic Development Division, and Generalist Division (together, the Land Use Management Team). The Housing Division works with member municipalities to prepare Housing Production Plans, draft inclusionary zoning bylaws and ordinances, implement state requirements such as the MBTA Communities Section 3A zoning, develop Fair Housing plans, conduct research on housing needs and challenges, and recommend improvements in local, state, and federal housing policy. My management of the Housing Division includes supporting project scoping and budgeting, emphasizing agency goals for expanded and equitable outreach and participation on planning projects, and providing technical knowledge, expertise, and mentorship to managers and staff undertaking specific activities.

3. The facts set forth in this affidavit are either personally known to me or my knowledge of them has been acquired through review of documents kept in the ordinary course of MAPC's business.

4. MAPC runs Technical Assistance Program (TAP), a funding program that enables and assists cities and towns in implementing projects that are beneficial to the community. Municipalities are invited to submit project concepts for work to be undertaken by MAPC through the TAP. MAPC accepts applications on a rolling basis, in response to a request for proposals, which is issued once or twice per year. Municipal applicants may apply through email correspondence.

5. A significant share of the TAP is funded by District Local Technical Assistance ("DLTA"), money appropriated annually by the Legislature and Governor to regional planning

agencies, with additional funds directed to TAP by MAPC management from the annual Municipal Assessment paid to MAPC by member municipalities.

6. In December 2023, MAPC notified municipalities that Technical Assistance funds were available for calendar year 2024. In this notice, MAPC highlighted the prioritization of projects that advance compliance with the MBTA Communities Law. This is in alignment with the DLTA contract with the Executive Office of Housing and Livable Communities (EOHLC), which required prioritization of funds for furthering 3A compliance.

7. In April 2024, Wrentham's Director of Planning & Economic Development reached out to MAPC to inquire about a consultation to assist the town in complying with MBTA Communities Law.

8. On April 29, 2024, MAPC met with Wrentham's Director of Planning & Economic Development to provide consultation services to help her prepare for upcoming public meetings relating to the MBTA Communities Law.

9. In May 2024, MAPC prepared a scope of work for the Town of Wrentham in preparation for supporting their process to become compliant with the MBTA Communities Law. The scope was prepared with the understanding that funding would come from a combination of resources, including DLTA, an existing Community One-Stop for Growth planning grant that the Town had been awarded from EOHLC to conduct a zoning recodification, and potentially Massachusetts Housing Partnership (MHP) 3A Technical Assistance grant funding. No expense would have been incurred by the Town of Wrentham.

10. In June 2024, I, along with a Housing Division staff member, represented MAPC and attended Wrentham's Planning Board meeting to discuss the draft scope of work for technical assistance. Wrentham's Planning Board was unable to make decisions on how to

advance the 3A project, however. As a result, MAPC decided to hold off on advancing the scope of work.

11. In August 2024, Wrentham's Director of Planning & Economic Development requested MAPC's assistance with GIS Mapping.

12. MAPC's staff subsequently provided GIS Mapping assistance to Wrentham from August to September 2024.

13. The cost of the total services MAPC has provided to Wrentham to date is approximately $3,500, which was paid for by DLTA funds. In my experience, these services are of the type that a municipality routinely incurs when amending or updating its zoning bylaw.

14. The Town of Middleton has never contacted MAPC to request TAP assistance in its compliance with the MBTA Communities Law.

15. The Town of Marshfield has never contacted MAPC to request TAP assistance in its compliance with the MBTA Communities Law.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Andrea Harris-Long

Mar. 18, 2025 Andrea Harris-Long

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF WILLIAM HINKLEY

I, William Hinkley, hereby depose and say as follows:

1. I am the Director of Grants Administration for Massachusetts Executive Office of Energy and Environmental Affairs ("EEA").

2. In my role as Director, I am responsible for overseeing the approval process for grant recommendations from EEA and agencies within the EEA structure. I coordinate the exchange of grant details between the program, the leadership of the Executive Office, and the Governor's Office. Upon approval by the Governor's Office, I notify the office or agency that the awards may be advanced to communications and legislative affairs personnel for public release.

3. The facts set forth in this affidavit are either personally known to me or my knowledge of them has been acquired through review of documents kept in the ordinary course of EEA's business.

4. I have reviewed Paragraph 124 and 125 of the Verified Complaint filed by the Town of Middleborough in the captioned action No. 2583 CV 00188, which alleges that "[o]ver the past Fiscal Year, the Town has expended approximately $3.7 million in reliance on. . . reimbursement grants previously awarded by the Commonwealth and for which reimbursement has not been provided," and lists six grants, four of which are administered by the EEA. The four grants administered by the EEA that are listed in Complaint are as follows: (1) Municipal Vulnerability Preparedness (MVP) FY25 Action Grant—School Street Parking Lot Renovation; (2) Parkland Acquisitions & Renovations to Communities Grant (PARC) – Middleborough Skatepark; (3) Drinking Water Supply Protection Grant, Purchase of land for new Wilbur Well; and (4) MassTrails Grant, ADA Trail @ Pratt Farm.

5. Each of the four EEA grants listed in Paragraph 4 of this Affidavit are paid to the recipient on a reimbursement basis. Payments are authorized upon receipt of a request by the recipient that includes copies of the invoices paid and proof-of-payment.

6. Each of the four EEA grants listed in Paragraph 4 of this Affidavit have been awarded to Middleborough and finalized by the execution of a contract.

7. The contract for Middleborough's Municipal Vulnerability Preparedness (MVP) FY25 Action Grant was executed on July 29, 2024, and the project is currently underway. A true and correct copy of the contract is attached to this affidavit as Exhibit A. As of the date of this affidavit, no requests for reimbursement have been submitted to EEA.

8. The two-year contract for Middleborough's Parkland Acquisitions & Renovations to Communities Grant was executed on October 2, 2024, and is currently underway. A true and correct copy of the contract is attached to this affidavit as Exhibit B. As of the date of this affidavit, no requests for reimbursement have been submitted to EEA.

9. The contract for Middleborough's Drinking Water Supply Protection Grant was executed on May 7, 2024, and the project was completed. A true and correct copy of the contract is attached to this affidavit as Exhibit C. Final reimbursement for the project is scheduled to transmit by EFT on March 27, 2025.

10. The contract for Middleborough's MassTrails Grant was executed on April 18, 2024, and the project is currently underway. A true and correct copy of the contract is attached to this affidavit as Exhibit D. As of the date of this affidavit, no requests for reimbursement have been submitted to DCR.

11. My understanding is that the Administration's discretionary state grant policy applies only to municipalities who are found to be noncompliant with § 3A at the time of award and at the time of contracting. As such, a municipality's award and related funds will not be rescinded even if that municipality falls out of compliance with § 3A after contracting.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ William Hinkley

Mar. 18, 2025 William Hinkley

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COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the Standard Contract Form Instructions and Contractor Certifications, the Commonwealth Terms and Conditions for Human and Social Services or the Commonwealth IT Terms and Conditions which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: https://www.macomptroller.org/forms. Forms are also posted at OSD Forms: https://www.mass.gov/lists/osd-forms.

CONTRACTOR LEGAL NAME: Town of Middleborough (and d/b/a):	**COMMONWEALTH DEPARTMENT NAME:** Executive Office of Energy & Environmental Affairs **MMARS Department Code:** ENV
Legal Address: (W-9, W-4): 10 Nickerson Ave, Middleborough, MA 02346	**Business Mailing Address:** 100 Cambridge St – Suite 900 Boston, MA 02114
Contract Manager: Christopher Peck, Director, Department of Public Works; **Phone:** 508-946-2480	**Billing Address (if different):**
E-Mail: CPeck@middleboroughMA.gov; **Fax:**	**Contract Manager:** Kara Runsten; **Phone:** 617-312-1594
Contractor Vendor Code: VC6000191882	**E-Mail:** kara.runsten@mass.gov; **Fax:**
Vendor Code Address ID (e.g. "AD001"): AD001 (Note: The Address ID must be set up for EFT payments.)	**MMARS Doc ID(s):** CT-ENV- MVPACTION007MIDDLE25 **RFR/Procurement or Other ID Number:** ENV 25 MVP 01

_X_ NEW CONTRACT **PROCUREMENT OR EXCEPTION TYPE:** (Check one option only) __ **Statewide Contract** (OSD or an OSD-designated Department) __ **Collective Purchase** (Attach OSD approval, scope, budget) _X_ **Department Procurement** (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) __ **Emergency Contract** (Attach justification for emergency, scope, budget) __ **Contract Employee** (Attach Employment Status Form, scope, budget) __ **Other Procurement Exception** (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)	**___ CONTRACT AMENDMENT** Enter **Current Contract End Date *Prior*** to Amendment: _____, 20___. Enter **Amendment Amount:** $ _____. (or "no change") **AMENDMENT TYPE:** (Check one option only. Attach details of amendment changes.) __ **Amendment to Date, Scope or Budget** (Attach updated scope and budget) __ **Interim Contract** (Attach justification for Interim Contract and updated scope/budget) __ **Contract Employee** (Attach any updates to scope or budget) __ **Other Procurement Exception** (Attach authorizing language/justification and updated scope and budget)

The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): _X_ Commonwealth Terms and Conditions __ Commonwealth Terms and Conditions For Human and Social Services __ Commonwealth IT Terms and Conditions

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.
__ **Rate Contract.** (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)
_X_ **Maximum Obligation Contract.** Enter total maximum obligation for total duration of this contract (or *new* total if Contract is being amended). $171,230

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: _X_ agree to standard 45 day cycle __ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)
To complete the project entitled "School Street Parking Lot Project" as outlined in Attachment A and Attachment B.

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:
_X_ 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.
__ 2. may be incurred as of _____, 20___, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.
__ 3. were incurred as of _____, 20___, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of June 30, 2025, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "**Effective Date**" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR:
X: JMcN. Date: 7/17/24
(Signature and Date Must Be Captured At Time of Signature)
Print Name: James McNeil
Print Title: Town Manager

AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:
X: Wallace Gathoni Date: 08/05/24
(Signature and Date Must Be Captured At Time of Signature)
Print Name: Wallace Gathoni
Print Title: Federal Funds Director

Scope of Services (Attachment A)
FY25 EEA Municipal Vulnerability Preparedness Program – Action Grant
Town of Middleborough
July 2024

Grantee:
Name: Christopher Peck, Director, Department of Public Works
Address: 10 Nickerson Ave, Middleborough, MA 02346
Phone: 508-946-2480
Email: CPeck@middleboroughMA.gov

Project Title: School Street Parking Lot Project

Project Summary: The Town of Middleborough is planning to provide remediation of inland flooding and stormwater run-off to the Nemasket River at the newly purchased School Street parking lot. The parking lot is located in the downtown area, adjacent to an Environmental Justice and other climate vulnerable neighborhoods. The roadway and roof run-off receives little to no pretreatment prior to discharging into the Nemasket River. This project seeks to eliminate inland flooding and reduce stormwater runoff with drainage upgrades including nature based solutions such as grassy surfaces and rain gardens, which will also reduce ambient temperatures in this designated heat island.

Scope:
The tasks described in Attachment B will be performed according to the agreed-upon schedule and budget.

Funding Distribution:
Funding will be distributed by reimbursement upon completion of tasks outlined in Attachment B and submission of invoices. Costs eligible for reimbursement include all approved project costs incurred between the contract execution date and the contract termination date. Any amendments to this attachment or Attachment B must be approved by EEA prior to commencement of such activities. All grant funds must be spent according to the fiscal year breakdown below (before June 30, 2025, for FY25 funds and before June 30, 2026, for FY26 funds, as applicable). Please reference the RFR "ENV 25 MVP 01" for additional details on what is required for reimbursement and contact your MVP regional coordinator with any questions.

FY25 - $171,230

To receive grant funding, the applicant must agree to the fiscal requirements of the program by providing a statement from the authorized signatory of the organization acknowledging and accepting the following:

- The Grantee commits to match 10% (or 0% if Grantee is approved for no match or is an MVP-recognized tribe) of the total project cost using cash or in-kind contributions (or a combination of the two);
- The Grantee acknowledges that the funding under this grant will be provided on a reimbursement basis; and

- All matching funds provided by the Grantee or direct project partners have been approved and/or appropriated (or are in the process of being approved).

Additional details:

- Massachusetts sales tax is not a reimbursable expense.
- Work done prior to the project start date (the date the contract is issued and signed by the Commonwealth's Department Authorized Signatory) shall NOT be reimbursed. No funds will be granted for work performed after the contract termination date.
- For work completed before June 30, 2025, requests for reimbursement are due by July 31, 2025. For work completed between July 1, 2025 and June 30, 2026, requests for reimbursement are due by July 31, 2026.
- ***Any FY25 funds that are not spent by June 30, 2025 do not roll over to the next fiscal year and will be forfeited.***

As tasks are completed and deliverables are submitted to, reviewed, and approved by EEA, the Grantee must submit a Reimbursement Package (template to be provided) containing the following items:

1. A signed letter (on city or town letterhead) from the Grantee requesting reimbursement.
2. All relevant invoices, including those from subcontractors. Invoices must itemize costs consistent with the agreed-upon scope of work. Invoices must include sufficient information for EEA to determine that the services were performed and/or products were received, and that the invoiced items meet all contractual performance requirements.
3. A detailed breakdown of the required match for the task. For in-kind services, include sufficient details to demonstrate the total amounts of match contributed, and as appropriate, a list of personnel, hours worked, hourly rates, etc.
4. A short case study and a summary PowerPoint slide with project images (due at the end of the project, templates to be provided).

Reimbursement Packages should be submitted as tasks are completed with the monthly progress report, and reflect work performed according to the schedule of deliverables included in the project budget. Reimbursement is generally made within 45 days after approval of a reimbursement package. Reimbursement packages are due before July 31, 2025 for FY25 funds and before July 31, 2026 for FY26 funds.

EEA will retain a minimum of ten percent (10%) of awarded funds until all contract provisions are satisfied and all deliverables have been received.

Progress Reporting:

To help EEA stay current on work being conducted over the course of the project, the Grantee will submit a brief monthly progress report (template to be provided), due by the 30th of the month, including:

- Significant activities that have occurred to show progress toward deliverables

- Whether a change in schedule or scope of work is anticipated
- Whether costs are anticipated to be overrun or underrun
- If additional assistance from EEA or partners is needed
- Invoices for work completed to date

The Grantee must be in regular communication with their MVP Regional Coordinator (RC) throughout the course of the project and submit all reporting documentation to the RC.

Changes in Scope, Schedule, or Budget:
The Grantee shall inform their RC as soon as possible if any change in the schedule or scope (including tasks and deliverables) is needed or if the Grantee expects an underrun or overrun of the budget, so that EEA can work with the Grantee to take any necessary steps. The RC will inform the Grantee of any necessary contract amendments or if the adjustment is minor enough to only require written approval from EEA. If circumstances beyond the Grantee's control make an extension or new split in funding between FY25 and FY26 necessary—please notify EEA **no later than May 1st** (so that we may discuss a potential amendment before the end of the fiscal year). These requests will be considered on a case-by-case basis and may not be approved.

Regulatory Compliance

Grantee agrees to comply with all applicable state, federal, and local laws and ordinances. Such compliance is a condition of this grant.

Additional Terms
Receipt of MVP funding shall not be considered state approval of the project for any necessary state, federal, or local permits, nor provide any indication of the project's competitiveness for future funding phases.

Attachment B: Town of Middleborough/School Street Parking Lot FY25 MVP Action Grant Scope/Budget

Project Task	Deliverables	Approximate Start Date	Approximate End Date	Total Grant	In-Kind Match	Cash Match	Total Match	Total Project Cost
Tasks to be Completed by June 30, 2025								
Task 1: Project Kick-off, Management, and Reporting								
Sub-task 1.1 Kick-off meeting with Town, EEA, and Consultant	Meeting notes, sign-in sheet	8/1/2024	8/15/2024	$ 1,070.00			$ -	$1,070.00
Sub-task 1.2 Monthly progress reports FY25	Monthly progress reports submitted by the 30th of each month of the grant period to your MVP Regional Coordinator	8/1/2024	6/30/2025	$ 2,190.00			$ -	$2,190.00
Sub-task 1.3 Project Case Study	Final Case Study Report, PowerPoint slide	6/1/2025	6/15/2025	$ -			$ -	$0.00
Total Task 1 Cost				$ 3,260.00	$ -	$ -	$ -	$3,260.00
Task 2: Community Engagement in FY25								
Sub-task 2.1 Community Engagement - Mass Housing Authority	Provide summary of meeting and requested goals of the project	8/1/2024	8/31/2024	$ 3,000.00			$ -	$3,000.00
Sub-task 2.2 Community Engagement - Sustainable Middleborough	Provide summary of meeting and requested goals of the project	9/1/2024	9/30/2024	$ 2,600.00			$ -	$2,600.00
Sub-task 2.3 Community Engagement - Middleborough High Youth Environmental Social Society (YESS) Club	Provide summary of meeting and requested goals of the project	10/1/2024	10/31/2024	$ 3,000.00			$ -	$3,000.00
Total Task 2 Cost				$ 8,600.00	$ -	$ -	$ -	$8,600.00
Task 3: Data Collection								
Sub-task 3.1 Topographic Survey	Survey Base Plan	8/15/2024	9/30/2024	$ 12,610.00			$ -	$12,610.00
Sub-task 3.2 Subsurface Investigations	Percolation rate and subsurface gradation	9/15/2024	9/30/2024	$ 8,130.00			$ -	$8,130.00
Sub-task 3.3 Boundary Survey	Boundary Survey Plan	9/30/2024	10/15/2024	$ 20,000.00			$ -	$20,000.00
Total Task 3 Cost				$ 40,740.00	$ -	$ -	$ -	$40,740.00
Task 4: Preliminary Design								
Sub-task 4.1 Project Coordination	Meeting notes, sign-in sheet	10/1/2024	10/1/2024	$ 3,280.00			$ -	$3,280.00
Sub-task 4.2 Preliminary Layout of Parking Lot	Preliminary Layout of Parking Lot	10/15/2024	11/15/2024	$ 12,940.00			$ -	$12,940.00
Sub-task 4.3 Stormwater Design	Preliminary stormwater design	9/1/2024	11/1/2024	$ 9,340.00			$ -	$9,340.00
Sub-task 4.4 Landscaping and Site Lighting	Landscape and site lighting plan	11/15/2024	12/1/2024	$ 8,900.00			$ -	$8,900.00
Sub-task 4.5 Preliminary Estimate	Preliminary Cost Estimate	11/15/2024	12/20/2024	$ 6,380.00			$ -	$6,380.00
Sub-task 4.6 Prepare Preliminary Submission	Preliminary Plans	11/15/2024	12/20/2024	$ 6,960.00				
Total Task 4 Cost				$ 47,800.00	$ -	$ -	$ -	$47,800.00
Task 5: Final Design								
Sub-task 5.1 Final Design	Final Design	12/20/2024	2/3/2025	$ 15,220.00			$ -	$15,220.00

Sub-task 5.2 Final Plans	Final Plans	12/20/2024	2/3/2025	$ 18,720.00			$ -	$18,720.00
Sub-task 5.3 Final Stormwater	Final Stormwater design	1/1/2024	1/22/2024	$ 8,320.00			$ -	$8,320.00
Sub-task 5.4 Engineers Estimate	Construction Estimate	2/3/2025	3/5/2025	$ 4,380.00			$ -	$4,380.00
Sub-task 5.5 Special Provisions	Technical Specs	2/3/2025	3/5/2025	$ 4,380.00			$ -	$4,380.00
Sub-task 5.6 Compile Final Submission	Final Plans, Specifications and Estimates	3/5/2025	3/19/2025	$ 9,180.00				
Total Task 5 Cost				$ 60,200.00	$ -	$ -	$ -	$60,200.00
Task 6: Construction Documents								
Sub-task 6.1 Contract Documents	Bidding Documents	3/19/2025	4/2/2025	$ 6,810.00			$ -	$6,810.00
Sub-task 6.2 Engineers Estimate	Final Cost Estimate	3/19/2025	4/2/2025	$ 3,820.00			$ -	$3,820.00
Total Task 6 Cost				$ 10,630.00	$ -	$ -	$ -	$10,630.00
TOTAL PROJECT COST FY25				$ 171,230.00	$ -	$ -	$ -	$ 171,230.00

TOTAL PROJECT COST OVERALL				$ 171,230.00	$ -	$ -	$ -	$ 171,230.00

Match 0.00%

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

B

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the Standard Contract Form Instructions and Contractor Certifications, the Commonwealth Terms and Conditions for Human and Social Services or the Commonwealth IT Terms and Conditions which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: https://www.macomptroller.org/forms. Forms are also posted at OSD Forms: https://www.mass.gov/lists/osd-forms.

CONTRACTOR LEGAL NAME: Town of Middleborough (and d/b/a):		**COMMONWEALTH DEPARTMENT NAME:** Exec. Off. of Energy and Env. Affairs **MMARS Department Code:** ENV	
Legal Address: (W-9, W-4): 10 Nickerson Avenue, Middleborough, MA 02346		**Business Mailing Address:** 100 Cambridge Street, 10th Floor, Boston, MA 02114	
Contract Manager: Stephanie Hall	**Phone:** (508) 947-0928	**Billing Address (if different):**	
E-Mail: SHall@middleboroughMA.gov	**Fax:**	**Contract Manager:** Melissa Cryan	**Phone:** 857-274-7173
Contractor Vendor Code: VC6000191882		**E-Mail:** melissa.cryan@mass.gov	**Fax:**
Vendor Code Address ID (e.g. "AD001"): AD 001. (Note: The Address ID must be set up for EFT payments.)		**MMARS Doc ID(s):** CT-ENV-PARC013MIDDLEBOROU25 **RFR/Procurement or Other ID Number:** ENV 25 DCS 04	

X NEW CONTRACT	___ CONTRACT AMENDMENT
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) __ **Statewide Contract** (OSD or an OSD-designated Department) __ **Collective Purchase** (Attach OSD approval, scope, budget) X **Department Procurement** (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) __ **Emergency Contract** (Attach justification for emergency, scope, budget) __ **Contract Employee** (Attach Employment Status Form, scope, budget) __ **Other Procurement Exception** (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)	Enter **Current Contract End Date *Prior*** to Amendment: _____, 20___. Enter **Amendment Amount:** $ _____. (or "no change") **AMENDMENT TYPE:** (Check one option only. Attach details of amendment changes.) __ **Amendment to Date, Scope or Budget** (Attach updated scope and budget) __ **Interim Contract** (Attach justification for Interim Contract and updated scope/budget) __ **Contract Employee** (Attach any updates to scope or budget) __ **Other Procurement Exception** (Attach authorizing language/justification and updated scope and budget)

The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): X Commonwealth Terms and Conditions __ Commonwealth Terms and Conditions For Human and Social Services __ Commonwealth IT Terms and Conditions

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.
__ **Rate Contract.** (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)
X **Maximum Obligation Contract.** Enter total maximum obligation for total duration of this contract (or *new* total if Contract is being amended). $ 495,000.

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting **accelerated** payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: X agree to standard 45 day cycle __ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) **Middleborough Skatepark, PARC #3:** The project will construct a skate park, in accordance with the terms of the PARC Grant Program and application filed by the Town of Middleborough, and on file with the Executive Office of Energy and Environmental Affairs, Division of Conservation Services.

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:
X 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.
__ 2. may be incurred as of _____, 20___, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.
__ 3. were incurred as of _____, 20___ , a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of June 30, 2026, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the **"Effective Date"** of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR:	AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:
X: James McGrail Date: 10/2/24 (Signature and Date Must Be Captured At Time of Signature)	X: Wallace Gathoni Date: 11/26/2024 (Signature and Date Must Be Captured At Time of Signature)
Print Name: James McGrail	Print Name: Wallace Gathoni
Print Title: Town Manager	Print Title: Federal Funds Director

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

ATTACHMENT A – SCOPE OF SERVICES AND ADDITIONAL TERMS AND CONDITIONS

INSTRUCTIONS: **In order to ensure that the Department and the Contractor have a clear understanding of their respective responsibilities and performance expectations, the Following attachment shall contain a specific detailed description of all obligations, responsibilities and additional terms and conditions between the Contractor and the Department which do not modify the Contract boilerplate language.** ***Attach as many additional pages as necessary.*** **{See INSTRUCTIONS sheet for more information and suggested provisions to include in ATTACHMENT A.}**

Middleborough Skatepark, PARC #3: The project will construct a skate park, in accordance with the terms of the PARC Grant Program and application filed by the Town of Middleborough, and on file with the Executive Office of Energy and Environmental Affairs, Division of Conservation Services. The Town of Middleborough will be reimbursed 66% of eligible costs incurred during the contract period up to the $495,000 grant award as evidenced by the submittal of invoices and canceled municipal checks.

ATTACHMENT B – BUDGET AND APPROVED EXPENDITURES

{The Department and Contractor may complete this format or attach an approved alternative Budget format or invoice.}
Items identified below which are not part of the Contract should be left blank.
Attach as many additional copies of this format as necessary, Maximum obligation should appear as last entry.

Contract Expenditures	Unit Rate (per unit, hour, day)	Number of Units	Other Fees or Charges (specify)	TOTAL
FY25 Design				$ 33,000
FY26 Construction				$ 462,000
				$
				$
				$
				$
SUBTOTAL (this page)				$ 495,000

MAXIMUM OBLIGATION	**$ 495,000**

Page __1____ of ___1___Budget pages
Attachment B is subject to any restrictions or additional provisions outlined in Attachment A

Commonwealth of Massachusetts
CONTRACTOR AUTHORIZED SIGNATORY LISTING

This form is jointly issued and published by the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default form for all Commonwealth Departments when another form is not prescribed by regulation or policy.

Signature for Corporation (C or S), Partnership, Trust/Estate, Limited Liability Company (must match Form W-9 tax classification)

Contractor Legal Name	Contractor Vendor/Customer Code (if available, not the Taxpayer Identification Number or Social Security Number)
Town of Middleborough	04-6001221

INSTRUCTIONS: Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor's behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor's authorized signatory, and not by a representative, designee or other individual.)

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver's licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

There are three types of electronic signatures that will be accepted on this form: **1) Traditional "wet signature" (ink on paper); 2) Electronic signature that is either: a. hand drawn using a mouse or finger if working from a touch screen device; or b. An upload picture of the signatory's hand drawn signature; 3) Electronic signature affixed using a digital tool such as Adobe Sign or DocuSign.** Typed text of a name not generated by a digital tool, computer generated cursive, or an electronic symbol are not acceptable forms of electronic signature.

Authorized Signatory Name	Signature (Signature as it will appear on contract or other documents)	Title	Phone Number	Email Address
James McGrail	JMG	Town Manager	508 947 0928	JmcgrailemiddleboroughMA.gov

Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.

I certify that I am a responsible authorized officer of the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor's employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.

Please note you cannot self-certify your own signature as a single signer listed above.

Signature	Date
[signature]	10-15-24
Print Name: Mark Germain	Phone Number
Title: Select Chair, Board	Email Address: mgermain@middleboroughMA.gov

A copy of this listing must be attached to the "record copy" of a contract filed with the department.

The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Maura T. Healey
GOVERNOR

Kimberley Driscoll
LIEUTENANT GOVERNOR

Rebecca L. Tepper
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1081
http://www.mass.gov/eea

September 23, 2024

Stephanie Hall
Town of Middleborough
10 Nickerson Street
Middleborough, MA 02537

Re: Middleborough Skatepark, PARC #3

Dear Ms. Hall:

I am pleased to officially confirm that the Middleborough Skatepark project has been selected by the Executive Office of Energy and Environmental Affairs (EEA) to receive up to $495,000 in state Parkland Acquisitions and Renovations for Communities (PARC) grant assistance.

Project deadline is June 1, 2026

Be advised that the sum of $33,000 for design costs has been set-aside for encumbrance and expenditure in FY25. Please note that this figure is solely for expenditure in FY25. The remaining $462,000 for construction will be executed for encumbrance of funds in FY26, which begins July 1, 2025. All construction work must be completed and closed out by June 1, 2026. PARC grants work on a reimbursement basis. Your community's reimbursement rate is 66%. We can only reimburse your community for 66% of what you spend as demonstrated through canceled municipal checks during the contract period, even if this figure does not reach the maximum value of the grant award for that specific fiscal year.

The project must be completed by June 1, 2026 because your grant award amount has been budgeted by EEA in the fiscal years requested in your application. If you anticipate any difficulties in meeting this spending target and schedule at any time, please contact me without delay. I can be reached at melissa.cryan@mass.gov or (857) 274-7173.

Next Steps

1. Take a **City Council or Town Meeting vote** if you have not done so already. I must have an electronic copy of the certified vote in hand no later than December 31, 2024. If you have not yet had me review the vote language, please do so immediately.
2. Execute the **PARC Project Agreements**. The PARC Project Agreement will be signed by your Chief Executive Officer and a majority of the Park or Recreation Commission members. Review the

agreement carefully to be sure that the project has been correctly described and contact me immediately if any changes or updates need to be made. If the document is correct, please have **two copies signed** and mail them to me for signature by Rebecca Tepper, Secretary of EEA. One original will be returned to you to record, along with the town meeting or city council vote, property deed, and boundary map, at the Registry of Deeds, and to be copied for your audit file. The recorded Project Agreement must be returned to me no later than August 1, 2025.

3. Execute a **State Standard Contract**. This document allows our fiscal department to establish an account for your project. No reimbursement request can be honored unless the State Standard Contract, including the **Contractor Authorized Signatory Listing**, are signed and returned to me. The Contractor Authorized Signatory Listing Form should be signed by whoever signed the contract.
4. After the state contract has been signed and returned to you, you may proceed with the final design of your project. You may not start construction until July 1, 2025, and are expected to begin construction on that date. If you cannot, you must explain why. Please note that we are unable to reimburse your community for any costs incurred prior to the execution of the State Standard Contract.

Reimbursement Procedures

The reimbursement procedures will be discussed in detail at the Grants Management Workshop (information below). A **quarterly report form** is also enclosed, which is due the first business day of December, March, June, and September while the project is active.

Reimbursement will be contingent upon satisfying the following conditions:

1. Submit **final designs and specifications** before going to bid, together with required permits for the construction phase, and final billing for design work by June 1, 2025.
2. A copy of the **PARC Project Agreement**, which has been recorded at the Registry of Deeds (along with the town meeting or city council vote for the project and boundary map) and a marginal notation entered on the deed to the property, is returned by August 1, 2025.
3. The construction must be started on July 1, 2025 and closed out by June 1, 2026. If you do not begin construction on July 1, 2025, you must explain why and submit a schedule demonstrating how your project will meet the June 1, 2026 deadline.
4. Middleborough's Open Space and Recreation Plan receives final approval.
5. Completion of outstanding Conservation Restrictions on parcels acquire with the use of Community Preservation Act funds. Applicants that have purchased real property interests for open space or recreational purposes using CPA funds must have all CRs required by Section 12 of Chapter 44B approved by the Secretary of EEA and recorded prior to receipt of project reimbursement from EEA. Please submit to DCS documentation showing the conveyance of approved CRs to an appropriate entity. Documentation should include the grantee, date of conveyance, and registry book/page of the CR document.
6. Completion of inspections of Land and Water Conservation Fund properties (list and inspection reports provided).

Legally Protected Recreation Land – Middleborough's Commitment

Please remember that according to Article 97 of the Amendments to the Massachusetts Constitution, acceptance of the state grant requires that this site remain open to the general public and prohibits any other use other than public outdoor recreation.

Project Sponsor's Workshop

Please carefully review all the enclosed information, and plan to attend the Project Sponsor's Workshop. This is a short (around an hour), but important, mandatory meeting to review how to prepare your reimbursement request(s). If you cannot attend, please send someone to represent you since it would be very difficult to meet individually with each project sponsor. It will be held on Thursday, October 3, 2024 at 9:30 am. Upon RSVPing to me at melissa.cryan@mass.gov, the login information will be provided.

Congratulations on your successful application to the PARC Grant Program!

Sincerely,

Melissa Cryan
Grant Programs Supervisor

enc.

C

State Standard Contract

Date Submitted:	May 22, 2024		
Department:	EEA/Division of Conservation Services (DCS)		
Contract #:			
Contractor:	Town of Middleborough		
Dates of service:	July 1, 2024	**To:**	June 30, 2024
Document Amount:	$ 100,200.00		
DCS Contact Person:	Vanessa Farny		
Contract Notes:	This is a 1-year contract to be funded through the DWSP ISA with DEP.		

Contract Check List

☒Signed State Standard Contract

☒Contractor Authorized Signatory Listing

☒ Letter confirming funding award

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the Standard Contract Form Instructions and Contractor Certifications, the Commonwealth Terms and Conditions for Human and Social Services or the Commonwealth IT Terms and Conditions which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: https://www.macomptroller.org/forms. Forms are also posted at OSD Forms: https://www.mass.gov/lists/osd-forms.

CONTRACTOR LEGAL NAME: Town of Middleborough (and d/b/a):	**COMMONWEALTH DEPARTMENT NAME:** Exec. Office of Energy & Environmental Affairs **MMARS Department Code:** ENV
Legal Address: (W-9, W-4): 20 Center Street	**Business Mailing Address:** 100 Cambridge St., Suite 900, Boston, MA 02114
Contract Manager: Michael Bumpus **Phone:** 508 946-2482	**Billing Address (if different):**
E-Mail: mbumpus@middlegoroughma.gov **Fax:**	**Contract Manager:** Vanessa Farny **Phone:** (857)330-1978
Contractor Vendor Code: VC6000191882	**E-Mail:** vanessa.farny@mass.gov **Fax:**
Vendor Code Address ID (e.g. "AD001"): AD001. (Note: The Address ID must be set up for EFT payments.)	**MMARS Doc ID(s):** CT-ENV-ENVDWSPMIDDLEBOROU25 **RFR/Procurement or Other ID Number:** ENV 24 DCS 08

X NEW CONTRACT	__ CONTRACT AMENDMENT
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) __ Statewide Contract (OSD or an OSD-designated Department) __ Collective Purchase (Attach OSD approval, scope, budget) X Department Procurement (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) __ Emergency Contract (Attach justification for emergency, scope, budget) __ Contract Employee (Attach Employment Status Form, scope, budget) __ Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)	Enter Current Contract End Date *Prior* to Amendment: June 30, 2023 . Enter Amendment Amount: $ no change . (or "no change") **AMENDMENT TYPE:** (Check one option only. Attach details of amendment changes.) __ Amendment to Date, Scope or Budget (Attach updated scope and budget) __ Interim Contract (Attach justification for Interim Contract and updated scope/budget) __ Contract Employee (Attach any updates to scope or budget) __ Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)

The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): X Commonwealth Terms and Conditions __ Commonwealth Terms and Conditions For Human and Social Services __ Commonwealth IT Terms and Conditions

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.
__ **Rate Contract.** (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)
X **Maximum Obligation Contract.** Enter total maximum obligation for total duration of this contract (or *new* total if Contract is being amended). $100,200.

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: X agree to standard 45 day cycle __ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: This is a Drinking Water Supply Protection Grant award of $100,200 for the purchase of 5.68 acres at Assessor' Parcel 78-1565, and containing 5.68 acres on Marion Road, Middleborough. The property is adjacent to a current town owned Wilbur Well, providing the town with the opportunity to conserve this land and protect this water source as a potential future well. to increase the protection for this drinking water supply that serves four surrounding municipalities.

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:
__ 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.
X 2. may be incurred as of July 1, 2024, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.
__ 3. were incurred as of _____, 20__ , a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of June 30, 2025, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "**Effective Date**" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR:	AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:
X: [signature] Date: 5/7/24 (Signature and Date Must Be Captured At Time of Signature)	X: Lindsey McCauley Date: 06/10/24 (Signature and Date Must Be Captured At Time of Signature)
Print Name: James McGrail	Print Name: Lindsey McCauley
Print Title: Town Manager	Print Title: Deputy CFO - Strategy

Commonwealth of Massachusetts
CONTRACTOR AUTHORIZED SIGNATORY LISTING

This form is jointly issued and published by the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default form for all Commonwealth Departments when another form is not prescribed by regulation or policy.

Signature for Corporation (C or S), Partnership, Trust/Estate, Limited Liability Company (must match Form W-9 tax classification)

Contractor Legal Name	Contractor Vendor/Customer Code (if available, not the Taxpayer Identification Number or Social Security Number)
Town of Middleborough	VC6000191882

INSTRUCTIONS: Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor's behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor's authorized signatory, and not by a representative, designee or other individual.)

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver's licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

There are three types of electronic signatures that will be accepted on this form: **1) Traditional "wet signature" (ink on paper); 2) Electronic signature that is either: a. hand drawn using a mouse or finger if working from a touch screen device; or b. An upload picture of the signatory's hand drawn signature; 3) Electronic signature affixed using a digital tool such as Adobe Sign or DocuSign.** Typed text of a name not generated by a digital tool, computer generated cursive, or an electronic symbol are not acceptable forms of electronic signature.

Authorized Signatory Name	Signature (Signature as it will appear on contract or other documents)	Title	Phone Number	Email Address
James McGrail	JMcG	Town Manager	508 947-0928	Jmcgrail@middleborough.ma.gov

Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.

I certify that I am a responsible authorized officer of the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor's employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.

Please note you cannot self-certify your own signature as a single signer listed above.

Signature	Date
MG	5-16-24
Print Name	Phone Number
Mark Germain	
Title	Email Address
Chair, Middleborough Select Board	mgermain@middleborough MA.gov

A copy of this listing must be attached to the "record copy" of a contract filed with the department.

The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Maura T. Healey
GOVERNOR

Kimberley Driscoll
UTENANT GOVERNOR

Rebecca L. Tepper
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1081
http://www.mass.gov/eea

April 17, 2024

Mr. Michael Bumpus
Town of Middleborough
Middleborough, MA 02346

Re: Wilber Well Property Project

Dear Mr. Bumpus,

I'm pleased to share that your application to the Fiscal Year 2025 Drinking Water Supply Protection (DWSP) Grant Program for the Wilber Well Property Project has been selected by the Executive Office of Energy and Environmental Affairs (EEA) to receive $100,200.00 in funding assistance.

Project is to be completed between July 1, 2024 and June 30, 2025 (FY2025)
The project must be completed by June 30, 2025. If you anticipate any difficulties in meeting this spending deadline, please contact me immediately. I can be reached at (857) 330-1978 or vanessa.farny@mass.gov.

Conditions of your award
Your grant payment is contingent upon your satisfactory completion of the following:

- Adherence to all contract specifications
- Certification of clear title
- Installation of a sign acknowledging receipt of DWSP funds
- Department of Environmental Protection (DEP) approval of the acquisition
- Completion of a Land Management Plan (a template will be provided)

Next steps

1.) **Sign and return electronic copies of the following forms:**
   - **State Standard Contract**. This document allows our fiscal department to establish an account for your project.
   - **Contractor Authorized Signatory form** (both pages). This document authorizes the person who signs your Contract and Project Agreement to sign on behalf of the organization. The document must be notarized or witnessed by a Corporate Clerk.

2.) **Secure notarized original signatures on <u>two (2)</u> copies of the DWSP Project Agreement**. The terms of the DWSP Project Agreement affirm that the property purchased with DWSP grant funding is permanently protected as water supply land, and open to the general public for appropriate passive recreation in perpetuity under Article 97 of the Articles of Amendment to the State Constitution. It may not be converted to other uses or developed.

- Review the agreement to ensure that your project is correctly described.
- Leave "Participant's Title" information blank. This information will be completed upon recording the deed or CR purchased with grant funding.
- Secure a notarized signature from your Chief Executive Officer.
- Have a majority of your Water Commissioners (or Selectboard acting as such) sign
- Return <u>two</u> copies of the agreement to:

Vanessa Farny (EEA) - Division of Conservation Services
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston MA 02114

We will return a fully executed copy for use at recording, retaining a back-up in the event it is needed.

3.) **Provide a certified Municipal or Board of Water Commissioners vote authorizing the purchase.** If draft language hasn't been provided to me for review, please do so in advance of the vote.

After I have received the above forms, EEA will sign the contract and a fully executed copy will be provided to you. Only expenses incurred **after** the contract execution date are eligible to be deducted from the full grant amount. <u>Do not close on the property until you have been notified that your Standard Contract has been executed by EEA</u>. Payment documentation requirements will be outlined more fully when your executed contract is returned.

Please note that DEP approval is required prior to acquisition. Your grant award does not waive your obligation to comply with all relevant DEP requirements. You must obtain DEP approval for your acquisition in coordination with your DEP regional office. Grantees should indicate that they have received a DWSP grant award. The application fee will be waived.

Communities must comply with municipal procurement policies and file a notice with the Central Register, prior to closing on your property, in accordance with MGL Ch. 30B (Uniform Procurement Act), unless you are using Community Preservation Act funds.

The recorded property deed(s) must state drinking water supply protection as a purpose of the acquisition. For example, Property [described using location, survey area, and/or recorded plan information] is acquired "*for the purposes of drinking water supply protection and land conservation.*"

Congratulations on your successful application to the DWSP program! Thank you in advance for your timely response to this letter.

Sincerely,

Vanessa Farny
Forest and Land Grant Program Manager

D

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

dcr
Massachusetts

Notice To Proceed

Patricia Cassady
Town of Middleborough
20 Centre Street
Middleborough, MA 02346

RE: Pratt Farm Accessible Trail Extension - Award
Contract No.: P24-3561-G17A

Dear Ms. Cassady,

The following is provided as formal authorization to proceed with your Recreational Trails Program Grant as described in your proposal for the **Pratt Farm Accessible Trail Extension** project. The authorization is effective as of the date signed below and the reimbursable portion of the project is not to exceed the total grant amount of **$60,000.00**. All work is expected to be completed by **December 31, 2025.**

Department oversight will be provided by **Elijah Velluti-Fry**, MassTrails Recreational Trails Program Manager. All official project correspondence, reimbursements, and other documentation and tracking forms must be submitted to the MassTrails administrative team at elijah.velluti-fry@mass.gov and amanda.lewis@mass.gov, unless otherwise specified.

Sincerely,

Patrice Kish
Patrice Kish
Chief, Design and Engineering

04/18/2024
Authorization Date

cc: Robert Boncore, Director, Contract Administration & Procurement
Amanda Lewis, Director, MassTrails Program
Elijah Velluti-Fry, Manager, MassTrails Recreational Trails Program

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the **Standard Contract Form Instructions and Contractor Certifications**, the **Commonwealth Terms and Conditions for Human and Social Services** or the **Commonwealth IT Terms and Conditions** which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: https://www.macomptroller.org/forms. Forms are also posted at OSD Forms: https://www.mass.gov/lists/osd-forms.

CONTRACTOR LEGAL NAME: (and d/b/a): Town of Middleborough	**COMMONWEALTH DEPARTMENT NAME:** DEPT. OF CONSERVATION AND RECREATION **MMARS Department Code:** DCR
Legal Address: (W-9, W-4): 20 Centre Street, Middleborough, MA 02346	**Business Mailing Address:** 136 DAMON ROAD, NORTHAMPTON, MA 01060
Contract Manager: Patricia Cassady — **Phone:** (508) 946-2406	**Billing Address (if different):**
E-Mail: pcssdy@middleboroughma.gov — **Fax:**	**Contract Manager:** AMANDA LEWIS — **Phone:** 617-645-8314
Contractor Vendor Code: VC6000191882	**E-Mail:** AMANDA.LEWIS@MASS.GOV — **Fax:**
Vendor Code Address ID (e.g. "AD001"): AD 001 . **(Note: The Address ID must be set up for EFT payments.)**	**MMARS Doc ID(s):** 4CTDCR8400P243561G17 **RFR/Procurement or Other ID Number:** BD-23-1020-DCRCU-DC250-80877

X NEW CONTRACT	**___ CONTRACT AMENDMENT**
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) __ **Statewide Contract** (OSD or an OSD-designated Department) __ **Collective Purchase** (Attach OSD approval, scope, budget) X **Department Procurement** (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) __ **Emergency Contract** (Attach justification for emergency, scope, budget) __ **Contract Employee** (Attach Employment Status Form, scope, budget) __ **Other Procurement Exception** (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)	Enter **Current Contract End Date *Prior*** to Amendment: _____, 20___. Enter **Amendment Amount:** $ _____. (or "no change") **AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.)** __ **Amendment to Date, Scope or Budget** (Attach updated scope and budget) __ **Interim Contract** (Attach justification for Interim Contract and updated scope/budget) __ **Contract Employee** (Attach any updates to scope or budget) __ **Other Procurement Exception** (Attach authorizing language/justification and updated scope and budget)

The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): X Commonwealth Terms and Conditions __ Commonwealth Terms and Conditions For Human and Social Services __ Commonwealth IT Terms and Conditions

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.
__ **Rate Contract.** (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)
X **Maximum Obligation Contract.** Enter total maximum obligation for total duration of this contract (or ***new*** total if Contract is being amended). **$60,000.00**

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting **accelerated** payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: X agree to standard 45 day cycle __ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)

RECREATIONAL TRAILS PROGRAM GRANT: P24-3561-G17A Pratt Farm Accessible Trail Extension

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:

X 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.

__ 2. may be incurred as of _____, 20___, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.

__ 3. were incurred as of _____, 20___, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of DECEMBER 31, 2025, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the **"Effective Date"** of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: _____. Date: 3/11/24 (Signature and Date Must Be Captured At Time of Signature) **Print Name:** James McGuire **Print Title:** Town Manager	**AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:** X: _____. Date: 4/18/24 (Signature and Date Must Be Captured At Time of Signature) **Print Name:** Robert Boncore **Print Title:** Director of Contracts

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CONSERVATION AND RECREATION
MASSTRAILS GRANT AWARD

Grant Award Recipient: Town of Middleborough, Conservation Commission and Commission on Disabilities
Award Date: 4/18/2024
Grant Contract ID: P24-3561-G17A
FAIN Number: RTP 2023
Catalogue of Federal Domestic Assistance (CFDA): Recreational Trails Program, 20.219

MASSTRAILS GRANT AGREEMENT
Recreational Trails Program Funding

This document represents a Grant Agreement between **Town of Middleborough, Conservation Commission and Commission on Disabilities** and the Department of Conservation and Recreation (DCR) for the **Pratt Farm Accessible Trail Extension** project as awarded under the MassTrails Grant Program. The project scope *may* have been modified after receiving the results of our mandatory regulatory review by agency partners. Please carefully review the project description below and the specific conditions – *if any* – that must be adhered to. Failure to meet and comply with the specific conditions may result in termination of the award.

Project Description:
The Pratt Farm Accessible Trail provides access for people of all abilities to the serene Pratt Farm, which features trails, forests, tree identification provided by a local scout troop, and small ponds and streams. The project will maintain and reconstruct the hard-packed surface originally designed to accommodate wheelchairs, adding a boardwalk to extend the trail's handicapped accessible portion. The boardwalk will also function as a bog bridge over marshy areas to protect fragile wetlands. Work will be contained to previously disturbed area and helical piers will be used for boardwalk completion.

Summary of Specific Conditions:
All work must occur above ground or in previously disturbed areas. Helical piers must be used for boardwalk to minimize ground impacts.
Project is subject to jurisdiction under Section 401 or Section 404 of the Federal Clean Water Act.

A full list of general conditions is provided and outlined in Section 10, "Compliance with State and Federal Regulations." *Please carefully read the entire section.* Contact the MassTrails Administrator if you need further clarification on what is required.

Upon signature of this Grant Agreement by the Project Manager or authorized signatory and in conjunction with execution of the fiscal MA Standard Contract by the State, **Town of Middleborough, Conservation Commission and Commission on Disabilities** may proceed to incur direct and matching expenses in relation to the project scope.

1. **GENERAL PURPOSE**
The **Town of Middleborough, Conservation Commission and Commission on Disabilities** agrees to perform the services related to **Pratt Farm Accessible Trail Extension** project as outlined in its original application, any approved revisions, or the above listed general conditions, in accordance with all regulations, policies, and procedures set forth by the Federal Recreational Trails Program and the State of Massachusetts under the MassTrails Program.

2. **GRANT TOTAL**
The maximum amount of funds available to the Grantee pursuant to this agreement shall be **$60,000.00.** It is further understood and agreed that the Grantee shall only be reimbursed on the basis of actual costs incurred, and that the State's determination of eligible and approved costs shall be final in all cases. It is understood and agreed that all payments of all sums by the State hereunder are contingent upon availability and continued appropriation, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, the State may terminate this grant in whole or part immediately. Any funds awarded but not spent by the Grantee by the project termination date shall lapse. In addition, the Grantee must provide complete and final reimbursement documentation no later than 30 days after the project termination date, unless otherwise approved by the MassTrails Administrator, or the funds will lapse.

3. **COST SHARING PROVISIONS**
The Grantee will be required to provide acceptable documentation in a format that fully accounts for and certifies that the matching funds or in-kind services have been, in fact, incurred on the project. The Grantee must document a minimum of 20% of the *total project cost,* or the amount listed in the grant proposal. Match activities must take place within the grant award period as specified at the top of this document or they cannot be counted as a part of the grant. The proposed match for this project, as stated in the grant proposal, is **$53,110.20.**

4. **TERM OF GRANT AGREEMENT AND GRANT CONTRACT**
This grant contract is effective from the date of the endorsed grant contract and Notice to Proceed through **December 31, 2025.** All expenditures submitted for reimbursement must occur within the contract time period. No direct expenses submitted for reimbursement will be accepted or reimbursed if they occur outside of the contract time period, including match activities.

5. **GRANTEE RESPONSIBILITIES AND COMPLIANCE**
This MassTrails Grant Award represents State financial support for a project through a competitive Request for Proposals (RFP) process and does not preclude any state, federal, or third-party compliance or required steps and tasks to complete the project. Receipt of a MassTrails grant does not translate into automatic State cooperation and/or imply approval across agencies nor does it imply special consideration for additional funding by state agencies or future MassTrails grant applications. The Grantee understands and acknowledges, by signing this Grant Agreement and accepting a MassTrails grant award, that the responsibilities for compliance with state and federal regulations and the grant process, procedures, and

requirements contained herein are designated to the Grantee alone. It is the responsibility of the Grantee to review this document as needed to stay updated on grant steps and oversight. The MassTrails Administrator is not responsible for any of the steps or tasks contained herein or as a part of the project, regardless of whether those steps or tasks involve a state agency (including DCR) or not. It is the sole responsibility of the Grantee to contact ***appropriate*** agency personnel to obtain required permitting needed to complete the project or to initiate any outstanding easement or care and control issues, for example. It is the sole responsibility of the Grantee to successfully undertake project communication, procurement, and reimbursement and match tracking.

6. GRANT INITIATION

The Grantee shall sign and submit the required Grant Contract Fiscal Paperwork as well as sign this Grant Agreement document before any project work can begin. A site visit will be scheduled with the MassTrails Administrator to review the grant work and the MassTrails Grant Initiation Form on site before contracting is finalized. In some cases, remote communication will replace the site visit, as determined by the MassTrails Administrator. **The Grantee is required to complete the online Grant Initiation Form and submit it after the site visit/remote communication takes place, finalizing the scope and budget of the grant project.** The Grant Initiation document will be the basis for all reporting going forward and the project will not be closed out until all tasks in the Initiation document have been completed.

A template for the Grant Initiation Form is available on the MassTrails Grants website, as well as a link to the online form submittal

7. PROJECT PROGRESS REPORTS

The Grantee shall submit the online **Grant Project Progress Report** bi-annually on March 15 and September 15 each year, or upon request by the MassTrails Administrator at any time. The Progress Report must reflect any changes which were requested between progress reporting periods.

A Progress Report should not contain an amendment request and, if it does, there is no guarantee that the request will be followed up on. That must be addressed through the Amendment request process.

A template for the Progress Report is available on the MassTrails Grants website, as well as a link to the online form submittal.

8. PROJECT AMENDMENT REQUESTS

The Grantee shall not amend, revise, or change the approved application, scope, or budget (including the proposed match) without the written consent of the MassTrails Administrator. Requests for a revised scope or budget must be submitted in writing and approved before the Grantee may proceed with the changes. This can be done by completing the online **Grant Amendment Request Form.** If the amendment request is approved and **involves a change in the grant budget amount, a Standard Contract Amendment Form must be fully executed** (signed by both parties) before proceeding with the updated expenses. An initial conversation with the MassTrails Administrator is advised before filling out and submitting the form. If the change is not submitted to MassTrails and approved, any and all costs associated with the change will not be reimbursed.

An Amendment Request can only be made through the Amendment Request Form and should not be requested through the Progress Report.

A template for the Amendment Request Form is available on the MassTrails Grants website, as well as a link to the online form submittal.

9. PROJECT COMPLETION REQUIREMENTS

Final reimbursement is contingent upon a satisfactory review of the project, including completing the proposed scope as outlined in the Grant Initiation Form and subsequent forms, and consistency with the proposed budget.

Before the final reimbursement can be finalized and paid, either a final Site Visit or a final remote communication must take place between the Grantee and the MassTrails Administrator. When the project is completed and/or when final documents are being prepared, contact the MassTrails Administrator to determine if a site visit or remote communication is appropriate. At that time, the **Grant Close Out Form** will be discussed. This form mirrors the Grant Initiation Form and must show that all proposed tasks in the initial scope and budget have been completed, much like a contractor's "punch list." If a Grant Amendment was approved, the Close Out form will also show the changes and that the project was completed according to all approved grant amendments. A two-page **Project Summary** Form is required to be filled out as a part of the Grant Close Out process.

Once the project is determined to be complete as proposed, the Grantee shall submit a **Final Request for Reimbursement**. The Final Request for Reimbursement will be filled out using the Request for Reimbursement Summary Sheet and the Reimbursement Excel Workbook labelling both as FINAL. The Final Report shall document the project's goals, accomplishments, barriers encountered, and lessons learned.

Templates for the Grant Close Out Form, the Project Summary Form, and the Reimbursement Summary Sheet and Reimbursement Excel Workbook are available on the MassTrails Grants website, as well as a link to the online form submittal. Instructions for the reimbursement procedure are provided in several locations: a subsequent section of this document below, in the reimbursement guidance document located online, and within the Reimbursement Excel Workbook.

10. COMPLIANCE WITH STATE AND FEDERAL REGULATIONS

The Grantee will ensure that the project complies with all applicable state and federal regulations as listed in this section. It is the responsibility of the Grantee to obtain any required permitting, documentation, or record of communication with regulatory review agencies as instructed below. When required, documentation of the review or permit must be on file with the MassTrails Administrator before the trail project can begin. Tracking and submitting required documentation is the sole responsibility of the Grantee. If documentation is not submitted at the appropriate time, the grant may be subject to termination.

- **Massachusetts Wetlands/Rivers Protection Acts and Local Wetland Bylaws**
  Any project that alters land within 100 feet of a wetland or 200 feet of a river or stream (or that meets any other condition of the Rivers or Wetlands Protection Act) will require the approval of the local Conservation Commission before any construction can proceed. If instructed by the Commission, filing an RDA and an NOI may be required.

Regulator Comments:
The project will involve work in wetlands or waterways; therefore, the project is subject to jurisdiction under Section 401 or Section 404 of the Federal Clean Water Act.

- **Massachusetts Endangered Species Act (MESA) and the Endangered Species Act of 1973**
MESA and the Federal Endangered Species Act protect rare species and their habitats by prohibiting the "Take" of any plant or animal species listed as Endangered, Threatened, or of Special Concern. Any project activities which occur within Estimated or Priority Habitat as identified by the Massachusetts Natural Heritage and Endangered Species Program (NHESP) must file with the program for review and approval, unless the project has been determined as exempt by NHESP. Projects which occur within habitat of Federally listed Endangered or Threatened species will be instructed by the Grants Administrator on steps required to prevent harmful impacts to those species.

Regulator Comments (MESA):
According to the specifications as outlined in the grant scope, this project does not overlap habitat subject to NHESP review. No further action is required.

Regulator Comments (ESA):
According to the U.S. Fish and Wildlife Service's Information for Planning and Consultation (IPaC) online mapping tool, the endangered northern long-eared bat (*Myotis septentrionalis*) may occur within the project limits. A NLEB Streamlined 4(d) submittal form was sent to the USFWS on April 20, 2023 to satisfy informal programmatic consultation under Section 7 of the Endangered Species Act. Finding: The Proposed Action will have no effect on the endangered Northern long-eared bat (*Myotis septentrionalis*). If the Proposed Action is not modified, no consultation is required for this.

ESA Avoidance and Minimization Measures:
None established during consultation with US Fish and Wildlife Service.

- **Historic and Archaeological Impact - Section 106 of the National Historic Preservation Act (NHPA)**
Any projects that receive funding from federal agencies must be reviewed in compliance with Section 106 of the National Historic Preservation Act of 1966. This legislation requires projects to take into account the effects of their undertakings on historic properties and affords the Massachusetts Historical Commission (MHC) and federally recognized tribes the opportunity to review and comment on the project.

Regulator Comments:
The existing trail at Pratt Farm was subject to professional archaeological survey in 2017 (MHC #25-3842). Mulitple ancient archaeological sites recorded in the MHC's Inventory of Archaeological Assets of the Commonwealth are recorded wihtin the Pratt Farm property in proximity to the project area of potential effect. The current trail was designed and constructed to specifically avoid identified archaeological resources. The proposed project will maintain and reconstruct the hard-packed surface originally designed to accommodate wheelchairs, adding a boardwalk to extend the trail's handicapped accessible portion. The boardwalk will also function as a bog bridge over marshy areas to protect

fragile wetlands. All work that disturbs ground will occur within the current trail tread and previously disturbed areas. Helical piers will be used in wet areas for boardwalk structural support. Therefore, this project is recommended to have no effect on historic properties or archaeological resources.

- **Massachusetts Environmental Policy Act (MEPA)**
  The MEPA review process provides meaningful opportunities for public review of potential environmental impacts of certain projects for which certain actions by state agencies are required. It requires state agencies to study the environmental impacts of projects requiring state permitting, financial assistance or land disposition, and to use all feasible measures to avoid, minimize, and mitigate damage to the environment or, to the extent damage to the environment cannot be avoided, to minimize and mitigate damage to the environment to the maximum extent practicable. Most MassTrails grants are exempt from MEPA. If a project does require MEPA review, the Grantees must submit a list of all relevant thresholds and indicate if an ENF and/or an EIR are required. The Grantee must submit relevant communication and final documents to the MassTrails Administrator before the project can proceed.

- **Other Required Permitting**
  There are many additional permitting requirements which may or may not apply to a given project. It is the responsibility of the Grantee to seek out and determine which permits are required, from Temporary Construction Access permits to U.S. Army Corps of Engineers permits.

11. LAND OWNERSHIP

Proposals for construction projects that will take place on land that is not owned or managed by the applying organization must include a signed statement from the landowner or manager specifically authorizing the project and ensuring that the property is open for continuing public access. If a MassTrails **Landowner Permission Form** (Public or Private version) or letter outlining similar permission language was not submitted at the time of grant application, MassTrails will not release the endorsed grant contract and Notice to Proceed until such time as the Grantee sends in the permission required. Similarly, if there is a Conservation Restriction (CR) on the parcel, the CR holder must provide written authorization for the project either using the MassTrails **Conservation Restriction Work Authorization Form** or providing a letter with language that clearly conveys that permission is granted for the project to proceed.

Any required permits or authorizations, such as a Temporary Construction Access Permit, must be obtained *by the Grantee* and submitted to the MassTrails Administrator before any construction takes place. Tracking and submitting required documentation is the sole responsibility of the Grantee. If documentation is not submitted as specified, the grant may be subject to termination.

A list of the required steps/tasks or permitting for a project will be finalized and submitted on the **Grant Initiation Form** at the onset of the project. If the project will take place on private land, an easement for public access with a commitment of no less than 10 years must be in place prior to the grant award. If there is a Conservation Restriction (CR) on the parcel, the CR holder must provide written authorization for the project as well. A plan for ongoing stewardship and continued communication must be formalized between the Grantee or other designated party and the landowners (or CR holders), for a period of no less than 10 years.

Regulator Comments:
No comments.

12. EQUIPMENT PURCHASES

Equipment is defined as tangible personal property having a useful life of at least five years and a per-unit acquisition cost of $5,000 or greater. If applicable, the equipment title will rest with the Grantee and must be used for the proper authorized use as stated in the project proposal. The Grantee is required to use the equipment for its proposed and intended purpose for a *reporting period of five years.*

An **Equipment Report** including the purchase details, title (if applicable), condition, use, and storage location shall be submitted with the Request for Reimbursement which contains documentation of the equipment purchase and match. The **Equipment Report** must then be *submitted annually, on the date of the original purchase, for a period of five years following the project end date*. For ease of compliance with this program requirement, the MassTrails Administrator will send a reminder notice to the Grantee each January for five years.

A template for the Equipment Report Form is available on the MassTrails Grants website, as well as a link to the online form submittal.

13. ACQUISITIONS

Projects involving land acquisition must obtain an appraisal of the land to be acquired, as well as a review of the appraisal by an independent review appraiser. The review appraiser must certify that the appraisal meets the standards of the Uniform Appraisal Standards for Federal Land Acquisitions, found at http://www.usdoj.gov/enrd/land-ack/. Projects involving land acquisition must also conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et seq., as amended, found at https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter61&edition=prelim. These regulations apply to evaluating the acquisition of real property and any potential displacement activities.

14. MASSTRAILS ACKNOWLEDGEMENT SIGNS

The Grantee shall display formal and permanent recognition/acknowledgment of MassTrails funding at the project site or affixed on equipment purchased through the program. Signs should be constructed of sturdy material that is permanent, large enough to be clearly visible and located at a prominent access point to the project area or prominently included within other signs or kiosks. The suggested language identifies the site as a cooperative venture (e.g., "A Cooperative Trail Project between the 'Name of Municipality/Organization' and MassTrails" OR "This project is funded in part by MassTrails, administered by the Department of Conservation and Recreation"). Any printed materials such as trail brochures, celebration announcements or website information should also identify the financial partnership that made the project a reality. Stickers or decals shall be printed and displayed on all equipment purchased with MassTrails funding. **It is also encouraged that the Grantee develop and distribute a press release upon the award of the grant and/or project completion, acknowledging MassTrails as a source of funds for the project**.

15. COMMUNITY AND STAKEHOLDER OUTREACH

It is the responsibility of the Grantee to manage and perform necessary outreach and notifications

to the community, stakeholders, and abutters of the project area. Any community concerns or issues regarding the project will be addressed and managed by the Grantee. It is the Grantee's responsibility to have all permissions and approvals in place prior to trail design, construction, or maintenance work. If there is a particular point of controversy at any point during the grant project time period, the Grantee should notify the MassTrails Administrator as a courtesy and to discuss the issue.

16. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

This grant is funded in whole, or in part, by the Federal Highway Administration, United States Department of Transportation (US DOT). As such, the requirements at **49 Code of Federal Regulations (CFR) Part 26: Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs** apply to this grant, as set forth below:

a. Nondiscrimination Assurance

The Grantee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of the requirements of 49 CFR Part 26. The Grantee shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts. The Massachusetts Department of Transportation's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, has been adopted by the Massachusetts Department of Conservation and Recreation, and is incorporated by reference in this agreement. Implementation of this program is a legal obligation. ***The MassTrails Grant Administrator will assist all grantees in guidance and implementation of this program.*** Failure to carry the terms of the DBE Program shall be treated as a violation of this grant agreement. Upon notification to the Grantee of its failure to carry the applicable requirements, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Grantee, before solicitation of any contract in excess of $30,000, shall consult with DCR and follow all required steps in assuring compliance with 49 CFR Part 26. The DCR may determine a DBE goal to be appropriate on certain contracts let under this grant. DCR will notify the grantee of any goals established and guide and assist through the process of complying with that goal. A DBE goal defines a certain percentage (e.g., 10%) of that project which should be awarded to a DBE. The establishment of a goal will consider the types of materials, categories of work, and location of the project. The Grantee shall be required to implement any DBE goal assigned by the DCR. If required by DCR, the Grantee shall insert into any contracts resulting from this grant a copy of the DCR/ MassDOT DBE Special Provisions. These provisions provide specific instruction to contractors concerning their obligations and procedures to be followed on contracts containing DBE participation goals. Subsequent to the grant award but prior to letting any contract with an established DBE goal, the Grantee is required to submit either evidence that the apparent low bidder met the goal or its good faith efforts to do so.

b. Reporting

The Grantee shall provide the DCR with the names and addresses of bidders responding to contract solicitations under this grant. The Grantee shall also provide the DCR with the value of each prime and subcontract subsequently awarded. This information shall be provided and included as a part of the Request for Reimbursement process. The Grantee

further agrees to cooperate fully with the DCR in obtaining information or records from its contractors to satisfy the DBE Program requirements.

c. Contract Assurance

The Grantee will ensure that the following language/provisions are placed in every contract and subcontract that is partially or fully funded by the Recreational Trails Program:

Non-Discrimination Assurance: *"The contractor or subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as (Name of Recipient/Grantee) deems appropriate."*

Prompt Payment Language: *"The Contractor agrees to make payment in full, including retainage, to each subcontractor not later than ten (10) business days after the subcontractor has completed all of the work required under its subcontract."*

Bidder's List: *"All official bidders will be required to report the names, addresses and telephone numbers of all firms that submitted bids or quotes in connection with this project."*

Form 00859 – Contractor's Sub Certification Form

For grants subject to DBE reporting (grants where a goal has been established), the Grantee shall insert a copy of the following forms in any contract(s) let under this grant, including:

1. MassDOT Form 00719 (Attachment A) – Special Provisions for Participation by Disadvantaged Business Enterprises;
2. MassDOT Form 00760 – FHWA-1273 -- Required Contract Provisions for Federal-Aid Construction Contracts – Revised May 1, 2012;
3. MassDOT Form B00853 – Schedule of Participation by DBEs;
4. MassDOT Form B00854 – Letter of Intent by DBE;
5. MassDOT Form B00855 – DBE Joint Check Arrangement Approval FORM;
6. MassDOT Form B00856 – Joint Venture Affidavit;
7. Form 00859 – Contractor's Sub Certification Form;
8. MassDOT Form 00870 – Standard Federal Equal Employment Opportunity Construction Contract Specifications – (Federal Executive Order 11246);
9. FHWA Sub-Recipient Non-Discrimination Assurances- Appendix A;
10. DCR Recreational Trails DBE Report; and
11. DCR Bidder's List

17. PROCUREMENT PROCEDURES

The Grantee will adhere to the Federal Guidelines for Procurement Procedures (Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200 – Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards) available for viewing online at: https://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1.

MassTrails Grantees may follow their own established written procurement procedures, however, any procedures relating to the grant project must provide for the following, at minimum:

a. Grantees' avoidance of purchasing unnecessary items.
b. Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement.
c. When purchasing an item with a value between $10,000 and $150,000, grantees are required to obtain at least three bids for goods and/or services. The solicitations must provide for all of the following:
    i. A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
    ii. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
    iii. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
    iv. The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
    v. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
    vi. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

If the grantee does not have established written procurement procedures, the grantee accepts and agrees to follow the above procurement policy in place of its own requirements.

18. REIMBURSEMENT

The State agrees to reimburse the Grantee **up to the approved grant amount** for approved expenses incurred in accordance with the project budget subject to the following:

a. It is understood and agreed by the parties that in the performance of this grant and the services hereunder, the Grantee and its servants and employees are in all respects independent contractors and shall neither be determined to be employed by, nor agents of, the State, nor be entitled to any benefits provided by the State to its employees.
b. The Grantee must pay 100 percent of the cost of an item before submitting a request for reimbursement of eligible costs. For example, a Grantee may not apply for reimbursement for a piece of equipment for which they have set up a loan agreement and monthly payment plan. The equipment must first be paid in full by the entity indicated on the state contract before any reimbursement will be authorized.
    i. When requesting reimbursements, the Grantee shall submit **invoices/receipts** for actual costs incurred. All invoices/receipts must show dates within the contract period.

ii. The Grantee must also submit **proof of payment** (such as a cancelled check or credit card statement) of the invoice by the Grantee. All payments must be traced from the invoice/receipt to proof of payment *by the entity* on the state contract.
iii. For **major equipment** purchased through the program (such as a snow groomer), a receipt from the vendor indicating the equipment has been delivered and paid in full, including name, serial number, year of manufacture, accessories received and price from seller, shall also be submitted.
iv. For requests of reimbursement of **staff time**, time sheet records indicating dates and hours spent on the project, tasks accomplished, and billing rates must be submitted by using the Reimbursement Excel Workbook. Proof of payment to the staff must also be submitted, such as payroll records or copies of pay stubs. The hourly rate must be clearly displayed, or a letter from the organization stating the hourly rate of each employee must be provided. Indirect/fringe costs can be included. A letter from the organization stating the indirect cost rate must be included for verification of the rate. If your organization has a Negotiated Indirect Cost Rate Agreement (NICRA), you must include documentation of rate from the issuing Federal Agency, otherwise you may use the de minimis indirect cost rate of 10 percent.
v. If a third party has made a purchase on behalf of the Grantee, the original invoice/receipt must be documented as well as proof of that direct payment having been made, (i.e., third party must provide a copy of the credit card statement showing the transaction, or cancelled check, or other acceptable proof of payment). If a credit card was used an extra step is required. The third party must provide the subsequent month's credit card statement to show that payment was made on the account for the month in which the project related purchase was made. As a result of this requirement, MassTrails *highly discourages* using a third party to pay for project expenses. As a last step, proof of payment to the third party by the Grantee must be submitted (e.g., a cancelled check, EFT, paystub showing reimbursed amount).

c. The Grantee may submit multiple reimbursement requests, on a monthly basis at most, during the grant period.
d. **The final Reimbursement Request can be submitted up to 30 days after the grant contract has ended.** For example, goods and services must be completed by the end date of the contract, but payment for those goods or services and submittal of the reimbursement request can be submitted up to, but not exceeding, 30 days past the contract end date. Documentation must be complete at this time, meaning all required back up documents must be included and approved by the Grants Administrator. This may require submitting a "draft" reimbursement request prior to the deadline (this is recommended) to ensure that all required paperwork is included. **Please avoid submitting reimbursements, if possible, between June 15 and August 15. This is the end of the state's fiscal year and a very busy time for DCR's finance team. Processing of payments will be delayed if submitted during this time period.**
e. The Grantee's final reimbursement will be held until a site visit has been conducted by the MassTrails Administrator and the Grant Close Out Form has been submitted and approved.
f. The Grantee will submit a Close Out Form, final budget,and Project Summary Form.
g. The purchase of food is not an acceptable cost for trail grant funding. Do not submit a reimbursement request for food as a part of your grant expenses or as match.

19. MATCH

The Grantee shall document incurred **match** with each reimbursement request and/or with the

final reimbursement request, unless otherwise authorized by the MassTrails Administrator. Match represents 20% of the TOTAL PROJECT VALUE, not 20% of the reimbursement amount. The easiest way to calculate this is to take your grant award amount and multiply by 0.25. For example, a $100,000 grant award requires $25,000 match (80% of $125,000 equals $100,000 and 20% equals $25,000).

a. All match activities must occur within the contract dates.
b. Any match that is actual cash spent towards the project must be documented with the same requirements as the reimbursement requests. Invoices and proof of payment are required.
c. Volunteer labor as match must be documented using the appropriate tab(s) in the Reimbursement Excel Workbook. Information must include names, dates, hours worked, description of work accomplished and value of those hours for every hour claimed.
d. Volunteer event days should be documented as stated in the previous bullet, with the addition of a *volunteer sign in sheet signed by each participant*. Sample sign in sheets can be provided by the MassTrails Administrator upon request.
e. If staff time is utilized as match, grantees must complete the appropriate tab in the Reimbursement Excel Workbook. Proof of payment to the employee must be provided as well, either in the form of copies of paystubs or a payroll report. The hourly rate must be clearly displayed, or a letter from the organization stating the hourly rate of each employee must be provided. Indirect costs/fringe can be included. A letter from the organization stating the indirect cost rate must be included for verification of the rate. If your organization has a Negotiated Indirect Cost Rate Agreement (NICRA), you must include documentation of rate from the issuing Federal Agency, otherwise you may use the de minimis indirect cost rate of 10 percent.
f. Donations must be documented with either an invoice with zero balance due and wording indicating donation, or a written statement from the entity that has made the donation, stating the donation, its value, and to whom it was given. Proof of the value of the donation must also be submitted, either on the invoice or by another form of valuation such as the most current value listed on a website where comparable products are sold. As a commonly donated material for trail construction projects, the most recent USGS Aggregate rates are included in the Reimbursement Excel Workbook for help in valuation of various stone products.

20. TERMINATION OF GRANT CONTRACT

Any failure by the Grantee to abide by or carry out any of the terms or conditions of this grant shall, at the discretion of the State, result in termination of this grant, if, after notice to the Grantee, said default is not remedied within ten (10) days. In the event of termination, no further payments shall be made by the State.

21. CONSTRUCTION INSPECTION REPORT; AUDITS

State representatives may, at any time, inspect the project and review the Grantee's records and files. Upon notification of project completion, the State may inspect projects and prepare a written report. Recommendations for corrective actions will be made, if appropriate. A copy of the report will be sent to the Grantee. Deficiencies, if any, shall be corrected and reported, in writing, to the State within twenty-one (21) days of receipt of the inspection report. Final payment will not be made until deficiencies are corrected. The Grantee agrees to submit to all requested inspections and audits by State officials, which relate to the services and payments under this grant.

22. RECORD RETENTION

All program and financial records shall be retained by the Grantee for state audit purposes and available for public inspection for a period of six (6) years ***after*** the contract end date or final payment on the project, whichever date is later. At a minimum, the following records shall be maintained and made available for audit: invoices, for purchased materials and for all design and construction costs indicating check number and date paid on each invoice; cancelled checks or copies thereof; bid, solicitation, and procurement documents; work changes, change orders and contract amendments. Record retention for purchases of items $10,000 or more must include, at minimum, documentation which provides the basis for contractor selection, justification for lack of competition when competitive bids or offers are not obtained, and a basis for the award cost or price.

23. TITLE VI/NONDISCRIMINATION ASSURANCES

The Grantee shall comply with the assurances included in the Federal Highway Administration Assurances for Title VI and Other Nondiscrimination Statutes and Regulations, attached, and incorporated in this grant agreement. The Grantee will review and sign this document on page 6, returning the original copy to the grant program administrator (see Appendix A).

24. TERMS AND CONDITIONS

This Grant Agreement serves as a guidance document outlining compliance and regulatory responsibilities of the Grantee. The Grantee takes full responsibility for complying with all requirements listed above or the grant may be subject to termination without reimbursement. The Grantee should reference the fiscal contract documents (MA Standard Contract, Commonwealth Terms and Conditions) for legal obligations and compliance regarding the fiscal agreement being entered into between the state (DCR) and the Grantee.

25. INITIALIZED CHECKLIST AND SIGNATURE

Please initial in the line shown after each of the following statements. Refer to these statements and the Grant Agreement document in full for guidance as your project progresses:

- The Grantee understands that under no circumstances can the grant contract be extended. The end date of this grant is the date listed on the Standard Contract Form, NTP, and this document. As such, the grantee has reviewed the project scope and budget and can ensure that the grant award will be spent within the contract period, understanding that any funds which are not spent by the contract end date will return to the state as program slippage. Grantee has communicated this to all subcontractors and included this language in any subcontractor agreements associated with this grant. _____ ***(Initial Here)***
- The Grantee understands that this is reimbursement grant program. The Grantee must first spend the money and then apply for reimbursement. A request for reimbursement must be submitted to the MassTrails Administrator as outlined specifically in this document, including a MassTrails Reimbursement Summary Sheet, Reimbursement Excel Workbook, invoices/receipts for goods or services, and documented proof of payment for those goods/services. _____ ***(Initial Here)***
- The Grantee understands that they are responsible for accruing their proposed match and providing proof of that match, as outlined in this document, on the condition of being reimbursed for grant-funded expenses. _____ ***(Initial Here)***

- The Grantee understands that the Final Reimbursement Request and Final Report must be submitted within 30 days of the contract end date, no exceptions. ***(Initial Here)***

Photo Release and Authorization

- The Grantee authorizes the MassTrails Administrators to edit, alter, exhibit, publish, or distribute any photos shared with the MassTrails Program related to the grant project. In addition, the Grantee waives the right to inspect or approve the finished product wherein the photo appears. Photo credit will be shared when possible. ***(Initial Here)***

By signing below, the **Town of Middleborough, Conservation Commission and Commission on Disabilities** confirms that they have read through and agree to the terms set forth in the agreement above.

Authorized Signature — Date: 3/14/24

Print Name: James McNeil

Organization/Agency: Town of Middleboro

Please sign and initial where indicated. Scan the FULL signed document and email a digital PDF copy to the MassTrails contact listed below. Upon endorsement of the grant contract and issuance of the Notice to Proceed, the MassTrails Administrator will send you a copy of this fully executed grant agreement.

Elijah Velluti-Fry
MassTrails Recreational Trails Program Manager
(413) 579-2975
elijah.velluti-fry@mass.gov

Appendix A

TITLE VI/NONDISCRIMINATION AGREEMENT AND RECIPIENT ASSURANCES

The **Commonwealth of Massachusetts**, acting through its **Department of Conservation and Recreation** (hereinafter referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the United States Department of Transportation (USDOT), Federal Highway Administration via funds received from the Commonwealth of Massachusetts Department of Transportation, it is subject to and must comply with the following, as applicable and appropriate:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 *et seq.*), (prohibits discrimination on the basis of disability);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 49 C.F.R. Part 27 (entitled *Nondiscrimination On The Basis Of Disability In Programs Or Activities Receiving Federal Financial Assistance*);
- 49 C.F.R. Part 28 (entitled *Enforcement Of Nondiscrimination On The Basis Of Handicap In Programs Or Activities Conducted By The Department Of Transportation*);
- 49 C.F.R. Part 37 (entitled *Transportation Services For Individuals With Disabilities (ADA)*);
- 23 C.F.R. Part 200 (FHWA's Title VI/Nondiscrimination Regulation);
- 28 C.F.R. Part 35 (entitled *Discrimination On The Basis Of Disability In State And Local Government Services*);
- 28 C.F.R. Part 50.3 (DOJ Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory cites are hereinafter referred to as the "Acts." The preceding regulatory cites are hereinafter referred to as the "Regulations."

Although not applicable to Recipients directly, there are certain Executive Orders and relevant guidance that direct action by Federal agencies regarding their federally assisted programs and activities to which compliance is required by Recipients to ensure Federal agencies carry out their responsibilities. Executive Order 12898, 3 C.F.R. 859 (1995), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,"

emphasizes that Federal agencies should utilize existing laws to achieve Environmental Justice, in particular Title VI, to ensure nondiscrimination against minority populations. Recipients should be aware that certain Title VI matters raise Environmental Justice concerns and FHWA intends that all Recipients evaluate and revise existing procedures (as appropriate) to address and implement Environmental Justice considerations. See the following FHWA website for more information and facts about Environmental Justice: http://www.fhwa.dot.gov/environment/ejustice/facts/index.htm.

Additionally, Executive Order 13166, 3 C.F.R. 289 (2001) on Limited-English-Proficiency, according to the U.S. Department of Justice in its Policy Guidance Document dated August 16, 2000 (65 Fed. Reg. at 50123), clarifies the responsibilities associated with the "*application of Title VI's prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency.*" When receiving Federal funds Recipients are expected to conduct a four-factor analysis to prevent discrimination based on National Origin. (See also U.S. DOT's "*Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons,*" dated December 14, 2005, (70 Fed. Reg. at 74087 to 74100); the Guidance is a useful resource when performing a Four-Factor Analysis).

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, policy, memoranda, and/or guidance, Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that

> *"No person in the United States shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the USDOT, including the Federal Highway Administration.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973) by restoring the broad, institution wide scope, and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is federally-assisted.

Additionally, the Recipient may not discriminate in the selection and retention of contractors, including without limitation, retaining contractors whose services are for, or incidental to, construction, planning, research, highway safety, engineering, property management, realty, fee contracts, and other commitments with persons for services and expenses incidental to the acquisition of rights-of-way.

Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of rights-of-way, and related projects, including those who supply materials and lease equipment.

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The Recipient may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where highway rights-of-way acquisitions necessitate relocation(s).

The Recipient may not discriminate by preventing Title VI/Nondiscrimination populations from accessing and utilizing facilities and services provided for public accommodations (i.e., eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over, or under the rights-of-way of federally assisted highways.

The Recipient, its sub-recipients, contractors, subcontractors, and other persons subject to this Agreement may not discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

The Recipient shall develop and implement a Public Participation Plan in a manner that ensures the identification of Title VI/Nondiscrimination population(s), affords the population(s) opportunities to comment, and provides an atmosphere where all comments are promptly addressed with regard to the location and design of highway construction projects. Additionally, the Recipient shall not locate, design, or construct a highway in such a manner as to deny access to, and use thereof, to any persons on the basis of race, color, national origin, sex, age, or disability.

More specifically and without limiting the above general Assurance, the Recipient agrees with and gives, the following Assurance with respect to its federally-assisted highway program, as follows:

1. The Recipient agrees that each "program" and each "facility" as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Acts and the Regulations;

2. The Recipient shall insert the following notification in all solicitations for bids and Requests For Proposals for work or material subject to the Acts and the Regulations made in connection with all **Federal Highway Programs** and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

   "*The Massachusetts Department of Conservation and Recreation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4), other Nondiscrimination requirements (The Federal-Aid Highway Act of 1973, The Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990), and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement will be awarded without discrimination on the ground of race, color, national origin, sex, age, or disability.*";

3. The Recipient shall insert the clauses of "Appendix A" of this Assurance in every contract or agreement subject to the Acts and the Regulations;

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4. The Recipient shall insert the clauses of "Appendix B" of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures or improvements thereon or interest therein to a Recipient;

5. The Recipient shall insert the following language in all Federal-Aid Agreements entered into with the FHWA:

   "*The Commonwealth of Massachusetts, acting through its Department of Transportation (Recipient) and Department of Conservation and Recreation (Recipient or Sub-Recipient)* ***HEREBY AGREES THAT****, as a condition to receiving Federal financial assistance from the United States Department Of Transportation, Federal Highway Administration, it is subject to and shall comply with Title VI of the Civil Rights Act of 1964 and additional Nondiscrimination requirements as detailed in the* ***FHWA Assurances for Title VI and Other Nondiscrimination Statutes and Regulations*** *document.*"

6. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith over which DCR has control;

7. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance shall extend to rights to space on, over or under such property;

8. That the Recipient shall "include the appropriate clauses set forth in Appendix C and Appendix D" of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

   a. For the subsequent transfer of real property acquired or improved under the applicable Project or Program; and

   b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable Project or Program.

9. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the Assurance obligates the Recipient or any transferee for the longer of the following periods:

   a. The period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

   b. The period during which the Recipient retains ownership or possession of the property.

10. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance; and

11. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the Department of Transportation under the Federal Highway Program and is binding on it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the **Federal Highway Programs**. The person or persons whose signature appears below are authorized to sign this assurance on behalf of the Recipient.

TITLE VI/NONDISCRIMINATION AGREEMENT AND SUB-RECIPIENT ASSURANCES

The _____ [Grantee] (hereinafter referred to as the "Sub-Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the United States Department of Transportation (USDOT), Federal Highway Administration, from the Commonwealth of Massachusetts, through its Department of Transportation and Department of Recreation and Conservation (Recipient), it is subject to and must comply with the Statutory/Regulatory Authorities and requirements and any relevant attachments detailed in this document.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the Department of Transportation under the Federal Highway Program and is binding on it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the **Federal Highway Programs**. The person or persons whose signature appears below are authorized to sign this assurance on behalf of the Sub-Recipient.

(Name of Grantee) James McGrail

(Signature of Grantee)

(Title Of Authorized Signatory) Town Manager

DATED 3/4/24

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APPENDIX A-1

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Acts and the Regulations relative to Nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers a program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. **Information and Reports:** The contractor shall provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Acts, Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Recipient or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

    - Withholding of payments to the contractor under the contract until the contractor complies; and/or

    - Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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Appendix B

RTP Equipment Requirements (CFR 200.319)

(a) *Title.* Subject to the obligations and conditions set forth in this contract, title to equipment acquired under this award will vest upon acquisition in the Grantee's name. Further, the title for equipment to be purchased under this contract is conditional upon the following:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the Massachusetts Department of Conservation and Recreation.

(3) Use and dispose of the property in accordance with paragraphs (c) and (e) of this section

(c) *Use.* (1) Equipment must be used by the Grantee pursuant to the scope and purpose of this project as long as needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the purposes of this project, the equipment may be used in other activities supported by the Massachusetts Department of Conservation and Recreation in the following order of priority:

(i) Activities under a Federal award through the Massachusetts Department of Conservation and Recreation, then

(ii) Activities under Federal awards from other Federal awarding agencies in the Commonwealth of Massachusetts.

(2) During the time that equipment is used on the project or program for which it was acquired, the Grantee must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work pursuant to this award. First preference for other use must be given to other programs or projects supported by the Massachusetts Department of Conservation and Recreation and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies in the Commonwealth of Massachusetts. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) The Grantee must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute during the useful life of the equipment.

(4) When acquiring replacement equipment, the Grantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for this award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once a year.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the Grantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under this award is no longer needed for the purposes of this project or for other activities currently or previously supported by a Federal awarding agency or the Commonwealth of Massachusetts, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the Grantee must request disposition instructions from the Massachusetts Department of Conservation and Recreation. Disposition of the equipment will be made as follows:

(1) Items of equipment with a current per unit fair market value of $5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Massachusetts Department of Conservation and Recreation.

(2) If the Massachusetts Department of Conservation and Recreation fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of $5,000 may be retained by the Grantee or sold. The Massachusetts Department of Conservation and Recreation is entitled to an amount calculated by multiplying the current market value or proceeds from sale by its percentage of participation in the cost of the original purchase. If the equipment is sold, the Massachusetts Department of Conservation and Recreation may permit the Grantee to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The Grantee may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the Grantee must be entitled to compensation for its attributable percentage of the current fair market value of the property.

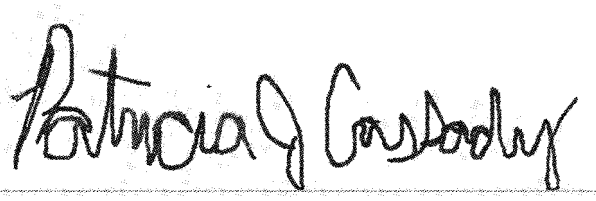
Form Name:	MassTrails GRANT INITIATION Form
Submission Time:	April 29, 2024 10:44 am
Browser:	Chrome 124.0.0.0 / Windows
IP Address:	173.14.134.33
Unique ID:	1220026035
Location:	42.5181, -70.899

MassTrails GRANT INITIATION Form

1.1 Primary Contact Name(s):	Patricia Cassady
1.2 Primary Contact Email(s):	pcssdy@middleboroughma.gov
1.3 Primary Contact Phone Number(s):	5089462406
1.4 Project Location:	20 Centre Street, 2nd Floor, Middleborough, MA 02346
1.5 Agency/Organization:	Town of Middleborough Conservation Commission
1.6 Grant Project Title:	Pratt Farm Accessible Trail Extension
1.7 Project Number:	P24-3561-G17A
1.8 Award Amount:	$60,000
1.9 Match Amount:	$15,000
1.10 Status of Match Source: Are funds secure or do additional steps need to be taken?	Match is secured and is entirely in-kind either for volunteer time or donation of materials.
1.11 Brief Project Description (updated, if changes): Provide a brief description of the proposed project in 3-4 sentences. This description will be used to describe the project in abbreviated form for various purposes including agency/Governor updates, press, and announcements going forward.	The Pratt Farm Accessible Trail provides access for people of all abilities to the serene Pratt Farm, which features trails, forests, tree identification provided by high school students, and small ponds and streams. The project will maintain and reconstruct the hard-packed surface originally designed to accommodate wheelchairs, adding a boardwalk to extend the trails handicapped accessible portion. The boardwalk will also function as a bog bridge over marshy areas to protect fragile wetlands.

1.12 Project Scope: Restate the project scope and highlight any changes to the scope since the application was submitted, including any necessary changes to maintain compliance with the Grant Agreement. Project scope refers to specific, individual tasks required to complete the project.	A local engineering company, familiar with the trail, which has previously designed plans for Pratt Farm, has volunteered to design an extension for the existing handicapped-accessible trail. After these plans are fully complete, rehabilitation of the existing trail will take place. Three teams of volunteers have committed hours for trail repair and maintenance, and these volunteers will clear the undergrowth, laying the groundwork for addition of material to the existing trail. This maintenance will begin at the Pratt Farm parking area, at 67 East Main Street, and will end at the western terminus of the existing aggregate trail, towards Sachem Street. Next, the earthen dam, culvert, and bridge structure supporting the existing accessible trail will be reconstructed using plans developed by Outback Engineering. The Town of Middleborough will contribute matching funding in order to complete this portion of the trail, necessary to support the weight of wheelchairs over the southern end of the currently dammed trout pond. The specific trail location is over what is locally known as Pratt's Brook. After the bridge is reconstructed, using contractor labor, the boardwalk construction project at the end of the existing aggregate trail will begin. Additionally, the project will complete the tactile trail portion of the previous Mass Trails-funded project, adding rope to a section of about 500 feet of trail that will connect twelve bronze relief sculptural panels providing the names of plants and a tactile, interactive surface for those who are vision-impaired. This will provide individuals with impaired vision the ability to navigate the rope-outlined section of trail by themselves, and to provide them the sensory experience of feeling the shapes of plants. The Dam & Culvert have not been funded through this grant award, therefore we will be seeking funding for this part of the project through either Capital Planning with the Town FY2025 or 2026 budget or through Private Funding.
2.1 Land Ownership Status: List the current ownership of the land where the project will take place and/or the plan for ownership as project moves forward.	The land ownership status is that the entire project is located on the Pratt Farm Conservation Area property under the care & custody of the Middleborough Conservation Commission/Town of Middleborough, MA.

2.2 Land Owner Permission/Public Access Assurance Status: List the status of required documents needed to obtain permission and/or assurance of continuing public access. Documentation of land ownership permissions/permits/assurance of public access must be submitted to the MassTrails Grants Administrator before on-the-ground construction projects can begin work.	The Middleborough Conservation Commission has voted for permission to conduct the project on the Pratt Farm Conservation Area.
2.3 Community Outreach Updates: What, if any, community outreach has taken place since the grant application was submitted?	This project has been discussed at several Conservation Commission public meetings since the grant application was submitted.
2.4 Historic and Archaeological Impact (if applicable): What are the MassTrails conditions assigned to this project to prevent impact to historic/archaeological resources and what is the plan to address these?	An archaeological investigation was conducted in 2017 by Public Archaeology Laboratory. The repair of the current trail and the extension of the trail with a boardwalk with helical posts will not disturb any archaeological significant areas per the 2017 investigation.
2.5 Wetland Permitting Status (if applicable): What are the MassTrails conditions assigned to this project to be in compliance with Massachusetts Wetlands/Rivers Protection Acts and Local Wetland Bylaws? Documentation of required permits must be submitted to the MassTrails Grants Administrator before any on-the-ground construction projects may begin work.	The proposed boardwalk, culvert replacement and other trail maintenance will require a Notice of Intent application under the MA Wetlands Protection Act to be filed with the Middleborough Conservation Commission and the MA DEP. This will be completed prior to any construction taking place.
2.6 Massachusetts Natural Heritage and Endangered Species Program (NHESP) Status and/or Federal Endangered Species Act Status (if applicable): What are the MassTrails conditions assigned to this project to be in compliance with NHESP and/or Federal Endangered Species Act? Documentation of required permits must be submitted to the MassTrails Grants Administrator before any on-the-ground construction projects may begin work.	This does not apply to the project as the area is not mapped under DFW NHESP.

2.7 Other Permitting Status: Documentation of required permits must be submitted to the MassTrails Grants Administrator before any on-the-ground construction projects may begin work.	Understood. We are not aware of any other required permitting for this project as currently funded. The Culvert may require additional permitting with the Army Corps of Engineers and/or MEPA review.
2.8 Buy America Compliance: If the project involves the purchase of steel or iron, including construction supplies (e.g., bridges, culverts) or equipment with steel or iron parts (e.g., tractors, snowmobiles), with a value of $2,500 or more, proof of compliance with Buy America must be submitted and approved by the MassTrails Grants Administrator.	Not applicable.
2.9 Accessibility: If the project is constructing a trail and does not fall under any exemptions for accessibility requirements, list the specifications for trail construction to meet standards for accessibility.	Yes, this project will comply with standards for accessibility.
	The upgrade to the existing culvert may be a challenge to fund since this grant award did not include that. We are hoping that there will be other alternative funding as mentioned above.
Upload Finalized Budget (Required)	https://www.formstack.com/admin/download/file/16279663093
Upload Other Updated Information since Application. Includes any updated project maps, plans, drawings, documentation of any of the above-referenced compliance, solicitations or bids/quotes for goods/services, etc.	https://www.formstack.com/admin/download/file/16279663094
Grantee Signature	
Date/Time	Apr 29, 2024 10:44 AM

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF KATHARINE LACY

I, Katharine Lacy, hereby depose and say as follows:

1. I am a Senior Planner with the Massachusetts Housing Partnership Fund Board ("MHP").

2. In my role, I provide direct support to communities and nonprofits for the production of housing across the state, including by overseeing MHP's MBTA Communities Technical Assistance Program ("3A-TA").

3. The facts set forth in this affidavit are either personally known to me or my knowledge of them has been acquired through review of documents kept in the ordinary course of MHP's business.

4. The purpose of MHP's 3A-TA Program is to provide technical assistance to planning staff and municipal officials with activities directly related to the development and/or documentation of multi-family zoning districts that comply with the 3A Regulations issued by the Executive Office of Housing and Living Communities ("EOHLC"), including identifying district boundaries and locations, estimating unit capacity and gross density using EOHLC's compliance model, developing use and intensity requirements and site plan review, drafting zoning amendments, community engagement and education, and economic feasibility analysis relative to district affordability.

5. Under the 3A-TA Program, work is performed by pre-qualified consultants, including the Regional Planning Agencies, who are under contract with and paid directly by MHP. These consultants work directly with municipal representatives to develop a scope of work for review by MHP, which must be completed within one year of the grant award.

6. MHP allows municipalities to request assistance through the 3A-TA Program at any time and requests are accepted on a rolling basis. Awards are capped at $25,000 per project, but municipalities may request assistance multiple times.

Middleborough 3A-TA Grants

7. On August 16, 2022, the Town of Middleborough submitted a request to participate in MHP's "early action" 3A-TA Program, intended to assist a small number of communities to test their ability to comply with the state's new multi-family zoning requirement while simultaneously allowing MHP and its consultants to further refine the model.

8. On September 7, 2022, MHP notified the Town of Middleborough that it had been selected to participate in the "early action" 3A-TA Program. As part of this "early action" program, MHP's consultant, RKG, provided a preliminary assessment of whether the six participating municipalities' proposed districts appeared to meet the size, location, and unit yield requirements set forth in the Section 3A Guidelines (now Section 3A Regulations). The total cost of RKG's services for the "early action" 3A-TA Program was $60,000. This cost covered RKG's services for the six participating municipalities and was not itemized by municipality.

9. On September 25, 2023, the Town of Middleborough submitted a second request for MHP's 3A-TA Program.

10. On November 28, 2023, MHP awarded the Town of Middleborough technical assistance services in an amount not to exceed $20,000 to assist the Town in complying with the MBTA Communities Law by providing the services of Southeastern Regional Planning and Economic Development District ("SRPEDD"). SPREDD executed a contract with MHP to provide the following services: review of existing zoning bylaws, participation in educational and progress meetings, bylaw/ordinance development, regulatory review, compliance modeling, and pre-adoption bylaw review. The scope of services was outlined in an exhibit to the contract, and a true and accurate copy of that exhibit is attached to this affidavit as Exhibit A. SRPEDD

invoiced for, and MHP paid, $5,352 of the not to exceed amount of $20,000 allowed under the contract.

Hanson 3A-TA Grants

11. On October 18, 2022, the Town of Hanson submitted a request for MHP's 3A-TA Program.

12. On February 22, 2023, MHP awarded the Town of Hanson technical assistance services in an amount not to exceed $19,890 to assist the Town in complying with the MBTA Communities Law by providing the services of Old Colony Planning Council. Old Colony Planning Council executed a contract with MHP to provide the following services: initial education and timeline planning, administrative review, evaluation of existing or proposed zoning district(s) for compliance with location, size, and minimum unit capacity, bylaw/ordinance development, and regulatory review. The scope of services was outlined in an exhibit to the contract, and a true and accurate copy of that exhibit is attached to this affidavit as Exhibit B. Old Colony Planning Council invoiced for, and MHP paid, $18,326 of the not to exceed amount of $19,890 allowed under the contract.

13. On May 30, 2023, the Town of Hanson submitted a second request for MHP's 3A-TA Program.

14. On September 15, 2023, MHP awarded the Town of Hanson technical assistance services in an amount not to exceed $19,400 to further assist the Town in complying with the MBTA Communities Law by providing the services of Vanasse Hagen Brustlin. Vanasse Hagen Brustlin executed a contract with MHP to provide the following services: initial zoning review and visioning, compliance evaluation, local consensus building, direct implementation, project administration, and participation in check-in meetings. The scope of services was outlined in an

exhibit to the contract, and a true and accurate copy of that exhibit is attached to this affidavit as Exhibit C. Vanasse Hagen Brustlin invoiced for, and MHP paid, the maximum amount of $19,400 allowed under the contract.

Wrentham 3A-TA Grants

15. On March 6, 2023, the Town of Wrentham submitted a request for MHP's 3A-TA Program.

16. On April 10, 2023, MHP awarded the Town of Wrentham technical assistance services in an amount not to exceed $20,000 to assist the Town in complying with the MBTA Communities Law by providing the services of Bohler Engineering, MA, LLC. Bohler Engineering, MA, LLC executed a contract with MHP to provide the following services: identification and evaluation of a proposed zoning district for compliance with location, size and unit capacity requirements. The scope of services was outlined in an exhibit to the contract, and a true and accurate copy of that exhibit is attached to this affidavit as Exhibit D. Bohler Engineering, MA, LLC invoiced for, and MHP paid, the maximum amount of $20,000 allowed under the contract.

17. On October 27, 2023, the Town of Wrentham submitted a second request for MHP's 3A-TA Program.

18. On December 13, 2023, MHP awarded the Town of Wrentham technical assistance services in an amount not to exceed $20,000 for further services from Bohler Engineering, MA, LLC. Bohler Engineering, MA, LLC executed a contract with MHP to provide the following services: refinement of the compliance model, exploration of a mandatory mixed-use district, and preparation of materials for Town Meeting. The scope of services was outlined in an exhibit to the contract, and a true and accurate copy of that exhibit is attached to

this affidavit as Exhibit E. Bohler Engineering, MA, LLC invoiced for, and MHP paid, the maximum amount of $20,000 allowed under the contract.

Middleton and Marshfield

19. MHP has never received a request for its 3A-TA Program from the Town of Middleton.

20. MHP has never received a request for its 3A-TA Program from the Town of Marshfield.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Katharine Lacy

March 18, 2025 Katharine Lacy

A

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

SRPEDD

Exhibit A

Middleborough 3ATA Round 1 Scope of Work

Total Proposed Technical Assistance: $20,000
Anticipated Project Start: November 1st, 2023
Anticipated Project End: April 30th, 2024

Review of Existing Zoning ($2,000)

- Analysis of existing zoning districts and their allowed uses;
- Highlight of relevant details for Middleborough's districts, particularly the existing 40R; and
- Document and illustrate existing "on-the ground" development patterns and trends.

Educational and Progress Meetings ($3,000)

- Five (5) meetings with staff, boards, and local officials about requirements of law, and Middleborough's desired approach to satisfying Section 3A requirements; and
- Produce educational materials about potential zoning changes for consumption by Town Boards and the public.

By-Law/Ordinance Development/Regulatory Review ($10,000)

- Translate proposed district requirements (use, intensity, location, exceptions, etc.) into draft zoning amendment or new bylaw;
- Where necessary, provide draft amendments to the Town's design guidelines;
- Draft all necessary district GIS boundaries and maps; and
- Develop all necessary draft amendments to existing By-laws/Ordinances in a form for legal review.

Compliance Modelling and Pre-Adoption Review ($5,000)

- Review proposed zoning and assisting with completion of the model checklist;
- Running the model to test for compliance with district size, unit capacity, density metrics, etc.; and
- Submission of the draft bylaw and compliance model for "Pre-Adoption Review" by the Executive Office of Housing and Livable Communities.

Plymouth Superior Court 2583CV00184 2025-P-0954

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

B

Exhibit A

HANSON

MBTA Communities Technical Assistance Statement of Work

Type of Technical Assistance Requested
Developing Use and Intensity Requirements
Calculating Capacity and Gross Density Requirements
Drafting Zoning Amendment

Compliance Readiness
Municipality is actively engaged in planning for compliance

Municipal Capacity
Municipality has limited capacity to pursue compliance

	Hours	Rate	total
Setting the Table			
• Presentation for staff, boards, local officials and the public introducing the MBTA communities' program and requirements of the law.	6	90.00	540.00
• Develop timeline that includes Town Counsel review of proposed bylaw changes/amendments, Planning Board hearings and public review, Town Meeting warrant opening/closing and Town meeting vote date.	2	90.00	180.00
Administrative Review			
• Review of existing zoning and analysis of obstacles; identify non-compliant neighborhoods and districts.	24	90.00	2,160.00
• Locate and delineate districts.	4	90.00	360.00
• Review of existing planning studies (HPP, Master Plan, et.) for designated housing and applicable land use goals: identify conflicts with	15	90.00	1,350.00
• Work with staff and local boards to identify 1-4 potential alternative districts.	10	90.00	900.00
• Outline potential regulatory changes required for compliance (height, sp requirements, use restrictions).	10	90.00	900.00
• Explore options to address affordability needs.	6	90.00	540.00
• Develop use and intensity requirements.	8	90.00	720.00
• Calculate capacity and gross density requirements.	8	90.00	720.00
• Work with the municipality to propose draft zoning amendments to be reviewed by Town. Counsel in preparation for the Town Meeting warrant.	20	90.00	1,800.00
Evaluate Existing or Proposed District (s) for Compliance with Location, Size and Minimum Unit Capacity			
• Export parcel data and import data into the compliance model.	3	90.00	270.00
• Review existing zoning and assisting with completion of the model checklist.	6	90.00	540.00

• Review proposed zoning and assisting with completion of the model checklist.	12	90.00	1,080.00
• Determine parcel overrides in the model if changes to constrained land are required.	6	90.00	540.00
• Run the model to test for compliance with district size, unit capacity, density metrics, etc.	6	90.00	540.00
• Test potential modifications and amendments to district boundaries and/or intensity requirements.	12	90.00	1,080.00
• Provide a set of written recommendations aimed at reaching compliance.	7	90.00	630.00

By-Law/Ordinance Development/Regulatory Review

• Translate proposed district requirements (use, intensity, location, exceptions, etc. into draft zoning amendment.	25	90.00	2,250.00
• Review existing zoning and other applicable state and local regulations for ALL potential conflicts (limitations, restrictions, defined terms).	12	90.00	1,080.00
• Develop recommended amendments to existing By-law/Ordinance in a form customary to municipality.	12	90.00	1,080.00
• Prepare easy-to understand explanatory material (graphic and narrative).	7	90.00	630.00
Total estimate	221		19,890.00

TIMEFRAME ESTIMATE: 5 months

C

SCOPE OF WORK

1. INITIAL ZONING REVIEW AND VISIONING

1.1 Tour of Potential District Properties

The Town, in its previous engagement with the Old Colony Planning Council, has identified the candidate multifamily district. The VHB Team will tour this district, and the surrounding area, to understand built conditions, including nearby land uses and amenities, roadway conditions, accessibility, and in general, key issues and opportunities.

VHB will document conditions through written notes and photographs that can be used by the Town in subsequent community engagement efforts, and in outreach with the Executive Office of Housing and Livable Communities.

1.2 Review of Existing Zoning and Planning Documents

VHB will review the Town's existing zoning map and zoning by-laws to identify regulatory impediments to housing density throughout the candidate district. VHB will also review the Town's existing Flexible Zoning Overlay regulations and consider how these regulations will need to be addressed in the new multifamily overlay language.

Further, VHB will review the Town's Comprehensive Plan and other planning studies to confirm an understanding of the community's housing and economic development goals, in addition to web-based resources to gather relevant information. These resources could include CoStar, US Census Data, and State GIS data.

VHB will prepare a series of slides featuring photographs, maps, diagrams, and infographics to build a narrative around the rezoning initiative.

2. COMPLIANCE EVALUATION

2.1 Verify OCPC Compliance Evaluation

VHB will review the compliance tool, previously completed by OCPC, to verify preliminary compliance with the state's requirements. Based on the findings from this exercise, VHB will make any modifications that may be needed to the geography or dimensional requirements of the candidate district.

2.2 Preliminary Outreach to HLC

VHB will complete a Pre-Application Form and submit it to the Executive Office of Housing and Livable Communities (HLC), to verify that the candidate district complies before moving forward with local outreach. Once HLC staff have had the chance to review the Pre-Application form, VHB will facilitate a meeting / work session with HLC staff to discuss, and if needed, modify the candidate district to reflect HLC feedback.

3. LOCAL CONSENSUS-BUILDING

3.1 Prepare District Visuals

In order to assist with the process of local outreach and consensus-building, VHB will prepare a series of images representing existing conditions in the candidate district, highlighting the issues and opportunities that the multifamily zoning overlay will help to address.
VHB will work closely with the Town to ensure that these images are supportive of the Town's preferred messaging strategy, and supplement the slide deck (Task 1.2) with images to identify and illustrate the district's needs.

4. DISTRICT IMPLEMENTATION

4.1 Full HLC Application

VHB will prepare the full application, to be submitted to HLC, defining all aspects of the proposed multifamily district and demonstrating compliance. It is anticipated that this application will be supported by narrative, photographs, maps, and the Excel-based compliance sheet.

4.2 Zoning Overlay Language

Once the district has been confirmed, VHB will prepare draft language to be added to the Town's zoning bylaw as a multifamily zoning overlay. VHB will review benchmark overlays from other Massachusetts municipalities that have drafted or adopted new overlays in response to the new legislation. VHB will provide draft language for the zoning district in accordance with State requirements, including the following sections:

- Purpose
- Establishment and Applicability
- Definitions
- Permitted Uses
- Dimensional Standards
- Off-Street Parking
- Severability

The following sections are noted as "optional". Once the zoning district area has been confirmed, VHB will determine whether draft language for the following sections will be included:

- General Development Standards
- Affordability Requirements
- Site Plan Review

5. PROJECT ADMINISTRATION AND CHECK-IN MEETINGS

VHB will perform typical project management tasks in support of project administration.

VHB will conduct check-in calls with the Client throughout the project (up to 3). The dates and agendas for these meetings will be established in the early phases of the project.

COMPENSATION

VHB's fee will be $19,400, as follows. The work will be performed primarily by Luke Mitchell, Christa McGaha, and Jennifer Nelson.

	Hours	Fee
Task 1	22	$3,700
Task 2	30	$4,800
Task 3	44	$5,000
Task 4	26	$4,100
Task 5	10	$1,800
TOTAL	**132**	**$19,400**

ASSUMPTIONS

VHB assumes the following:

- VHB is dependent upon the Client to provide documentation and data on a timely basis.
- This scope of work does not include cost estimation of any kind.
- This scope of work does not include any site surveys or other engineering studies.
- Any meetings with local stakeholders or town/state agencies not described herein will require additional contract coverage.

Prepared By: **Luke Mitchell** Department Approval: **Mark Junghans**

Please execute this Client Authorization for VHB to proceed with the above scope of services at the stated estimated costs. No services will be provided until it is signed and returned to VHB.

☒ Subject to attached terms & conditions. ☐ Subject to terms & conditions in our original agreement dated

Vanasse Hangen Brustlin, Inc. Authorization

By:

Print: Mark Junghans

Title: Principal

Date: August 25, 2023

Client Authorization *(Please sign original and return)*

By:

Print:

Title:

Date:

D

Wrentham Scope of Work
Date: 4/4/23

Lump Sum Fee = $20,000

PHASE 200 – MBTA 3A-TA Round 1 Support

A. Initial Education and Visioning

- Coaching of town staff at interim meetings about requirements of 3A law
- Review of existing zoning and analysis of obstacles; identify non-compliant neighborhoods and districts
- Review of any applicable existing planning studies for designated housing and applicable land use goals: identify potential conflicts with existing zoning
- Work with staff to identify up to three (3) potential alternative districts
- Documentation of existing conditions in areas of analysis to identify development opportunities
- Outline potential regulatory changes required for compliance (height, sp requirements, use restrictions)

B. Evaluating Existing or Proposed District(s) for Compliance with Location, Size and Minimum Unit Capacity

- Exporting parcel data and importing data into the compliance model
- Reviewing existing and proposed zoning and assisting with completion of the model checklist
- Determining parcel overrides in the model if changes to constrained land are required
- Running the model to test for compliance with district size, unit capacity, density metrics, etc.
- Testing potential modifications and amendments to district boundaries and/or intensity requirements
- Providing the community with a set of written recommendations aimed at reaching compliance

C. By-Law/Ordinance Development/Regulatory Review

- Translate proposed district requirements (use, intensity, location, exceptions, etc.) into draft zoning amendment, including potential existing zoning changes to eliminate conflicts
- Assist in developing necessary amendments to existing By-law/Ordinance in a form customary to municipality
- Preparation of an exhibit that illustrates the proximity to MBTA modes of transit
- Prepare easy-to understand explanatory material (graphic and narrative)

D. Project Meetings

- Preparation for an attendance at up to five (5) meetings and conference calls with MHP and town staff throughout the Round 1 support phase.

E

Exhibit A

PROPOSAL

November 16, 2023
Via Electronic Mail

Massachusetts Housing Partnership
160 Federal Street
Boston, MA 02110

Attention: Katy Lacy

RE: Professional Planning Services
Technical Assistance
MBTA Communities
Wrentham, Massachusetts
Bohler Project #MAB230036

Dear Ms. Lacy:

Thank you for this opportunity to present our Proposal for Professional Planning Services to be rendered in connection with Phase II for the above referenced municipality. It was a pleasure to discuss the proposed scope with the Town of Wrentham. As we understand at this time, Wrentham is requesting technical assistance for Phase II and are requesting assistance in revisions to the compliance model, exploring the use of a Mandatory Mixed-Use District, and support through the information sessions.

Our office's obligation as defined within this Proposal will be to provide technical assistance in this community outreach phase. For clarity, we have delineated our firm's services more specifically as outlined in the following phases with the following assumed schedule:

PHASE 210 – MBTA 3A-TA Round 2 Support:

A. Refinement of the Compliance Model and Exploring Mandatory Mixed-Use
   a. Review of the Standards for Mandatory Mixed-Use and determining if the contemplated area meets requirements
   b. Preparation of one revision to the compliance model based revised areas per town feedback and the utilization of a Mandatory Mixed-Use district

B. Preparation for Town Meeting
   a. Development and preparation of exhibit plans, graphics, and explanatory material for information session based on revised compliance model.

C. Meeting Attendance
   a. Bohler attendance at two (2) public information sessions
   b. Bohler attendance at up to three (3) remote meetings with town staff

Proposed Town Schedule
- December – Meeting with Wrentham and Bohler to discuss new areas
- January – Round 1 revised compliance model for review by Wrentham
- January – Meeting with Wrentham and Bohler to discuss findings
- February – Round 2 revised compliance model for review
- March – Preparation of exhibit plans and frame out information sessions
- March - Meeting with Wrentham and Bohler to prepare for information session
- Early March – Information Session #1
- April- Meeting with Wrentham and Bohler to prepare for information session
- End April – Information Session #2

- May - Meeting with Wrentham and Bohler to prepare for information session
- **June – Town Meeting**

This scope of work is anticipated to be completed by June 2024 and expires December 2024.

Reimbursable Expenses:

These expenses could include, but are not limited to, printing, graphics, photography, public hearing notices, travel, and traffic data collection, and will be billed in accordance with our current fee schedule.

** Mileage reimbursement subject to change based upon IRS standard mileage rate.

Miscellaneous Reimbursable Expenses:	
Postage/Federal Express & Printing Supplies	$Cost + 15%
Mileage Reimbursement**	Current IRS rate
Travel (Hotel, Airfare, Meals)	$Cost + 15%
Printing	$4.00/sheet
Computer Mylars/Color Plots	$20.00/sheet
Outside Services or Fees	$Cost + 15%
Photo Copies	$0.20/each
Color Photo Copies	$1.50/each

The Firm reserves the right to modify or increase its billing rates and reimbursable expense rates once annually during the term of this Contract.

FEES:

The scope of services will be provided for the lump sum fees summarized below.

	WORKSCOPE:	**FEES:**
PHASE 210	MBTA 3A-TA Round 2 Support	$20,000

Items not included in this Proposal are any activities not specifically identified herein, design and permitting services, miscellaneous reimbursable expenses, or other work scope or permits not specifically identified herein.

The pricing described in this Contract is valid and in effect for one-hundred and eighty (180) days from the date of this Contract. After one-hundred and eighty (180) days, the Firm has the right to modify and/or increase the pricing described herein. Further, if all of the scopes of Service described in this Contract are not authorized in their entirety within ninety (90) days of the date the Client authorizes the first scope of Service, pricing for any unauthorized phases or scopes of Service are subject to the Firm's modification and/or increase.

Invoices for Professional Services and expenses incurred shall be generated on a monthly basis and are due and payable upon receipt. Additionally, attached to this Proposal are the "Standard Terms and Conditions" of all agreements between our Firm and its clients. The attached "Standard Terms and Conditions" shall form a part of this Proposal and are incorporated herein by reference.

Thank you again for the opportunity to provide our Proposal for Professional Services to be rendered to your office on this project. We are eager to continue our relationship with your organization, and trust you will find our firm's services beneficial to your development objectives.

If you have any questions or comments or wish to discuss this Proposal in further detail, please feel free to contact our office at your convenience.

Sincerely,

BOHLER ENGINEERING MA, LLC

Angela Botto

Zachary L. Richards, P.E.

ACCEPTED BY:

Massachusetts Housing Partnership

By: _____

Katy Lacy (date)

Enclosures

COMMONWEALTH OF MASSACHUSETTS
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AFFIDAVIT OF DAVID MOHLER

I, David Mohler, hereby depose and say as follows:

1. I am the Executive Director of the Massachusetts Department of Transportation ("MassDOT")'s Office of Transportation and Planning, where I have served since 2007.

2. The facts set forth in this affidavit either are personally known to me or are based on knowledge I have acquired through review of documents kept by MassDOT in the ordinary course of its business.

Overview of Safe Routes to School ("SRTS") Grant Program

3. Pursuant to G.L. c. 6C, § 10, one of my responsibilities as Executive Director is to administer all aspects of the Safe Routes to School ("SRTS") program, a federal grant program established under 23 U.S.C., § 208(b).

4. SRTS is a competitive, federally funded initiative administered by MassDOT, which is intended to enable and encourage children, including those with disabilities, to walk and bicycle to school. SRTS facilitates the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution within the area surrounding publicly funded K–12 schools.

5. The Commonwealth's grantmaking under the SRTS program is conducted on a rolling basis. To qualify to seek an SRTS grant, individual schools in the Commonwealth must first enroll for at least six months as an SRTS school partner. School partners receive technical assistance in designing, implementing, marketing, and evaluating initiatives tailored to an individual school's needs and priorities. School partners must then work to implement SRTS education, encouragement, engagement, and evaluation practices and programs (the "non-infrastructure component").

6. Following registration as a school partner for six months or more and participation in the non-infrastructure component of the program, schools become eligible to apply for SRTS infrastructure funding (the "infrastructure component").

7. The infrastructure component of the SRTS program funds transportation construction and capital improvement projects designed to improve safety and/or increase the number of children walking and biking to school.

8. MassDOT's SRTS Committee (the "Committee") reviews all applications received and submits recommendations on the final approval or denial of individual SRTS grant funding applications to me for my review. I decide whether applications are denied or approved.

9. Once a school partner is approved to receive SRTS grant funding, MassDOT issues the school a letter stating that the application has been recommended to advance in the project initiation process. *See* Ex. A.

10. The school partner must then complete and submit a project need form ("PNF") and, if approved, an additional questionnaire describing the project's scope ("PS"). The PNF and PS are then considered for approval by the MassDOT Project Review Committee ("PRC") chaired by the Chief Engineer.

11. A recommendation to advance in the project initiation process does not automatically result in an award of funding. Rather, typically within the first year of the approval of an application, MassDOT assigns the project a project manager, contracts with a design/engineering firm to implement the project, and conducts a pre-construction family travel survey. Typically within the second and third years after approval of an application, project design is expected to reach 25% completion, a public hearing is held on the project, and a formal

request is submitted for municipal approval. Construction does not typically begin until approximately the fourth year after an application is initially approved.

Nichols Middle School's SRTS Infrastructure Project Application

12. On November 9, 2023, the Committee recommended for my approval an SRTS grant application submitted by Nichols Middle School ("NMS"), a partner school in the Town of Middleborough (the "Town"). Ex. A. I approved the application as recommended by the Committee.

13. On February 7, 2024, MassDOT notified NMS that its SRTS infrastructure project application was "recommended to advance in the project initiation . . . process." *Id.*

14. At this time, MassDOT has yet to contract with any design/engineering firm to implement the project. As such, project design has not reached the 25% stage, no public hearing has been held on the project, and no formal municipal approval for the project has been sought or obtained. Accordingly, no funds have been committed to this project.

15. I have reviewed the Complaint filed by the Town in this case, and particularly its allegation (¶ 124) that the Town has already "expended . . . $2.8 million" at sidewalks along Wood Street, in reliance on expected SRTS grant funding.

16. In my opinion, this allegation is inaccurate. SRTS infrastructure funding is not available to reimburse any project carried out by the Town prior to design completion and while MassDOT has yet to approve a contractor. Any expense incurred at Wood Street sidewalks is not an expense subject to reimbursement through the infrastructure component of the SRTS program.

17. I have not been instructed to pause or discontinue the Wood Street sidewalks project on account of Middleborough's noncompliance with the MBTA Communities Act, and I presently have no reason to believe that the project will not proceed through the SRTS process in the ordinary course.

18. I declare under penalty of perjury that the foregoing is true and correct.

Mar. 17, 2025

David Mohler
Executive Director
Office Transportation and Planning
Massachusetts Department of Transportation

A

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Monica Tibbits-Nutt, Secretary & CEO

massDOT
Massachusetts Department of Transportation

February 7, 2024

Mel Jenks
Grant Writer
Town of Middleborough
20 Centre Street, Third Floor
Middleborough, MA 02346
Via Email: mjenks@middleboroughma.gov; ecd@middleboroughma.gov

Dear Mr. Jenks:

Thank you for applying to the Massachusetts Department of Transportation's (MassDOT) solicitation process for the 2023-2024 Safe Routes to School (SRTS) Infrastructure Project Grant Program on behalf of the Town of Middleborough and the Nichols Middle School.

MassDOT's SRTS Project Selection Committee met on November 9, 2023, to review and score project applications. Based on this review, MassDOT is pleased to inform you that your application has been recommended to advance in the project initiation and State Transportation Improvement Program (STIP) process. A member of the SRTS team will contact you via email in the next few weeks regarding next steps.

If you have any questions, please contact Miranda Briseño, SRTS Program Coordinator, at Miranda.E.Briseno@dot.state.ma.us.

We are excited to work with you as this project advances.

Sincerely,

David J. Mohler
Executive Director
Office of Transportation Planning

CC: Carolyn Lyons, Superintendent, Middleborough Public Schools

COMMONWEALTH OF MASSACHUSETTS
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TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
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TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF AMANDA NEWMILLER

I, Amanda Newmiller, hereby depose and say as follows:

1. I am Director of Site Planning at the Massachusetts Development Finance Agency ("MassDevelopment"), where I have served since 2020.

2. The facts set forth in this affidavit either are personally known to me or are based on knowledge I have acquired through review of documents kept by MassDevelopment in the ordinary course of its business.

The Town of Hanson's
Application to the Site Readiness Program through the FY25 Round of the Community One Stop for Growth

Overview of the Site Readiness Grant Program

3. One of my responsibilities at MassDevelopment is to oversee and administer the Site Readiness Program established by *An Act Relative to Job Creation and Workforce Development*, 2016 Mass. Acts c.219, s.2A.

4. The Site Readiness Program is a competitive grant program that provides funding for site assembly, site assessment, predevelopment permitting and other predevelopment marketing activities that enhance a site's readiness for commercial, industrial or mixed-use development. Municipalities among other entities are eligible to seek and receive Site Readiness Program grants.

5. MassDevelopment solicits applications for funding from the Site Readiness Program through the Commonwealth's Community One Stop for Growth portal, a centralized process through which an applicant can seek grant funds from multiple funding programs.

6. An upcoming Site Readiness grant round is publicized through a Community One Stop for Growth "Notice of Funding Availability," which sets forth information about the grantmaking process.

7. A municipality that seeks a Site Readiness grant applies using the consolidated "Community One Stop for Growth" application.

8. If a municipality is awarded a Site Readiness grant, it is notified of that fact, along with the amount of the award, through an award letter. The municipality may then be requested to submit additional "pre-contract" information to MassDevelopment such as a scope of services, an estimated project completion date, project contact information and other clarifying items that MassDevelopment may request.

9. Following a satisfactory pre-contract submission, MassDevelopment and the municipality then execute a contract that finalizes the grant award. MassDevelopment uses a standard contract for Site Readiness grants to municipalities.

The Town of Hanson's FY25 Site Readiness Grant Application

10. On June 3, 2024, the Town of Hanson ("Hanson") applied for a Site Readiness Program grant related to its 212 Industrial Boulevard project.

11. In a letter dated October 11, 2024, MassDevelopment notified Hanson that its application had been approved in the amount of Seventy Thousand and 00/100 Dollars ($70,000). MassDevelopment's award letter, a copy of which is attached as Exhibit A, advised Hanson that "this letter does not constitute an agreement or contract with MassDevelopment or the Commonwealth of Massachusetts, and the grant award is not final until the organization has executed a contract with MassDevelopment." The letter also advised Hanson that "a contract will not be executed if [Hanson] is noncompliant with Section 3A of M.G.L. Chapter 40A as determined by EOHLC [i.e., the Commonwealth's Executive Office of Housing and Livable Communities]."

12. On February 15, 2025, MassDevelopment was informed that the Town of Hanson had been determined to be in interim compliance by EOHLC.

13. MassDevelopment has begun working with the Town of Hanson to collect any necessary pre-contract information and draft its Site Readiness Grant Agreement in the amount of $70,000.

14. MassDevelopment stands ready to execute a Grant Agreement with the Town of Hanson and will authorize its consultant to commence work under the Agreement as soon as it is fully executed.

I declare under penalty of perjury that the foregoing is true and correct.

March 17, 2025

Amanda Newmiller
Amanda Newmiller

EXHIBIT A

MassDevelopment

99 High Street
Boston, MA 02110

Main: 617-330-2000
Fax: 617-330-2001

massdevelopment.com

VIA Electronic Mail to tdefrias@hanson-ma.gov
October 11, 2024

Antonio De Frias, Town Planner
Town of Hanson
542 Liberty Street
Hanson, MA 02341

RE: Application: 00720

Dear Mr. De Frias,

Congratulations on the Town of Hanson's successful application to the FY25 Round of the Community One Stop for Growth.

On behalf of the Healy-Driscoll Administration, I am pleased to inform you that a grant in the amount of $70,000 from the Site Readiness Program has been approved to support the 212 Industrial Boulevard project.

Maura Healey
Governor

Kim Driscoll
Lieutenant Governor

Yvonne Hao, Chair
Secretary of Economic Development

If this project is located in an MBTA Community, please note that a contract will not be executed if the community is noncompliant with Section 3A of M.G.L. Chapter 40A as determined by EOHLC.

The Site Readiness Program Award is to support due diligence and planning activities for your project and the next step is to work with our staff to confirm the scope for your project, which may differ from your application, and finalize a grant agreement. Please review the accompanying sample grant agreement template carefully. The specifics of this document will be identified during the scoping process. Please note, this grant is recoverable if the site, or any portion thereof, is sold, conveyed, gifted, demised, ground leased, otherwise transferred, or refinanced within thirty (30) years of the execution of the agreement. Please see Section 2(e) of the sample grant agreement for additional information.

Please be advised that this letter does not constitute an agreement or contract with MassDevelopment or the Commonwealth of Massachusetts, and the grant award is not final until the organization has executed a contract with MassDevelopment. You should not proceed with any grant activities until a contract is in place.

Sincerely,

Gary S. Walker
Interim Executive Vice President, Real Estate

Enclosure – Sample Grant Agreement

Cc: Lisa Green, Esq, Town Administrator

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF CHRISTINE POND

I, Christine Pond, hereby depose and say as follows:

1. I am a Behavioral and Mental Health Specialist at the Massachusetts Department of Elementary and Secondary Education.

2. In my role, I collaborate with vendors to support school districts to build integrated, multi-tiered, culturally responsive systems to meet the needs of their students' families and school staff and work with schools/districts to build strong partnerships with community-based mental health agencies and/or providers.

3. The facts set forth in this affidavit are either personally known to me or my knowledge of them has been acquired through review of documents kept in the ordinary course of DESE's business.

4. The Supporting Students' SEL, Behavioral & Mental Health and Wellness Grant is a state-funded competitive grant program that seeks to adapt, expand or strengthen multi-tiered systems of support to respond to the social-emotional and behavioral health needs of students, families, and educators and to build strong partnerships with community-based mental health agencies and/or providers to create comprehensive mental health systems.

5. Middleborough applied for the Supporting Students' SEL, Behavioral & Mental Health and Wellness Grant in September 2025.

6. On November 21, 2025, Middleborough was notified that its district's grant application for FY25 was awarded pending funding approval. DESE informed Middleborough that the grant was awarded with a start date of 11/21/24 so any grant expenditures could be incurred as of that date, but that it was still waiting for the approval to release the funding. DESE stated that once approved, an official award letter would be available and funds could then be drawn down to reimburse expenses.

7. On February 6, 2025, DESE issued a status update to grant awardees that they will not have access to draw down awarded funds and its award status is not public until a Governor's Award Letter has been issued.

8. On February 20, 2025, DESE issued a status update to grant awardees that grant programs generally require that they certify compliance with state laws and that the Healey-Driscoll Administration believes in the MBTA Communities Act and has directed all agencies to take the goal of increased housing into account in making discretionary funding determinations.

9. On February 24, 2025, the Director of Student Services for Middleborough Public Schools emailed me to inquire about the status of Middleborough's grant. I responded to the email that day and informed the Director that his district is not eligible to receive the grant because Middleborough is not in compliance with state law.

10. On March 7, 2025, I emailed the Director of Student Services for Middleborough Public Schools to inform him that DESE is in the process of moving his grant award forward in the system so that the district could access grant funds for previously incurred expenses. Specifically, I requested that the Director only request grant funds that were expended from November 21, 2024, through February 20, 2025, the project duration of the FY25 grant.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Christine Pond

Mar. 18, 2025 Christine Pond

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
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TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF HAJI SHEARER

I, Haji Shearer, hereby depose and say as follows:

1. I am the Associate Commissioner of Family and Community Supports for the Commonwealth of Massachusetts Department of Early Education and Care ("EEC"), where I have served since 2022.

2. The facts set forth in this affidavit either are personally known to me or are based on knowledge I have acquired through review of documents kept by EEC in the ordinary course of its business.

Overview of the Coordinated Family and Community Engagement Grant

3. One of my responsibilities as Associate Commissioner is to administer all aspects of the Coordinated Family and Community Engagement ("CFCE") Grant.

4. The purpose of the CFCE Grant is to address the multi-generational, social-emotional, developmental, and community needs of young children (from birth through age six) and their families through locally-based programs in the community that provide outreach, parent-child playgroups, developmental screenings, parent education, and home visiting.

5. A municipality that seeks a CFCE Grant must first submit an application to EEC, as part of a competitive bid process.

6. If the municipality is awarded a CFCE Grant, it is notified of that fact, along with the amount of the award, through an award letter. The municipality must then submit additional "pre-contract" information to EEC.

7. Following a satisfactory pre-contract submission, EEC and the municipality then execute a contract that finalizes the grant award. EEC uses a standard contract for CFCE Grants to municipalities; such a contract contemplates that EEC will reimburse the municipality for

covered expenses that the municipality has incurred within the scope of the grant award and the supporting materials previously submitted by the municipality.

The Town of Marshfield's FY24 CFCE Grant Application

8. In FY24, EEC, as part of its competitive bid process for CFCE grants, awarded the Town of Marshfield ("Marshfield") a FY24 CFCE grant in the amount of $45,700.

9. The contract between EEC and Marshfield was executed on July 11, 2023.

10. The initial duration of the contract is from July 1, 2023 though June 30, 2026.

11. The contract has one option to renew for a period of two years, from July 1, 2026 through June 30, 2028. Any CFCE grantee in good financial and programmatic standing with EEC that received a FY24 CFCE grant, may apply to EEC for a non-competitive FY25 CFCE continuation grant of the existing FY24 CFCE grant awarded in June 2023.

12. On March 13, 2025, EEC released the FY26 CFCE Renewal Grant for existing FY24 CFCE grants. Applications are due April 17, 2025.

13. Because Marshfield is an existing FY24 CFCE grantee under contract with EEC, its grant award and related funds will not be rescinded for the duration of the contract and Marshfield is eligible for the FY26 CFCE Renewal Grant regardless of its current non-compliance with the MBTA Communities Act. At my instruction, the EEC Family and Community Quality Specialist for Marshfield sent an email to the Marshfield Grant Coordinator on March 9, 2025, to inform her as such.

14. Marshfield's eligibility for the FY26 CFCE Renewal Grant remains subject to the terms of the grant and the renewal grant as stated herein and in the public posting of March 13, 2025.

I declare under penalty of perjury that the foregoing is true and correct:

Haji Shearer
Associate Commissioner of Family
and Community Supports
Commonwealth of Massachusetts Department
of Early Education and Care

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
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TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF KEVIN STANTON

I, Kevin Stanton, hereby depose and say as follows:

1. I am the Executive Director of the Executive Office of Public Safety and Security ("EOPSS")'s Office of Grants and Research ("OGR"), where I have served since 2004.

2. The facts set forth in this affidavit either are personally known to me or are based on knowledge I have acquired through review of documents kept by OGR in the ordinary course of its business.

Overview of Municipal Local Cybersecurity Grant Program

3. One of my responsibilities as Executive Director is to administer all aspects of public safety grant funds, including the Federal Fiscal Year 2023 Municipal Local Cybersecurity Grant Program (the "Cybersecurity Grant Program"), established by 6 U.S.C., § 665g.

4. The Cybersecurity Grant Program is a competitive, federally funded grant program intended to support local government agencies with improving cybersecurity. *See* Ex. A at 3. The Cybersecurity Grant Program requires entities receiving awards to match 20% of the federal award with state funds.

5. If a municipality is selected to receive a grant, it next receives an award letter, describing the amount of the grant and stating that "[a]dditional correspondence, including all the documents necessary to make this award official, are forthcoming." *See* Ex. B.

6. OGR will then enter into a contract with the municipality. Contracts between OGR and municipalities under the Cybersecurity Grant Program call for each municipality to first incur contemplated expenses, and then seek reimbursement from OGR, which will be forthcoming as long as the expenses are as contemplated by the contract. *See* Ex. C (outlining terms and conditions to receive a grant).

The Town of Middleborough's Municipal Local Cybersecurity Grant Program Application

7. On March 7, 2024, the Town of Middleborough ("Middleborough") applied to OGR for a grant under the Cybersecurity Grant Program.

8. On July 11, 2024, OGR notified Middleborough that it would be awarded a grant under the program in the amount of $80,500. Ex. B. The grant award was subject to execution of a contract with OGR, and other conditions set forth in the contract. *See* Ex. C. Accordingly, on December 18, 2024, OGR entered into a contract with Middleborough for an award of $80,500 in federal funding from the Cybersecurity Grant Program. *Id.* A copy of this contract is attached as Exhibit C.

9. OGR subsequently contracted with Middleborough and provided the required state match funds, totaling $20,012.50 for use as the required 20% match. Ex. D. A copy of this additional contract is attached as Exhibit D.

10. In all, Middleborough was awarded $100,512.5 in grant funding. Exs. C–D.

11. I have reviewed the Complaint filed by Middleborough in this case, and particularly its allegation (¶124) that Middleborough "has expended . . . $100,050" on the "[c]reation of CIRT and TTX" under the Cybersecurity Grant Program.

12. In my opinion, the grant monies described are unaffected by Middleborough's compliance or noncompliance with G.L. c. 40A, § 3A. Middleborough's contracts for awards under this program have been executed, and OGR will proceed with the grant under the terms of those contracts.

13. As of the date of this affidavit, Middleborough has submitted no requests for reimbursement to OGR.

14. If Middleborough's allegation that it spent $100,050 on the creation of CIRT and TTX projects is true, and Middleborough otherwise complies with its contractual obligations, OGR anticipates disbursing in full to Middleborough a Cybersecurity Grant Program award sufficient to cover those expenses, as envisioned by the contract.

I declare under penalty of perjury that the foregoing is true and correct.

Mar. 17, 2025

/s/ Kevin Stanton
Kevin Stanton
Executive Director
Office of Grants and Research
Executive Office of Public Safety and Security

A

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Office of Grants and Research
Notice of Availability of Grant Funds

Municipal Local Cybersecurity Grant Program

Maura T. Healey
Governor

Kimberley L. Driscoll
Lieutenant Governor

Terrence M. Reidy
Secretary

Kevin J. Stanton
Executive Director

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

Notice of Availability of Grant Funds (AGF)
Office of Grants and Research

February 9, 2024

Municipal Local Cybersecurity Grant Program (MLCGP)

Applications Due: March 8, 2024; 4:00 p.m.

Overview

The Office of Grants and Research (OGR) will make available approximately **$7,289,717** to units of local government through the federal State and Local Cybersecurity Grant Program (SLCGP) award to assist local communities in strengthening cybersecurity while reducing systemic cyber risk. To keep pace with today's dynamic and increasingly sophisticated cyber threat environment, local governments and local public entities in Massachusetts must adopt key cybersecurity best practices, take decisive steps to modernize their approach to cybersecurity, and advance towards a Zero Trust Architecture. This competitive grant opportunity is being referred to as the **"Municipal Local Cybersecurity Grant Program" (MLCGP)** to avoid confusion with the application process. There is no local cost match for the MLCGP.

Applicant Eligibility

Only a Massachusetts local unit of government (e.g., municipalities, regional school districts, regional water authorities) are eligible to apply under this grant program. The **Municipal Chief Executive Officer** (Mayor, City Manager, Town Administrator, Executive Director) of the local unit of government applying for a grant award must sign the application when submitted. Only one (1) application per local unit of government is permitted for consideration of funding.

A municipality may submit a joint application that includes other municipalities in an effort to streamline the grant administrative process for itself and neighboring or nearby communities. Each separate municipality participating in a joint application will be eligible for up to the maximum award amount of $100,000.00 individually and up to maximum of $300,000.00 collectively. For example, if a joint application represents a total of three (3) towns and the maximum award amount for a local unit of government participating is $100,000.00, the total maximum award amount that may be requested is $300,000.00. A municipality will not be permitted to file a joint application if goods and services are not directly benefiting all listed partnering municipalities. No more than ten (10) municipalities may participate in a joint application.

Please note, if a municipality wishes to submit a joint application representing **greater than 3 municipalities**, the maximum amount of funding allowed to be requested may **NOT exceed $300,000.00**. A municipality listed as a partner within a joint application submitted may NOT also submit an additional application as a primary applicant.

Purpose

This grant opportunity is a competitive solicitation for local units of government within Massachusetts, interested in preventing, protecting against, mitigating, responding to, and recovering from cybersecurity threats and attacks. The purpose of funding under this AGF is to assist local units of government with improving cybersecurity by reducing susceptibility to cybersecurity threats, reducing cybersecurity vulnerabilities, and mitigating the consequences of a cybersecurity attacks by enhancing specific cybersecurity capabilities. Funding will be specifically used to acquire allowable equipment and services. Supplanting of funds is strictly prohibited. Funds for programs and services provided through this grant are intended to supplement, not supplant, other state or local funding.

Key Dates

AGF POSTED	February 9, 2024
Application Assistance Webinar (**Optional**)	February 16, 2024, at 11:00 a.m. Please register for Municipal Local Cybersecurity Grant Program Applicant Information Session here. After registering, you will receive a confirmation email containing information about joining the webinar. Brought to you by GoTo Webinar® Webinars Made Easy®
Application Due Date	**4:00 p.m. Friday, March 8, 2024**
Award Notification *(anticipated)*	May 2024
Performance Period	May 2024-June 30, 2025

Application Requirements

Under this solicitation, applicants must be a Massachusetts local unit of government. Only one (1) application per local unit of government will be permitted. The maximum amount of funding that may be requested by a unit of local government submitting an individual application is $100,000.00. If a joint application is submitted, the maximum amount that may be requested is $300,000.00 with the local units of government participating in the joint application each receiving no more than $100,000.00. A local unit of government and/or its agencies may not submit or participate in more than one application.

Applicants must identify an allowable project for funding from the list of objectives below. In accordance with federal requirements, local jurisdictions or local public entities submitting subrecipient applications for the MLCGP must address at least one or more of the five (5) Project Objectives listed in the next section in their

proposed project(s) as specifically defined in the Massachusetts State and Local Cybersecurity Grant Program Plan (MA SLCGP Plan). The MA SLCGP Plan can be obtained by municipal and local public agency applicants by emailing sarah.e.cook@mass.gov. The release of the MA SLCGP Plan to state and local government applicants was approved by the MA SLCGP Planning Committee. The MA SLCGP Plan is not for public dissemination and is to be treated by applicants as For Official Use Only (FOUO) and will only be released by OGR to authorized state and local government applicants.

Applications proposing projects not identified as addressing a cybersecurity objective in this AGF will not be approved. Applications from a local unit of government must propose a project for funding from one of the following objectives:

Project Objectives

This AGF provides five (5) Objectives from the MA SLCGP Plan that applicants must select from to identify an allowable project that assists a local community in achieving the purpose of the MLCGP. The objectives are within the MA SLCGP Plan's goals to "Implement Cybersecurity Best Practices and Security Protections Commensurate with Risk "and "Create Cyber Workforce Plans that Develop and Train Employees Commensurate with Responsibility." Only applications proposing a project from one of these five (5) Objectives will be given consideration based on their importance towards reducing and mitigating cyber risk.

Project Objectives:

1. Migration of the local municipality or local public entity to the .gov internet domain.

2. Implementation of multi-factor authentication (MFA).

3. Cybersecurity awareness training –Municipalities with a .gov domain or a network email domain owned and managed by the local unit of government are eligible to apply.

4. Development of a written cybersecurity incident response plan for a local unit of government.

5. Tabletop exercises (TTX) involving cross-functional staff members, including senior leadership of the applicant to exercise, test, and refine written cyber incident response plans.

Application Priorities

1. Include a detailed explanation of:

    a. the intended uses of funds provided under the grant and

    b. how the activities funded under the grant will meet the purpose;

    c. If a joint application, letters of intent from the Chief Executive Officer from each joint applicant stating their commitment to participate in and comply with all

MLCGP requirements, a description of how the primary applicant will ensure that all jointly participating applicants will benefit, and information specifying what allowable program and services each participating local unit of government will receive.

2. Include an assurance that the applicant will maintain and report all data, records, and information (programmatic and financial) that OGR may reasonably require; in a joint application, the local unit of government that is the primary applicant will also maintain and report all data, records, and information (programmatic and financial) that OGR may reasonably require on behalf of it and all other joint applicants;

3. Include a certification within your application that:

   a. the programs to be funded by the grant meet all the requirements of this AGF;

   b. all the information contained in the application is true and correct; and

   c. the applicant will comply with all provisions of this AGF and all other applicable State and Federal laws.

Maximum Award Amount

No award made to a single unit of local government may exceed **$100,000.00.** If a municipality wishes to submit a joint application that consists of one additional partner, the applicant may not request more than $200,000.00 in funding. A joint application consisting of 3-10 municipalities will not be awarded more than $300,000.00 in total funding.

Project Duration

The period of performance for this grant is one year. Applicants must have their program completed by June 30, 2025. The anticipated funding cycle for projects will be **May 2024 through the end of June 2025.**

Funding Disbursement

This is a cost reimbursement grant. Reimbursement requests must be submitted to OGR on a quarterly basis. Details about the reimbursement process will be provided upon award notification.

Subrecipient Requirements

Subrecipients must abide by the federal grant requirements below as well as all OGR Subrecipient Grant Conditions to be provided at the time of contracting.

Obtain a Unique Entity Identifier (UEI) and Register in the System for Award Management (SAM)

Each applicant, unless they have a valid exception under 2 CFR 25.110, must:

a. Be registered in SAM.gov before application submission;

b. Provide a valid Unique Entity Identifier (UEI) in its application; and
c. Continue to always maintain an active System for Award Management (SAM) registration with current information during the Federal Award process.

Note that subrecipients do not need to have a valid UEI at the time of application; however, *they must have a valid UEI in order to receive a subaward.*

Steps Required to Obtain a Unique Entity Identifier, Register in the System for Award Management (SAM)

Applying for an award under this program is a multi-step process and requires time to complete. Applicants are encouraged to register early as the registration process can take four weeks or more to complete. Therefore, registration should be done in sufficient time to ensure it does not impact the applicant's ability to obtain funding and/or meet required deadlines.

All entities wishing to do business with the federal government must have a unique entity identifier (UEI). The UEI number is issued by the SAM system. Requesting a UEI using SAM.gov is straightforward; the link can be found at https://sam.gov/content/entity-registration. Note that subrecipients do not need to have a valid UEI at the time of application but must have a valid UEI in order to receive a subaward.

Required Memberships, Programs, and Services

Cyber Hygiene Services – Required for subrecipients

Web Application Scanning is an "internet scanning-as-a-service." This service assesses the "health" of your publicly accessible web applications by checking for known vulnerabilities and weak configurations. Additionally, CISA can recommend ways to enhance security in accordance with industry and government best practices and standards.

Vulnerability Scanning evaluates external network presence by executing continuous scans of public, static IPs for accessible services and vulnerabilities. This service provides weekly vulnerability reports and ad-hoc alerts.

To register for the free grant required Cyber Hygiene Services, email: vulnerability@cisa.dhs.gov with the subject line "Requesting Cyber Hygiene Services – SLCGP" to get started. Indicate in the body of your email that you are requesting this service as part of the SLCGP. For more information, visit CISA's Cyber Hygiene Information Page.

Homeland Security Exercise and Evaluation Program (HSEEP) - Required for subrecipients

Exercises conducted with grant funding will be managed and conducted consistent with the Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) Homeland Security Exercise and Evaluation Program (HSEEP). HSEEP guidance for exercise design, development, conduct, evaluation, and

improvement planning is located at https://www.fema.gov/emergency-managers/national-preparedness/exercises/hseep.

Nationwide Cybersecurity Review (NCSR) - Required for subrecipients
The NCSR is a free, anonymous, annual self-assessment designed to measure gaps and capabilities of a SLT's cybersecurity programs. It is based on the NIST Cybersecurity Framework and is sponsored by DHS and the MS-ISAC.

Eligible entities and their subrecipients are required to complete the NCSR, administered by the MS-ISAC, during the first year of the award/subaward period of performance and annually. However, subrecipients receiving non-funding assistance in lieu of funding do not have to complete the NCSR.

For more information, visit Nationwide Cybersecurity Review at www.cisecurity.org.

Recommended Membership in the Multi State-Information Sharing and Analysis Center (MS-ISAC) and/or Election Infrastructure Information Sharing and Analysis Center (EI-ISAC):
Additionally, subrecipients are strongly encouraged to become a member of the MS-ISAC and/or EI-ISAC, as applicable. Membership is free.

The MS-ISAC receives support from and has been designated by DHS as the cybersecurity ISAC for State, Local, and Territorial (SLT) governments. The MS-ISAC provides services and information sharing that significantly enhances SLT governments' ability to prevent, protect against, respond to, and recover from cyberattacks and compromises. DHS maintains operational-level coordination with the MS- ISAC through the presence of MS-ISAC analysts in CISA Central to coordinate directly with its own 24x7 operations center that connects with SLT government stakeholders on cybersecurity threats and incidents. To register, please visit https://learn.cisecurity.org/ms-isac-registration. For more information, visit MS-ISAC (cisecurity.org).

The EI-ISAC is a collaborative partnership between the Center for Internet Security (CIS), CISA, and the Election Infrastructure Subsector Government Coordinating Council. The EIISAC is funded through DHS grants and offers state and local election officials a suite of elections-focused cyber defense tools, including threat intelligence products, incident response and forensics, threat and vulnerability monitoring, cybersecurity awareness, and training products. To register, please visit https://learn.cisecurity.org/ei-isac-registration. For more information, visit https://www.cisa.gov/topics/election-security.

Grants Management

1. Submission of satisfactory and timely quarterly progress reports and quarterly financial reports with all required back-up documentation.
2. Cooperation during OGR monitoring endeavors, including site visits and desk reviews.

3. Supplanting of funds is strictly prohibited. Funds for programs and services provided through this grant are intended to supplement, not supplant, other state or local funding sources.
4. All costs paid with grant funds must be direct and specific to the execution of the MLCGP funded through the United States Department of Homeland Security (DHS) State and Local Cybersecurity Grant Program (SLCGP).
5. Subrecipients must accept their award no later than 30 days from the award date. Failure to accept a grant award within the 30-day timeframe may result in a loss of funds.

Procurement

1. Subrecipients choosing to further subgrant all or any part of the award to an implementing agency or an independent contractor will enter into a written contract or memorandum of understanding (MOU) with the implementing agency or independent contractor. This written contract or MOU will include the provisions of the OGR standard subgrant conditions, and must, at a minimum explicitly outline the expected deliverables, timeframes/hours, and rates.
2. A copy of the contract or MOU must be submitted to OGR once an award is made.
3. Procurement of services, equipment, and supplies must follow M.G.L. Ch. 30B for local units of government and non-profit entities and Operational Services Division (OSD) Purchasing Guide for state agencies. Local units of government must ensure that subcontracts with private organizations have provisions ensuring any goods and services provided by the subcontractor are consistent with M.G.L. Ch. 30B procedures.

Other Requirements

1. In addition to the requirements set forth above, subrecipients are required to agree to and abide by all state rules, regulations, and conditions pertaining to the receipt, administration, and management of grant funding.
2. OGR subgrant conditions must be signed and dated at the time an award is made.
3. All costs charged to this award covered by this AGF must comply with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements at 2 C.F.R. Part 200. This includes that costs must be incurred, and products and services must be delivered, within the period of performance of the award.

Equipment and Technology

1. Equipment acquired with grant funds will be used and managed to ensure that the equipment is used to address cybersecurity risks and cybersecurity threats to information systems owned or operated by, or on behalf of, state and local governments.
2. All equipment must meet all applicable statutory, regulatory, and DHS standards to be eligible for purchasing using these funds.
3. In addition, recipients are responsible to obtain and maintain all necessary certifications and licenses for the requested equipment. Investments in emergency communications equipment must meet applicable SAFECOM Guidance recommendations. Such investments must be coordinated with the Statewide Interoperability Coordinator (SWIC) and the State Interoperability Governing Body (SIGB) to ensure interoperability and long-term compatibility.
4. MLCGP funds may be used to purchase maintenance contracts or agreements, warranty coverage, licenses, and user fees in support of a system or equipment. These contracts may exceed the period of performance if they are purchased incidental to the original purchase of the system or equipment as long as the original purchase of the system or equipment is consistent with that which is typically provided for, or available through, these types of agreements, warranties, or contracts. When purchasing stand-alone warranty or extending an existing maintenance on an already-owned piece of equipment system, coverage purchase may not exceed the period of performance of the award used to purchase the maintenance agreement or warranty, and it may only cover equipment purchased with MLCGP funds or for equipment dedicated for MLCGP related purposes. As with warranties and maintenance agreements, this extends to licenses and user fees as well.
5. Subrecipients are responsible for replacing or repairing the property that is willfully or negligently lost, stolen, damaged, or destroyed. Any loss, damage, or theft of the property must be investigated, fully documented, and made part of the official project records. A copy of the police report must be forwarded to OGR.

Reporting Alleged Waste, Fraud, and Abuse

It is the responsibility of the subrecipient to report alleged Fraud, Waste, or Abuse including any alleged violations, serious irregularities, sensitive issues or overt or covert acts involving the use of public funds in a manner not consistent with statutes, related laws and regulations, appropriate guidelines, or purposes of the grant. To report alleged waste, fraud, or abuse in DHS programs or operations, you should contact the U.S. Department of Homeland Security Office of Inspector General Hotline at **1-800-323-8603**; by fax at 202-254-4297; or online at: www.oig.dhs.gov/hotline.

Evaluation Criteria

Proposals will be evaluated based on the Evaluation Criteria listed below. It is important that proposals clearly and completely address these requirements. The Attachment A Application and Attachment B (Excel) Budget Workbook must be completed and include the following:

1. **Applicant Information (10 points maximum): Full contact information is required for all applicants, whether individual or joint.**

2. **Needs Assessment (15):**

   - Describe the municipality(s) and community(s) that will benefit from this award.
   - Provide the 2020 U.S. Census residential population of the municipality(s) participating in the application and / or serviced by the local unit of government applicant or joint applicant (e.g., regional school district, regional water district, etc.).
   - Describe your municipality(s) current unmet cybersecurity needs. Include detail about how grant funding will help address cybersecurity risks and cybersecurity threats to information systems owned or operated by, or on behalf of local governments.
   - Describe related initiatives within your municipality (if applicable). If not applicable, please indicate this in your application.

   It is important for applicants to address ***all*** *questions completely within this section. The narratives should be clearly written.*

3. **Project Description (25):**

   Please use the space provided to:

   - Describe the allowable project(s) with a detailed project scope that meets the criteria of the Municipal Local Cybersecurity Grant Program (MLCGP).
   - Describe the expected outcomes within the performance period and how those outcomes will be measured.
   - Provide a brief narrative identifying how the project(s) will be sustained by the municipality(s) or local unit of government, in the future.
   - Briefly describe how this project(s) will be managed, including key roles and responsibilities, and identification of key personnel.
   - Provide a usage plan for equipment and owners of the proposed assets to be procured (if applicable). If not applicable, please indicate this in your application.

     In a joint application, the primary applicant must provide procurement services to all joint applicants partnering with them. The usage plan must include a description of the procurement process and, if applicable, tracking and ownership of all allowable goods and services to ensure compliance with all laws and requirements. This must include ensuring that any other joint applicants receive, track, and own, as applicable, the goods and services they are obtaining as described in the application.

It is important for applicants to address ***all*** *questions completely within this section. The narratives should be clearly written.*

In a joint application, the primary applicant must provide procurement services to all joint applicants partnering with them. The usage plan must include a description of the procurement process and, if applicable, tracking and ownership of all allowable goods and services to ensure compliance with all laws and requirements. This must include ensuring that any other joint applicants receive, track, and own, as applicable, the goods and services they are obtaining as described in the application.

It is important for applicants to address ***all*** *questions completely within this section. The narratives should be clearly written.*

4. **MLCGP Project Objectives (10 points maximum):** A detailed description of how the proposed project(s) supports the MLCGP Project Objectives. Please refer to the MA SLCGP Plan for details on meeting the allowable project objectives.

5. **Milestones (15 points maximum):** A detailed timeline that illustrates how the project(s) will be completed within the performance period, to ensure adequate goals and resources are in place for completion of the proposed project(s).
6. **Budget Narrative & Budget Details (25 points maximum):** A brief narrative of what the proposed budget entails (including how the budget was determined and cost-effectiveness), as well as an accurate budget breakdown, by cost category, by cost, and by description of expenditure. If a joint application, each local unit of government participating in it must be separately described by budget breakdown, cost category, cost, and description of expenditure.

OGR will utilize the *Sub-Grantee Risk Assessment Form* through its review process to help identify if additional monitoring plan(s) and/or special conditions are required. OGR is required to evaluate each applicant's risk of non-compliance with Federal statutes, regulations and the terms and conditions of a sub-award for the purpose of determining the appropriate applicant's monitoring described in 2 CFR 200.331(b). If a joint application, each participating joint applicant must submit a Sub-Grantee Risk Assessment Form.

Additional Application Guidance

To the extent applicable, follow the "Who, What, When, Where, Why, and How" approach.

- ***Who*** (specifically) will benefit from this proposal, and who will implement the project?
- ***What*** (specifically) is being proposed, and what will be the outcome? (Define the project and its scope.)
- ***When*** will the project begin and end?
- ***Where*** will any equipment be located and/or where will project activities be focused?
- ***Why*** is this project important? ***How*** was this determined? ***How*** will the project be implemented?

Review Process

Please note that these questions above are provided as a general guide to assist applicants so that sufficient detail and specificity is included. For example, a proposal merely stating, *"Cybersecurity software will be procured,"* does not provide enough detail.

Budget Section and Budget Excel Worksheet

This section should include costs that are reasonable and allowable under the MLCGP. Budgets should include both itemized and total costs. The information provided here must align with the Project Summary Section. It is incumbent on the applicant to verify allowable costs and the information prior to submitting the application. Applicants must also complete a Budget Excel Worksheet (refer to Attachment B). Please be sure to complete both Excel tabs (the Summary sheet and Detail worksheet) and submit with your application.

Allowable Budget Cost Categories for Local Equipment and Technology

- Contract/Consultant (to install or train on how to use items purchased)
- Equipment and Technology (goods purchased)
- Other (identify any additional costs that directly correlate to goods purchased)

Definitions of each budget cost category are provided.

Allowable Budget Cost Categories	Definitions and Documentation Requirements
Consultants/Contract Costs	Consultant or Contractor fees associated with the equipment/technology purchased. For example, a consultant might be hired to install the technology.
Equipment/Technology Costs	Tangible non-expendable personal property having a useful life of more than one year; cost based on classification of equipment. Shipping and handling charges for equipment purchased should be placed in this cost category.
Other Costs	Supplies directly correlated to the equipment purchased. For example, ink or paper for a printer, batteries, etc.

Unallowable Costs

These grant funds may not be used for any of the following:

- To pay a ransom;
- For recreation or social purposes;
- To pay cybersecurity insurance premiums;
- To acquire land or to construct, remodel, or perform alterations of buildings or other facilities; and
- To pay for a retainer for cybersecurity services.

This is a competitive grant and will be subject to a review process. All applications will be reviewed and scored by three (3) reviewers. The OGR Executive Director or his designee will present the award recommendations made by the reviewers to the Massachusetts State and Local Cybersecurity Grant Program Planning Committee.

In addition to scoring recommendations, when determining an award, other considerations, such as achieving geographic diversity, strategic priorities, past performance, and available funding can be factored into the decision process. Please note, federal guidelines require that rural areas receive at least 25% of the overall award's total funding. A rural area is defined in the federal requirements as an area encompassing a population of less than 50,000 people.

Applications from rural local jurisdictions and rural areas will receive priority consideration to meet this requirement. If additional funds become available, the OGR reserves the right to award additional applications considered worthy of funding.

Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services

Subrecipients of FEMA federal financial assistance are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act. This Act prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

Notification of Awards

Once funding decisions are approved, OGR is responsible for administering and managing all contracts awarded. OGR anticipates it will announce awards under this program in May 2024.

Submission Process and Deadline

Please review the following instructions carefully as there are two separate steps involved in submitting the Application, Budget and other documents.

Please Note: The application and attachments are to be submitted electronically via the online application form. Emailed submissions will NOT be accepted.

This AGF and all other required documents can also be found on our website:
https://www.mass.gov/info-details/municipal-local-cybersecurity-grant-program

If you have any questions regarding this application, please reach out to:

Sarah E. Cook, Program Coordinator
Sarah.e.cook@mass.gov

Hard Copy and Electronic Submission

Step 1: Electronic Submission
Submit your Online Application form no later than **Friday, March 8th at 4:00 p.m.**

The online application must be completed and submitted with the following required attachments uploaded:

- Attachment B: Budget Excel Workbook (in Excel format, not PDF) uploaded to online application form.

Submission of the online form alone will not be accepted as an application submission.

Step 2: Hard Copy Submission
Upon submission of your online application, the grant contact will receive an email confirmation with the PDF attachments of the online submission. Please print these attachments and obtain the signature of the Senior Organization Official on the hard copy application.

Applicants must submit by mail:

- The complete, printed, signed application, Attachment A
- Attachment B: Budget Excel Workbook (Summary and Detail)

Online Applications must be submitted no later than **4:00 p.m. on Friday, March 8, 2024,** and hard copy of the application and documents must be postmarked on or before this date and mailed to:

Office of Grants and Research
35 Braintree Hill Office Park, Suite 302
Braintree, MA 02184
Attention: Sarah Cook

B

2025-P-0954

July 11, 2024

James McGrail
Town of Middleborough
10 Nickerson Ave
Middleborough, MA 02346

Dear Mr. McGrail:

Congratulations! We are pleased to notify you that **Town of Middleborough** has been awarded **$80,050.00** from the **Municipal Local Cybersecurity Grant Program (MLCGP)** offered by the Executive Office of Public Safety and Security's Office of Grants and Research (OGR).

Additional correspondence, including all the documents necessary to make this award official, are forthcoming. In the meantime, if you have any questions, please feel free to contact Sarah Cook, OGR Program Coordinator, at sarah.e.cook@mass.gov.

Once again, congratulations on this award and thank you for your commitment to public safety.

Sincerely,

GOVERNOR MAURA T. HEALEY

LT. GOVERNOR KIMBERLEY DRISCOLL

222

Ply. Sup. Ct. 2583CV00184

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

C

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice forms) to the terms in this published form or to the Standard Contract Form Instructions and Contractor Certifications, the Commonwealth Terms and Conditions for Human and Social Services or the Commonwealth IT Terms and Conditions which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: https://www.macomptroller.org/forms. Forms are also posted at OSD Forms: https://www.mass.gov/lists/osd-forms.

CONTRACTOR LEGAL NAME: Town of Middleborough (and d/b/a):		COMMONWEALTH DEPARTMENT NAME: Executive Office of Public Safety & Security MMARS Department Code: EPS	
Legal Address: (W-9, W-4): 10 Nickerson Ave, Middleborough, MA, 02346		Business Mailing Address: 35 Braintree Hill Office Park, Ste 302, Braintree, MA 02184	
Contract Manager: Susan Nickerson	Phone: (508) 946-2313	Billing Address (if different):	
E-Mail: snickerson@middleboroughma.gov	Fax:	Contract Manager: Denise Brown	Phone: 781-535-0069
Contractor Vendor Code: VC 6000191882		E-Mail: Denise.M.Brown@mass.gov	Fax:
Vendor Code Address ID (e.g. "AD001"): AD 001 (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s): 2023SLCGPMIDDLEBOROU RFR/Procurement or Other ID Number: BD-24-1044-EPS11-1044O-98322	

_x_ NEW CONTRACT

PROCUREMENT OR EXCEPTION TYPE: (Check one option only)

__ Statewide Contract (OSD or an OSD-designated Department)
__ Collective Purchase (Attach OSD approval, scope, budget)
x__ Department Procurement (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation)
__ Emergency Contract (Attach justification for emergency, scope, budget)
__ Contract Employee (Attach Employment Status Form, scope, budget)
__ Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)

___ CONTRACT AMENDMENT

Enter Current Contract End Date *Prior* to Amendment: _____, 20___.
Enter Amendment Amount $ _____. (or "no change")

AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.)

__ Amendment to Date, Scope or Budget (Attach updated scope and budget)
__ Interim Contract (Attach justification for interim Contract and updated scope/budget)
__ Contract Employee (Attach any updates to scope or budget)
__ Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)

The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): x__ Commonwealth Terms and Conditions __ Commonwealth Terms and Conditions For Human and Social Services __ Commonwealth IT Terms and Conditions

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.
__ Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)
_X_ Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or *new* total if Contract is being amended). $ 90,050.00

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: X_agree to standard 45 day cycle __ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications
FFY2023 SLCGP - Assist local communities in strengthening cybersecurity while reducing systemic cyber risk. CFDA# 97.137
Appropriation – 8000-4727 / Program Code - FSCGPRUR23

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:

x__ 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.
__ 2. may be incurred as of _____, 20___, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.
__ 3. were incurred as of _____, 20___, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of __6/30, 2025__, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR:
X: _____, Date: 7/18/24
(Signature and Date Must Be Captured At Time of Signature)
Print Name: James McGrail
Print Title: Town Manager

AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:
X: _____, Date: 12/17/24
(Signature and Date Must Be Captured At Time of Signature)
Print Name: Kevin Stanton
Print Title: Executive Director

D

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the Standard Contract Form Instructions and Contractor Certifications, the Commonwealth Terms and Conditions for Human and Social Services or the Commonwealth IT Terms and Conditions which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: https://www.macomptroller.org/forms. Forms are also posted at OSD Forms: https://www.mass.gov/lists/osd-forms.

CONTRACTOR LEGAL NAME: Town of Middleborough (and d/b/a):		COMMONWEALTH DEPARTMENT NAME: Executive Office of Public Safety & Security MMARS Department Code: EPS	
Legal Address: (W-9, W-4): 20 Center St Town, Middleborough, MA 02346		Business Mailing Address: 35 Braintree Hill Office Park, Ste 302, Braintree, MA 02184	
Contract Manager: Susan Nickerson	Phone: (508) 946-2313	Billing Address (if different):	
E-Mail: snickerson@middleboroughma.gov	Fax:	Contract Manager: *Corine A. Pryme*	Phone: *781-535-0067*
Contractor Vendor Code: VC6000191802		E-Mail: corine.a.pryme@mass.gov	Fax:
Vendor Code Address ID (e.g. "AD001"): AD001. (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s): 2023SSCGPTOWNMIDDLEB RFR/Procurement or Other ID Number: 24-1044-EPS11-1044O-98322	

X NEW CONTRACT

PROCUREMENT OR EXCEPTION TYPE: (Check one option only)

__ Statewide Contract (OSD or an OSD-designated Department)
__ Collective Purchase (Attach OSD approval, scope, budget)
X Department Procurement (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation)
__ Emergency Contract (Attach justification for emergency, scope, budget)
__ Contract Employee (Attach Employment Status Form, scope, budget)
__ Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)

__ CONTRACT AMENDMENT

Enter Current Contract End Date *Prior* to Amendment: _____, 20___.
Enter Amendment Amount: $ _____. (or "no change")
AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.)

__ Amendment to Date, Scope or Budget (Attach updated scope and budget)
__ Interim Contract (Attach justification for Interim Contract and updated scope/budget)
__ Contract Employee (Attach any updates to scope or budget)
__ Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)

The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): X Commonwealth Terms and Conditions __ Commonwealth Terms and Conditions For Human and Social Services __ Commonwealth IT Terms and Conditions

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.
__ Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)
X Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or *new* total if Contract is being amended). $20,012.50

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: x agree to standard 45 day cycle __ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)
Assist local communities in strengthening cybersecurity while reducing systemic cyber risk.
1790-1700 - $17,788.89 and 1790-1701 - $2,223.61

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:

X 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.
__ 2. may be incurred as of _____, 20___, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.
__ 3. were incurred as of _____, 20___, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of 6/30/2025, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR:

X: _____. Date: 12/2/24
(Signature and Date Must Be Captured At Time of Signature)
Print Name: James McGrail
Print Title: Town Manager

AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:

X: _____. Date: 1/2/25
(Signature and Date Must Be Captured At Time of Signature)
Print Name: Kevin Stanton
Print Title: Executive Director

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF EMILY TAYLOR

I, Emily Taylor, hereby depose and say as follows:

1. I am an Early Learning and Safe and Supportive Schools Specialist with the Massachusetts Department of Elementary and Secondary Education ("DESE").

2. In my role, I oversee the Safe and Supportive Schools Grant Programs, which are state-funded programs funded through state line item 7061-9612.

3. The facts set forth in this affidavit are either personally known to me or my knowledge of them has been acquired through review of documents kept in the ordinary course of DESE's business.

4. The Safe and Supportive Schools Grant supports schools and districts in strengthening equitable, safe, positive, healthy, culturally competent, and inclusive whole-school learning environments for all students, and in making effective use of systems for integrating services and aligning initiatives that promotes students' behavioral health.

5. The Safe and Supportive Schools Grant is a competitive, one-year grant, with eligibility for a 2nd year continuation grant (through Fund Code 0337) pending state appropriation in FY2026, and contingent upon meeting grant requirements including submitting an approvable continuation grant proposal.

6. Each applicant for the Safe and Supportive Schools Grant was eligible to apply for either an Option 1 or Option 2 grant. Option 1 grantees convene a school team composed of various stakeholders to review and respond to the questions in the Safe and Supportive Schools Grant Self-Reflection Tool. Based on the results from the Tool, the team will identify school and district areas to prioritize for improvements related to creating safer and more supportive learning environments and will finalize a school and district action plan that is aligned to school and district priorities. Option 2 grantees either begin or continue to implement school-based action plans (and associated district-support plans) that were created in a prior year.

7. For fiscal year 2025, DESE received a total of 31 proposals for the Safe and Supportive Schools Grant and awarded funding to a total of 11 applicants.

8. For the review of this competitive grant, nine DESE staff with knowledge and backgrounds related to Safe and Supportive Schools read and scored their assigned grants using a scoring rubric. Each grant was reviewed by at least 2 people and the scoring team then met virtually to come to a consensus on which grants to recommend for awarding, based on scoring, document review, and recommendation scores. The grants that were awarded demonstrated the most readiness and understanding of the priorities of the Safe and Supportive Schools Competitive Grant opportunity.

9. The score cut off for funding Option 1 was 75/100 and the score cut off for funding Option 2 was 90/100.

10. Middleborough applied for an Option 1 grant and received a total score of 72/100.

11. On August 29, 2024, Middleborough was notified that its application for an Option 1 grant was denied.

12. Middleborough was denied funding because it did not receive the minimum required score of 75/100. Noncompliance with the MBTA Communities Act was not considered in scoring its application.

I declare under penalty of perjury that the foregoing is true and correct.

/s /Emily Taylor

Mar. 18, 2025 Emily Taylor

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs,	)	
v.	)	No. 2583 CV 00184
COMMONWEALTH OF MASS. et al., Defendants	)	
TOWN OF MIDDLEBOROUGH, Plaintiff,	)	
v.	)	No. 2583 CV 00188
COMMONWEALTH OF MASS., et al., Defendants	)	
TOWN OF HANSON, et al., Plaintiffs,	)	
v.	)	No. 2583 CV 00209
COMMONWEALTH OF MASS., et al., Defendants	)	
TOWN OF WRENTHAM, et al., Plaintiffs,	)	
v.	)	No. 2582 CV 00259
COMMONWEALTH OF MASS., et al., Defendants	)	
TOWN OF MIDDLETON, et al., Plaintiffs,	)	
v.	)	No. 2577 CV 00249
COMMONWEALTH OF MASS., et al., Defendants	)	

AFFIDAVIT OF JUAN R. VEGA

I, Juan R. Vega, hereby depose and say as follows:

1. I am the Assistant Secretary for Communities & Programs at the Massachusetts Executive Office of Economic Development ("EOED"), where I have served since 2015.

2. The facts set forth in this affidavit either are personally known to me or are based on knowledge I have acquired through review of documents kept by EOED in the ordinary course of its business.

The Town of Middleborough's and the Town of Middleton's Respective

FY25 Applications to the MassWorks Infrastructure Grant Program

Overview of the MassWorks Infrastructure Grant Program

3. One of my responsibilities as Assistant Secretary is to supervise all aspects of the administration of the "MassWorks" Infrastructure Program established by G.L. c. 23A, § 63.

4. MassWorks is a competitive grant program that supports the construction of, and improvements to, publicly owned infrastructure. Public entities in the Commonwealth, including municipalities, are eligible to receive MassWorks grants.

5. MassWorks is part of the Commonwealth's "Community One Stop for Growth" initiative, a centralized process through which a single applicant can seek grant funds from multiple state funding programs.

6. An upcoming MassWorks grant round is publicized through a Community One Stop for Growth "Notice of Funding Availability," which sets forth information about the grantmaking process.

7. A municipality that seeks a MassWorks grant applies using the consolidated "Community One Stop for Growth" application.

8. If that municipality is awarded a MassWorks grant, it is notified of that fact, along with the amount of the award, through an award letter. The municipality must then submit additional "pre-contract" information to EOED confirming the project's milestones, budget, drawdown schedule for the grant monies, and other items.

9. Following a satisfactory pre-contract submission, EOED and the municipality then execute a contract that finalizes the grant award. EOED uses a standard contract for MassWorks grants to municipalities; such contract contemplates that EOED will reimburse the municipality for covered expenses that the municipality has incurred within the scope and timeframe of the grant contract.

10. EOED issued the Community One Stop for Growth Notice of Funding Availability for the FY25 round on January 19, 2024. That document, a copy of which is attached as Exhibit A, expressly stated (page 5) that a municipality subject to the MBTA Communities Act, G.L. c. 40A, § 3A, that is noncompliant with that statute, "is ineligible for funding from . . . the MassWorks Infrastructure Program."

The Town of Middleborough's FY25 MassWorks Grant Application

11. On June 5, 2024, the Town of Middleborough ("Middleborough") applied for a MassWorks grant related to its "Logistics Park" project.

12. On October 11, 2024, EOED notified Middleborough that its application had been approved in the amount of $2.8 million. EOED's award letter, a copy of which is attached as Exhibit B, advised Middleborough that "this letter does not constitute an agreement or contract with EOED or the Commonwealth of Massachusetts, and the grant award is not final until [Middleborough] has executed a contract with EOED." The letter also advised Middleborough that "a contract will not be executed if [Middleborough] is noncompliant with Section 3A of

M.G.L. Chapter 40A as determined by EOHLC [i.e., the Commonwealth's Executive Office of Housing and Livable Communities]."

13. On February 19, 2025, EOHLC informed EOED that Middleborough was noncompliant with G.L. c. 40A, § 3A. As of that date, EOED had not yet executed any contract with Middleborough finalizing the award of a MassWorks grant for its Logistics Park project. EOED stands ready to execute a contract with Middleborough for that grant award if EOHLC deems Middleborough to be compliant with G.L. c. 40A, § 3A, reasonably in advance of the applicable contracting deadline of June 30, 2025.

The Town of Middleton's FY25 MassWorks Grant Application

14. On May 31, 2024, the Town of Middleton ("Middleton") applied for a MassWorks grant related to its "Route 62 & Route 114 Transportation Improvements" project.

15. On October 11, 2024, EOED notified Middleton that its application had been approved in the amount of $2 million. EOED's award letter, a copy of which is attached as Exhibit C, advised Middleton that "this letter does not constitute an agreement or contract with EOED or the Commonwealth of Massachusetts, and the grant award is not final until [Middleton] has executed a contract with EOED." The letter also advised Middleton that "a contract will not be executed if [Middleton] is noncompliant with Section 3A of M.G.L. Chapter 40A as determined by EOHLC."

16. On February 19, 2025, EOHLC informed EOED that Middleton was noncompliant with G.L. c. 40A, § 3A. As of that date, EOED had not yet executed any contract with Middleton finalizing the award of a MassWorks grant for its Route 62 & Route 114 Transportation Improvements project. EOED stands ready to execute a contract with Middleton

for that grant award if EOHLC deems Middleton to be compliant with G.L. c. 40A, § 3A, reasonably in advance of the applicable contracting deadline of June 30, 2025.

The Town of Marshfield's Application to the Seaport Economic Council Grant Program

Overview of the Seaport Economic Council Grant Program

17. Another of my responsibilities as Assistant Secretary is to supervise all aspects of the administration of Seaport Economic Council ("SEC") grant program.

18. The SEC offers a competitive grant program that supports communities in bringing forward the best ideas and projects for stimulating the maritime economy and growing jobs. The Commonwealth's 78 coastal municipalities, as well as other qualified public entities, are eligible to receive SEC grants.

19. A municipality that seeks an SEC grant applies to the SEC. If that municipality is awarded an SEC grant, it is notified of that fact, along with the amount of the award, through an award letter from the SEC

20. Following the notice of the award, EOED staff is responsible for administering the award and contracting with the grantee. The municipality must first submit additional "pre-contract" information to EOED.

21. Following a satisfactory pre-contract submission, EOED and the municipality then execute a contract that finalizes the grant award. EOED uses a standard contract for SEC grants to municipalities; such a contract contemplates that EOED will reimburse the municipality for covered expenses that the municipality has incurred within the scope and timeframe of the grant contract.

The Town of Marshfield's 2024 SEC Grant Application

22. On June 17, 2024, the Town of Marshfield ("Marshfield") applied for an SEC grant related to its "Permitting & Engineering/Design of North/South River Dredging" project.

23. On or about December 12, 2024, the SEC notified Marshfield that its application had been approved in the amount of $261,600. That award letter, a copy of which is attached as Exhibit D, advised Marshfield that the award "is contingent on the Town of Marshfield being in compliance with the multifamily zoning requirements set forth in section 3A of chapter 40A of the Massachusetts General Laws. Compliance is determined by the Executive Office of Housing and Livable Communities." The award letter also advised Marshfield that "this grant award is not final until the Town of Marshfield has executed a contract with EOED."

24. On February 19, 2025, EOHLC informed EOED that Marshfield was noncompliant with G.L. c. 40A, § 3A. As of that date, EOED had not yet executed any contract with Marshfield finalizing the award of an SEC grant for its Permitting & Engineering/Design of North/South River Dredging project. EOED stands ready to execute a contract with Marshfield for that grant award if EOHLC deems Marshfield to be compliant with G.L. c. 40A, § 3A, reasonably in advance of the applicable contracting deadline of December 31, 2025.

The Dredging Grant Program

25. Another of my responsibilities as Assistant Secretary is to supervise all aspects of the administration of the Dredging Grant program.

26. The Dredging Grant is a competitive grant program that supports saltwater dredging of publicly owned waterways and associated disposal of dredged material. The Commonwealth's 78 coastal municipalities are eligible to seek and receive Dredging Grants.

27. On February 3, 2025, EOED released a Request for Proposals soliciting applications for the FY26 round of the Dredging Grant. The deadline to submit applications is March 21, 2025. The contracting deadline, by which FY26 Dredging Grant awardees must have a fully executed contract with EOED, will be December 31, 2025.

28. As of March 17, 2025, the Town of Marshfield has not submitted any application for the FY26 round of the Dredging Grant program.

I declare under penalty of perjury that the foregoing is true and correct:

March ____, 2025

Juan R. Vega

A

Commonwealth of Massachusetts
EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT
ONE ASHBURTON PLACE, ROOM 2101
BOSTON, MA 02108

Community One Stop for Growth

An EOEED initiative, in partnership with the Executive Office of Housing & Livable Communities and the Massachusetts Development Finance Agency

Notice of Funding Availability
FY2025

Full Application Open Date:	January 19, 2024
Virtual Information Sessions	
Webinar 1 - One Stop Overview:	Feb. 5, 2024
Webinar 2 - Application Guidance:	Feb. 7, 2024
Webinar 3 - Technology Webinar:	Feb. 8, 2024 (Prerecording to be posted online)
Individual Program Webinars:	Feb. 16, 2024 (Prerecordings to be posted online)
Full Application Submission Period:	May 6, 2024 – June 5, 2024
Full Application Deadline:	June 5, 2024 at 11:59 p.m.
Email Questions to:	onestop@mass.gov

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I. ABOUT THE ONE STOP

A. Introduction

The Executive Office of Economic Development is pleased to announce the availability of grant funds for the FY2025 round of the Community One Stop for Growth (One Stop). The One Stop is a single application portal and collaborative review process that allows applicants to access a series of grant programs that support community economic development. The Executive Office of Economic Development (EOED) partners with the Executive Office of Housing and Livable Communities (EOHLC) and Massachusetts Development Finance Agency (MassDevelopment), to make targeted grant investments based on a Development Continuum.

This coordinated process is designed to provide a more streamlined experience for applicants and to make the programs more accessible to all types of organizations, large and small, in all regions of the state. The partner agencies have a long-standing and successful history of providing funding, through multiple programs, that support various stages and/or phases of economic development projects. The One Stop gives communities the ability to pursue, and in some cases stack, state resources in a more timely and strategic manner based on what stage they are at and how ready they are to implement a project. The goal of the One Stop is to support more efforts that result in economic growth for all cities and towns across the Commonwealth.

B. What's New in FY2025

The first three rounds of the One Stop were met with positive reviews and, more importantly, have resulted in 869 grants across 243 communities, totaling $396.3 million in funding. Largely based on feedback received from applicants, several exciting improvements were made for the FY25 Round of the One Stop to increase access to funding and further streamline the application process:

1. **New Program: The HousingWorks Infrastructure Program**
   The HousingWorks Infrastructure Program, a new grant program offered by EOHLC, is now fully integrated into the One Stop. The HousingWorks Infrastructure Program is a competitive grant to municipalities and other public entities for a variety of infrastructure related activities to support and unlock housing opportunities. This grant program awards funds based on the project's nexus with housing, transportation, infrastructure, and community development needs. Visit the HousingWorks Infrastructure Program website for program guidelines and additional information.

2. **Simplified Development Continuum**
   The Development Continuum was updated to make it easier for applicants to understand where their project fits within the One Stop and which program is most likely to review the application. The Development Continuum categories are now made up of multiple Project Types, each tied to a One Stop program and named to describe the purpose of the program. When answering question 2.4 of the Full Application, applicants will be able to see which program is tied to each available Project Type option by hovering over the accompanying radio button. See *Section III. Development Continuum Details* below for more information.

3. **Improved Expression of Interest Process**
   The Expression of Interest (EOI) process has been updated for the FY25 round to make filling out an EOI form as easy and quick as possible for applicants. Improvements to the EOI process include:

- *Easier Access* - The EOI is now available as a simple webform accessed through the One Stop website. Prospective applicants no longer need to register and/or log into the IGX system in order to access the EOI.
- *Applicants May Submit Multiple EOI Forms* - The former limit of one EOI submission per organization has been removed and applicants may return to submit additional EOI forms. Although there is no longer a limit to the number of submissions, applicants are still encouraged to prioritize their projects prior to submitting their EOI(s).
- *An Even Simpler EOI Form* - The EOI form has been simplified to only require a brief description and a multiple choice questions for each project proposed. Applicants will complete a separate EOI Form for each project that they would like feedback on.
- *Expedited Feedback Delivery* - The streamlined form reduces the time required for staff to review each EOI and allows for a prompt delivery of the EOI Feedback Report to the applicant.

4. Staff Office Hours

To supplement the guidance received in the EOI process, One Stop staff and program managers will now host two separate virtual office hour series to answer applicant questions:

- *One Stop General Guidance Office Hours* – One Stop staff, and a representative from each agency, will hold several office hours to answer general One Stop process and technology questions.
- *Individual Program Office Hours* – Each program in the One Stop will host a separate office hour session to allow applicants to ask program staff questions related to the program.

All office hours will be open to the public. Attendees are encouraged to submit questions ahead of time. Visit www.mass.gov/onestop for the full schedule of office hours and instructions on registering and submitting questions.

5. Program Specific Webinars

In addition to the three One Stop virtual sessions hosted each year, One Stop program managers will record a webinar specific to their respective program. Each webinar will provide an overview of the program, including information about eligibility, project competitiveness, and examples of past awards. All program webinars will be posted to the One Stop website on February 16, 2024.

6. Consolidated Full Application

The Full Application has been consolidated into three forms that all applicants must complete: Form 1. Applicant Information, Form 2. Project Information, and Form 3. Certification. The Project Information form now includes all questions related to the project; applicants will be able to view all questions required through the Project Core as well as any additional Development Continuum category and Housing Choice additional questions required, depending on the application. The former Additional/Optional Attachments section is now included at the end of Form 2 as well.

7. Redundant Questions Removed

Questions within the Project Core were altered and expanded to eliminate questions that produced similar answers throughout the application. This exercise allowed for the complete elimination of the Community Activation & Placemaking and Planning & Zoning additional questions. Applicants applying for funding through these categories will only see the questions in the Project Core on Form 2.

II. OVERVIEW OF THE ONE STOP PROCESS

A. Programs Integrated into the One Stop

The One Stop allows applicants to apply to multiple grant programs at once with a standard application. The following programs are fully integrated into the One Stop application process:

Executive Office of Economic Development
MassWorks Infrastructure Program
Massachusetts Downtown Initiative
Urban Agenda Grant Program
Rural Development Fund

Executive Office of Housing and Livable Communities
Housing Choice Grant Program
Community Planning Grant Program
HousingWorks Infrastructure Program

MassDevelopment
Brownfields Redevelopment Fund (Municipal Competitive Round only)
Site Readiness Program
Underutilized Properties Program
Collaborative Workspace Program
Real Estate Services Technical Assistance

Applicants may visit program websites for guidelines and program-specific versions of the One Stop Full Application template.

MBTA Community Compliance Requirement
Section 3A to the Zoning Act (Chapter 40A of the General Laws) requires each of the 177 MBTA communities to have a zoning district in which multifamily zoning is permitted as of right, and that meets other requirements set forth in the statute. Any noncompliant MBTA community is ineligible for funding from the Housing Choice Grant Program, the HousingWorks Infrastructure Program, and/or the MassWorks Infrastructure Program, and all other Community One Stop for Growth programs will take noncompliance with Section 3A into consideration when making grant award recommendations. For information on compliance with the MBTA communities law, please visit www.mass.gov/mbtacommunities.

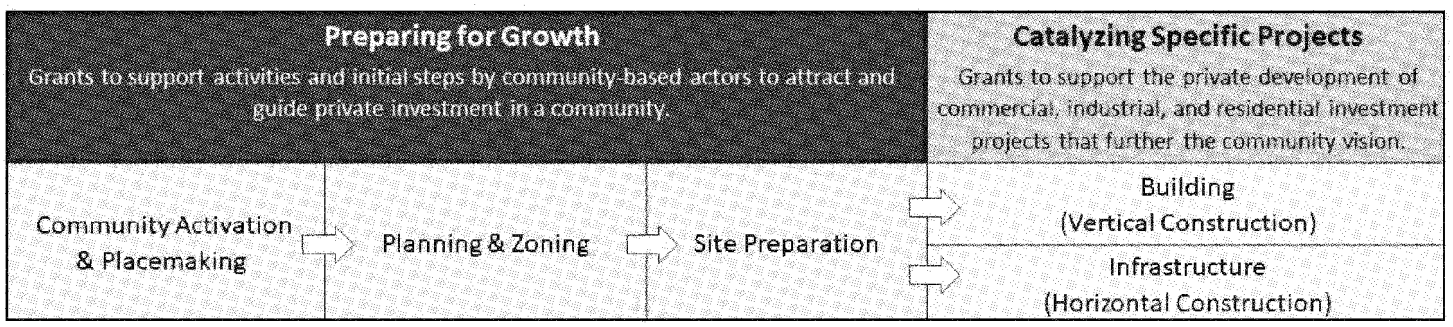
B. The Development Continuum

To help guide applicants, the One Stop uses a Development Continuum that describes how a typical economic development project moves from concept to reality within diverse communities.

The One Stop requires applicants to think about their economic development priorities in the context of the Development Continuum, both to guide applicants towards best practices and strategies and to help applicants identify the types of projects that will support their economic development priorities. Applicants should consider this spectrum of activities as they prepare to submit applications to the One Stop, thinking fully about the steps necessary for progress in the development of a project.

This continuum separates economic development activities into two broad categories. The first, "Preparing for Growth," includes the initial steps that typically need to occur before specific development projects can move

forward, as well as community activation focused economic development activities. The second, "Catalyzing Specific Projects," covers various forms of project-specific activities, particularly for projects that have private development identified.



C. Expression of Interest

The Expression of Interest (EOI) is an optional short form that gives prospective Community One Stop for Growth applicants the opportunity to receive guidance on priority projects before submitting a Full Application. The Expression of Interest is optional but highly encouraged.

The EOI Feedback Report informs the applicant whether their projects are a fit for the funding opportunities within the One Stop. If so, the report will indicate where the project falls on the Development Continuum, the program that best fits the project, tips on how to be competitive for the program, as well as important project budget and timeline considerations.

In other cases, the report may tell the applicant that their project is not a fit for the programs offered through the One Stop. If a state program offered outside of the One Stop is a better fit for the project, the EOI Feedback Report may include a referral to the program.

It is important to note that any eligible applicant may submit a Full Application, regardless of whether they participated in the EOI process or not.

D. Full Application

The Full Application is the form that applicants must complete and submit to formally apply for funding. The Full Application must be submitted via the IGX system.

Applicants may submit multiple projects for consideration but must submit one application per project. The number of project applications submitted is not limited, but it is recommended that communities prioritize their requests. The Full Application opens in January 2024 for applicants to begin working on their applications. Applicants will be able to submit their application beginning May 6, 2024. The final submission deadline is 11:59 p.m. on June 5, 2024.

E. One Stop Process Steps

The One Stop is an opportunity for the state's economic development agencies to work with communities to define their objectives, submit applications and obtain funding for projects following a collaborative process:

Step 1: Expressions of Interest & Guidance (Optional): The Expression of Interest (EOI) is an optional short form that gives prospective Community One Stop for Growth applicants the opportunity to receive guidance on priority projects before submitting a Full Application. Applicants complete a short form and receive a Feedback Report indicating whether the project is a fit for the funding offered through the One Stop. If so, the report will tell the applicant where the project falls on the Development Continuum, the program that best fits the project, tips on how to be competitive for the program, as well as important project budget and timeline considerations.

Step 2: One Stop Full Application(s): After the guidance phase of the process concludes, the One Stop portal will open to accept applications. Applicants are able to submit multiple projects for consideration but must submit one application per project. The number of project applications submitted is not limited, but it is recommended that communities prioritize their requests to reflect the goals submitted in the Expression of Interest phase. Interested applicants will have full access to the online application the launch of the One Stop in January until the final submission deadline in June. During this time, applicants may draft and work on applications, but submissions will only be accepted between May 6 and 11:59 p.m. on June 5, 2024.

Step 3: Review & Evaluation: The participating agencies will review all applications. The agencies may also request additional information or clarification about applications submitted. All grants will be reviewed on the criteria noted in the Review Criteria section and the additional review criteria noted in specific program guidelines. If an application is not fully clear, or the partner agencies have additional questions, the applicant will be notified to either have a follow up discussion with the partner agencies, amend the application submission or respond to questions via email.

Step 4: Notification of Award: The One Stop partners will review all applications and make determinations of grant amounts based upon availability of funds. All applicants will be notified of award decisions, and the contracting process for successful applicants will begin with the applicable partner agency. Reporting will be required.

Step 5: Contracting and Reporting: All grants in any category of funding are subject to appropriation. Once a project is approved, contracting for the project will be handled by the relevant partner agency including the specifications of the duration, scope and final budget. Routine reporting will be required by the agencies and will be specified at the time of contracting.

F. Timeline

Expressions of Interest (EOI) Submission Period	Feb. 9, 2024 – April 30, 2024
One Stop Official Launch of Full Application	Jan. 19, 2024
Webinar 1: One Stop Overview Webinar	Feb. 5, 2024
Webinar 2: One Stop Application Guidance Webinar	Feb. 7, 2024
Webinar 3: Prerecorded Technology Webinar	Feb. 8, 2024 (Prerecording to be posted online)

Individual Program Webinars	Feb. 16, 2024 (Prerecordings to be posted online)
One Stop General Guidance Office Hours	February-April, 2024
Individual Program Office Hours	February-March, 2024
Full Application Submission Period	May 6, 2024 – June 5, 2024
Review & Evaluation	June-August, 2024
Notification of Awards	September 2024
Anticipated Contracting	October/November 2024

III. DEVELOPMENT CONTINUUM DETAILS

Categories Related to Preparing for Growth

The development of certain districts, sites or the advancement of certain economic development initiatives requires a series of initial steps by applicants to attract and guide private investment. Recognizing that these initial steps are applicable for almost all communities, whether a strong or weak market, grants associated with "Preparing for Growth" help support activities related to:

A. Continuum Detail – Community Activation & Placemaking

Community Activation & Placemaking grants support projects and programs aimed at identifying and enhancing community assets. These assets can include the built environment, local business, or the community's residents.

Eligible Applicants:

- All Public Entities
- Non-Profit Organizations
- Community Development Corporations

Programs in this Category:

- Massachusetts Downtown Initiative
- Urban Agenda Grant Program

Type/Focus of Projects Supported:

Technical Assistance for Downtowns

- Downtown Design Consultant Services
- Downtown Mobility/Parking Consultant Services
- Downtown Wayfinding/Branding Consultant Services
- Economics of Downtown Consultant Services
- Pedestrian Orientation/Placemaking Consultant Services
- Small Business Support/E-commerce Consultant Services
- Forming a Downtown Management District
    - Phase 1 Feasibility
    - Phase 2 Implementation

Equitable Workforce and Business Development Programming

- Entrepreneurship and Small Business Development
- Workforce Development and Training Initiatives
- Community Organizing and Leadership Development

Example Projects:

- Request by a municipality to explore the feasibility of developing a Business Improvement District.
- A request from a community coalition to fund English language training and other prerequisite trainings, including coverage for childcare and transportation, to prepare low-income residents for new jobs available in the region due to the expansion of a major employer.

B. Continuum Detail – Planning & Zoning

Applications for projects in the Planning & Zoning category represent an early-stage project that requires a guiding plan, study, or assessment of project needs, prior to any construction or site preparation. These are planning grants and projects must produce a planning document or zoning revision.

Eligible Applicants:

- All Public Entities

Programs in this Category:

- Community Planning Grant Program
- Rural and Small Town Development Fund
- Real Estate Services Technical Assistance
- Housing Choice Grant Program

Type/Focus of Projects Supported:

Community Plan

- Master Plan
- Neighborhood Plan
- Downtown Plan
- Urban Renewal Plan
- Housing Production Plan
- Regional Plan
- Corridor Plan
- Other Plan

Zoning Revision

- Zoning Revision to Comply with Section 3A of MGL c.40A
- Comprehensive Zoning Review & Revision
- Other Zoning Revision

Planning for Housing

- Housing Feasibility Plan
- Housing Site Master Plan
- Housing Infrastructure Plan
- Housing Site Design Plan
- Other Housing Plan

District Redevelopment Technical Assistance

- Planning for Growth in a Commercial/Industrial or Mixed-Use District

Example Projects:

- Create a housing production plan to better understand housing needs of the community and identify strategies to reduce gaps in existing housing relative to identified needs.
- Study the area with a ½ mile of a commuter rail station and create strategies to intensify development in that area.
- Prepare a corridor study of a commercial area that runs through multiple towns and seeks land use alternatives to promote multi-modal access, introduce mixed-use and achieve more compact commercial development.
- Review current zoning to identify and remove language that excludes certain housing types.

C. Continuum Detail – Site Preparation

This category includes funding for an applicant working to progress a key site toward development; a final developer or end use is not necessarily identified at this phase.

Eligible Applicants:

- All Public Entities
- Non-Profit Organizations
- Community Development Corporations

Programs in this Category:

- Site Readiness Program
- Brownfields Redevelopment Fund
- Real Estate Services Technical Assistance
- Rural and Small Town Development Fund
- Housing Choice Grant Program

Type/Focus of Projects Supported:

Brownfield Site Clean Up

- Brownfields Site Assessment
- Brownfields Remediation

Site Improvements to Unlock Development

- Site Readiness Pre-Construction
  - Site Due Diligence
  - Site Plan Design
  - Market Study
  - Civil Engineering
  - Pre-Permitting/Permitting
- Site Readiness Construction
  - Demolition
  - Site Acquisition, related tasks
  - Construction of site related upgrades

Municipal Surplus Property Disposition

- Municipal Surplus Property Disposition Study

Example Projects:

- The acquisition of land in an industrial zone to allow for business expansion.
- The remediation of a brownfield site to prepare it for the development of a new industrial complex for businesses

Categories Related to Catalyzing Specific Projects

In areas where "Preparing for Growth" activities may have already occurred, certain projects within a community may be ready for implementation by public and private investment. Grants associated with "Catalyzing Specific Projects" will be used to incentivize and leverage private commercial, industrial, and/or residential investment projects that further the community vision.

D. Continuum Detail – Buildings (Vertical)

Funding is available for predevelopment activities and capital improvements that are essential to the occupancy of a blighted and/or underutilized property, as well as those that support the creation of new coworking space. Funding in this category is limited to projects with a strong public purpose and benefit. Projects in this category must have the building secured with building and/or site control, an identified end use, and a clear public purpose. Additional funding is available for eligible Housing Choice designated municipalities to projects supporting the production, rehabilitation, or preservation of housing units within the community.

Eligible Applicants:

- All Public Entities
- Non-Profit Organizations
- Community Development Corporations
- For-Profit Organizations

Programs in this Category:

- Underutilized Properties Program
- Collaborative Workspace Program
- Rural and Small Town Development Fund
- Housing Choice Grant Program

Type/Focus of Projects Supported:

Underutilized Property Rehabilitation

- Underutilized Property Pre-Construction
  - Building Condition Study
  - Development Feasibility Study
  - Code Compliance Study
  - Architectural or Engineering Plans
- Underutilized Property Construction
  - Code Compliance
  - Building Accessibility Improvements
  - Building Stabilization and/or Shell Repair
  - Interior Demolition or Remediation

Creating Collaborative Workspace

- Collaborative Workspace Feasibility Study
- Collaborative Workspace Fit-Out or Equipment

Community Led Housing Production *(Only Available to Public Organizations in Housing Choice Communities)*

- Support Housing Production
- Support Housing Rehabilitation
- Support Housing Preservation

Example Projects:
- A request to fit-out an incubator within a property that was previously vacant.
- A request to install an elevator in a city-owned property to open up second floor space for space for a new housing development.
- Fitting out a collaborative workspace that provides access to shared workshops and equipment.

E. Continuum Detail – Infrastructure (Horizontal)

The Infrastructure category supports improvements to public land and infrastructure that leverages and supports private investment in the community. These are predevelopment and implementation grants for projects that improve public infrastructure such as roadways, streets, bridges, culverts, water/sewer, other public utilities, etc. Investments will be targeted to projects that require the infrastructure improvements or expansion to support and/or facilitate new growth or address road safety issues.

Eligible Applicants:
- All Public Entities

Programs in this Category:
- MassWorks Infrastructure Program
- HousingWorks Infrastructure Program
- Rural and Small Town Development Fund
- Housing Choice Grant Program

Type/Focus of Projects Supported:

Public Infrastructure to Support Housing Growth (Residential Only)
- Pre-Construction - Design / Engineering Documents Only
- Construction
  - Roadway / Streetscape Improvements
  - Bridge / Culvert Repair or Replacement
  - Water / Sewer Infrastructure
  - Public Utility Project (Gas, Electric, etc.)

Public Infrastructure to Support Mixed-Use and/or Commercial/Industrial Growth
- Pre-Construction - Design / Engineering Documents Only
- Construction
  - Roadway / Streetscape Improvements
  - Bridge / Culvert Repair or Replacement
  - Water / Sewer Infrastructure
  - Public Utility Project (Gas, Electric, etc.)

Small Town Road Improvements to Enhance Public Safety (aka STRAP)
- Construction of Road Improvements to Enhance Public Safety

Example Projects:
- A request for water and sewer upgrades to a previously used site that will now be made into market rate housing.

- A request to update a culvert under a roadway leading to new private development for mixed use that creates new industrial space and rental housing.
- A request to repair at-risk municipal bridges that affect evacuation routes and/or access to commercial centers or transportation nodes.

Applications from Housing Choice Communities and Rural/Small Towns

The One Stop provides additional opportunities exclusively for Housing Choice Communities through the Housing Choice Grant Program and Rural and/or Small Towns through the Rural Development Fund. Only communities with current Housing Choice and/or Rural & Small Town designation are eligible for funding by the respective programs.

The Housing Choice Grant Program and Rural Development Fund may consider granting applications requesting funding through the following Development Continuum categories: Planning & Zoning, Site Preparation (excluding Brownfields Assessment and Brownfields Remediation projects), Building (excluding Collaborative Workspace Predevelopment and Collaborative Workspace Fit-Out projects), and Infrastructure.

Applicants submitting a project that is eligible for review by the Housing Choice Grant Program will be asked whether they intend to complete the *Housing Choice Additional Questions*. These questions must be completed in order for the project to be considered for funding by the Housing Choice Grant Program.

IV. ELIGIBLE APPLICANTS AND FULL APPLICATION DETAILS

A. Eligible Applicants

	Preparing for Growth			Catalyzing Specific Projects	
Applicant Type	**Community Activation & Placemaking**	**Planning & Zoning**	**Site Preparation**	**Building**	**Infrastructure**
Public Entity					
Municipal	All Programs	All Programs	All Programs	All Programs	All Programs
Other Public	All Programs	All Programs	All Programs	All Programs	All Programs
Non-Public Entity					
Non-Profit	Urban Agenda Grant Program	N/A	Site Readiness Program	Underutilized Properties Program, Collaborative Workspace Program	N/A
Community Development Corporation	Urban Agenda Grant Program	N/A	Site Readiness Program	Underutilized Properties Program, Collaborative Workspace Program	N/A
For-Profit	N/A	N/A	N/A	Underutilized Properties Program, Collaborative Workspace Program	N/A

All types of public entities are welcome and encouraged to submit a One Stop application. Municipalities and other public entities such as local housing or redevelopment authorities will have access to all grants administered through the One Stop process. However, non-municipal applicants are encouraged to open a discussion with their municipal leadership to ensure coordination and local support.

Non-public entities may submit an application jointly with a public entity or with the written letter of support of the public entity and will be considered for funding only under those programs that allow for financial assistance to non-public entities, specifically Community Activation & Placemaking, Site Preparation, and Buildings. Non-public entities are not eligible for the following categories: Planning & Zoning and Infrastructure. Non-public entities should partner with their municipality to submit applications in those categories.

For-profit entities are only eligible to apply to the Buildings category and must demonstrate a public benefit or purpose for the grant.

All applications should include a letter of support from the chief executive officer of the municipality in which the project is located or, if not available, an explanation of why the municipal letter was not included.

B. Structure of the Full Application

The One Stop Full Application is organized into the following forms:

Form 1. Applicant Information/Background
This form is where the applicant identifies information about the organization, including the organization type, contact information, and other organization details. Organizations located within an MBTA Community will be asked additional questions related to the community's compliance with Section 3A of MGL c. 40A.

Form 2. Project Information
The Project Information form is where the applicant provides all detail related to the project. This form is broken up as follows:

Project Core
The Project Core includes the project information required by all programs in the One Stop. The applicant will identify the Development Continuum category, project type, and project focus that best fit the project in question 2.4, which will drive additional questions. The applicant will respond to questions about the grant funding request, community characteristics, the project implementation plan, and environmental considerations. This section also includes questions related to the project timeline and anticipated project outcomes. Applicants to the Site Preparation, Buildings and Infrastructure categories must also complete the Site Information questions, which include identification of the specific site, ownership, and zoning, as well as a details about climate resilience, as applicable.

Additional Project Questions
In addition to the Project Core, applicants applying through the Site Preparation, Building, or Infrastructure Development Continuum categories will be required to answer additional questions. The questions asked will vary depending on the Development Continuum, Project Type, and Project focus options selected in question 2.4.

Housing Choice Additional Questions
The Housing Choice Additional Questions are available to public organizations within Housing Choice designated municipalities. Eligible applicants applying for funding through the Planning & Zoning, Site Preparation (excluding Brownfields projects), Building (excluding Collaborative Workspace projects), or Infrastructure categories must opt in to answer these questions by selecting "Yes" on question 2.4.a. Eligible applicants applying for Community Led Housing Production funding through the Building category are automatically required to answer these questions in order to submit the application. These must be completed in order for the application to be reviewed by either program.

Other/Optional Attachments
This section allows applicants to submit other attachments to support the application, including other site images, partner letters or support letters. Please note that these items will generally not be scored or assessed as part of the formal evaluation of the proposal.

Form 3 - Certification of Application Submission Authority

Signature page certifying the authority to submit the application on behalf of the applying entity and attesting that all responses are true and accurate.

All applications must be submitted electronically through the IGX system, however Microsoft Word (.docx) templates of the Full Application are available at www.mass.gov/onestop to allow applicants to draft their application(s) ahead of time. A separate application template is available for each project type supported through the One Stop. The online application portal, *IGX*, can be accessed at https://eohed.intelligrants.com.

V. APPLICATION EVALUATION

A. Core Review Criteria

All applications submitted through the One Stop will be reviewed by program staff to determine which One Stop program is best suited to achieve the applicant's objective. This review will include an initial screening based on statutory and regulatory eligibility requirements and program guidance (See Appendix for links to program guidelines). All applications will then be evaluated based on the following core review criteria, in addition to the criteria detailed in each respective program's guidelines:

- **Achievable Project Scope:** Is the project feasible and achievable?
- **Ability to Execute & Leadership:** Does the project have appropriate leadership with the requisite experience and ability to execute the project?
- **Achievable Timeline:** Is the timeline of the project reasonable and achievable? For construction projects, is the project advanced in its design and permitting.
- **Reasonable Budget, Showing Commitment**: Is the project budget reasonable? While not required, preference will be given to projects that leverage match funding outside of the requested grant funds, but outside funding is not a prerequisite.
- **Outcomes and Impact:** What are the projected outcomes of this project and the impact this project may have on the community? Outcomes related to equitable opportunity and environmental impact will also be taken into consideration.
- **Progress to Date, Showing Commitment:** Does the applicant show commitment to the project through past activity and investment?

VI. ADDITIONAL INFORMATION

A. Submitting Questions

If you have questions, please submit them in writing to OneStop@mass.gov with the subject line "One Stop for Growth Question." The One Stop partners will review and aggregate responses and post them regularly on the One Stop website: www.mass.gov/onestop. EOED, EOHLC, and/or MDFA reserve the right to respond only to questions relevant to the participating programs.

B. Notes about Application Submission

- All Full Applications must be submitted electronically. The online application portal, *IGX*, can be accessed at https://eohed.intelligrants.com.

- All applicants must set up a user account on IGX in order to submit an application for the Full Application. Staff reviews of user accounts may be conducted periodically to determine the accuracy of user access designations. If necessary, action shall be taken to change, revoke, or grant user access to reflect the appropriate designation.

- The application form template and link to the portal will also be available on the EOED webpage. Applicants will have at least 12 weeks to review the application questions and prepare their project proposal.

- It is the responsibility of the applicant to be aware of all requirements and deadlines, and to ensure that their application is complete and submitted on time. All applications will be logged as to date and time received and kept on file as public record. Late submissions will not be considered.

- EOED reserves the right to request additional information from the applicant or external sources as may be necessary in order to complete the application review. EOED also reserves the right to recommend partial grant awards, as deemed appropriate.

B

2025-P-0954

James McGrail, Town Manager
Town of Middleborough
10 Nickerson Street
Middleborough, MA 02346

October 11, 2024

Dear Manager McGrail: RE: **Middleborou-Middleboro-Middleborou-01298**

Congratulations on Middleborough's successful application to the FY25 Round of the Community One Stop for Growth. On behalf of the Healey-Driscoll Administration, I am pleased to inform you that a grant in the amount of **$2,800,000** from the **MassWorks Infrastructure Program** has been approved to support the **Logistics Park project**.

If this project is located in an MBTA Community, please note that a contract will not be executed if the community is noncompliant with Section 3A of M.G.L. Chapter 40A as determined by EOHLC.

As a condition of the award, you will be required to submit a completed Pre-Contract Form (to be provided by EOED) no later than January 31, 2024, to begin the contracting process. A MassWorks team member will reach out directly to discuss any additional conditions or requirements, as well as the next steps related to this grant award. If you have any immediate concerns, please contact Senior Director of Communities and Programs, Marc Horne, at marc.horne@mass.gov.

Please be advised that this letter does not constitute an agreement or contract with EOED or the Commonwealth of Massachusetts, and the grant award is not final until the organization has executed a contract with EOED. You should not proceed with any grant activities until a contract is in place.

Sincerely,

Yvonne Hao
Secretary of Economic Development

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Ply. Sup. Ct. 2583CV00184

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

C

2025-P-0954

Justin Sultzbach, Town Administrator
Town of Middleton
49 South Main Street
Middleton, MA 01949

October 11, 2024

Dear Administrator Sultzbach: RE: **Middleton-Middleton-Route 62 & -00776**

Congratulations on Middleton's successful application to the FY25 Round of the Community One Stop for Growth. On behalf of the Healey-Driscoll Administration, I am pleased to inform you that a grant in the amount of **$2,000,000** from the **MassWorks Infrastructure Program** has been approved to support the **Route 62 & Route 114 project**.

If this project is located in an MBTA Community, please note that a contract will not be executed if the community is noncompliant with Section 3A of M.G.L. Chapter 40A as determined by EOHLC.

As a condition of the award, you will be required to submit a completed Pre-Contract Form (to be provided by EOED) no later than January 31, 2024, to begin the contracting process. A MassWorks team member will reach out directly to discuss any additional conditions or requirements, as well as the next steps related to this grant award. If you have any immediate concerns, please contact Senior Director of Communities and Programs, Marc Horne, at marc.horne@mass.gov.

Please be advised that this letter does not constitute an agreement or contract with EOED or the Commonwealth of Massachusetts, and the grant award is not final until the organization has executed a contract with EOED. You should not proceed with any grant activities until a contract is in place.

Sincerely,

Yvonne Hao
Secretary of Economic Development

257

Ply. Sup. Ct. 2583CV00184

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

D

Commonwealth of Massachusetts

Seaport Economic Council

93 State Pier
New Bedford, Massachusetts 02740
508-999-3030

MAURA T. HEALEY
GOVERNOR

KIMBERLEY DRISCOLL
LIEUTENANT GOVERNOR
COUNCIL CHAIR

ASHLEY STOLBA
VICE CHAIR

December 12, 2024

Town of Marshfield
Town Administrator
Michael Maresco
870 Moraine Street
Marshfield, MA 02050

Dear Town Administrator Maresco:

Congratulations! On behalf of the Seaport Economic Council, I am pleased to inform you that the Council has conditionally approved the Town of Marshfield's application for a grant in the amount of $261,600 for the Permitting North/South River Dredging project. The Executive Office of Economic Development (EOED), as the lead state agency for the Council, will administer the funding.

Please note that this grant award is contingent on the Town of Marshfield being in compliance with the multifamily zoning requirements set forth in section 3A of chapter 40A of the Massachusetts General Laws. Compliance is determined by the Executive Office of Housing and Livable Communities. If you have questions about the Town's compliance status, you may contact the Executive Office of Housing and Livable Communities at EOHLC3A@mass.gov.

The grant award is not final until the Town of Marshfield has executed a contract with EOED. A contract must be executed no later than December 31, 2025. You should not proceed with any purchases or construction work until a contract is in place. In order to begin preparing a contract for this grant, please email a completed Pre-Contract Information Worksheet (template attached) no later than June 30, 2025 to Ellen Cebula, Director of the Seaport Economic Council, at ellen.cebula@mass.gov. Ms. Cebula will contact you to discuss any additional conditions or requirements related to this grant award and next steps.

Sincerely,

Kimberley Driscoll

Kimberley Driscoll
Chair, Seaport Economic Council
Lieutenant Governor, Commonwealth of Massachusetts

cc Ellen Cebula, Director, Seaport Economic Council

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	)	No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

AFFIDAVIT OF CHRISTOPHER JEE

I, Christopher Jee, hereby depose and say as follows:

1. I am the General Counsel of the Massachusetts Executive Office of Housing Livable Communities ("EOHLC"). I have served in this capacity since 2024 and have worked for EOHLC and its predecessor agencies in other capacities since 2014.

2. The facts set forth in this affidavit either are personally known to me or are based on knowledge I have acquired through review of documents kept by EOHLC in the ordinary course of its business.

The Healey-Driscoll Administration's Policy Regarding Award of Discretionary State Grants to MBTA Communities

3. It is the policy of the Healey-Driscoll Administration that all discretionary state grants shall be subject to compliance with § 3A.

4. For each grant opportunity, an awardee's compliance status is evaluated at the time of award and at the time of contracting. If, at either of these points, a municipality is found to be out of compliance with § 3A, it will not receive that grant unless it comes into compliance with the law. If a municipality falls out of compliance with § 3A after contracting, the award and related funds will not be rescinded.

5. Grants or funds where the awarding agency does not have discretion as to recipient selection, such as Chapter 70 state aid for public schools or federal grants where the state is considered a pass-through mechanism, are not subject to this policy. However, grants where the state has discretion on recipient selection, or any state matching funds, are subject to this policy.

The Division of Local Mandates' Recent Requests for Information from EOHLC

6. On January 14, 2025, EOHLC filed an emergency regulation with the Secretary of the Commonwealth's Office, relative to 760 CMR 72.00. The materials submitted to the

Secretary's office on that date included both a statement of no fiscal effect pursuant to G.L. c. 30A, § 5, and a small business impact statement.

7. On March 3, 2025, I received an email from an employee of the Division of Local Mandates ("DLM") requesting "the fiscal impact statements in connection with the MBTA Communities Act referenced in the SJC's Milton decision."

8. On March 6, 2025, I replied to DLM, attaching a true and correct copy of the documents filed with the Secretary of the Commonwealth's Office on January 14, 2025, including the fiscal effect statement and the small business impact statement. A true and correct copy of my reply to DLM (including the attachment) is attached to this affidavit as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct:

/s/ Christopher Jee

March 18, 2025 Christopher Jee

A

From: Jee, Christopher (EOHLC)
To: Kwon, Sonia J. (EXT)
Cc: Leung-Tat, Michael K. (SAO); DiNatale, Jana J. (SAO)
Subject: RE: MBTA Communities Act - Fiscal Impact Statements
Date: Thursday, March 6, 2025 1:16:00 PM
Attachments: 760 CMR 72.00 Emergency Filing Package 250131 Date stamped filing.pdf
image001.png
image002.png
image003.png
image004.png
image005.png

Hello Sonia,

I am attaching what was filed with the Secretary of the Commonwealth's Office on January 14 with the MBTA Communities regulation, which included both the fiscal impact statement and the small business impact statement.

Thanks,
Chris

Chris Jee *(he/him)*
General Counsel
Executive Office of Housing and Livable Communities
100 Cambridge Street, 3rd Floor | Boston, MA | 02114
t. 617.573.1313 | christopher.jee@mass.gov

Interact with EOHLC!

From: Kwon, Sonia J. (SAO) <Sonia.Kwon@massauditor.gov>
Sent: Monday, March 3, 2025 3:42 PM
To: Jee, Christopher (EOHLC) <christopher.jee@mass.gov>
Cc: Leung-Tat, Michael K. (SAO) <Michael.Leung-Tat@massauditor.gov>; DiNatale, Jana J. (SAO) <Jana.DiNatale@massauditor.gov>
Subject: MBTA Communities Act - Fiscal Impact Statements

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Christopher,

I am reaching out to ask whether EOHLC has prepared the fiscal impact statements in connection with the MBTA Communities Act referenced in the SJC's *Milton* decision and, if so, to request a copy of those statements.

Thank you,

Sonia J. Kwon
Senior Legal Counsel, Division of Local Mandates
Office of State Auditor Diana DiZoglio
One Winter Street, 9th Floor
Boston, MA 02108
Tel: (857) 242-5446
Sonia.Kwon@MassAuditor.gov

Date Filed 3/18/2025 10:30 PM
Superior Court - Plymouth
Docket Number 2583CV00184

SEC OF STATE / REG DIV
2025 JAN 14 PM 8:19

Docket # 0

THE COMMONWEALTH OF MASSACHUSETTS
William Francis Galvin
Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: **760 CMR 72.00**

CHAPTER TITLE: **Multi-family Zoning Requirement for MBTA Communities**

AGENCY: **Executive Office of Housing and Livable Communities**

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

760 CMR 72.00 is an emergency regulation that implements the MBTA Communities Act, created by M.G.L. c. 40A, § 3A, to require MBTA Communities to have a zoning ordinance or by-law that provides for at least one district of reasonable size in which multi-family housing is permitted as of right.

REGULATORY AUTHORITY: **M.G.L. c. 40A, § 3A, M.G.L. c. 23B**

AGENCY CONTACT: **Caitlin Loftus** PHONE: **617-573-1506**

ADDRESS: **100 Cambridge Street, Suite 300, Boston, MA 02114**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

G.L. c. 40A, § 3A, requires EOHLC, in consultation with EOED, MassDOT and the MBTA, to promulgate guidelines to determine if an MBTA community is in compliance with G.L. c. 40A, § 3A. The immediate adoption of 760 CMR 72.00 is necessary pursuant to the Decision issued by the SJC in Attorney General v. Town of Milton, et al. SJC-13580, slip op. at 22 (Jan. 8, 2025), holding that the guidelines

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

A&F approval: 1/14/2025; GOV approval: 1/14/2025; Notice to LGAC 1/14/2025

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **2/21/2025 (end of comment period)**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: **none**

For the first five years: **none**

No fiscal effect: **none**

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: **1/14/2025**

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Zoning, Multi-Family Zoning, Housing, MBTA Communities, Multi-Family Housing

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

Promulgate 760 CMR 72.00

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: Caitlin Corbett DATE: 1/14/2025

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: _____ DATE: _____

EFFECTIVE DATE: _____

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages:	*Insert these pages:*

760 CMR 72.00 – Multi-family Zoning Requirement for MBTA Communities
Supplement to the Regulation Filing Form

The following language was cut off in the Regulation Filing Form under the Section "Compliance with G.L. 30A – Emergency Adoption" and is provided below:

issued by EOHLC on August 17, 2023 "are legally ineffective and must be repromulgated in accordance with [Chapter 30A]...." Absent this emergency adoption, there would be no regulations in effect, which EOHLC finds would be detrimental to the general public welfare, including but not limited to the interests of municipalities and others that have relied on the guidelines. EOHLC intends to make 760 CMR 72.00 permanent and will begin the non-emergency promulgation process shortly after filing the emergency regulation.

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 760 CMR 72.00

Estimate of the Number of Small Businesses Impacted by the Regulation: EOHLC does not anticipate that the regulation will have any impact on small businesses. G.L. c. 40A, s. 3A requires MBTA Communities to adopt a zoning ordinance or by-law that provides for at least one district of reasonable size in which multi-family housing is permitted as of right. The regulation establishes rules, standards and procedures to set forth how MBTA Communities may achieve compliance with G.L. c. 40A, § 3A.

Select Yes or No and Briefly Explain		
Yes ☐	No ☑	Will small businesses have to create, file, or issue additional reports?
Yes ☐	No ☑	Will small businesses have to implement additional recordkeeping procedures?
Yes ☐	No ☑	Will small businesses have to provide additional administrative oversight?
Yes ☐	No ☑	Will small businesses have to hire additional employees in order to comply with the proposed regulation?
Yes ☐	No ☑	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
Yes ☐	No ☑	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
Yes ☐	No ☑	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.)
Yes ☐	No ☑	Do any other regulations duplicate or conflict with the proposed regulation?
Yes ☐	No ☑	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?
Yes ☐	No ☑	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
Yes ☐	No ☑	Is the regulation likely to *deter* the formation of small businesses in Massachusetts?

Yes ☐	No ☑	Is the regulation likely to *encourage* the formation of small businesses in Massachusetts?
Yes	No	Does the regulation provide for less stringent compliance or reporting requirements for small

☐	☑	businesses?
Yes ☐	No ☑	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
Yes ☐	No ☑	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?
Yes ☐	No ☑	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?
Yes ☐	No ☑	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?

760 CMR 72.00 MULTI-FAMILY ZONING REQUIREMENT FOR MBTA COMMUNITIES

72.01: Background and Purpose
72.02: Definitions
72.03: General Principles of Compliance
72.04: Allowing Multi-Family As of Right
72.05: Determining Reasonable Size
72.06: Minimum Gross Density
72.07: Determining Suitability for Families with Children
72.08: Location of Districts
72.09: Determinations of Compliance
72.10: Ongoing Obligations; Rescission of a Determination of Compliance
72.11: Changes to MBTA Service

72.01: Background and Purpose

G.L. c 40A, §3A provides: An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

The purpose of G.L. c. 40A, § 3A is to encourage the production of Multi-family housing by requiring MBTA communities to adopt zoning districts where Multi-family housing is allowed As of right, and that meet other requirements set forth in the statute. 760 CMR 72.00 establishes rules, standards, and procedures to set forth how MBTA communities may achieve compliance with G.L. c. 40A, §3A. Pursuant to G.L. c. 40A, § 3A(c), the Executive Office of Housing and Livable Communities (EOHLC) is the regulatory agency for the program and is expressly authorized to issue guidelines, in consultation with the Executive Office of Economic Development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, to determine if an MBTA community is in compliance with G.L. c. 40A, § 3A. EOHLC is adopting these regulations pursuant to its authority under G.L. c. 6A, §16G ½ and pursuant to the Decision issued by the Supreme Judicial Court in Attorney General v. Town of Milton, et al. SJC-13580, slip op. (Jan. 8, 2025), holding that the guidelines issued by EOHLC on August 17, 2023 are unenforceable and must be promulgated in accordance with G.L. c. 30A, § 3.

72.02: Definitions

"Adjacent community" means an MBTA community that (i) has within its boundaries less than 100 acres of Developable station area, and (ii) is not an Adjacent small town.

"Adjacent small town" means an MBTA community that (i) has within its boundaries less than 100 acres of Developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

"Affordable unit" means a Multi-family housing unit that is subject to a restriction in its chain of title limiting the sale price or rent, or limiting occupancy to an individual or household of a specified income, or both. Affordable units may be, but are not required to be, eligible for inclusion on EOHLC's Subsidized Housing Inventory. Nothing in 760 CMR 72.00 changes the Subsidized Housing Inventory eligibility criteria, and no affordable unit shall be counted on the Subsidized Housing Inventory unless it satisfies the requirements for inclusion under 760 CMR 56.03(2) or any other regulation or guidance issued by EOHLC.

"Age-restricted housing" means any housing unit encumbered by a title restriction requiring a minimum age for some or all occupants.

"As of right" means development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.

"Bus station" means a location with a passenger platform and other fixed infrastructure serving as a point of embarkation for the Massachusetts Bay Transportation Authority Silver Line. Upon the request of an MBTA community, EOHLC, in consultation with the Massachusetts Bay Transportation Authority, may determine that other locations qualify as a bus station if (i) such location has a sheltered platform or other fixed infrastructure serving a point of embarkation for a high-capacity Massachusetts Bay Transportation Authority bus line, and (ii) the area around such fixed infrastructure is highly suitable for Multi-family housing.

"Commuter rail community" means an MBTA community that (i) does not meet the criteria for a Rapid transit community, and (ii) has within its borders at least 100 acres of Developable station area associated with one or more Commuter rail stations.

"Commuter rail station" means any Massachusetts Bay Transportation Authority Commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service, including stations and any extensions to such lines under construction and scheduled to begin service before the end of 2025.

"Compliance model" means the model created by EOHLC to determine compliance with G.L. c. 40A, § 3A's reasonable size, gross density, and location requirements. The compliance model is described in further detail in the Compliance Methodology Model, which is a model prescribed by EOHLC.

"Determination of compliance" means a determination made by EOHLC as to whether an MBTA community has a Multi-family zoning district that complies with the requirements of G.L. c. 40A, § 3A. A Determination of compliance may be a determination of interim compliance or a determination of district compliance, as described in 760 CMR 72.09.

"Developable land" means land on which Multi-family housing can be permitted and constructed. For purposes of 760 CMR 72.00, Developable land consists of: (i) all privately-owned land except Lots or portions of Lots that meet the definition of Excluded land, and (ii) Developable public land.

"Developable public land" means any Publicly-owned land that (i) is used by a local housing authority; (ii) has been identified as a site for housing development in a housing production plan approved by EOHLC; or (iii) has been designated by the public owner for disposition and redevelopment. Other Publicly-owned land may qualify as Developable public land if EOHLC determines, at the request of an MBTA community and after consultation with the public owner, that such land is the location of obsolete structures or uses, or otherwise is suitable for conversion to Multi-family housing, and will be converted to or made available for Multi-family housing within a reasonable period of time.

"Developable station area" means Developable land that is within 0.5 miles of a Transit station.

"EOED" means the Executive Office of Economic Development.

"EOHLC" means the Executive Office of Housing and Livable Communities.

"Excluded land" means land areas on which it is not possible or practical to construct Multi-family housing. For purposes of 760 CMR 72.00, Excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

(1) All Publicly-owned land, except for Lots or portions of Lots determined to be Developable public land.
(2) All rivers, streams, lakes, ponds and other surface waterbodies.
(3) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
(4) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
(5) All Public rights-of-way and Private rights-of-way.
(6) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
(7) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.

"Ferry terminal" means the location where passengers embark and disembark from regular, year-round Massachusetts Bay Transportation Authority ferry service.

"Gross density" means a units-per-acre density measurement that includes land occupied by Public rights-of-way and any recreational, civic, commercial, and other nonresidential uses.

"Housing suitable for families" means housing comprised of residential dwelling units that are not age-restricted housing, and for which there are no zoning restriction on the number of bedrooms, the size of bedrooms, or the number of occupants.

"Listed funding sources" means (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in G.L. c. 29, § 2EEEE; and (iii) the MassWorks infrastructure program established in G.L. c. 23A, § 63.

"Lot" means an area of land with definite boundaries that is used or available for use as the site of a building or buildings.

"MassGIS data" means the comprehensive, statewide database of geospatial information and mapping functions maintained by the Commonwealth's Bureau of Geographic Information, within the Executive Office of Technology Services and Security, including the lot boundaries and use codes provided by municipalities.

"MBTA Community Categories and Requirements" means the table of MBTA communities adopted and updated by EOHLC, identifying the community category assignment, minimum land area, minimum Multi-family unit capacity, Developable station area, and percentage of the Multi-family zoning district to be located in the Developable station area, applicable to MBTA communities.

"MBTA community" means a city or town that is: (i) one of the 51 cities and towns as defined in G.L. c. 161A, § 1; (ii) one of the 14 cities and towns as defined in G.L. c. 161A, § 1; (iii) other served communities as defined in G.L. c. 161A, § 1; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under G.L. c. 161A, § 6 or in accordance with any special law relative to the area constituting the authority.

"Mixed-use development" means development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

"Mixed-use development zoning district" means a zoning district where multiple residential units are allowed as of right if, but only if, combined with non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

"Multi-family housing" means a building with three or more Residential dwelling units or two or more buildings on the same Lot with more than one Residential dwelling unit in each building.

"Multi-family unit capacity" means an estimate of the total number of Multi-family housing units that can be developed As of right within a Multi-family zoning district, made in accordance with the requirements of 760 CMR 72.05(1)(b).

"Multi-family zoning district" means a zoning district, including a base district or an overlay district, in which Multi-family housing is allowed As of right; provided that the district shall be in a fixed location or locations, and shown on a map that is part of the zoning ordinance or by-law.

"One Stop Application" means the single application portal for the Community One Stop for Growth through which (i) EOED considers requests for funding from the MassWorks infrastructure program; (ii) EOHLC considers requests for funding from the Housing Choice Initiative, (iii) EOED, EOHLC and other state agencies consider requests for funding from other discretionary grant programs.

"Private rights-of-way" means land area within which private streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

"Publicly-owned land" means (i) any land owned by the United States or a federal agency or authority; (ii) any land owned by the Commonwealth of Massachusetts or a state agency or authority; and (iii) any land owned by a municipality or municipal board or authority.

"Public rights-of-way" means land area within which public streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

"Rapid transit community" means an MBTA community that has within its borders at least 100 acres of Developable station area associated with one or more Subway stations, or Massachusetts Bay Transportation Authority Silver Line bus rapid transit stations.

"Residential dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

"Sensitive land" means Developable land that, due to its soils, slope, hydrology, or other physical characteristics, has significant conservation values that could be impaired, or vulnerabilities that could be exacerbated, by the development of Multi-family housing. It also includes locations where Multi-family housing would be at increased risk of damage caused by flooding. Sensitive land includes, but is not limited to, wetland buffer zones extending beyond the title 5 setback area; land subject to flooding that is not a wetland resource area; priority habitat for rare or threatened species; Department of Environmental Protection-approved wellhead protection areas in which development may be restricted, but is not prohibited (Zone II and interim wellhead protection areas); and land areas with prime agricultural soils that are in active agricultural use.

"Site plan review" means a process established by local ordinance or by-law by which a local board reviews, and potentially imposes conditions on, the appearance and layout of a specific project prior to the issuance of a building permit.

"Subway station" means any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, or Blue Line, including but not limited to the Mattapan High Speed Line and any extensions to such lines.

"Transit station" means a Massachusetts Bay Transportation Authority Subway station, Commuter rail station, Ferry terminal or Bus station.

"Transit station area" means the land area within 0.5 miles of a Transit station.

72.03: General Principles of Compliance

(1) 760 CMR 72.00 describes how an MBTA community can comply with the requirements of G.L. c. 40A, § 3A. 760 CMR 72.00 specifically addresses:

(a) What it means to allow Multi-family housing "As of right."

(b) The metrics that determine if a Multi-family zoning district is "of reasonable size."

(c) How to determine if a Multi-family zoning district has a minimum gross density of 15 units per acre, subject to any further limitations imposed by G.L. c. 131, § 40 of and title 5 of the state environmental code.

(d) The meaning of G.L. c. 40A, § 3A's mandate that "such multi-family housing shall be without age restrictions and shall be suitable for families with children."

(e) The extent to which MBTA communities have flexibility to choose the location of a Multi-family zoning district.

(2) The following general principles have informed the more specific compliance criteria that follow:

(a) MBTA communities with Subway stations, Commuter rail stations and other Transit stations benefit from having these assets located within their boundaries and should provide opportunity for Multi-family housing development around these assets. MBTA communities with no Transit stations within their boundaries benefit from proximity to Transit stations in nearby communities.

(b) The Multi-family zoning districts required by G.L. c. 40A, § 3A should encourage the development of Multi-family housing projects of a scale, density and aesthetic that are compatible with existing surrounding uses, and minimize impacts to Sensitive land.

(c) "Reasonable size" is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a Multi-family zoning district that is "reasonable" in one city or town may not be reasonable in another city or town.

(d) When possible, Multi-family zoning districts should be in areas that have safe, accessible, and convenient access to Transit stations for pedestrians and bicyclists.

72.04: Allowing Multi-Family Housing "As of Right"

(1) To comply with G.L. c. 40A, § 3A, a Multi-family zoning district must allow Multi-family housing As of right, meaning that the construction and occupancy of multi-family housing is allowed in that district without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval. EOHLC will determine whether zoning provisions allow for Multi-family housing as of right consistent with the following requirements.

(a) Site plan review. G.L. c. 40A does not establish nor recognize site plan review as an independent method of regulating land use. However, the Massachusetts courts have recognized Site plan review as a permissible regulatory tool, including for uses that are permitted as of right. The court decisions establish that when Site plan review is required for a use permitted As of right, site plan review involves the regulation of a use and not its outright prohibition. The scope of review is therefore limited to imposing reasonable terms and conditions on the proposed use, consistent with applicable case law. 760 CMR 72.00 similarly recognizes that Site plan review may be required for Multi-family housing projects that are allowed As of right, within the parameters established by the applicable case law. Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. Site plan review should not unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed As of right and complies with applicable dimensional regulations.

(b) Affordability requirements. G.L. c. 40A, § 3A does not include any express requirement or authorization for an MBTA community to require Affordable units in a Multi-family housing project that is allowed As of right. It is a common practice in many cities and towns to require Affordable units in a Multi-family project that requires a special permit, or as a condition for building at greater densities than the zoning otherwise would allow. These inclusionary zoning requirements serve the policy goal of increasing affordable housing production. If affordability requirements are excessive, however, they can make it economically infeasible to construct new Multi-family housing.

1. For purposes of making compliance determinations with G.L. c. 40A, § 3A, EOHLC will consider an affordability requirement to be consistent with As of right zoning as long as the zoning requires not more than ten percent of the units in a project to be Affordable units, and the cap on the income of families or individuals who are eligible to occupy the Affordable units is not less than eighty percent of area median income. Notwithstanding the foregoing, EOHLC may, in its discretion, approve a greater percentage of affordable units, or deeper affordability for some or all of the affordable units, in either of the following circumstances:

a. The affordability requirements applicable in the Multi-family zoning district are reviewed and approved by EOHLC as part of a smart growth district under G.L. c. 40R, or under another zoning incentive program administered by EOHLC; or

b. The affordability requirements applicable in the Multi-family zoning district are supported by an economic feasibility analysis, prepared for the municipality by a

qualified and independent third party acceptable to EOHLC, and using a methodology and format acceptable to EOHLC. The analysis must demonstrate that a reasonable variety of Multi-family housing types can be feasibly developed at the proposed affordability levels, taking into account the densities allowed As of right in the district, the dimensional requirements applicable within the district, and the minimum number of parking spaces required.

2. In no case will EOHLC approve alternative affordability requirements that require more than 20 percent of the units in a project to be Affordable units, except in a smart growth zoning district under G.L. c. 40R with a 25 percent affordability requirement approved and adopted prior to August 10, 2022 (the date of issuance by EOHLC of Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act which have been superseded by 760 CMR 72.00), including any such existing district that is expanded or amended to comply with G.L. c. 40A, § 3A and 760 CMR 72.00.

(c) Other requirements that do not apply uniformly in the Multi-family zoning district. Zoning will not be deemed compliant with G.L. c. 40A, § 3A's requirement that Multi-family housing be allowed As of right if the zoning imposes requirements on Multi-family housing that are not generally applicable to other uses. The following are examples of requirements that would be deemed to be inconsistent with As of right use: (i) a requirement that Multi-family housing meet higher energy efficiency standards than other uses; (ii) a requirement that a Multi-family use achieve a third party certification that is not required for other uses in the district; and (iii) a requirement that Multi-family use must be combined with commercial or other uses on the same Lot or as part of a single project. Mixed use projects may be allowed As of right in a Multi-family zoning district, as long as Multi-family housing is separately allowed As of right.

72.05: Determining "Reasonable Size"

(1) In making determinations of "reasonable size," EOHLC will take into consideration both the land area of the Multi-family zoning district, and the Multi-family zoning district's Multi-family unit capacity.

(a) Minimum land area. A zoning district is a specifically delineated land area with uniform regulations and requirements governing the use of land and the placement, spacing, and size of buildings. For purposes of compliance with G.L. c. 40A, § 3A, a Multi-family zoning district should be a neighborhood-scale district, not a single development site on which the municipality is willing to permit a particular Multi-family project. EOHLC will certify compliance with G.L. c. 40A, § 3A only if an MBTA community's Multi-family zoning district meets the minimum land area applicable to that MBTA community, if any, as set forth in the MBTA Community Categories and Requirements. The minimum land area for each MBTA community has been determined as follows:

I. In Rapid transit communities, Commuter rail communities, and Adjacent communities, the minimum land area of the Multi-family zoning district is 50 acres, or 1.5% of the

Developable land in an MBTA community, whichever is less. In certain cases, as set forth in the MBTA Community Categories and Requirements a smaller minimum land area applies.

2. In Adjacent small towns, there is no minimum land area. In these communities, the Multi-family zoning district may comprise as many or as few acres as the community determines is appropriate, as long as the district meets the applicable minimum Multi-family unit capacity and the minimum Gross density requirements.

3. In all cases, at least half of the Multi-family zoning district land areas must comprise contiguous Lots of land. No portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement. If the Multi-family unit capacity and Gross density requirements can be achieved in a district of fewer than 5 acres, then the district must consist entirely of contiguous Lots.

(b) Minimum Multi-family unit capacity. A reasonably sized Multi-family zoning district must also be able to accommodate a reasonable number of Multi-family housing units As of right. For purposes of determinations of compliance with G.L. c. 40A, § 3A, EOHLC will consider a reasonable Multi-family unit capacity for each MBTA community to be a specified percentage of the total number of housing units within the community, with the applicable percentage based on the type of Transit service in the community, as shown on Table 1:

Table 1.

Category	Percentage of total housing units
Rapid transit community	25%
Commuter rail community	15%
Adjacent community	10%
Adjacent small town	5%

1. To be deemed in compliance with G.L. c. 40A, § 3A, each MBTA community must have a Multi-family zoning district with a Multi-family unit capacity equal to or greater than the minimum unit capacity as determined by EOHLC in accordance with the MBTA Community Categories and Requirements. The minimum Multi-family unit capacity for each MBTA community has been determined as follows:

a. First, by multiplying the number of housing units in that community by 0.25, 0.15, 0.10, or .05 depending on the MBTA community category. For example, a Rapid transit community with 7,500 housing units is required to have a Multi-family zoning district with a Multi-family unit capacity of 7,500 x 0.25 = 1,875 Multi-family units. For purposes of 760 CMR 72.00, the number of total housing units in each MBTA community has been established by reference to the most recently published United States Decennial Census of Population and Housing.

b. Second, when there is a minimum land area applicable to an MBTA community, by multiplying that minimum land area (up to 50 acres) by G.L. c. 40A, § 3A's minimum gross density requirement of 15 units per acre. The product of that multiplication creates a floor on Multi-family unit capacity. For example, an MBTA community with a minimum land area of 40 acres must have a district with a Multi-family unit capacity of at least 600 (40 x 15) units.

c. The minimum unit capacity applicable to each MBTA community is the greater of the numbers resulting from steps (i) and (ii) above, but subject to the following limitation: In no case does the minimum Multi-family unit capacity exceed 25% of the total housing units in that MBTA community.

Example: The minimum multi-family unit capacity for an Adjacent community with 1,000 housing units and a minimum land area of 50 acres is determined as follows:(i) first, by multiplying 1,000 x .1 = 100 units; (ii) second, by multiplying 50 x 15 = 750 units;(iii) by taking the larger number, but adjusting that number down, if necessary, so that unit capacity is no more than 25% of 1,000 = 250 units. In this case, the adjustment in step (iii) results in a minimum unit capacity of 250 units.

(c) Unit Capacity in Mixed-Use Development Districts

1. In making determinations of whether an MBTA community has a Multi-family zoning district of "reasonable size" under this section, EOHLC shall also take into consideration the existence and impact of Mixed-use development zoning districts, subject to the requirements below.

2. EOHLC shall take these Mixed-use development districts into consideration as reducing the unit capacity needed for a Multi-family zoning district to be "reasonable" (in accordance with the MBTA Community Categories and Requirements) where:

a. the Mixed-use development zoning district is in an eligible location where existing village-style or downtown development is essential to preserve pedestrian access to amenities;
b. there are no age restrictions or limits on unit size, number of bedrooms, bedroom size or number of occupants and the residential units permitted are suitable for families with children;
c. Mixed-used development in the district is allowed As of right as that phrase has been interpreted by EOHLC (for example, in 760 CMR 72.04(1)(b) with respect to affordability requirements);
d. the requirement for non-residential uses is limited to the ground floor of buildings, and in no case represents a requirement that more than thirty-three percent of the floor area of a building, Lot, or project must be for non-residential uses;
e. the requirement for non-residential uses does not preclude a minimum of three residential dwelling units per Lot;
f. the requirement for non-residential uses allows a broad mix of non-residential uses As-of-right in keeping with the nature of the area; and

g. there are no minimum parking requirements associated with the non-residential uses allowed As of right.

2. An MBTA community asking to reduce the unit capacity requirement for its Multi-family zoning district(s) based on the unit capacity for one or more Mixed-use development districts shall submit to EOHLC, on a form to be provided by EOHLC, a request for a determination that the Mixed-use development district is in an eligible location meeting the requirements of 760 CMR 72.05(1)(c)2.a. This request must be submitted at least 90 days prior to the vote of the MBTA community's legislative body. An MBTA community also may submit a broader inquiry as to G.L. c. 40A, § 3A compliance in accordance with 760 CMR 72.09(5). EOHLC shall respond prior to the vote of the MBTA community's legislative body if the request is timely submitted.

3. In any community with both a Multi-family zoning district and a Mixed-use development district that meets these considerations, the unit capacity requirement for the Multi-family zoning district, as stated in the MBTA Community Categories and Requirements, shall be reduced by the lesser of:

a. the unit capacity of Residential dwelling units in the Mixed-use development district or subdistrict (as calculated by EOHLC using a methodology similar to that in 760 CMR 72.05(1)(d) which takes into account the impact of non-residential uses), or
b. twenty five percent of the unit capacity requirement as stated in the MBTA Community Categories and Requirements. This consideration shall not affect the minimum land area acreage or contiguity requirements for a Multi-family zoning district otherwise required by 760 CMR 72.00.

(d) Methodology for determining a Multi-family zoning district's multi-family unit capacity.

1. MBTA communities seeking a determination of compliance must use the EOHLC Compliance model to provide an estimate of the number of Multi-family housing units that can be developed As of right within the Multi-family zoning district. The Multi-family unit capacity of an existing or proposed district shall be calculated using the unit capacity worksheet described in the Compliance Methodology Model. This worksheet produces an estimate of a district's Multi-family unit capacity using inputs such as the amount of Developable land in the district, the dimensional requirements applicable to Lots and buildings (including, for example, height limitations, lot coverage limitations, and maximum floor area ratio), and the parking space requirements applicable to Multi-family uses.

2. Minimum unit capacity is a measure of whether a Multi-family zoning district is of a reasonable size, not a requirement to produce housing units. Nothing in G.L. c. 40A, § 3A or 760 CMR 72.00 should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target. Demonstrating compliance with the minimum multi-family unit capacity requires only that an MBTA community show that the zoning allows multi-family housing as of right and that a sufficient number of multi-

family housing units could be added to or replace existing uses and structures over time—even though such additions or replacements may be unlikely to occur soon.

3. If an MBTA community has two or more zoning districts in which Multi-family housing is allowed As of right, then two or more districts may be considered cumulatively to meet the minimum land area and minimum Multi-family unit capacity requirements, as long as each district independently complies with G.L. c. 40A, § 3A's other requirements and 760 CMR 72.00.

(e) Water and wastewater infrastructure within the multi-family zoning district

1. MBTA communities are encouraged to consider the availability of water and wastewater infrastructure when selecting the location of a new Multi-family zoning district. Compliance with G.L. c. 40A, § 3A does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future Multi-family housing production within the Multi-family zoning district. In most cases, Multi-family housing can be created using private septic and wastewater treatment systems that meet state environmental standards. Where public systems currently exist, but capacity is limited, private developers may be able to support the cost of necessary water and sewer extensions. While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows.

2. The Multi-family unit capacity analysis does not need to take into consideration limitations on development resulting from existing water or wastewater infrastructure within the Multi-family zoning district, or, in areas not served by public sewer, any applicable limitations under title 5 of the state environmental code. For purposes of the unit capacity analysis, it is assumed that housing developers will design projects that work within existing water and wastewater constraints, and that developers, the municipality, or the Commonwealth will provide funding for infrastructure upgrades as needed for individual projects.

72.06: Minimum Gross Density

(1) G.L. c. 40A, § 3A expressly requires that a Multi-family zoning district—not just the individual lots of land within the district—must have a minimum Gross density of 15 units per acre, subject to any further limitations imposed by G.L. c. 131 and title 5 of the state environmental code established pursuant to G.L. c. 21A. G.L. c. 40A, § 1A defines "Gross density" as "a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses."

(2) District-wide Gross density.

(a) To meet the district-wide Gross density requirement, the dimensional restrictions and parking requirements for the Multi-family zoning district must allow for a Gross density of

15 units per acre of land within the district. By way of example, to meet that requirement for a 40-acre Multi-family zoning district, the zoning must allow for at least 15 multi-family units per acre, or a total of at least 600 Multi-family housing units.

(b) For purposes of determining compliance with G.L. c. 40A, § 3A's Gross density requirement, the EOHLC Compliance model will not count in the denominator any excluded land located within the Multi-family zoning district, except public rights-of-way, private rights-of-way, and publicly-owned land used for recreational, civic, commercial, and other nonresidential uses. This method of calculating minimum Gross density respects G.L. c. 40A, § 1A's definition of Gross density—"a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses"—while making it unnecessary to draw patchwork Multi-family zoning districts that carve out wetlands and other types of excluded land that are not developed or developable.

(3) Achieving district-wide gross density by sub-districts. Zoning ordinances and by-laws typically limit the unit density on individual lots. To comply with G.L. c. 40A, § 3A's Gross density requirement, an MBTA community may establish reasonable sub-districts within a Multi-family zoning district, with different density limits for each sub-district, provided that the Gross density for the district as a whole meets the statutory requirement of not less than 15 Multi-family units per acre. EOHLC will review sub-districts to ensure that the density allowed As of right in each sub-district is reasonable and not intended to frustrate the purpose of G.L. c. 40A, § 3A by allowing projects of a such high density that they are not likely to be constructed.

(4) Wetland and septic considerations relating to density. G.L. c. 40A, § 3A provides that a district of reasonable size shall have a minimum Gross density of 15 units per acre, "subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to G.L. c. 21A, § 13." This directive means that even though the zoning district must permit 15 units per acre As of right, Multi-family housing produced within the district is subject to, and must comply with, the state wetlands protection act and title 5 of the state environmental code—even if such compliance means a proposed project will be less dense than 15 units per acre.

72.07: Determining Suitability for Families with Children

G.L. c. 40A, § 3A states that a compliant Multi-family zoning district must allow Multi-family housing As of right, and that such multi-family housing shall be without age restrictions and shall be suitable for families with children. EOHLC will deem a Multi-family zoning district to comply with these requirements as long as the zoning does not require Multi-family uses to include units with age restrictions, and does not limit or restrict the size of the units, cap the number of bedrooms, the size of bedrooms, or the number of occupants, or impose a minimum age of occupants. Limits, if any, on the size of units or number of bedrooms established by state law or regulation are not relevant to G.L. c. 40A, §3A or to determinations of compliance made pursuant to 760 CMR 72.00.

72.08: Location of Districts

(1) General rule for determining the applicability of G.L. c. 40A, § 3A's location requirement.

(a) A Multi-family zoning district shall "be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable." When an MBTA community has only a small amount of Transit station area within its boundaries, it may not be possible or practical to locate all of the Multi-family zoning district within 0.5 miles of a Transit station. Transit station area may not be a practical location for a Multi-family zoning district if it does not include Developable land where Multi-family housing can actually be constructed. Therefore, for purposes of determining compliance with G.L. c. 40A, § 3A and 760 CMR 72.00, EOHLC will consider the statute's location requirement to be "applicable" to a particular MBTA community only if that community has within its borders at least 100 acres of Developable station area. A Multi-family zoning district shall be located within transit station areas depending on how much total developable station area is in that community, in accordance with Table 2:

Table 2.

Total Developable station area within the MBTA community (acres)	Portion of the Multi-family zoning district that must be within a transit station area
0-100	0%
101-250	20%
251-400	40%
401-600	50%
601-800	75%
801+	90%

(b) The percentages specified in this table apply to both the minimum land area and the minimum Multi-family unit capacity. For example, in an MBTA community that has a total of 500 acres of Transit station area within its boundaries, a Multi-family zoning district will comply with G.L. c. 40A, § 3A's location requirement if at least 50 percent of the district's minimum land area is located within the Transit station area, and at least 50 percent of the district's minimum Multi-family unit capacity is located within the Transit station area.

(c) A community with Transit station areas associated with more than one Transit station may locate the Multi-family zoning district in any of the Transit station areas. For example, a Rapid transit community with Transit station area around a Subway station in one part of town, and Transit station area around a Commuter rail station in another part of town, may locate its Multi-family zoning district in either or both Transit station areas.

(d) MBTA communities with limited or no Transit station area. When an MBTA community has less than 100 acres of Developable station area within its boundaries, the MBTA community may locate the Multi-family zoning district anywhere within its boundaries. To encourage transit-oriented Multi-family housing consistent with the general intent of G.L. c. 40A, § 3A, MBTA communities are encouraged to consider locating the Multi-family zoning

district in an area with reasonable access to a Transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that qualifies as an "eligible location" as defined in G.L. c. 40A—for example, near an existing downtown or village center, near a regional transit authority bus stop or line, or in a location with existing under-utilized facilities that can be redeveloped into new Multi-family housing.

(2) General guidance on district location applicable to all MBTA communities. When choosing the location of a new Multi-family zoning district, every MBTA community should consider how much of a proposed district is Sensitive land on which permitting requirements and other considerations could make it challenging or inadvisable to construct Multi-family housing. For example, an MBTA community should avoid including in a Multi-family zoning district areas that are subject to flooding, or are known habitat for rare or threatened species, or have prime agricultural soils in active agricultural use.

72.09: Determinations of Compliance

(1) G.L. c. 40A, §3A provides that any MBTA community that fails to comply with G.L. c. 40A, § 3A's requirements will be ineligible for funding from any of the Listed funding sources. EOHLC will make determinations of compliance with G.L. c. 40A, § 3A in accordance with 760 CMR 72.00 to inform state agency decisions on which MBTA communities are eligible to receive funding from the Listed funding sources. The following discretionary grant programs will take compliance with G.L. c. 40A, § 3A into consideration when making grant award recommendations:

(a) Community Planning Grants, EOHLC,
(b) Massachusetts Downtown Initiative, EOED,
(c) Urban Agenda, EOED,
(d) Rural and Small Town Development Fund, EOED,
(e) Brownfields Redevelopment Fund, MassDevelopment,
(f) Site Readiness Program, MassDevelopment,
(g) Underutilized Properties Program, MassDevelopment,
(h) Collaborative Workspace Program, MassDevelopment,
(i) Real Estate Services Technical Assistance, MassDevelopment,
(j) Commonwealth Places Programs, MassDevelopment,
(k) Land Use Planning Grants, EOEEA,
(l) Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA, and
(m) Municipal Vulnerability Preparedness (MVP) Planning and Project Grants, EOEEA

(2) Determinations of compliance also may inform other funding decisions by EOED, EOHLC, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs or making other discretionary funding decisions.

(3) EOHLC will recognize both interim compliance, which means an MBTA community is taking active steps to enact a Multi-family zoning district that complies with G.L. c. 40A, § 3A, and District compliance is achieved when EOHLC determines that an MBTA community has a Multi-family zoning district that complies with G.L. c. 40A, § 3A and the requirements set forth

below. Table 3 includes deadlines, shown with an asterisk, established under prior guidelines that many municipalities have met, and prospective deadlines for certain categories of municipalities as shown without an asterisk.

Table 3.

Transit Category	Deadline to Submit Action Plan	Deadline to Submit District Compliance Application
Rapid transit community	January 31, 2023*	December 31, 2023*
Commuter rail community	January 31, 2023*	December 31, 2024*
Adjacent community	January 31, 2023*	December 31, 2024*
Adjacent small town	January 31, 2023*	December 31, 2025
Rapid transit community that has not submitted a district compliance application to EOHLC as of December 31, 2023	February 13, 2025	July 14, 2025
Commuter rail community that has not submitted a district compliance application to EOHLC as of December 31, 2024	February 13, 2025	July 14, 2025
Adjacent community that has not submitted a district compliance application to EOHLC as of December 31, 2024	February 13, 2025	July 14, 2025

(4) Process to achieve interim compliance. Prior to achieving district compliance (but no later than the deadlines set forth in Table 3), these MBTA communities can achieve interim compliance by taking the following affirmative steps towards the creation of a compliant Multi-family zoning district.

(a) Creation and submission of an action plan. An MBTA community seeking to achieve interim compliance must first submit an action plan on a form to be provided by EOHLC. An MBTA community action plan must provide information about current zoning, past planning for Multi-family housing, if any, and potential locations for a Multi-family zoning district. The action plan also will require the MBTA community to establish a timeline for various actions needed to create a compliant Multi-family zoning district.

(b) EOHLC approval of an action plan. EOHLC will review each submitted action plan for consistency with 760 CMR 72.00, including but not limited to the timelines in Table 3. If EOHLC determines that the MBTA community's action plan is reasonable and will lead to district compliance in a timely manner, EOHLC will issue a determination of interim

compliance. EOHLC may require modifications to a proposed action plan prior to approval.

(c) Implementation of the action plan. After EOHLC approves an action plan and issues a determination of interim compliance, an MBTA community must diligently implement the action plan. EOHLC may revoke a determination of interim compliance if an MBTA community has not made sufficient progress in implementing an approved action plan. EOHLC and EOED will review an MBTA community's progress in implementing its action plan prior to making an award of funds under the Housing Choice Initiative and Massworks infrastructure program.

(d) Deadlines for submitting action plans. An MBTA community that does not submit an action plan by the applicable deadline set forth in Table 3 may not receive a EOHLC determination of interim compliance in time to receive an award of funds from the listed funding sources. An MBTA community that does not achieve interim compliance in time for the Community One Stop for Growth Application deadline may submit an action plan to become eligible for a subsequent round of the One Stop Application, provided that an action plan must be submitted by no later than the applicable deadline of the year in which the MBTA community seeks to establish grant eligibility; and provided further that no action plan may be submitted or approved after the applicable district compliance application deadline set forth in Table 3.

(5) Assistance for communities implementing an action plan. MBTA communities are encouraged to communicate as needed with EOHLC staff throughout the process of implementing an action plan, and may inquire about whether a proposed Multi-family zoning district complies with G.L. c. 40A, § 3A prior to a vote by the municipal legislative body to create or modify such a district. Such requests shall be made on a form to be provided by EOHLC. If a request is submitted at least 90 days prior to the vote of the legislative body, EOHLC shall respond prior to the vote.

(6) Requests for determination of district compliance. An MBTA community must request a determination of district compliance from EOHLC by submitting an application form required by EOHLC and shall include, at a minimum, the following information:

(a) A certified copy of the municipal zoning ordinance or by-law and zoning map, including all provisions that relate to uses and structures in the multi-family zoning district.
(b) An estimate of multi-family unit capacity using the compliance model.
(c) GIS shapefile for the multi-family zoning district.
(d) In the case of a by-law enacted by a town, evidence that the clerk has submitted a copy of the adopted multi-family zoning district to the office of the Attorney General for approval as required by state law, or evidence of the Attorney General's approval.

(7) After receipt of a request for determination of district compliance, EOHLC will notify the requesting MBTA community within 30 days if additional information is required to process the request. Upon reviewing a complete application, EOHLC will provide the MBTA community a written determination stating one of the following:

(a) that the existing Multi-family zoning district complies with G.L. c. 40A, § 3A and 760 CMR 72.00;
(b) that the Multi-family zoning district has been determined to be conditionally compliant with G.L. c. 40A, §3A and 760 CMR 72.00, provided that the MBTA community meets the conditions expressed by EOHLC in its determination; or
(c) that the Multi-family zoning district fails to comply with G.L. c. 40A, § 3A and 760 CMR 72.00 and the steps that must be taken to achieve compliance.

(8) An MBTA community that has achieved interim compliance prior to requesting a determination of district compliance shall remain in interim compliance for the period during which a request for determination of district compliance, with all required information, is pending at EOHLC.

72.10: Ongoing Obligations; Rescission of a Determination of Compliance

(1) After receiving a determination of compliance, an MBTA community must notify EOHLC in writing of any zoning amendment or proposed zoning amendment that affects the compliant Multi-family zoning district, or any other by-law, ordinance, rule or regulation that limits the development of Multi-family housing in the Multi-family zoning district.

(2) EOHLC may rescind a determination of district compliance, or require changes to a Multi-family zoning district to remain in compliance, if EOHLC determines that:

(a) The MBTA community submitted inaccurate information in its application for a determination of compliance;
(b) The MBTA community failed to notify EOHLC of a zoning amendment that affects the Multi-family zoning district;
(c) The MBTA community enacts or amends any by-law or ordinance, or other rule or regulation, that materially alters the minimum land area and/or the Multi-family unit capacity in the Multi-family zoning district;
(d) A board, authority or official in the MBTA community does not issue permits, or otherwise acts or fails to act, to allow construction of a Multi-family housing project that is allowed As of right in the Multi-family zoning district (or any Mixed-use zoning development district taken into account in determining the required Multi-family unit capacity in the Multi-family zoning district);
(e) The MBTA community takes other action that causes the Multi-family zoning district to no longer comply with G.L. c. 40A, § 3A; or
(f) An MBTA community with an approved Multi-family zoning district has changed transit category as a result of a newly opened or decommissioned Transit station, or the establishment of permanent, regular service at a Transit station where there was formerly intermittent or event-based service.

72.11: Changes to MBTA Service

(1) G.L. c. 40A, § 3A applies to the MBTA communities identified in G.L. c. 40A, § 1A and G.L. c. 161A, § 1. When MBTA service changes, the list of MBTA communities and/or the

transit category assignments of those MBTA communities in the MBTA Community Categories and Requirements may change as well.

(2) The community category assignments identified in the MBTA Community Categories and Requirements reflect certain MBTA service changes that are expected to result from the South Coast Rail and Green Line Extension projects. Affected MBTA communities are noted in the MBTA Community Categories and Requirements.

(3) Municipalities that are not now identified as MBTA communities and may be identified as such in the future are not addressed in 760 CMR 72.00 or included in the MBTA Community Categories and Requirements. New MBTA communities will be addressed with revisions to the MBTA Community Categories and Requirements, and separate compliance timelines.

(4) Future changes to Silver Line routes or stations may change district location requirements when expanded high-capacity service combined with new facilities creates a bus station where there was not one before. Changes to other bus routes, including the addition or elimination of bus stops or reductions or expansions of bus service levels, do not affect the transit categories assigned to MBTA communities and will not affect location requirements for Multi-family zoning districts. Any future changes to MBTA transit service, transit routes and transit service levels are determined by the MBTA Board of Directors consistent with the MBTA's Service Delivery Policy.

REGULATORY AUTHORITY

760 CMR 72.00: M.G.L. c. 23B, M.G.L. c. 40A, § 3A

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY and ERIC KELLEY as they constitute the TOWN OF MARSHFIELD SELECT BOARD, Plaintiffs, v. COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES, Defendants. Defendants	No. 2583CV00184 **CASE ASSIGNED TO HON. MARK C. GILDEA**

THE TOWN OF MARSHFIELD AND MARSHFIELD SELECT BOARD'S[1] REPLY MEMORANDUM TO THE COMMONWEALTH AND OTHER DEFENDANTS'[2] MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTIONS FOR PRELIMINARY INJUNCTION

INTRODUCTION

This lawsuit by the Town of Marshfield and its duly elected Select Board (collectively "Marshfield") arises from and is connected to the so-called "MBTA Communities Act" contained in Mass. Gen. L. c. 40A §3A added by § 18 of Chapter 358 of the Acts of 2020, effective January 14, 2021, amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, further

[1] Specifically, Lynne Fidler, Stephen Darcy and Eric Kelley as they constate the Town of Marshfield Select Board.
[2] Specifically, the Commonwealth and the Executive Office of Housing and Livable Communities.

amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§2, 2A, 2B, and 20-26 of Chapter 234 of the Acts of 2024, effective November 20, 2024. As summarized in other filings, the MBTA Communities Act creates a new zoning requirement, obligating all MBTA communities, including the Town of Marshfield, which is considered an "adjacent [MBTA] community", to zone at least one district where dense multi-family housing is permitted as of right, subject to other requirements.[3] The MBTA Communities Act was measure purportedly designed to address the ongoing housing crisis in the Commonwealth of Massachusetts and has as its primary purpose the production of dense, multi-family housing in so-called MBTA communities.

Marshfield hereby submits this brief Reply Memorandum in Support of their Motion for Preliminary Injunction, along with the accompanying affidavits of Town Administrator, Michael Maresco, Town Planner, Greg Guimond, Police Chief, Phillip Tavares, Town Engineer, Rod Procaccino, and Harbormaster, Michael DiMeo. A preliminary injunction has been sought by Marshfield because the Commonwealth and HLC has begun to enforce the MBTA Communities Act against Marshfield by (1) refusing to honor Seaport Economic Council grants awarded to the Town when it was clearly in compliance with the law; (2) denying access to 17 other grant programs enumerated in the MBTA Communities Act, as amended; (3) informing Marshfield that while it is not precluded from seeking other discretionary grant funds that its lack of compliance with the MBTA Communities Act and regulations will be considered as a factor in determining to

[3] An MBTA community is defined as "a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority." The Town of Marshfield is specified as one of the other served communities in clause (iii).

award such future grant funds while Marshfield advances its claim, as is its right, to petition the Superior Court in Plymouth County pursuant to Mass. Gen. L. c. 29 §27C (the "Local Mandate Law") seeking to challenge the law as an unfunded mandate and seeking an exemption from its provisions. In the view of the Town of Marshfield, the present circumstance is self-inflicted because the Commonwealth could have but did not seek the opinion of the State Auditor's Division of Local Mandate (DLM) prior to enactment of the law or could have exempted itself from any such claim by inserting the same into the MBTA Communities Act ab initio. Now, in the face of a reasoned decisions from DLM after the fact determining that the MBTA Communities Act constitutes an unfunded mandate, the Commonwealth and HLC seek to proceed with enforcement without a plenary review of the issue.

I. THE PRELIMINARY INJUNCTION STANDARD

As indicated in Marshfield's original motion, normally, "[a] party seeking a preliminary injunction must show: (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction." *Boston Firefighters Union, Local 718, Int'l Ass'n of Fire Fighters, AFL- CIO v. City of Boston, 491 Mass. 556, 562 (2023) (cleaned up), quoting Garcia v. Department of Housing & Community Dev., 480 Mass. 736, 747 (2018).* "The public interest may also be considered in a case between private parties where the applicable substantive law involves issues that concern public interest[s]" see Bank of New England, N.A. v. Mortgage Corp. of New England, 30 Mass. App. Ct. 238, 246 (1991) or in cases where the an

injunction may restrain government action. *Tri-Nel Management, Inc. v. Board of Health of Barnstable*, 433 Mass. 217, 219 (2001).

The standard is however quite different when the moving party, here Marshfield, is the moving party and on behalf of its residents it is seeking a preliminary injunction preclude being punished from complying with or being subjected to a law that has been determined by DLM to constitute an unfunded mandate and which it clearly and convincingly has set forth facts and a more compelling basis than that of the Commonwealth and HLC that the law imposes on it direct service and cost obligations to implement that were not provided for in the new law. In such a case, the public interest favors Marshfield and the other communities and a temporary halt to the lost grant funds and an exemption from the operation of the law until this matter is fully adjudicated on the merits. In such a case, the "[t]he standard of requiring a demonstration of immediate irreparable harm, employed in civil litigation as a condition precedent to the granting of injunctive relief, is not a prerequisite to the allowance of an injunction ….". *Commonwealth v. Mass. Crinc, 392 Mass 79, 89 (1984).* `When the government [such as Marshfield] acts to enforce a statute or make effective a declared policy of [the Legislature], the standard of public interest and not the requirements of private litigation measure the propriety and need for injunctive relief" (citation omitted). *Id. quoting from United States v. D'Annolfo, 474 F. Supp. 220, 222 (D. Mass. 1979).* Thus, before issuing the preliminary injunction, this Court is only required to determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public. *Id. citing generally Planned Parenthood League v. Bellotti, 641 F.2d 1006 (1st Cir. 1981); United States v. Lit Drug Co., 333 F. Supp. 990, 998 (D.N.J. 1971).*

A. The Issuance of an Injunction Is in the Public Interest as it is Likely that the MBTA Communities Act Constitutes an "Unfunded Mandate" and Otherwise Compels a Certain Vote at Town Meeting .

Marshfield incorporates by reference its arguments and discussions advanced in its Opposition to the Commonwealth and HLC's Motion to Dismiss that the MBTA Communities Act and HLC's regulations constitute an unfunded mandate in violation of Mass. Gen. L. c. 20 §27C as it is plainly evident that municipalities, including Marshfield, do incur direct service and cost obligations in connection with the implementation of the law intended to produce dense, multi-family housing and none of the expenses are indirect costs or speculative because they may be incurred in varying amounts over a period of years. Additionally, Marshfield, contends that the very essence of the law, compels Town Meeting to vote to approve a zoning bylaw dictated by the state in violation of Gen. L. c. 43B. If the Commonwealth and HLC wished to compel compliance and preclude the claims advance by Marshfield it could have exempted the MBTA Communities Act from the provisions of the Local Mandate Law and/or inserted the same as subject that local zoning may not regulate or exempt it under Mass. Gen. L. c. 40A §3. To the extent that the Commonwealth or HLC wish to short-circuit a plenary judicial review via motion to dismiss, such motions are discouraged particularly when the allegations must be presumed true and discovery will likely be needed before a fully reasoned determination can be made as to whether the costs of implementation are direct service or cost obligations.

B. The Balancing of the Public Interests to the Extent Applicable Favors Marshfield.

The Commonwealth and HLC almost overlook the fact that the MBTA Communities Act and its regulations are not lawful if the constitute an unfunded mandate and that Marshfield and the other communities have a statutory right to petition this Court for an exemption from the effect of the law until and unless there is funding provided to cover the direct service and cost obligations of compliance and implementation of the purpose behind the law that is to produce dense, multi-family housing to offset the asserted housing crisis in the Commonwealth. In actuality, the original law was required to include and appropriation for Marshfield to cover the costs of implementation and those costs must be annually appropriated but have not been. While the MBTA Communities Act may have been adjudicated constitutional and enforceable, the SJC never reached the issue presented in this case and the state agency charged with making this determination correctly sided with Marshfield's view of the law as well as that of Methuen, Wrentham and Middleborough. Notwithstanding this determination, Marshfield finds itself on the outside looking in and has lost grant funds it was awarded, eligibility for hundreds of thousands of dollars in enumerated grants, and likely any other discretionary grants controlled by the Commonwealth. Marshfield may also be vulnerable to the claim that in the absence of a compliant district, a developer may be able to claim the "builder's remedy" and that it is vulnerable anywhere to a proposed 1276 units of multi-family housing. Absent preliminary relief, there is no assurance of a right to ever recover from awarded and/or lost grant funds that are not being escrowed in any way or from the lost opportunity of other grant funds that will be distributed elsewhere that if received could be applied to the very costs needed to facilitate the development of dense, multi-family housing. As stated by Wrentham and Middleton, a clearer case of irreparable harm is "difficult to contemplate". On the other hand, the Commonwealth and HLC will not suffer any losses pending a determination on the merits of this critical legal

issue. In fact, the vast majority of communities voluntarily complied with the law or have filed action plans professing their intention to comply and only a handful have sought to challenge the law.

C. Marshfield and the Other Communities are the Only Parties Suffering Irreparable Harm

As set forth in accompanying affidavits:

1. That compliance with the MBTA Communities Act would increase the total amount of housing by 1276 new multi-family units, and correspondingly, population, in the Town of Marshfield by more than twelve percent (12%) or from 25,800 to 28,250. **Guimond Affidavit at ¶¶32-33; Ex. B.**
2. 1276 units multi-family housing required by the MBTA Communities Act would likely necessitate additional police officers, as well as additional fire and rescue personnel and equipment, including two new police cars at a cost of $150,000 and an ambulance at cost $500,000. **Guimond Affidavit at ¶¶32-33; Ex. B; Tavares Affidavit at ¶18**
3. That the associated impacts on public education to the Town of Marshfield resulting from that housing increase would be approximate 568 new students, and adding millions of dollars of annual operating and capital costs not currently covered by the Commonwealth. **Guimond Affidavit at ¶¶32-33; Ex. B.**
4. That funds for necessary dredging (exclusive of those direct costs cited above resulting from the MBTA Communities Act), are already being withheld by the Commonwealth

on the basis of non-compliance with the EOHLC regulations. **DiMeo Affidavit at ¶¶3-5; also Maresco Affidavit and Ex. A to Motion for Preliminary Injunction.**

5. That dependent on the location of proposed multi-family housing development, immediate system wide supply and infrastructure improvements will need to be made to the towns drinking water wells to prevent contamination from PFAS, to upgrade aging water distribution infrastructure and expand municipal sewer with aggregate costs likely exceeding $100M. **Procaccino Affidavit at ¶14 (pp. 5-6).**
6. Together, the total direct costs associated with education, public safety, fire and rescue to the Town of Marshfield residents resulting from that housing increase would be $4,657,150,988, net of tax revenue, chapter 70 funds, and public works improvements. **Guimond Affidavit at ¶¶32-33; Ex. B.**

II. CONCLUSION

For the foregoing reasons, the of Marshfield's Motion for Preliminary Injunction should be allowed, its eligibility for grant funding be ordered permitted pending a full determination on the merits, and Marshfield should be exempted from the other requirements of the MBTA Communities Act and regulations.

Respectfully submitted,
Town of Marshfield and
by their Town Counsel,

Dated: March 28, 2025

/s/ Robert W. Galvin

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CERTIFICATE OF SERVICE

I, Robert Galvin, counsel for the Town of Marshfield, hereby certify that I served a copy of the foregoing document on counsel for the Commonwealth of Massachusetts counsel this 28th day of March 2025 by filing and email. They are:

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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS:

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
DOCKET NO. 2583CV00184

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD,
Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Defendants.

AFFIDAVIT OF GREGORY J. GUIMOND, TOWN PLANNER OF THE TOWN OF MARSHFIELD

1. My name is Gregory J. Guimond. I am the current Town Planner for the Town of Marshfield. My office is located in the Marshfield Town Hall on the second floor located at 870 Moraine Street, Marshfield, Massachusetts within the Planning Department office.

2. I have served as the Marshfield Town Planner my appointment in 2014 but have over thirty-seven (37) years of diverse professional planning experience, including in-depth knowledge of the technical aspects, conceptual approaches, problem solving strategies, and implementation techniques associated with planning and development projects, including multi-family housing projects. I have also been intricately involved in the successful completion of major regional growth management initiatives and numerous local level planning and zoning actions. I also have extensive experience in

regulatory review of residential, commercial and industrial development projects at the local and regional level. **My curriculum vitae is attached hereto as Exhibit A.**

3. I am a 57 year resident of the Town of Marshfield and was previously elected and served as a member of the Marshfield Planning Board. I have been involved in the evaluation and review as either a professional planner or as a Planning Board member with dozens and dozens of conventional residential developments in the Town of Marshfield and other communities including commercial, industrial, residential and multi-family residential projects and also a number of prior and contemporaneous 40B projects that are constructed or permitted.

4. I have personal knowledge of all of the facts stated herein, excepting for those which I have stated to be on information and belief, which I also believe to be true.

5. I am familiar with the MBTA Communities Act[1], the former EOHLC guidelines, the current emergency regulations, and the current progress towards permanent regulations.

6. The MBTA Communities Act creates a new zoning requirement, requiring that all MBTA communities, including the Town of Marshfield, which is considered an "adjacent [MBTA] community", zone at least one district in which multi-family housing is permitted as of right, subject to other requirements.

[1] "MBTA Communities Act" is codified in Mass. Gen. L. c. 40A §3A added by § 18 of Chapter 358 of the Acts of 2020, effective January 14, 2021, amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§2, 2A, 2B, and 20-26 of Chapter 234 of the Acts of 2024, effective November 20, 2024.

7. The MBTA Communities Act is alleged to have been designed to address the ongoing housing crisis in the Commonwealth of Massachusetts.

8. The MBTA Communities Act further defines "a district of reasonable size" and specifies that any such district must be situated within one-half mile of an MBTA facility. According to the Act, Noncompliant MBTA communities are ineligible for funds from certain State funding sources. Mass. Gen. L. c. 40A, § 3A (b). The last paragraph of § 3A directs the Executive Office of Housing and Livable Communities ("HLC"), in consultation with three other state agencies, to "promulgate guidelines" to determine if an MBTA community has complied with the act. Mass. Gen. L. c. 40A, § 3A (c).

9. Shortly after the act was passed, HLC issued a preliminary announcement describing the MBTA Communities Act and giving notice of its intention to produce detailed guidelines. Over the next two years, HLC issued draft guidelines, conducted community presentations, and solicited feedback directly from affected communities. I attended numerous lecture, presentations and information sessions from HLC, state and regional planning agencies, and other planning groups, to understand the potential obligations and impact on the Town of Marshfield. I also had dozens of communications with planning colleagues and other officials, including representatives of the Massachusetts Attorney General's Office, to try and develop a proposed bylaw that I felt minimized the impacts on the Town of Marshfield.

10. I also followed closely the situation in the Town of Milton. On December 11, 2023, the Town of Milton, approved at special town meeting, a proposed zoning bylaw (Article 1) that would have complied with HLC's guidelines; however, pursuant to the Milton town charter, a sufficient number of

the town's voters petitioned to have Article 1 submitted to a town-wide referendum vote; so, less than three weeks after the initial vote approving the bylaw, the Milton select board voted to schedule a referendum on the article for February of 2024. Before the vote was held, both HLC and the Attorney General sent letters to Milton town officials, giving notice that they would enforce the funding penalties listed in § 3A and take legal action should the town fail to comply with the act.

11. The Town of Milton held the referendum on February 14, 2024 despite the warnings from the state, and the voters in Milton rejected the proposed zoning bylaw reportedly by a margin of approximately eight percentage points.

12. Shortly after the referendum in Milton, I observed that the Attorney General filed before a single justice of the Supreme Judicial Court, a complaint against the Town of Milton and its building commissioner seeking declaratory and injunctive relief to enforce compliance with G. L. c. 40A, § 3A, as set forth in HLC's guidelines. See G. L. c. 231A, § 1; G. L. c. 214, § 1. Milton then filed an answer denying that it was in violation of § 3A and filed a counterclaim against the Attorney General and HLC seeking declaratory relief. The single justice (Georges, J.) reserved and reported the case to the full Supreme Judicial Court.

13. During the pendency of the matter involving the Attorney General and Town of Milton, in furtherance of the HLC's final guidelines that required the town to adopt a compliant zoning bylaw prior to December 31, 2024, the Town of Marshfield proposed zoning bylaws that the Attorney General had reviewed and approved for its April 22, 2024 Special Town Meeting in Articles 18 and 19. Articles 18 and 19 were defeated by Town Meeting by more than a majority vote.

14. In a further effort to allow the Town Meeting to consider again whether to adopt a compliant zoning bylaw, on behalf of the Town as Town Planner, I proposed updated zoning bylaws at a further Special Town Meeting, Articles 12-14 on December 16, 2024. Once again, the Articles 12-14 were soundly defeated by Town Meeting by a more than majority vote. I was told and believe that the Town of Marshfield was also given written notice that certain approved grants were at risk should it fail to comply with the MBTA Communities Act and HLC guidelines.

15. During the pendency of the matter of the Attorney General and Town of Milton, the Towns of Wrentham, Middleborough and Methuen filed written requests with the Office of the State Auditor's (OSA) Division of Local Mandates (DLM) seeking a determination that MBTA Communities Act imposed an unfunded mandate on these cities and towns by requiring them to enact a zoning ordinance creating a reasonably-sized district in which multifamily residential use is allowed as of right," within the meaning of Gen. L. c. 29, § 27C (the Local Mandate Law).

16. I learned that in response to these requests, DLM sent correspondence to these cities and towns, stating that it was unable to issue a determination due to the pending litigation in connection with the MBTA Communities Act that was before the Supreme Judicial Court involving the Attorney General and the Town of Milton.

17. On January 8, 2025, the Supreme Judicial Court issued its decision in the matter of *Attorney General v. Town of Milton, 495 Mass. 183 (2025)* and held that the MBTA Communities Act was constitutional, could be enforced by the Attorney General, but nullified the HLC's guidelines which the court determined had not been adopted in compliance with the APA. In response to the decision of the Supreme Judicial Court, six days after the decision in the *Milton* case, HLC filed

emergency regulations with the Secretary of the Commonwealth to support ongoing implementation of the MBTA Communities Act and committed to adopt new regulations in compliance with the APA within ninety days. I reviewed these emergency regulations. Communities like the Town of Marshfield were afforded by the emergency regulations an additional six months to adopt compliant zoning bylaws provided they filed an interim action plan with HLC prior to February 14, 2025. I prepared an interim action plan for the Town of Marshfield and submitted the same to the Select Board for their consideration.

18. On February 10, 2025, during a public meeting, the Town of Marshfield Select Board discussed my proposed interim action plan and voted unanimously not to approve and submit an interim action plan as required by HLC's emergency regulations since Marshfield Town Meeting had repeatedly rejected proposed zoning bylaws intended to bring the town into compliance with the MBTA Communities Act. In making this determination, the Select Board stated they understood that the grant programs identified in the MBTA Communities Act were at risk and that the town would likely be subjected to potential litigation by the Attorney General seeking to enforce compliance with the MBTA Communities Act.

19. On February 19, 2025, HLC notified the Town of Marshfield in writing that the town was noncompliant with Section 3A of Chapter 40A, that the consequences of its noncompliance were significant, that compliance with the MBTA Communities Law was mandatory, and stated that, in addition to the grant programs set forth in the MBTA Communities Act, all discretionary grant programs across the Healey-Driscoll Administration take compliance with the MBTA Communities Law into consideration when making funding decisions causing the town to conclude that all state grant programs were at risk.

20. On February 21, 2025, I learned that the DLM issued three mandate determinations to the City of Methuen, Town of Middleborough, and Town of Wrentham, finding that MBTA Communities Act constituted an unfunded mandate reserving additional time to perform a more thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined.

21. According to this lawsuit filed on behalf by Town Counsel, DLM's mandate determinations issued under Gen. L. c. 29 §27C enables the Town of Marshfield, a similarly situated community, to petition the Superior Court for a determination of deficiency and an exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act.

22. On Monday, February 24, 2025, the Marshfield Select Board discussed HLC's letter dated February 19, 2025 and the unfunded mandate determinations and voted by a majority vote to ask its legislators to file legislation asking the Commonwealth of Massachusetts to provide the town funding to comply with the MBTA Communities Act and/or seeking an exemption from compliance until the Commonwealth of Massachusetts provides funding for compliance with the MBTA Communities Act and further, to authorize a petition to be filed with the Plymouth County Superior Court pursuant to Gen. L. c. 29 §27C for exemption from compliance until the Commonwealth of Massachusetts provides sufficient funding to comply with the MBTA Communities Act.

23. The lawsuit which I am making this affidavit for is connected to the DLM's decisions. I understand the Town is seeking a preliminary injunction against the Commonwealth and HLC intended to preserve the status quo that includes access to grant funds and precludes other enforcement against the Town of Marshfield until the issues raised by the Town are decided and it is determined

whether the MBTA Communities Act is an unfunded mandate allowing the town to be exempted under the Act or compelling the state to provide sufficient funding to comply.

24. In connection with my efforts to design and obtain Town Meeting approval of a zoning district that would comply with the MBTA Communities Act it became incumbent on me as the Town Planner not only to study where a compliant zoning district could be potentially located but to fully understand the impact of the law on the Town of Marshfield and specifically the financial impact on the town to comply with the Act. I did not seek any discretionary state grant funds that were offered by the state outside of the MBTA Communities Act for the Town of Marshfield preferring and trusting my own analysis given my knowledge, experience and training as a planner. I believe that the MBTA Communities Act should have provided funding to cities and towns in order to assist us all in the design and implementation of the law.

25. Based on my review of the MBTA Communities Act and the emergency regulations and projected permanent regulations being developed by HLC, it was my conclusion that the Town of Marshfield is considered an "MBTA Community" as it is considered to be an "other served community" under Mass. Gen. L. c. 161A §1 even though the Town of Marshfield does not have any MBTA transportation facilities anywhere within the town or within 0.5 miles or more of the town.

26. The closest MBTA station is the Greenbush MBTA Commuter Rail Station in Scituate and is three or more miles from the town over roadways connecting the towns.

27. It is further my opinion that the town obligated by the MBTA Communities Act to adopt zoning bylaw that provides for at least one zoning district of reasonable size in which multi-family

housing is permitted as of right, without age restrictions, suitable for families with children, with a minimum gross density of 15 units per acre subject to any further limitations imposed by Mass. Gen. L. c. 131 § 40 and title 5 of the state environmental code established pursuant to Mass. Gen. L. c. 21A §13 and located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

28. In order to comply with the MBTA Communities Act and regulations, it is my opinion that the Town of Marshfield will need to adopt a zoning district where the construction of at least new 1276 housing units must be allowed by right.

29. I am informed that the Commonwealth and HLC assert in this case that there is no direct service expense or cost obligation to the Town of Marshfield from the MBTA Communities Act and therefore there is no unfunded mandate.

30. I disagree with the Commonwealth and HLC and have concluded based on my analysis of the impacts that not only will the Town of Marshfield suffer a loss of valuable grants that have been important to the health, safety and welfare of the residents of the Town of Marshfield including MassWorks Grants, Seaport Economic Council Grants, and other grant programs as detailed by Mr. Maresco and will be irreparably lost, but the Town will immediately be impacted by impacts to public safety and by the impacts to municipal water and other municipal infrastructure requiring local community investment.

31. My staff and I also expended hundreds of hours evaluating the impact of a new 1276 multi-family dwelling units including interviewing town and school officials knowledgeable and familiar with their staffs and expenses.

32. My analysis is attached hereto as **Exhibit B**.

33. My analysis yields the conclusion that the Town of Marshfield will experience an estimated 12% population growth from 25,800 resident to roughly 28,250 residents and an additional 568 students. Based on information from Chief Tavares, we will need approximately 7 new officers and two additional police cruisers and, based on information from Fire Chief LaSelva, we will need 7 new firefighter/paramedics plus an additional ambulance with an estimated capital cost of $500,000.00. The additional costs for the Police are $781,288 and Fire $653,208 respectively. I also estimate there will be a cost to the rest of the town's general municipal services based on the new population of $410,000 and increased costs per pupil of $18,000 per year resulting on 9,600,000 in additional staffing and education costs. Exclusive of the costs to make water, sewer and street infrastructure improvements needed to be able to support 1276 multi-family housing units and subtracting projected tax revenue and Chapter 70 funds, I estimate the Town of Marshfield will have a direct financial loss of $4,657,150.

34. It is my opinion that there is a direct impact of this obligation on the Town to adopt a zoning bylaw is so obvious that the Commonwealth has established the MBTA Communities Catalyst Fund which is designed, according to the state's Notice of Funding Availability, to support activities related to multi-family housing creation, infrastructure projects associated with multi-family housing development, and acquisition of property to promote multi-family housing. **See Exhibit C.**

35. If there was any doubt as to whether the obligation to adopt a compliant zoning district would have any financial impact on a community like the Town of Marshfield, the existence of this Catalyst Fund is evidence that the state itself believes that without funding from the state which it labels a

"reward" there will be infrastructure impacts that will not be borne by the developer and will be needed for the town to comply.

36. While I have always stated that that it would be unlikely that all 1276 multi-family housing units would be proposed at once or be occupied at one time as practical matter, the two major housing projects in Marshfield comprising 519 units were each permitted within a year under current laws allowing for a comprehensive permit and each of these multi-family developments contains multiple, multi-family housing buildings that were and are being constructed in phases where buildings are now constructed and can be occupied within a year even before the entire development is completed.

37. It my opinion that a by right development will be permitted even sooner than development that is subject to discretionary permits and therefore to keep pace with the increased demand for public utilities, additional traffic, additional students and the demand on town services in town caused by the marked population increase, the Town of Marshfield must expend money on improvements and services now and the town does not have sufficient resources to pay for those costs.

SIGNED UNDER THE PENALTIES OF PERJURY

Dated: March 28, 2025

Gregory J. Guimond, Town Planner
Town of Marshfield

A

Gregory J. Guimond
870 Moraine Street
Marshfield, Massachusetts 02050
gguimond@townofmarshfield.org

Summary of Experience:

Thirty seven years of diverse professional planning experience including management and supervisory positions in Massachusetts. In-depth knowledge of the technical aspects, conceptual approaches, problem solving strategies, and implementation techniques associated with planning and development projects. Successful completion of major regional growth management initiatives and numerous local level planning and zoning actions. Extensive experience in regulatory review of residential, commercial and industrial development projects at the local and regional level.

Professional Experience:

Marshfield, Massachusetts
Town Planner (2014 to Present)
Provide professional assistance to the Town and the Planning Board in the review and permitting of Subdivisions and Special Permits. Guided the successful completion of the 2015 Master Plan and the 2018 Multi-Hazard Mitigation Plan. Prepared and presented various zoning and funding articles accepted by Town Meeting. Prepared and currently managing a FMA elevation grant for severe repetitive loss properties. Provides assistance to the Coastal Advisory Committee, Open Space Committee, Housing Partnership Committee and Trails Committee. Serves as local representative to GATRA, MBTA and MAPC.

Bridgewater, Massachusetts
Town Planner (2012 - 2014)
Provided professional assistance to the Town Manager and Planning Board in support of the strategic goals of the Town Council through local and regional planning efforts. Currently managing the community and economic development efforts of the town through a wide range of coordination and cooperation with departments, citizens, outside agencies, and other stakeholders. These include: the Master Plan/Green Communities Committee, Iron Works Committee, Municipal Building Committee, Traffic Committee, Community Preservation Committee, Housing Partnership, Community Development Advisory Committee, Keith Homestead Committee, Nunckatessett Greenway Committee and served as the town's representative of the Old Colony Planning Council.

Assisted the highway department with MS4 Stormwater permit requirements by mapping the drainage systems for 70 subdivision roads with assistance from an intern. Revised and updated the Planning Board's Subdivision Rules and Regulations. Prepared and presented revised Floodplain Zoning Ordinance and Floodplain Map, Downtown Mixed Use, Bed and Breakfast, Medical Marijuana and Solar facilities ordinances accepted by Town Council. Worked on the updating of the town's master plan and assisted in drafting a successful community development block grant application to start a downtown master plan and a housing rehabilitation program. Reviewed subdivision and site plan applications and prepared decisions for the Planning Board.

Southeastern Regional Planning and Economic Development District (SRPEDD)
Taunton, Massachusetts (1997 – 2011)

Deputy Director and Comprehensive Program Manager
Assisted the Executive Director with budget and personnel assignments; administered state and local contracts and managed the Comprehensive Planning Department and the regional Municipal Assistance Program for twenty-seven communities. Supervised the economic development, data center, environmental, GIS and planning staff of the agency. Worked closely with state and federal agencies, municipal officials and municipal planning staff.

Comprehensive Planning Director
Administered various state and local contracts as well as the regional Municipal Assistance Program. Supervised the economic development, data center, environmental, GIS and planning staff of the agency. Other duties included: developed documents and presentations on a variety of planning issues, maintained the agency website, reviewed and drafted zoning amendments for communities.
Projects Include:

Master Plans for the towns of Plainville and Dartmouth: Regional station and layover site analysis for the South Coast Rail Project: Major revisions to the Freetown Zoning By-law and Map: prepared zoning revisions for new Village districts and a Business Development Overlay District for Wareham: Made revisions to the Berkley Zoning By-law and Map including creation of a Business District and Adult Entertainment District: Drafted the Lakeville Smart Growth Zoning Overlay District (Chapter 40R): Revised the Raynham Site Plan Approval Zoning Bylaw and Rules and Regulations: and developed population and employment projections for 27 communities for the regional transportation plan.

Cape Cod Commission
Barnstable, Massachusetts
Comprehensive and Regulatory Planner (1990 – 1997)
Coordinated review of large and often highly controversial residential, commercial and industrial Developments of Regional Impact. Regular duties included: holding pre-application meetings with applicants, review and analysis of development plans, site inspections, scheduling of public hearings, negotiating project conditions, ensuring compliance with both local and regional development regulations, coordinating with press and local, state and federal agencies, and preparing staff reports and decisions. Assisted the towns of Sandwich and Barnstable with development of local comprehensive plans, and developed the Commission's exterior lighting guidelines.

Southeastern Regional Planning and Economic Development District (SRPEDD)
Taunton, Massachusetts
Principal Planner (1987- 1990)
Performed a wide variety of planning services, including drafting of zoning amendments, subdivision rules and regulations revisions, the review of subdivision special permit, comprehensive permits and site plans for twenty-seven communities. Worked closely with the planning staff and elected officials of twenty-seven member communities. Worked under contract with the Town of Plainville to serve as planner to the Town of Plainville reviewing and preparing reports on subdivisions and site plan approval applications.

Winchendon, Massachusetts
Town Planner (1986 – 1987)
Coordinated a one year citizen's task force charged with reviewing the zoning and redistricting of over 4,000 acres of land. Prepared amendments and presented a comprehensive rezoning package to town meeting (approved by town meeting), while also reviewing subdivision, site plan, and zoning board applications.

Education:
University of Rhode Island
Masters in Community Planning, 1986

Westfield State College
Bachelor of Science, Urban / Regional Planning, 1984
Bachelor of Arts, History, 1984

Recent Training:
Bridgewater State University
GIS mapping
Fall 2012

Volunteer Experience:
Planning Board, Marshfield (1986-2003)
Local Housing Partnership, Marshfield (1987-1989)
Growth Management Committee, Marshfield (1988)
Solid Waste Committee, Marshfield (1994-1996)
MBTA, Greenbush Citizens Advisory Committee representing Marshfield (1997-2001)
South Shore Coalition, representing Marshfield (1997-2001)
Library Trustee, Marshfield (2002 to 2007/ 2013 to Present)

B

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Population and Students

- Current Population of Marshfield is around 25,800.
- Current persons per household in Marshfield is 2.51.
- With the two approved 40B developments and the Full-Build Scenario from the MBTA Communities Development new housing units.
- When all these units are built we could expect approximately 3,202 new residents in the Town.
- 3,202 new residents would bring the Town's population to 28,250 roughly a 12% increase.

Currently there are 3,637 students in the School System.

An additional 568 are estimated to be added.

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Projected Additional Police and Fire Calls Under Full-Build Out Scenario

Police	1,217
Fire	736

The Police Department would need app. 7 new officers and two new cruisers.
Roughly $600,000 per year for personnel.
Plus 2 additional Cruisers roughly $150,000 (not every year).

The Fire Department would need app. 7 new firefighters/paramedics plus an additional ambulance.
Roughly $500,000 per year for personnel.
Plus 1 additional Ambulance roughly $500,000 (not every year).
(This information was provided by the Police and Fire Departments)

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Estimated Assessment of Full-Build Out Scenario

	Costs	New Tax Revenue
New Taxes collected		$4,500,000
Additional Chapter 70 funds *(Not guaranteed)*		*$2,287,336*
Schools	$9,600,000	
Police	$781,288	
Fire	$653,208	
General Services	$410,000	
Does not include known DPW projects including Sewering of Blackmount area and Kent Park, Flood protecting the sewer treatment plant and reconstruction of the dyke (flood protection).	(see Procaccino Afffidavit)	
	$11,444,496	$6,787,336

2025-P-0954

Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES
100 CAMBRIDGE STREET, SUITE 300
BOSTON, MA 02114

MBTA Communities Catalyst Fund

Grant program available to MBTA Communities that have received a district compliance determination letter from EOHLC

Notice of Funding Availability
FY2025 - FY2027

Agency Document Number: EOHLC2024-79
COMMBUYS Bid Number: BD-25-1076-OCDDE-OCD01-104930
Division: Livable Communities

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I. INTRODUCTION & PURPOSE

The Executive Office of Housing and Livable Communities ("EOHLC") is pleased to announce the MBTA Communities Catalyst Fund ("Catalyst Fund"), a new grant program of the Healey-Driscoll Administration to support its efforts to increase housing production in the Commonwealth. The Catalyst Fund is intended to reward MBTA communities with an approved 3A district compliant with M.G.L. Chapter 40A, Section 3A.

This competitive grant program accepts applications and makes awards on a rolling basis to fund a variety of activities related to housing development and infrastructure projects associated with housing production.

II. OVERVIEW OF THE GRANT

A. Program Authorization

The Catalyst Fund was created as part of the FY25-Five Year Capital Investment Plan as a continuation of the Healey-Driscoll Administration's commitment to make historic investments in housing production and preservation.

B. Funding Availability

Up to $5M is available per fiscal year from FY25 through FY27 for the Catalyst Fund at the time of posting. Funding availability is subject to the final state budget and capital investment plan.

The Catalyst Fund accepts applications and will make awards on a rolling basis per deadlines outlined in Section F, below.

C. Eligible Applicants

MBTA communities with a district compliance determination letter from EOHLC at the time of grant application are eligible to apply. Eligible MBTA communities must be the lead applicant and recipient of grant funds. MBTA communities may passthrough grant funds to another entity to execute the proposed project, at the discretion of EOHLC, such as but not limited to a home builder, a Community Development Corporation, or other non-profit or for-profit entity creating or promoting housing development, preservation, or rehabilitation.

D. Eligible Uses of Grant Funds

Awarded grants will fund a variety of activities related to housing development and infrastructure associated with housing development that help produce, preserve, and/or rehabilitate housing units in eligible locations (as defined in "other requirements" below).

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Permissible activities:

The Catalyst Fund will only award funds to A) infrastructure to support housing ("Infrastructure"), B) housing development ("Development"), and/or C) acquisition to support housing ("Acquisition").

- Infrastructure: projects to support housing growth and mixed-used development to advance housing development, preservation, and/or rehabilitation including but not limited to:
  - Design, engineering, and site prep of infrastructure projects.
  - Construction of new or improved infrastructure, including roadway/streetscape improvements, water/sewer, public utilities (gas, electric, etc.), and bridge/culvert repair or replacement.
- Development: fund "shovel ready" or ongoing projects, including but not limited to passthrough of funds to eligible entities, new housing construction, preservation of existing units, and/or rehabilitation.
- Acquisition: purchase of land or other properties with the intent to develop housing units.

Other requirements:

- Infrastructure: projects must be located within or adjacent to the approved zoning district created to comply with MBTA Communities law, hereafter "3A district." "Adjacent" for purposes of this grant program shall mean 1) a parcel that immediately abuts the approved 3A district; or 2) a parcel documented to be associated with the approved 3A district despite not being included in it.
- Development: projects must be located within the 3A district and must have been submitted to the municipality for approval after the adoption of the 3A district.
- Acquisition: projects must be located within .5 mile of the 3A district.

E. Application Process

At the time of posting, eligible applicants may submit either of the following within the rolling application deadlines outlined in Section F, below, for consideration of a Catalyst Fund award:

1. Completed MBTA Communities Catalyst Fund grant application with required attachments, or
2. A recently submitted Community One Stop for Growth (COSG) application in any of the eligible project categories.

The Catalyst Fund grant application is available online at www.mass.gov/how-to/mbta-communities-catalyst-fund.

Eligible applicants must submit by email a completed application as a **SINGLE PDF document** to EOHLCCommCatalyst@mass.gov per rolling application deadlines outlined in Section F, below. An application that includes multiple files, or multiple files with various formats, will be considered an incomplete application and will not be accepted.

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EOHLC may, at its discretion, update the Catalyst Fund grant application and/or submission process.

F. Application Deadlines

Applications may be submitted during the rolling deadlines outlined below for consideration of a Catalyst Fund award.

Deadlines for FY25 round awards	
Early Decision	10/1/2024 – 12/1/2024
Regular Decision	12/2/2024 – 1/15/2025

Deadlines for FY26 round awards	
Early Action	1/16/2025 – 10/1/2025
Early Decision	10/2/2025 – 12/1/2025
Regular Decision	12/2/2025 – 1/15/2026

Deadline for FY27 round awards	
Early Action	1/16/2026 – 12/1/2026

Application submission deadline is 11:59PM on the final day listed.

EOHLC may, at its discretion, update the Catalyst Fund grant application deadlines for FY26 and FY27 round of awards.

G. Applicant Evaluation Criteria

Catalyst Fund grant applications will be evaluated on the following:

1. Project and location eligibility;
2. Project readiness;
3. Financial feasibility;
4. Outcomes and impact, including the number of housing units developed, the number of affordable units developed, and the level of affordability of said units;
5. Alignment with EOHLC priorities; and
6. Special consideration will be given to projects that: directly produce multi-family housing units; directly produce affordable multi-family housing units that are deed restricted in perpetuity; increase affordability levels below 80% Area Median Income (AMI); request funding for multi-family housing components of mixed-use projects.

H. Additional Information

If you have questions about eligibility or the application process, please submit them in writing to EOHLCCommCatalyst@mass.gov.

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III. ABOUT M.G.L. c.40 §3A

A. Introduction

Section 3A to the Zoning Act (Chapter 40A of the General Laws) requires each of the 177 MBTA communities to have a zoning district in which multifamily zoning is permitted as of right and that meets other requirements set forth in the statue. Read more about section 3A here.

B. Compliance with M.G.L. c.40 §3A

District compliance is achieved when an MBTA community adopts a multi-family zoning district that meets all the requirements of the compliance guidelines and is certified by EOHLC. Only MBTA communities that have received a notification of district compliance at the time of a grant funding request are eligible for this grant program.

DRAFT FOR GUIDANCE PURPOSES ONLY

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES

MBTA COMMUNITIES CATALYST FUND APPLICATION

Municipalities are eligible to apply if they have received a District Compliance Determination Letter from EOHLC.

To be considered, eligible applicants must email a completed application form with required attachments (or a recently submitted Community One Stop for Growth application in any eligible categories) as a single PDF document to EOHLCMBTACommCatalyst@mass.gov. An application checklist for guidance is included at the end of this template.

This application template is intended for draft purposes only. Find the MBTA Communities Catalyst Fund Application, a fillable PDF application, online at www.mass.gov/how-to/mbta-communities-catalyst-fund.

If you have recently applied for funds through the Community One Stop for Growth and the project was not funded, then you may utilize that application as a substitute for the MBTA Communities Catalyst Fund Application from the below list.

For a complete application, please make sure you have the following:

- ☐Fully completed MBTA Communities Catalyst Fund Application (or recent Community One Stop for Growth application, if applicable)
- ☐Copy of District Compliance Determination Letter from EOHLC
- ☐If applicable: copy of housing restriction ordinance
- ☐Project budget and/or cost estimate and/or pro forma
- ☐Project location map
- ☐If applicable: partner entity letter
- ☐If applicable: certified copy of vote taken by relevant entity to certify application submission

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APPLICANT INFORMATION

Applicant Information			
Municipality:			
Municipality Legal Address:			
City/Town:		**Zip Code:**	
Municipality CEO		**Project Contact (if different than CEO)**	
Name & Title:		**Name & Title:**	
Email:		**Email:**	
Tel. #:		**Tel. #:**	

MBTA Communities Date of District Compliance Determination: _____
**You must have received a district compliance determination letter at the time of application to be eligible for this fund and must attach a copy with your application.*

Community Housing Restrictions – Are there any active housing restrictions or other restrictive bylaws, such as phased growth zoning or an active housing moratorium?

☐Yes* ☐No

**If yes, you must provide a copy of the restriction with your application.*

PROJECT OVERVIEW

Project Category – Select the category and project type that best fits the proposed project.

☐ Acquisition of property/properties
- ☐Municipal acquisition of property
- ☐Private acquisition of property (passthrough funding)

☐ Housing Development
- ☐Housing production
- ☐Housing rehabilitation
- ☐Housing preservation

☐Infrastructure
- ☐Pre-construction - Design / Engineering Documents Only
- ☐Construction

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Project Name:	
Project Abstract – Provide a concise description of the project.	

Location Eligibility – Indicate the location of the project site in relation to the compliant 3A district*:

☐Within ☐Adjacent to ☐0.5 miles or farther

**Refer to published guidelines regarding project location eligibility definitions and criteria.*

Project Site: Describe the location of proposed project site and where it is located within/in relation to the approved 3A district. Provide a map of the project site with your application.
Project Address(es) & Parcel ID(s):

Grant Funding Request – In the table below, provide a breakdown by spending category of the total funding request for the proposed project. Include a copy of your project budget and/or cost estimate and/or pro forma with your application.

Grant Spending Description	Grant Request
Consultants/Prof. Fees	
Pre-Construction (Design, Engineering, Permitting, Bidding, etc.)	
Construction	
Construction Admin	
Contingency	
Other / Miscellaneous	
Total Grant Request	

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Justification of Request – Provide line-item explanations, justifications, and/or notes for the funding requested. Include an explanation of the methods for estimating project costs.
Applicant Match – If applicable, indicate if you will provide a match to supplement any awarded grant funds. If yes, detail the amount, source, and status of matching funds. *Note: staff time does not count as match funds.*
Additional Funding – If applicable, indicate if there are any additional sources of funding provided by outside parties to support the project. provide a match to supplement any awarded grant funds. If yes, detail the indicate the amount, source, and status of additional funding.
Scope of Work & Project Implementation – Detail the proposed work to be funded by the grant. Describe the steps and timeline to implement the project, as well as any tasks that need to be completed before expending grant funds (i.e., procurement, hiring contractors, issuing RFPs, etc.) and any notable dates and/or milestones. If applicable, identify any necessary review and/or approval entities such as Planning Board, Council or Selectboard and/or subcommittee Committee, town meeting, etc.

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Project Expenditure Timeline – Detail the timeline of expending grant funds, if awarded.
Anticipated Outcomes and Impacts –Describe the project's tangible outcomes on housing development, preservation, and/or rehabilitation.

Indicate characteristics of any planned and/or leveraged development, if applicable:

General Information	
Development Address (or Parcel ID)	
Lot area (acres) of the development site:	
Housing Impacts	
Number of NEW market-rate units to be created for rent/lease:	
Number of NEW market-rate units to be created for homeownership:	
Number of NEW affordable units to be created for rent/lease:	
Number of NEW affordable units to be created for homeownership:	
Number of EXISTING market-rate units to be preserved and/or rehabilitated:	
Number of EXISTING affordable units to be preserved and/or rehabilitated:	
If any affordable, specify lowest income limit used (65% AMI, 80% AMI, etc.):	

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ACQUISITION PROJECT QUESTIONS

Site Description – Describe the parcel or property to be acquired, including ownership history, conditions, square footage, unique challenges that may exist at this location, etc. Indicate whether you will acquire and maintain ownership or passthrough funds to an entity to acquire and maintain ownership and, if so, to which entity.
Planned Development – Describe any planning or studies to date and/or what future planning or studies will be undertaken on the parcel or property that will advance housing development, preservation, and/or rehabilitation.
Letter from Partner Entity – If applicable, include a letter from the partner entity to which you will passthrough funds for the acquisition project with your application.

HOUSING DEVELOPMENT PROJECT QUESTIONS

Site Description – Describe the parcel or property being developed, including ownership history, conditions, square footage, unique challenges that may exist at this location, etc. Indicate whether you will fund work directly or passthrough funds to an entity to execute the project.
Planned Development – Describe any planning or studies to date and/or what future planning or studies will be undertaken on the parcel/property/development that will advance housing development, preservation, and/or rehabilitation.

DRAFT FOR GUIDANCE PURPOSES ONLY

Housing Development Information – Date the development project was submitted to the municipality for approval:	
Housing Developer Contact Information – Provide the following information for the housing development project, including the entity name and contact information.	
Proponent Entity/Company:	
Project Name:	
Project Address:	
Contact Name/Title:	
Contact Email:	
Contact Phone:	
Housing Development Overview – Describe the housing development project, including the scope of the development, expected public benefits, project phasing, and approximate date of when housing units will be occupied.	
Letter from Partner Entity – If applicable, include a letter from the partner entity to which you will passthrough funds for the acquisition project with your application.	

PUBLIC INFRASTRUCTURE PROJECT QUESTIONS

Site Ownership – Indicate if the infrastructure project site is publicly owned. If yes, describe the type of public ownership (i.e., public land, right of way, etc.).	
Provide information related to the leveraged private development as a result of this public infrastructure project.	
Developer Contact Information – Provide the following for the primary private development project most directly leveraged by this infrastructure project.	
Proponent Entity/Company:	
Project Name:	
Project Address:	
Contact Name/Title:	
Contact Email:	
Contact Phone:	

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Private Development Overview – Describe the private development project(s), including the scope of the development, project phasing, status of financing and design/construction, and approximate date of when housing units will be occupied.

Reliance on Public infrastructure Improvements - Can the private development proceed independently without the public infrastructure project?

☐ Yes ☐ No

Letter from Private Development Proponent - Include a letter from the private development proponent confirming and explaining this answer with your application.

CERTIFICATION OF APPLICATION SUBMISSION

Does application submission require a formal vote of any board, commission, or other local entity? If yes, attachment required.

☐ Yes* ☐ No ☐ Not Applicable

**If yes, include a certified copy of the vote taken by the relevant entity with your application.*

If no or not applicable, are you authorized to submit this application on behalf of the applicant entity, by virtue of your administrative role (chief elected official, chief executive officer, city/town manager, authorized signatory, etc.) or as a designee of an administrator and/or authorized signatory?

☐ Yes ☐ No

I, _____ (Submitter Name), hereby certify that I am duly authorized to submit this application on behalf of _____ (Municipality Name). By entering my name in the space below, I further certify, under the pains and penalties of perjury, that the responses to the questions provided in this application, and the attached documentation, are true, accurate, and complete. I understand that the Executive Office of Housing and Livable Communities (EOHLC) will rely on the information provided in this application to make decisions about whether to award a grant from their respective funding sources. Also, that the Commonwealth reserves the right to take action against me, the applicant organization, and/or any other beneficiary of a grant, if any of the information provided is determined to be false, inaccurate, or misleading. I also affirm that, if awarded, the applicant organization has the capacity to carry out the project in accordance with all applicable laws and regulations.

Name: _____ Title: _____ Date: _____

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS:

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
DOCKET NO. 2583CV00184

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD,
Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Defendants.

AFFIDAVIT OF PHILLIP A. TAVARES, POLICE CHIEF OF THE TOWN OF MARSHFIELD

I, Phillip A. Tavares, hereby depose and state under oath as follows:

1. My name is Phillip A. Tavares. I am the duly appointed Police Chief of the Town of Marshfield. I have served in this role since September of 2012 and my Curriculum Vitae setting forth by educational and professional background is attached hereto as Exhibit A. I have personal knowledge of all of the facts stated in this Affidavit excepting for those facts that I have stated to be on information and belief which I also believe to be true.

2. I am familiar with the Town of Marshfield's current litigation with the Commonwealth of Massachusetts and the Executive Office of Housing and Livable Communities that concerns the MBTA Communities Act.

3. As the Chief of Police of the Town of Marshfield, I am directly responsible for (a) the supervision of the daily operation of the entire Marshfield Police Department that includes one (1) chief, one (1) captain, four (4) lieutenants and six (6) sergeants, thirty-seven (37) police officers and four (4) civilian support personnel including administrative assistants; (b) the preparation and submission of the annual Police Department budget to the Town and Town Meeting; (c) the submission of reports to the Town either orally or in writing when requested or required by the Select Board in order to ensure the proper communication between the Town and the Police Department; (d) the oversight and control of all departmental expenditures, as well as the receipt of funds and property in the custody of the Department; (e) the supervision and control of all Police Department equipment and motor and motorized vehicles belonging to or used by the Police Department, including police cars, trucks, motorcycles, off road vehicles and former military rescue vehicles; (f) the establishment of weapons, ammunition, uniforms, equipment and vehicle specifications for the Police Department and procurement of said items; (g) the supervision of all school resource officers, special and/or reserve police officers, if any; (h) the supervision and control of all training programs for department personnel and the assignment of personnel to such programs; (i) the investigation and prosecution of all crimes committed in the Town of Marshfield; (j) maintaining the discipline of department personnel; (k) the issuance of orders, rules, regulations, policies and procedures; and the assignment to shifts and duties of all departmental personnel; (l) the responsibility for attending hearings before any Board of the Town at which the Police Department is required to appear and before the Town Meeting when necessary; (m) the responsibility for planning, organizing, directing, staffing and coordinating police operations, including so-called "paid details", mutual aid, regional task force or

similar enforcement efforts, and coordination with the State Police where as Chief I deem it appropriate; (n) the responsibility for all communications with the public, including the media, on matters related to crime, police operations and department policy; (o) and the supervision of the following other Town departments and the dozens of additional employees of such departments: Harbormaster and Harbormaster's Office as Captain of the Port, Marshfield Emergency Management, Marshfield Beaches, and Marshfield Animal Control.

4. Also, according to the United States Census Bureau, the town also has a total area of approximately 31.74 square miles, of which approximately 28.46 square miles is land and 3.28 square miles is water. Marshfield is bordered by Massachusetts Bay to the east, Duxbury to the south and southeast, Pembroke to the west, Norwell to the northwest, and Scituate to the north and northeast. Marshfield is 18 miles east of Brockton and 29 miles southeast of Boston.

5. According to the Massachusetts Department of Transportation (MassDOT) the town has a total of 167.57 miles of highways, accepted (public) streets and unaccepted (private) ways within its limits.

6. According to the most recent census data from United States Census Bureau from July of 2023, the Town of Marshfield has an annual population of 25,765 residents. During the summer months, the population of the Town of Marshfield swells to over 44,000 residents due to seasonal residents and visitors who spend the summer season in the Town of Marshfield and its location along the coast of Massachusetts Bay. There were also an estimated 10,195 housing units in July of 2023; however, that number is growing with the approval and construction of at least 519 units of housing in two apartment complexes the Town's Planned Mixed Use and Industrial Districts.

7. While the Town of Marshfield is considered by many sources each year to be one of the safest communities of its size in the United States, the town is not immune to the opioid crisis and my officers and I are regularly the first responders to overdose situations and this has necessitated my departments finding new ways to prevent, respond, treat, and combat the issue. Equally concerning is the marked increase in the need to provide non-law enforcement intervention services for persons suffering from mental health crises and my departments establishment of a crisis intervention team for domestic violence and mental health calls.

8. I am aware based on presentations given by the Town Planner, Greg Guimond, that under the MBTA Communities Act and the emergency regulations and projected permanent regulations being developed by the Executive Office of Housing and Livable Communities that the Town of Marshfield is considered an "MBTA Community" it is considered to be an "other served community" under Mass. Gen. L. c. 161A §1 even though the Town of Marshfield does not have any MBTA transportation facilities anywhere within the town or within 0.5 miles or more of the town. The closest MBTA station is the Greenbush MBTA Commuter Rail Station in Scituate and is three or more miles from the town over roadways connecting the towns.

9. I am further advised by the Town Planner that the Town of Marshfield is obligated by the MBTA Communities Act to adopt zoning bylaw that provides for at least one zoning district of reasonable size in which multi-family housing is permitted as of right, without age restrictions, suitable for families with children, with a minimum gross density of 15 units per acre subject to any further limitations imposed by Mass. Gen. L. c. 131 § 40 and title 5 of the state environmental code established pursuant to Mass. Gen. L. c. 21A §13 and located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

10. According to the Town Planner, in order to comply with the MBTA Communities Act and regulations, the Town of Marshfield will need to adopt a zoning district where the construction of at least new 1276 housing units must be allowed by right.

11. It is my experience that police staffing models in the U.S. are generally determined by one of five commonly used methods, including based on crime trends, a per-capita approach, minimum-manning levels, authorized/budgeted levels, and workload-based models.

12. Each methodology has certain advantages and disadvantages, so the staffing in the Town of Marshfield has been traditionally based on a variant of the minimum-manning model where the town predetermines a specific level of staffing that fits within the budget of the town. Annually, the previous year's budget is examined in context with the current financial situation of the Town of Marshfield and staffing decisions are made on that basis. Notwithstanding this practice, it has always been my goal as Marshfield Police Chief to advocate for staffing based on actual demand for police services and try and match that demand with a supply of adequate police resources.

13. Currently, the Marshfield Police Department operates on average in four adjusting shifts of dependent on the time of day and week This is already nine (9) fewer officers than the Town of Marshfield employed in the 1970s and 1980s.

14. It is my opinion that if the Town of Marshfield is obligated to allow at least new 1276 housing units by right, the Town of Marshfield will need plan today and start the recruitment and training to increase the number of police officers and related support personnel in order to try and match the increased demand for police services that is absolutely certain to occur with such an increase in housing units and the concomitant population increase.

15. Following the establishment of the Massachusetts Peace Officer Standards and Training (POST) Commission as part of the criminal justice reform legislation enacted in Chapter 253 of the Acts of 2020 with the mission is to improve policing and enhance public confidence in law enforcement by implementing a fair process for mandatory certification, discipline, and training for all peace officers in the Commonwealth, the cost of educating, preparing and employing police officers continues to increase markedly. It now costs the Town of Marshfield an estimated $85,000 in the first year to train and employ single a new police officer when those officers begin at an entry level position and this excludes the cost of health insurance and pension contributions due under collective bargaining agreements.

16. I am informed that there is a belief or opinion that there is no direct cost to the Town of Marshfield from the MBTA Communities Act from a public safety perspective since in order to comply with the requirements of the law, the town merely has to adopt a bylaw. I disagree.

17. While I agree that it would be unlikely that all 1276 housing units are unlikely to be created, constructed and then occupied at one time as practical matter, the two major housing projects in Marshfield comprising 519 units were each permitted within a year under current laws allowing for a comprehensive permit and each development contains multi-family housing buildings that were and are being constructed in phases where buildings are now constructed and can be occupied within a year even before the entire development is completed. It is reasonable to infer that development that is permitted by right will be permitted even sooner than development that was subject to discretionary permits and therefore to keep pace with the increased demand for police services in town caused by the population increase, the Marshfield Police will need to incur the expense of adding additional police officers and likely firefighter/paramedic/EMTs now.

18. It is my opinion that the Town of Marshfield in order to accommodate the quantity of new development would need to hire five (5) new officers, increase our overtime budget, and purchase and/or lease two additional police cruisers to accommodate the projected population of the new multi-family units. Alternatively, without an increase in overtime, it is my opinion that we would need to hire between six and eight (6-8) new officers and obtain two (2) new cruisers. It is further my opinion that the projected cost for police alone would annually be estimated at a total of $600,000 and $800,000 per year.

19. In my capacity as Captain of the Port, I also have personal knowledge of the loss of a December 2024 - $261,600 Seaport Economic Counsel grant - associated with the permitting and implementation of a North/South River Dredging Project needed to maintain navigable rivers in the Town. The navigable portions of these two rivers in Marshfield are essential to the ability of hundreds of commercial and recreational fishermen and boaters who utilize the North and South Rivers for access to Cape Cod Bay and many water dependent business and residential properties that are dependent on access. Since the date of the award on December 16, 2024, the Seaport Economic Council has refused to communicate with the Town of Marshfield Harbormaster, Michael Dimeo, and even though the town and the Council was prepared to finalize the grant agreement and the Town of Marshfield was in compliance with the Act through February 14, 2025.

SIGNED UNDER THE PENALTIES OF PERJURY

Dated: March 28, 2025

Phillip A. Tavares, Police Chief
Town of Marshfield

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS:

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
DOCKET NO. 2583CV00184

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD,
Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Defendants.

AFFIDAVIT OF RODERIC J. PROCACCINO, JR.
TOWN ENGINEER FOR THE TOWN OF MARSHFIELD

I, Rod Procaccino, hereby depose and state under oath as follows:

1. My name is Roderic J. Procaccino, Jr. I am formerly a long time registered professional engineer (PE) in the Commonwealth of Massachusetts. I allowed my engineering license to expire given my employment with the Town of Marshfield. In addition to my professional engineering licenses, I have previously held two types of Water Treatment licenses/certifications issued by the MA Board of Certification of Operators of Drinking Water Supply Facilities. I am currently employed as the Town Engineer for the Town of Marshfield, a position I have held for the last 20+ years. Prior to my becoming the Town of Marshfield's Town Engineer, I served for 13 years as a Water Project Engineer for the Town of Marshfield.

2. I have personal knowledge of all of the facts stated herein, excepting for those which I have stated to be on information and belief, which I also believe to be true.

3. During my tenure as Town Engineer and Water Project Engineer, I have been responsible for oversight of all work on the town's water supply infrastructure and sewer infrastructure, including the development of new water supplies, rehabilitation and improvement of all municipal pumping and water treatment facilities, new and replacement water mains, the maintenance and replacement of water tanks, and the entire water metering system which has included over 9000 water meters. I am also responsible for overseeing outside engineers and consultants working for the town on all water supply and distribution projects and handle procurement in these areas. This makes me particularly knowledgeable about the costs associated with the design, construction, maintenance and operation of the water supply system in the Town of Marshfield. In summary, I believe that am the most knowledgeable employee of the Town of Marshfield about its public water supply and water distribution system and its condition and function.

4. The Town of Marshfield's sole source of municipal drinking water supply consists of six aquifers and sixteen active gravel-packed wells. The town's drinking water supply is obtained entirely from an underground source within the Town's borders. All of the drinking water that is pumped into the distribution system receives some form of treatment at the individual pump stations. Each well has its own pump station and a pH (the water is naturally acidic) adjustment treatment process. Water from eleven of the sixteen wells, after this pH adjustment, is pumped directly into the distribution system's water mains as drinking water.

5. Like other town officials, I am familiar with the Town of Marshfield's current litigation with the Commonwealth of Massachusetts and the Executive Office of Housing and Livable Communities that concerns the MBTA Communities Act.

6. I am also aware based on presentations given by the Town Planner, Greg Guimond, that under the MBTA Communities Act and the emergency regulations and projected permanent regulations being developed by the Executive Office of Housing and Livable Communities that the Town of Marshfield is considered an "MBTA Community" it is considered to be an "other served community" under Mass. Gen. L. c. 161A §1 even though the Town of Marshfield does not have any MBTA transportation facilities anywhere within the town or within 0.5 miles or more of the town.

7. I am further advised by the Town Planner that the Town of Marshfield is obligated by the MBTA Communities Act to adopt zoning bylaw that provides for at least one zoning district of reasonable size in which multi-family housing is permitted as of right, without age restrictions, suitable for families with children, with a minimum gross density of 15 units per acre subject to any further limitations imposed by Mass. Gen. L. c. 131 § 40 and title 5 of the state environmental code established pursuant to Mass. Gen. L. c. 21A §13 and located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

8. According to the Town Planner, in order to comply with the MBTA Communities Act and regulations, the Town of Marshfield will need to adopt a zoning district where the construction of at least new 1276 housing units must be allowed by right. This would result in my estimation a five to six percent increase in demand for water which is likely tolerable but is likely dependent on the location of the development to require significant infrastructure improvements.

9. Prior to Town Meeting, where voters were asked to consider passing zoning articles intended to establish a compliant zoning district over a portion of the Town's frontage along Plain Street, I was consulted by the Town Planner about the ability of the Town to absorb the projected number of new multi-family housing units in a specific area as well as in a number of alternate areas in town. I felt that had Town Meeting approved the proposed MBTA compliant zone as originally proposed that the Town Planner along Plain Street in the Town's B-2 Zoning District that the Town had the ability to provide public water supply to the projected number of approximately 300 multi-family dwelling units that the town would be obligated to permit.

10. As the Town Engineer, while more than an estimated 90% of the properties in town are able to connect to municipal water, the Town's water drinking water wells, pump stations and water distribution systems would not, dependent on location, support the addition of even a small fraction of that number of housing units that would be permitted by right. This is due to the capacity and age of the system. The town already annually experiences trouble and imposes water restrictions during the summer system when the system is unable to supply the town with ordinary usage.

11. While I would not deny that it is customary for a developer to make upgrades to the water distribution system in close proximity to a proposed development in order to be able to develop new housing, it is never the case that system wide improvements are made that relieve the system as a whole.

12. It is my opinion to a reasonable degree of engineering certainty that in order to permit the connection of even a small fraction of the number of potential units that the MBTA Communities Act, the Town would need water infrastructure improvements dependent on the location of the proposed developments. Two of the locations in Marshfield considered for MBTA zoning require significant

investment in water main installation to replace existing undersized or aged water main or add for a distance of half mile for approximately $1M in one instance and a mile length for $2.5 M in the other instance.

13. I am also more intimately familiar with the wastewater pollution from subsurface sewage disposal systems that are not connected to the Town of Marshfield municipal sewerage treatment plant. Only certain areas of the Town mostly downtown and in the coastal village areas are actually sewered. The Town is in the process of monitoring and studying our drinking water wells for traces of PFAS and related chemicals that are used in daily life and enter the groundwater through wastewater in private septic systems. It is generally accepted that PFAS exposure over a long period of time can cause cancer and other illnesses that decrease quality of life or result in death.

14. In areas of the Town where there is no municipal sewer, there are numerous parcels of land could be developed for multi-family housing to meet the Town's requirements under the MBTA Communities Act. Since there are presently no state or federal laws prohibiting or regulating PFAS in wastewater but there are present EPA regulations obligating the Town of Marshfield to test its drinking water for PFAS contamination and regulatory thresholds of 4.0 parts per trillion for PFOA and PFOS individually, it is likely to a reasonable degree of engineering certainty that wastewater from this quantity of new multi-family dwelling units will cause the Town of Marshfield the need to treat for PFAS at one or more of its wells. I am familiar with the cost of adding a treatment facility for PFAS to our drinking water wells and the cost for each such facility should the PFAS levels exceed the standards is $5,000,000 and there is an annual cost of $100,000 per year for annual carbon replacement.

It appears to require the Town of Marshfield to permit, that the Town needs to immediately make needed system wide supply and infrastructure improvements including adding GAC Filtration facilities to treat municipal wells in close proximity to potential parcels to be developed and especially those wells of which are under the influence of wastewater from existing septic systems to treat for PFAS removal, and upgrade water distribution mains in areas near property that could support this type of development, and or expand the municipal sewer collection system and expansion of the Towns WWTF. The collective costs of these improvements could exceed $100M.

SIGNED UNDER THE PENALTIES OF PERJURY

Dated: March 27 2025

Roderic J. Procaccino, Jr., Town Engineer
Town of Marshfield

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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS:

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
DOCKET NO. 2583CV00184

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY AND ERIC KELLEY AS THEY CONSTITUTE THE TOWN OF MARSHFIELD SELECT BOARD,
Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Defendants.

AFFIDAVIT OF MICHAEL A. DIMEO, HARBORMASTER FOR THE TOWN OF MARSHFIELD

1. My name is Michael A. DiMeo. I am the current Harbormaster for the Town of Marshfield. My office is located at the Marshfield Town Pier located in the Brant Rock Section of the Town of Marshfield, Massachusetts abutting Green Harbor. I am also a Police Officer for the Town of Marshfield.

2. I have personal knowledge of all of the facts stated herein, excepting for those which I have stated to be on information and belief, which I also believe to be true.

3. In early December 2024, the Town was awarded a $261,600 grant from the Seaport Economic Council to start the permitting and engineering for needed dredging work in the North and South

Rivers. The details of that grant and a copy of the award letter are attached to the Town's Motion for a Preliminary Injunction.

4. On December 16, 2024, when there was still a deadline under the prior HLC guidelines of December 31, 2024 to adopt a zoning bylaw that was compliant with the MBTA Communities Act, Marshfield Town Meeting voted not to adopt the proposed bylaws.

5. Since that date, I have repeatedly attempted to communicate with the Council to finalize and sign the contract. I cannot get anyone to even return my calls or emails anymore.

6. After the Supreme Judicial Court voided the HLC guidelines on or about January 8, 2025 and the Town of Marshfield was again still in compliance with the MBTA Communities Act, I have attempted to finalize that contract to receive the grant funds and was unable to do so or even communicate with the Seaport Economic Council (SEC). The Scituate Harbormaster (Stephen Mone) has also made many calls to the Seaport Economic Council; as this was a regional grant for the Towns of Marshfield and Scituate.

7. I am informed that the Town of Marshfield did not submit an action plan by February 14, 2025 that was required under new emergency HLC regulations.

8. If the Town was compliant with the MBTA Communities Act until at least February 14, 2025, there is no reason why the grant contract could not have been executed.

9. As stated by Mr. Maresco, our Town Administrator, maintaining safe navigation in the portions of these two rivers in Marshfield are essential to the ability of hundreds of commercial and recreational

fishermen and boaters who utilize the North and South Rivers for access to Massachusetts Bay and many water dependent business and residential properties that are dependent on access. Significant shoaling also jeopardizes the ability of first responders to respond to vessels in distress, thus causing delayed responses that place the general boating public at a greater risk. It should be documented that the confluence of the North and South Rivers is one of the Commonwealth's most dangerous inlets. Without those funds, the Town will be unable to remove severe navigational hazards from significant shoaling and the risk of damage or injury increases so significantly that the Town in my view needs to locate funding to perform this work.

10. The Town has previously applied for many SEC grants for coastal resiliency improvements for town infrastructure, to include dredging at the Town Pier. I will continue to seek State grant funding 2025 as Marshfield has for many years, it is clear from the position of the Commonwealth that given Marshfield's decision not to adopt a compliant bylaw, the Town will not ever receive any such funding.

SIGNED UNDER THE PENALTIES OF PERJURY

Dated: March 28, 2025

Michael A. DiMeo, Harbormaster
Town of Marshfield

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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY and ERIC KELLEY as they constitute the TOWN OF MARSHFIELD SELECT BOARD, Plaintiffs, v. COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES, Defendants. Defendants	No. 2583CV00184 **CASE ASSIGNED TO HON. MARK C. GILDEA**

THE TOWN OF MARSHFIELD AND MARSHFIELD SELECT BOARD'S[1] MEMORANDUM OF LAW IN OPPOSITION TO THE COMMONWEALTH AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES' MOTION TO DISMISS

INTRODUCTION

This lawsuit by the Town of Marshfield and its duly elected Select Board (collectively "Marshfield") arises from and is connected to the so-called "MBTA Communities Act" contained in Mass. Gen. L. c. 40A §3A added by § 18 of Chapter 358 of the Acts of 2020, effective January 14, 2021, amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, further

[1] Specifically, Lynne Fidler, Stephen Darcy and Eric Kelley as they constate the Town of Marshfield Select Board.

amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§2, 2A, 2B, and 20-26 of Chapter 234 of the Acts of 2024, effective November 20, 2024.

The MBTA Communities Act, a new law described by the Commonwealth as intended to address the ongoing housing crisis in Massachusetts, requires all MBTA communities, including the Town of Marshfield, which is considered an "adjacent [MBTA] community", to zone at least one district where dense, multi-family housing is permitted as of right, subject to other requirements.[2] Under the plain language of the MBTA Communities Act and as interpreted as enforceable by the Supreme Judicial Court in the matter of *Attorney General v. Town of Milton, 495 Mass. 183 (2025)*, the Town of Marshfield is now obligated by this new law to permit the construction of 1276 new multi-family housing units on a by-right basis. As decided by the Office of the State Auditor's Division of Local Mandates and evidenced by detailed Affidavits of Marshfield officials, including the Town Administrator, Police Chief, Harbormaster, Town Planner and Town Engineer, the MBTA Communities Act, since the MBTA Communities Act constitutes an unfunded mandate within the meaning of Mass. Gen. L. c. 29 §27C and otherwise, in the opinion of the Town of Marshfield, impermissibly compels the Marshfield Town Meeting to adopt a zoning bylaw under Mass. Gen. L. c. 40A §5 instead of exempting such by-right housing under Mass. Gen. L. c. 40A §3, the Commonwealth's Motion to Dismiss must be denied. The grounds for this motion are more fully developed herein.

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[2] An MBTA community is defined as "a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority." The Town of Marshfield is specified as one of the other served communities in clause (iii).

II. SUMMARY OF FACTUAL BACKGROUND

Marshfield alleges that the Commonwealth of Massachusetts enacted a new law called the MBTA Communities Act effective January 14, 2021.[3] Mass. Gen. L. c. 40A §3A; Complaint at ¶7.[4] In order to comply with the MBTA Communities Act and its regulations, Marshfield is obligated to adopt and implement a zoning district in which 1276 new housing units are allowed. *Affidavit of Gregory Guimond, Town Planner at ¶28.* Marshfield alleges that the MBTA Communities Act and its implementing regulations by the Executive Office of Housing and Livable Communities (HLC) impose an unfunded mandate on the town to adopt and implement a by right zoning district in which dense, multi-family housing development is permitted without discretionary permits or approvals. Complaint at ¶29. Marshfield alleges that as the direct and proximate result of the MBTA Communities Act and regulations, in addition to suffering a irreparable loss of awarded grant funds in enumerated grant programs, it is foreclosed from all other discretionary grant funds not mentioned in the statute, including mostly importantly, the newly discovered grant fund, the Commonwealth's MBTA Communities Catalyst Fund, intended, inter alia, to reward communities by fund infrastructure costs to implement the law, and will incur significant direct costs and expenses beyond a local administration expense, including public safety, infrastructure expenses, and educational costs, described as money damages. See Complaint at ¶¶31, 35, 39, 43, 52 and Affidavits of Michael Maresco, Greg Guimond, Phillip A. Tavares, Michael Dimeo and Roderic Procaccino. Marshfield alleges that since the law and regulations constitute an unfunded mandate it is further

[3] The Commonwealth and HLC have not argued in their Motion to Dismiss that the MBTA Communities Act is not a new law or that the legislature in the same session in which the MBTA Communities Act was enacted provided by general law and by appropriation, for the assumption by the commonwealth of such cost to comply with the act. See Mass.Gen.L. c. 29, § 27C(a). It is presumed that these arguments are waived by the Commonwealth and HLC. . by appropriation in each successive year for such assumption" (emphasis added).

[4] The Affidavit of Michael Maresco, Town Administrator verifies the allegations of the Complaint.

entitled to a declaratory judgment that it is exempt pursuant to Mass. Gen. L. c. 29 §27C from compliance and a restoration of awarded grants and a right to access other discretionary grant funding until the Commonwealth provides funding for compliance. Complaint at ¶¶43, 52-53.

III. STANDARD ON MOTION TO DISMISS

In evaluating the sufficiency of a pleading pursuant to Mass. R. Civ. P. 12(b)(6), the Court must take the allegations of the pleading, as well as any inferences which can be drawn from those allegations in the pleader's favor, as true. *Eyal v. Helen Broadcasting Corp., 411 Mass. 426, 429 (1991).* While detailed factual allegations are not required, mere labels and conclusions are not enough. More specifically, in *Iannacchino v. Ford Motor Co., 451 Mass. 623 (2008)*, the SJC explained that "[f]actual allegations must be enough to raise a right to relief above the speculative level…." *Id., 452 Mass. at 636, quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545 & 555 (2007).* What is required at the pleading stage are factual "allegations plausibly suggesting (not merely consistent with)" an entitlement to relief, in order to "reflect[] the threshold requirement of [Fed. R. Civ. P.] 8(a)(2) that the 'plain statement' possess enough heft to 'sho[w] that the pleader is entitled to relief.'" *Id., quoting Twombly, 550 U.S. at 557.* While the previous standard spoke of possibilities, the standard announced in Iannacchino speaks to plausibility. It is equally clear that "dismissals on the basis of pleadings, before facts have been found, are discouraged" see *Gennari v. City of Revere, 23 Mass.App.Ct. 979 (1987)* and that the trial courts may also consider other matters of public record and items contained within the records of the case. *See Schaer v. Brandeis University, 432 Mass. 474, 477 (2000).* Since Marshfield has asserted sufficient facts demonstrating that the MBTA Communities Act and its implementing regulations is a new law, that imposes additional direct service or other costs on

Marshfield, excluding incidental local administration expenses, and the law was not expressly exempted from the application of the Local Mandate Law, this Motion to Dismiss must be denied. In addition, since Marshfield has plausibly described how the MBTA Communities Law impermissibly obligates Marshfield to approve passage of a zoning compliant district rather than exempting the use under the provisions of Mass. Gen. L. c. 40A §3 it infringes on right of Town Meeting to accept or reject such a bylaw. The grounds for this motion are further developed below.

A. The Town of Marshfield's Complaint and related Affidavits in the Court Record sufficiently plead that the MBTA Communities Act constitutes an unfunded mandate pursuant to Mass. Gen. L. c. 29 §27C.

The Commonwealth and HLC's first claim is that Marshfield, as well as the other communities, have pled no direct service cost or obligation imposed by the MBTA Communities Act. *Commonwealth Brief at p. 14, 15-16.* This is simply not true and contradicted by the allegations of the Marshfield Complaint as well as the additional affidavits of the Marshfield town officials who have submitted affidavits in connection with Marshfield Motion for a Preliminary Injunction and Reply to the Commonwealth's Opposition to Marshfield's Motion for a Preliminary Injunction. *See Complaint at ¶¶31, 35, 39, 43, 52 and Affidavits of Michael Maresco; Greg Guimond at ¶¶ 31-33 & Ex. B, Phillip A. Tavares at ¶¶18, Michael Dimeo at ¶¶ 3-8 and Roderic J. Procaccino at ¶¶ 13-14.* Moreover, the Commonwealth and HLC's assertions are wholly inconsistent with the express determinations by the State Auditor's Division of Local Mandates that communities will have direct costs in developing compliant zoning that amount to more than incidental expenses that Marshfield expressly relied and alleged

as a part of its complaint. See Complaint at ¶¶29-30, 35, 37-41. For these reasons, the Commonwealth and HLC's arguments are without any basis.

B. The Direct Service Costs or Cost Obligations Asserted by Marshfield are Direct Service or Cost Obligations within the meaning of Gen. L. c. 29 §27C.

Whether the MBTA Communities Act imposes a "direct service or cost obligation" on municipalities by the Commonwealth that amounts to more than an "incidental local administration expense" on Marshfield has already been answered by the State Auditor's Division of Local Mandates (DLM) as a part of its analysis as to whether the MBTA Communities Act constituted an unfunded mandate in Methuen, Wrentham and Middleborough. *See DLM Decisions dated February 21, 2025 attached hereto as Exhibit A.* While the DLM could not at the time of its mandate determination evaluate the total fiscal impact of implementation of the MBTA Communities Act in the communities without further data collection[5], DLM expressly concluded that, at a minimum, cities and town will incur direct costs exist in developing compliant zoning that amount to more than incidental local administration expenses after examining the accepted definition of "incidental local administration expenses" as relatively minor expenses related to the management of municipal service and . . . are subordinate consequences of a municipality's fulfilment of primary obligations". *Id. p. 6 (Metheun determination).* Distinguishing, as it should have, the types of "subordinate administrative tasks" like parental notice and the annual submission of a school building access plan as administrative expenses incidental to the primary obligation to identify children in need

[5] At the time, the DLM had not been provided the fiscal impact statement and other information by HLC. The March 6, 2025 fiscal impact statement is virtually useless and simply states in conclusory fashion without any type of analysis that there is no financial impacts to municipalities.

of special education services at issue in the case of *City of Worcester v. the Governor, 416 Mass. 751 (1994),* DLM concluded that expenses incurred by a municipality in fulfilling the primary obligation of the MBTA Communities Act that is to encourage the production of multi-family housing imposes a direct service cost or cost obligation on municipalities that amount to more than incidental local administration expenses." *Id.* DLM's conclusions are further supported by reference to EOHLC's emergency regulations, which recognize that in addition to communities and developers incurring costs, "*the Commonwealth will provide funding for infrastructure upgrades as needed* for individual projects". *Id. at 8.* Marshfield concurs with this analysis by DLM and its conclusion makes perfect sense since the expenses that are alleged by Marshfield and the other communities are not in the nature of the subordinate tasks of towns and their officials like (1) providing notice of the requirements of the new law, (2) the conduct of a town meeting at which passage of zoning bylaw is ordinarily discussed, or (3) some periodic municipal reporting to the Commonwealth or HLC on passage of a bylaw or even the details of development in a zoning compliant district, but rather, direct service expenses and cost obligations incurred by Marshfield to identify and study the feasibility of locations for dense multi-family housing, the cost to design a bylaw, or evaluate infrastructure needs and deficiencies precedent to development, and the costs to implement or that will certainly occur due to the development of dense, by-right housing.

The fact that the Commonwealth and HLC offered, outside of the MBTA Communities Act, state "technical" grant funds to offset those direct service and cost obligations expenses and gratuitously identified two other sources of grant funds is tantamount to a concession by the Commonwealth and HLC that there are direct service expenses and cost obligations to implement the MBTA Communities Act in a municipality that are likely well beyond the level of

technical expertise of municipalities to identify, create, design and implement or accommodate the production of dense, multi-family housing. *Commonwealth Brief at pp. 9-10; see also DLM Decision dated May 23, 2013 (Halifax).* Furthermore, the fact that the Commonwealth has established, independently of the MBTA Communities Act, an MBTA Communities Catalyst Fund with the primary purpose supporting multi-family housing production in communities with an approved 3A district with grants ranging from $250,000 to $1,000,000 that may be permissibly spent on infrastructure projects including "construction of new or improved infrastructure, including roadway/streetscape improvements, bridge/culvert repair or replacement, water/sewer, public utilities (gas, electric, etc.)" as well as design and engineering of infrastructure projects and to provide pass through funds for housing production, rehabilitation, and preservation, is the most clear and convincing admission that municipalities, like will necessarily incur and have incurred such direct service expenses and cost obligations.[6]

The conclusion by DLM and the contention by Marshfield that it will incur direct service expense and cost obligations to implement the MBTA Communities Act is also consistent with federal law under the Unfunded Mandates Reform Act of 1995 (UMRA) and the statutory definition of direct costs by the federal equivalent of DLM, the Congressional Budget Office (CBO). Enacted as an amendment to the Congressional Budget and Impoundment Control Act of 1974, UMRA, aims to promote informed decision-making by focusing congressional and administrative deliberations on the costs incurred by intergovernmental entities and the private

[6] For example, the Town of Westford, received a $300,000 MBTA Community Catalyst Fund Grant to conduct pre-development activities for critical transportation connectivity including infrastructure upgrades, identify connections to trails and sidewalk networks and new trails and connections and to educate the public about the benefits of thoughtful multi-family development. The listing of other awards is contained on March 14, 2025 story on Boston Orange listing all ten Catalyst Fund grant recipients seven of which requested funds for street, water or sewer infrastructure projects. See Healey-Driscoll Administration Awards $8.7 Million to Compliant MBTA Communities in Support of New Housing, Boston Orange, March 14, 2025 at Boston Orange 波士頓菊子: Healey-Driscoll Administration Awards $8.7 Million to Compliant MBTA Communities in Support of New Housing.

sector in order to comply with federal legislation and regulation. *See Anderson and Constantine, Unfunded Mandates Briefing Papwer No. 7, Harvard Law School, Federal Budget Policy Seminar, May 2005 at 2.* UMRA's primary purpose is "to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding. *Id.* The CBO functions differently than DLM and is charged with determining whether the aggregate direct costs of the mandates would be greater than the statutory thresholds established in UMRA in any of the first five fiscal years in which the mandates are effective. Under UMRA, 2 USC §1501, "direct costs" are defined as "the aggregate estimated amounts that all state, local and tribal governments, or the private sector, would be required to spend in order to comply with the proposed mandate." 2 USC §1501. Utilizing this simple definition from the equivalent federal law as instructive, Marshfield and the other communities are clearly incurring "direct costs" and will continue to incur direct costs to implement the purpose of the MBTA Communities Law in identifying, locating, designing, and implementing the production of 1297 multi-family housing units.

The Commonwealth and HLC suggest that this Court should not afford any deference to DLM, which is the state agency charged by law, with evaluating whether a new law or regulation constitutes an unfunded mandate; however, this is exactly opposite settled law. In Massachusetts, the Supreme Judicial Court has consistently maintained that court are to give "substantial deference" to an agency's interpretation of its statutory obligations when the statute does not speak directly to the question and the interpretation offered by the agency "may be reconciled with the governing legislation." *See Goldberg v. Board of Health of Granby, 444 Mass. 627, 633-634 (2005); Robinhood Financial, LLC v. Secretary of the Commonwealth, 492 Mass. 696, 707 (2023); Johnson v. Energy Facilities Siting Board, 495 Mass. 197 (2025).* This

is precisely the charge given by law to DLM with respect to the issues of unfunded mandates. Under Mass. Gen. L. c. 11, § 6B, the law states that DLM "shall have the responsibility of determining to the best of its ability and in a timely manner the estimated and actual financial effects on each city and town of laws, and rules and regulations of administrative agencies of the commonwealth either proposed or in effect, as required under section twenty-seven C of chapter twenty-nine of the General Laws." Mass. Gen. L. c. 11, § 6B (emphasis added). In this case, DLM did precisely what it was charged to do by law and when its decision making as to the financial impacts to communities is completed is even considered "prima facie" evidence of the amount of deficiency in the law under Mass. Gen. L. c. 29 §27C(e).

C. The Direct Service Costs or Cost Obligations Asserted by Marshfield are Not Indirect Obligations Simply Because they Involve Future Estimated Expenses

The Commonwealth and HLC also contend that Hanson, Middleton and Wrentham claims that they will incur substantial infrastructure impacts, including without limitation, impacts to its water system, public safety services, educational services and buildings, roads and other general governmental services are speculative and therefore at most an indirect consequence of §3A. The Commonwealth and HLC also posits that since those expenses are not easily determined they are speculative and that DLM could not determine them. This is an absurdity. Since Marshfield, like the other communities, contends that it will incur similar types of expenses, Marshfield also disputes these assertions by the Commonwealth and HLC. As set forth in the supporting affidavits, Marshfield will most assuredly will incur future expenses to implement the production of multi-family consistent with the primary purpose of the MBTA Communities Act and although the exact total of these expenses will need to be

determined through the discovery process and likely through expert opinion and may even change from year to year; those expenses are not speculative. In actuality, the sum total will ultimately depend on where and how in Marshfield 1276 new multi-family housing units are constructed and what infrastructure is needed in the vicinity of the development is needed to accommodate this development which is variable. The specific figures to each municipality will need to be determined likely by expert testimony and only means that the Commonwealth and HLC must appropriate sufficient funds over a period of time for Marshfield and the other communities to accommodate the direct expenses connected to number of new multi-family dwelling units they are obligated to accept. The plain language of Mass. Gen. L. c. 29 §27C(a) also contemplates that such direct costs must be provided for "by an appropriation in each successive year for such assumption" and therefore the language of the statute contemplates and supports Marshfield and the other communities' positions that the exact figures of direct costs are matters that will need to be proven by competent evidence. Moreover, Marshfield and the other communities have the statutory right to present evidence in accordance with Mass. Gen. L. c. 29 §27C(e) to request in the absence of any determination by DLM that superior court shall determine the amount of the deficiency, if any, and to request an order that town be exempt from such general or special law, or rule or regulation of any administrative agency until the commonwealth shall reimburse such city or town the amount of said deficiency or additional costs or shall repeal such exemption from local taxation. See Mass. Gen. L. c. 29 §27C(e). Dismissal of this matter for failure to state a claim would deprive Marshfield of the ability to develop and present competent evidence as to the amount of deficiency that will need time and expert testimony to present and therefore should be denied.

D. The Commonwealth Could Have Requested DLM Before Enactment if the MBTA Communities Act Constituted an Unfunded Mandate But Did Not and Could Have but Did Not Exempt Itself from the Unfunded Mandate Law in the Enactment of the MBTA Communities Act.

Prior to the enactment of the MBTA Communities Act, the Legislature had the obvious option to inquire of DLM as to whether the MBTA Communities Act constituted an unfunded mandate pursuant to Mass. Gen. L. c. 29 §27C(d) before its passage. That is also the process that is always followed on the federal level under UMRA. Instead, the Legislature elected to presume and took the risk that the MBTA Communities Act did not constitute an unfunded mandate if it did not seek out DLM in advance. In addition to the foregoing, as noted by DLM in its determinations for Methuen, Wrentham, and Middleborough, in a pre-emptive move, it was always permissible for the Legislature to override Local Mandate Law and to specifically exempt the MBTA Communities Act from the application of the Local Mandate Law. The fact that the Legislature failed to avail itself of either measure is entirely not the fault of the municipalities who assert direct service expense and cost obligations to implement the new law. Either of the foregoing moves would have prevented the precise circumstances facing Marshfield and the other communities today. An initial request to DLM may also have resulted in the law being redrawn to exempt the MBTA Communities Act from the Local Mandate Law. Today, the Commonwealth and HLC act as if Marshfield is overreaching when in fact Marshfield seeks only to present its case that it will be significantly impacted well beyond the lost and future lost grant funds by the implementation of the Act.

D. The Commonwealth and HLC Could Have but Did Not Exempt Multi-Family Housing from Zoning under Gen. L. c. 40A §3.

In a claim unique to Marshfield, Marshfield asserts that the MBTA Communities Act codified at Mass. Gen. L. c. 40A §3A compels, in the case of a town like Marshfield which has open town meeting as its legislative branch of local government, to adopt "a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children." Mass. Gen. L. c. 40A §3A(a)(1). Zoning bylaws are adopted obviously in accordance with Mass. Gen. L. c. 40A §5. Based on the decision in the *Milton* case, it is now apparent that Town Meeting cannot under the theory advanced by the Commonwealth and HLC refuse to adopt a compliant zoning bylaw irrespective of its willingness to forego grant funding and must choose to enact a zoning compliant district. The statutes cannot be read harmoniously with one another without depriving Marshfield Town Meeting, the only body authorized by state law to adopt zoning in Massachusetts, of its right to decline to adopt zoning measures or determine its own zoning. In this sense, the law compels an act which is beyond the scope of its authority, and if it was desired by the Commonwealth, should have been included within Mass. Gen. L. c. 40A §3 governing subjects that municipalities could not regulate. Marshfield submits that basic principles of conflicts of law require that where there is a conflict between two statutory provisions — one of them a general statement, (like in Gen. L. c. 40A §3A), and the other a specific statement (like in Gen. L. c. 40A §5)— courts are obligated to follow the more specific statement as an exception to the general statement. Also, had the Legislature intended by the adoption of Mass. Gen. L. c. 40A §3A to preempt the right of Town Meeting under Mass. Gen. L. c. 40A §5 to determine such matters and impose an outright exemption for the production by right of multi-family housing units, the Legislature could have included those limitations within Mass. Gen. L. c. 40A §3 (setting forth

subjects that municipalities may not regulate and exemptions) or added some limitation within Mass. Gen. L. c. 40A §5 rather than pretending to continue to allow local choice.

D. Marshfield Adopts by Reference all Arguments Advanced by Hanson, Wrentham and Middleton.

Marshfield adopts by reference all arguments made by Hanson, Wrentham and Middleton not expressly referenced herein to the extent applicable.

IV. CONCLUSION

For the foregoing reasons, Marshfield has set forth sufficient facts at this stage of this case to demonstrate that the MBTA Communities Act constitutes an unfunded mandate in violation of Mass. Gen. L. c. 29 §27C and that the provisions of the law cannot be read to compel Town Meeting to affirmative vote in a manner on an issue delegated to it without violating the Home Rule Procedures Act. As a result, the Commonwealth and HLC's Motion to Dismiss should be denied.

Respectfully submitted,
Town of Marshfield and
by their Town Counsel,

Dated: March 28, 2025

/s/ Robert W. Galvin

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CERTIFICATE OF SERVICE

I, Robert Galvin, counsel for the Town of Marshfield, hereby certify that I served a copy of the foregoing document on counsel for the Commonwealth of Massachusetts counsel this 28th day of March 2025 by efiling and email. They are:

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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	**CASES SPECIALLY ASSIGNED TO HON. MARK C. GILDEA** No. 2583 CV 00184
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	No. 2577 CV 00249

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT OF THE TRIAL COURT
PLYMOUTH COUNTY
APR 1 2025
Clerk of Court

COMMONWEALTH AND OTHER DEFENDANTS'[1] REPLY IN SUPPORT OF THEIR CROSS-MOTION TO DISMISS[2]

[1] Specifically, the Commonwealth, Governor Maura Healey, the Executive Office of Housing and Livable Communities, the Executive Office of Economic Development, and the Massachusetts Development Finance Agency (together, "Commonwealth").

[2] This Reply is not being filed in Town of Middleborough v. Commonwealth et al., No. 2583 CV 00188 (Plymouth Superior Court) because that plaintiff chose to voluntarily dismiss its case following filing of the Commonwealth's cross-motion to dismiss.

I. As a Matter of Law, No Plaintiff Pleads Any Direct Service or Cost Obligation Imposed by G.L. c. 40A, § 3A, Outside of Incidental Local Administration Expenses.

Hanson, Middleton, and Wrentham (MTD Oppo. pp. 6-7), argue that "determination of the nature and extent of [costs alleged to have been imposed by § 3A] is necessarily a factual determination that cannot be resolved on a motion to dismiss." That is wrong: Whether a state law imposes the type of costs that implicate § 27C is a "question[] of law," City of Worcester v. Governor, 416 Mass. 751, 754 (1994), and the Appeals Court has affirmed dismissal of a complaint on the ground that the costs pled are "indirect" and thus "are not sufficient under § 27C(a) to support [a] claim." Kennedy v. Commonwealth, 92 Mass. App. Ct. 644, 651 (2018).

These three plaintiffs counter (p. 5) by construing Worcester's analysis as limited to whether the challenged regulatory changes were "new law changing existing law." But that is also wrong: The SJC's legal inquiry broadly analyzed "whether [each regulation] was a new law changing existing law, and resulted in [the city's] having a direct service or cost obligation which it did not voluntarily assume and which was imposed on it by the Commonwealth . . . [as well as] whether a new imposed cost obligation related only to an incidental local administrative expenses . . . ." 416 Mass. at 754-55. And the SJC concluded that one of the challenged regulatory changes (i.e., to 603 CMR 28:315.1), did not implicate § 27C because it "relate[d] solely to incidental local administration expenses," without even discussing whether it also constituted "new law changing existing law." Id. at 757-58.

A. DLM's Opinion Letter Receives No Deference.

Hanson, Middleton, and Wrentham suggest (p. 11) that this Court must "assum[e] for purposes of Rule 12(b)(6) the truth and accuracy" of DLM's February 21, 2025, letter. But this misapplies the dismissal standard, which expressly does not require this Court to accept the truth

of legal conclusions.[3] E.g., Cubberley v. Commonwealth Ins. Co., 495 Mass. 289, 292-93 (2025). And the conclusions set forth in DLM's letter are legal in nature, not factual: They purport to address the legal question of whether § 3A imposes a direct service or cost obligation within the meaning of § 27C, and not the factual question of the amount of any deficiency (i.e., the only question that the Legislature has actually entrusted to DLM under § 27C(d)).[4]

Furthermore, deferring to DLM's letter would do Hanson, Middleton, and Wrentham no good. That is because the only costs DLM identified as implicating § 27C are those to "develop[] compliant zoning." DLM Ltr. p. 6. As discussed in the Commonwealth's opening brief (pp. 18-19), none of those towns alleges it has incurred unreimbursed costs of that type.

Marshfield cites (MTD Oppo. p. 9) caselaw supporting the general concept of agency deference, but those cases all featured facts and circumstances very different from here. See Goldberg v. Bd. of Health of Granby, 444 Mass. 627, 633-34 (2005) (deferring to content of agency regulations in presence of "explicit, broad" grant of rulemaking authority); Robinhood Fin., LLC v. Sec'y of the Com., 492 Mass. 696, 707-08 (2023) (same, where agency was "broadly authorize[d] . . . to administer the law"); Johnson v. Energy Fac. Siting Bd., 495 Mass. 197, 200 (2025) (deferring to agency factfinding in adjudicatory proceeding). Instead, the governing principle here is that an agency like DLM receives no deference when it acts beyond its statutory authority. E.g., DiMasi v. Sec'y of the Com., 491 Mass. 186, 193-94 (2023).

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[3] These plaintiffs repeatedly cite (pp. 3, 7, 19) the dismissal standard of Conley v. Gibson, 355 U.S. 41 (1957). But the SJC long ago found that standard had "earned its retirement" and replaced it with the new standard cited in the Commonwealth's opening brief. See Iannacchino v. Ford Motor Co., 451 Mass. 623, 635-36 (2008).

[4] Nor, as these plaintiffs suggest (pp. 8-9), is the legal inquiry an ingredient of the factual one. Indeed, by consistently not deferring to DLM's opinions that a law imposes direct service or cost obligations—notwithstanding § 27C(e)'s command to treat DLM's deficiency calculation as "prima facie evidence"—the SJC has confirmed that the two inquiries are distinct. Worcester, 415 Mass. at 754; Town of Norfolk v. Dep't of Env't'l Quality Eng'g, 407 Mass. 233 (1990).

B. Hanson, Middleton, and Wrentham Do Not Rebut the Conclusion that Infrastructure Costs Are "Indirect" as a Matter of Law.

The Commonwealth's core point here is that the type of infrastructure costs relied upon by Hanson, Middleton, and Wrentham are "indirect" because § 3A mandates only zoning for—not construction of—multi-family housing. Those three plaintiffs do not rebut this point, or make any substantive argument about the scope of "indirect" costs under § 27C. Instead, they rely (pp. 7, 11-12) exclusively on DLM's letter, which is unavailing as previously discussed.[5]

The plaintiffs point to an "MBTA Communities Catalyst Fund," but the mere existence of this program has no bearing on the legal question of whether costs it might cover are properly considered "indirect" under § 27C. They also point to 760 CMR 72.05(1)(e)(2), which states that calculation of the multi-family unit capacity required of a § 3A district need not "take into consideration limitations on development resulting from existing water or wastewater infrastructure . . . or, in areas not served by public sewer, any applicable limitations under 310 CMR 15.000" and instead "assume[s] that housing developers will design projects that work within existing water and wastewater constraints, and that developers, the municipality, or the Commonwealth will provide funding for infrastructure upgrades as needed for individual projects." But, contrary to the plaintiffs' suggestion, this provision confirms how § 3A mandates only zoning and not construction (which may not be feasible in all areas within the district). Cf.

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[5] Marshfield's Opposition (pp. 10-11) and affidavits suggest that it also seeks to rely upon costs of this type. But Marshfield has not pled such costs: The only part of its complaint to describe unreimbursed costs allegedly imposed by § 3A (i.e., ¶ 51) speaks to "costs and expenses in evaluating and drafting proposed zoning bylaws and presenting them to Town Meetings."

Marshfield suggests (pp. 8-9) that the "direct service or cost obligations" addressed by § 27C should be construed consistently with "direct costs" under the federal Unfunded Mandate Reform Act. But the federal definition of "direct cost" as the sum another government "would be required to spend . . . in order to comply with" a federal mandate, 2 U.S.C. § 658(3), does not help the plaintiffs, because it does not answer the Commonwealth's central contention that § 3A compliance requires only zoning—not construction.

760 CMR 72.05(1)(e)(1) ("Compliance with [§ 3A] does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future multi-family housing production"; "lack of infrastructure or infrastructure capacity" may "result in actual housing production at lower density than the zoning allows").

C. Marshfield Does Not Rebut the Conclusions that Costs to Implement § 3A Are Incidental Local Administrative Expenses and Are Not "Imposed" by § 3A.

The Commonwealth's core points here—each of which is independently sufficient to grant dismissal—are that the implementation costs relied upon by Marshfield: (1) are incidental administration expenses, in view of Marshfield's longstanding maintenance of a zoning program; and (2) are not "imposed" by § 3A, but rather result from Marshfield's voluntary choice to pursue § 3A compliance in a more complex fashion than § 3A requires. Marshfield does not rebut these points, or make any substantive argument about them, instead relying (pp. 6-8) exclusively on DLM's letter. It also cites (p. 7) the availability of technical assistance funds to aid § 3A implementation, but the existence of such funds has no bearing on the legal questions of whether implementation costs are incidental administrative expenses or are not imposed by § 3A.

To the contrary, Marshfield's own papers confirm that these costs are incidental local administrative expenses. Pointing (pp. 7-8) to a 2011 DLM letter that turned in part on whether Halifax had been saddled with responsibilities "beyond the customary staff resources of local government," Marshfield argues that costs to implement § 3A implicate § 27C because they are "beyond the level of technical expertise of municipalities." But Marshfield's own affidavit attests that the two § 3A rezoning proposals presented to Town Meeting in 2024 were prepared by Marshfield's longtime town planner, who rejected technical assistance monies because he "prefer[ed] and trust[ed] [his] own analysis given [his] knowledge, experience and training as a planner." Guimond Aff. ¶ 24. Thus, as argued in the Commonwealth's opening brief (pp. 21-

22), Marshfield's efforts to implement § 3A were within the scope of incidental administrative expenses, attendant to having a zoning program, that Marshfield was already incurring.

II. Middleton Meets the Regulatory Definition of "Adjacent Community."

Middleton concedes (pp. 15-18) the two facts needed to conclude, as a matter of law, that it is an "adjacent community" within the meaning of 760 CMR 72.02, specifically that:

1. It has a population over 7,000, see MTD Oppo. p. 17 & fn.3; and
2. "[T]here is no 'Developable Land' in Middleton, regardless of acreage, within '0.5 miles' of a 'Transit Station' as those terms are defined in the EOHLC regulations." Id. p. 17.

Combined with Middleton's appearance as one of the "51 cities and towns" listed in G.L. c. 161A, § 1, and G.L. c. 40A, § 1A, this means that Middleton meets the regulatory definition of "adjacent community." Middleton argues (p. 17) that it "is not actually located adjacent to any municipality with MBTA service," but 760 CMR 72.02 requires no such thing. Middleton also seems to suggest (pp. 17-18) that its "no developable land" is not less than the "100 acre" threshold set by the regulation—but this suggestion lacks logic, especially in view of the "generous" deference afforded to HLC's reasonable interpretations of its own regulations. DeCosmo v. Blue Tarp Redev., LLC, 487 Mass. 690, 698-704 & n.22 (2021).

III. The SJC Has Conclusively Rejected Marshfield's Claim Concerning G.L. 40A, § 5.

In arguing (pp. 12-13) that G.L. c. 40A, § 5, trumps § 3A, Marshfield ignores the Commonwealth's citation (p. 31) of Durand v. IDC Bellingham, LLC, 440 Mass. 45 (2003). In fact, Durand is dispositive of Marshfield's claim, as it holds that the municipal zoning power extends only to enactments "not inconsistent with . . . laws enacted by the Legislature" and that § 5 merely "dictates the process a municipality must follow in amending its zoning bylaws." Id. at 50-52. Section 5 does not limit the Legislature's authority to substantively regulate municipalities' exercise of the zoning power.

Respectfully submitted,

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April 1, 2025

Certificate of Service

Pursuant to Mass. R. Civ. P. 5(b), I certify that I caused a copy of this paper to be served, by e-mail, on all counsel of record who have appeared in any of the captioned cases or any of the pending related cases that have been specially assigned to Hon. Mark C. Gildea, specifically:

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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS. et al., Defendants	**CASES SPECIALLY ASSIGNED TO HON. MARK C. GILDEA** No. 2583 CV 00184
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	No. 2577 CV 00249

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY
APR 1 2025
Clerk of Court

SUPPLEMENTAL AFFIDAVIT OF CHRISTOPHER JEE

I, Christopher Jee, hereby depose and say as follows:

1. I am the General Counsel of the Massachusetts Executive Office of Housing Livable Communities ("EOHLC"). I have served in this capacity since 2024 and have worked for EOHLC and its predecessor agencies in other capacities since 2014.

2. The facts set forth in this affidavit either are personally known to me or are based on knowledge I have acquired through review of documents kept by EOHLC in the ordinary course of its business.

3. On March 18, 2025, I signed an affidavit filed in these matters attesting to the Healey-Driscoll administration's policy regarding award of discretionary state grants to MBTA communities. In the two weeks since I signed that affidavit, the Healey-Driscoll administration has clarified and updated its policy regarding award of discretionary state grants to MBTA communities in the ways set forth herein. All other facts attested-to in my March 18 affidavit remain true and correct to the best of my present knowledge.

4. It is the current policy of the Healey-Driscoll Administration that all discretionary state grants to municipalities may be subject to compliance with § 3A.

5. This policy applies to municipal governments and their departments, but does not apply to non-municipal entities seeking funding for projects located in a non-compliant municipality unless otherwise provided by statute. Grants or funds where the awarding agency does not have discretion as to recipient selection, such as Chapter 70 state aid for public schools or federal grants where the state is considered a pass-through mechanism, are not subject to this policy. However, grants where the state has discretion on recipient selection, or any state matching funds, are subject to this policy.

6. For each grant opportunity subject to compliance with § 3A, an awardee's compliance status is evaluated at the time of award and at the time of contracting. If, at either of these points, a municipality is found to be out of compliance with § 3A, grant funds may be withheld unless the municipality comes into compliance with the law. If a municipality falls out of compliance with § 3A after contracting, the award and related funds will not be rescinded.

I declare under penalty of perjury that the foregoing is true and correct:

/s/ Christopher Jee

April 1, 2025 Christopher Jee

Certificate of Service

Pursuant to Mass. R. Civ. P. 5(b), I certify that I caused a copy of this Supplemental Affidavit to be served by e-mail on all counsel of record who have appeared in any of the captioned cases or any of the pending related cases that have been specially assigned to Hon. Mark C. Gildea, specifically:

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COMMONWEALTH OF MASSACHUSETTS
PLYMOUTH SUPERIOR COURT

TOWN OF MARSHFIELD, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	**CASES SPECIALLY ASSIGNED TO HON. MARK C. GILDEA** No. 2583 CV 00184
TOWN OF MIDDLEBOROUGH, Plaintiff, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00188
TOWN OF HANSON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2583 CV 00209
TOWN OF WRENTHAM, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2582 CV 00259
TOWN OF MIDDLETON, et al., Plaintiffs, v. COMMONWEALTH OF MASS., et al., Defendants	)	No. 2577 CV 00249

BRIEF OF AMICUS CURIAE: CITIZENS' HOUSING AND PLANNING ASSOCIATION

IN SUPPORT OF COMMONWEALTH AND OTHER DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION AND IN SUPPORT OF COMMONWEALTH AND OTHER DEFENDANTS' CROSS-MOTION TO DISMISS

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STATEMENT OF INTEREST OF AMICUS CURIAE

Citizens' Housing and Planning Association ("CHAPA") files this brief as amicus curiae in these consolidated cases. For the reasons outlined below, CHAPA urges the Court to deny the Plaintiffs' requests for preliminary injunctive relief and to instead grant the Cross Motion to Dismiss filed by the Commonwealth and other Defendants.

CHAPA is a nonprofit membership organization devoted to the production and preservation of affordable housing in Massachusetts. CHAPA members include nonprofit and for-profit developers, local housing providers and advocates, municipal officials, lenders, property managers, architects, consultants, homeowners, tenants, and local planners.

In pursuit of its mission, CHAPA champions legislation designed to encourage the development of safe and affordable housing in the Commonwealth. It has done so with respect to many critical statutes, including G.L. c. 40B (Massachusetts' Affordable Housing Law), G.L. c. 40R (The Smart Growth Zoning Act), and G.L. c. 40T (Expiring Use Law). More recently, CHAPA assisted legislators in drafting the language that became G.L. c. 40A, § 3A ("Section 3A"), and advocated for its passage. Since Section 3A's codification in 2021, CHAPA has also supplemented its general municipal engagement work with an "MBTA Zoning Technical Assistance Initiative." That Initiative assists communities with Section 3A compliance, helps them take advantage of the new zoning opportunities it presents, and aims to facilitate a more equitable housing landscape near transit.

CHAPA's advocacy, municipal partnerships, and technical zoning work make it an expert on both the local legislative process and the role zoning plays in shaping communities. It crafted this brief to supplement the parties' filings with organizational knowledge in key areas, including

by outlining the mechanics of the local zoning process and providing the Court with a community-based perspective on the harmful effects of the affordable housing crisis.

DISCUSSION

I. Introduction

Faced with an ongoing affordable housing crisis, the Massachusetts Legislature has declared that it must pioneer "innovative policies to encourage the production of more … housing."[1] State policymakers began that process in 2021 by inserting the MBTA Communities Law, G.L. c. 40A, § 3A ("Section 3A"), into the Commonwealth's Zoning Act, G.L. c. 40A, *et. seq*. Section 3A compels 177 communities with access to MBTA service ("MBTA Communities") to have at least one reasonably sized zoning district where multifamily housing can be built without a discretionary municipal approval. G.L. c. 40A, § 3A. As the Supreme Judicial Court has explained, Section 3A was "designed to address the ongoing housing crisis" and its "purpose … is to increase housing stock" by "require[ing] towns benefiting from MBTA services to permit their fair share of multifamily housing." *Attorney General v. Milton*, 495 Mass. 183, 193 (2025).

Despite the Legislature's considered judgement that all MBTA Communities must do their part by making way for multi-family housing, a vocal minority of municipalities have long resisted compliance.[2] The SJC seemingly quashed this movement in January 2025 when it ruled that Section 3A's zoning parameters are mandatory for MBTA Communities. *Milton*, 495 Mass. at 196. But the State Auditor's recent opinion (the "Opinion") declaring Section 3A to be an "unfunded

[1] An Act to Create the Executive Office of Housing and Livable Communities and to Rename the Executive Office of Economic Development 2023 Mass. Legis. Serv. Ch. 7 (H.B. 43) (West).

[2] *See* Andrew Brinker, *'It's an invasion.' In towns across Eastern Mass., resistance grows against ambitious state housing law*, Bos. Globe (March 3, 2024), https://www.bostonglobe.com/2024/03/03/business/milton-massachusetts-towns-housing-law/ (discussing pushback to Section 3A in MBTA Communities).

mandate" has breathed new life into the municipal resistance. Each of the towns bringing these cases[3] (together, "the Towns") has seized upon the Opinion to argue that it should be exempt from carrying its share of zoning responsibility under Section 3A.

However, the Towns' reliance on the Opinion is misplaced because its legal conclusion is fatally flawed. To successfully challenge a law as an unfunded mandate, a party must first identify "direct service or cost obligation" that is "imposed" by the law. *Worcester v. Governor*, 416 Mass. 751, 754 (Mass. 1994). The Opinion declines to pinpoint any such costs and, therefore, it fails to satisfy the unfunded mandate test. As discussed in more detail below, the Towns' unfunded mandate claims all collapse along similar lines: they only allege costs or services that are vague, speculative, or not actually compelled by Section 3A. These failures, combined with the devastating effects of the housing crisis on Bay State residents, establish that the Towns' unfunded mandate claims do not warrant preliminary relief and should be dismissed.

II. Legal Framework

CHAPA begins by outlining the legal mechanics of local zoning, which are key to evaluating the claims here. It then supplements the parties' briefing by providing a detailed overview of the relevant statutory provisions—the unfunded mandate law, G.L. c. 29, § 27C, and Section 3A—and the binding case law interpreting those provisions. Finally, it explains why granting preliminary relief to the towns is not in the public's interest.

A. The Local Zoning Process

Article 89 of the Massachusetts Constitution grants cities and towns the power to zone, that is, "to control [their] land usages in an orderly, efficient, and safe manner to promote the public

[3] Currently consolidated before the Court are cases brought by Marshfield, Hanson, Wrentham, and Middleton. As Middleborough recently filed a voluntary dismissal, this brief omits any discussion of Middleborough's complaint and preliminary injunction papers.

welfare." *Bd. of Appeals of Hanover v. Housing Appeals Comm. in Dept. of Cmty. Affairs*, 363 Mass. 339, 409 (1973). However, the SJC has explained that the state Legislature retains "supreme power in zoning matters" and that municipalities must zone consistent with general and special laws enacted by that body. *Id.* In 1975, the Legislature exercised its authority in this area and passed the "current version" of the Zoning Act, *81 Spooner Road v. Brookline*, 452 Mass. 109, 113-114 (2008), to, among other things, "provide standardized procedures for the administration and promulgation of municipal zoning laws." 1975 Mass. Acts c. 808 § 2A.

Section 5 of the Zoning Act outlines a series of formulaic and straightforward steps that municipalities must follow to pass or amend zoning bylaws. Although the exact steps vary slightly depending upon the structure of the municipal government, the steps for a town are as follows. A variety of different parties may initiate the zoning process by submitting a proposed bylaw or amendment to the city council or board of selectmen, which must then pass the proposal to the local planning board for review. *See* G.L. c. 40A, § 5. The planning board must then hold a noticed public hearing on the proposal. *See id.* Following the hearing, the municipal legislative body—either a town meeting or city council—may then vote on the proposal after either the planning board submits a report on the proposal, or 21 days have elapsed without such submission. *See id.*

Municipalities in Massachusetts with the town meeting form of government—like all the Towns here—must hold at least one town meeting annually. *See* G.L. c. 39, § 9. Each town meeting is governed by a warrant, which must be prepared by the board of selectmen in advance of the meeting and outline the subjects to be acted upon at the meeting. G.L. c. 39, § 10. This means that all the Towns have one built-in opportunity each year to consider and codify zoning changes.

B. The Unfunded Mandate Law

Massachusetts enacted the unfunded mandate law in 1980 through a ballot initiative called Proposition 2 ½. *See Mass. Teachers Ass'n v. Sec. of Com.*, 384 Mass. 209, 216 (1981). The main

thrust of the unfunded mandate law, subsection (a), states that:

> "[a]ny law taking effect on or after January 1, 1981 imposing any direct service or cost obligation upon any city or town shall be effective ... only if such law is accepted by vote or ... appropriation ... unless the general court, at the same session in which such law is enacted, provides ... for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses."

G.L. c. 29, § 27C(a). In short, post-1980 laws that impose more than incidental expenses on municipalities must be fully funded by the Legislature or subject to local acceptance

Subsection (d) of the law allows any municipality to test whether a new statute is an unfunded mandate as applied to it by seeking the opinion of the Division of Local Mandates ("DLM") within the State Auditor's office. *See* G.L. c. 29, § 27C(d). This provision gives DLM remit to determine whether any "costs imposed by the Commonwealth … have been paid in full by the Commonwealth … and, if not, the amount of any deficiency in such payments." *Id.* However, the statute only gives force to these DLM determinations in one respect: in a lawsuit seeking an unfunded mandate finding under subsection (e), a DLM "deficiency" determination "shall be prima facie evidence" of the relevant law's unfunded cost. G.L. c. 29, § 27C(e).

The SJC has held that two preconditions must be met for a law to constitute an unfunded mandate as applied to a municipality: (1) the law in question must be a "new law" that changes pre-1981 law; and (2) it must impose "a direct service or cost obligation which [the municipality] did not voluntarily assume." *Worcester*, 416 Mass. at 754. The parties agree that the first element is met here, so the Court need only focus on the second.

To satisfy the second element, a municipality must identify a non-speculative cost or service increase that is truly compulsory under the challenged law. Subsection (a) of the unfunded mandate law applies to statutes that "impos[e]" cost or service increases, G.L. c. 29, § 27C(a), and the SJC has held that "the word 'imposition' connotes compulsion and involuntariness." *Norfolk*

v. Dept. of Env. Quality Engineering, 407 Mass. 233, 239 (1990) (interpreting the word "imposition" in subsection (c) of the unfunded mandate law). The SJC does not appear to have defined the words "direct" or "obligation" as used in subsection (a), but it has made clear that the challenged law must itself mandate the alleged cost or service increase. *See Worcester*, 416 Mass. at 761 (reciting that "[G.L. c. 29, § 27C] applies to regulatory obligations in which the municipality has no choice but to comply and to pay the costs. It is from these mandatory obligations which Proposition 2 ½ grants relief"); *Mass. Teachers Ass'n*, 384 Mass. at 216 (noting that proposition 2 ½ "was concerned with freeing cities and towns from expenditures mandated by state law").

Voluntary responses to a statute thus cannot serve as the basis for an unfunded mandate finding. The SJC's analysis in *Worcester v. Governor* provides an instructive example of this point. In that case, the City of Worcester brought a G.L. c. 29, §27C challenge to the state's increased foreign language requirements for students to be admitted to Massachusetts public colleges. *Worcester*, 416 Mass. at 760-761. Worcester argued that "as a practical matter," the heightened admission standards "imposed new obligations" on its high schools "to expand foreign language course offerings for students preparing for college." *Id.* at 761. However, the Court rejected this unfunded mandate argument, explaining that although expanded offerings "may have been an appropriate response … the standards did not mandate that response." *Id.* at 761.

Likewise, binding precedent establishes that "indirect" and "speculative" costs are insufficient to support an unfunded mandate claim. *Kennedy v. Commonwealth* provides an illustration of both. There, a plaintiff municipality challenged special legislation allowing another town to withdraw from its school district without meeting the terms of an agreement. 92 Mass. App. Ct. 644, 651 (Mass. App. Ct. 2018). It claimed this would generate "a possible increase in what the remaining towns may be required to pay to support the school district." *Id.* However, the

Court held that such costs were too "indirect and … speculative" to warrant an unfunded mandate finding. *Id.*

As a final point, the unfunded mandate inquiry "in some instances" requires courts to examine if alleged costs are the kinds of "incidental local administrative expenses" exempted from the statute's coverage. *Worcester*, 416 Mass. at 756. The SJC has defined those expenses as "relatively minor expenses related to the management of municipal services and … subordinate consequences of a municipality's fulfilment of primary obligations." *Id.* at 758.

C. Section 3A

Section 3A is a zoning statute. Not only is it codified in the Commonwealth's Zoning Act, but its mandate for MBTA Communities focuses exclusively on zoning. That mandate, which appears in the first of three sections, provides that: MBTA Communities "shall have" one "as of right" multi-family zoning district of "reasonable size" and such district "shall … have a minimum gross density of 15 units per acre." G.L. c. 40A, §3A(a)(1). "As of right" means that "development may proceed" without the municipality's "discretionary zoning approval." G.L. c. 40A, § 1A. Moreover, the second and third sections of the statute state that: non-compliant towns "shall" lose access to certain state funding grants; and the Executive Office of Housing and Livable Communities ("HLC") "shall" promulgate compliance guidelines. G.L. c. 40A, §3A(b)-(c).

It is now settled that Section 3A "creates an affirmative duty" for MBTA Communities "to have" a compliant multifamily zoning district. *Milton*, 495 Mass. at 196. Under Section 3A's plain terms, once a municipality has satisfied this duty, its obligations are fulfilled. The statute does not contemplate—let alone mandate—any additional duties for municipalities. *See* G.L. c. 40A, §3A.

In January 2025, HLC promulgated the currently operative regulations implementing Section 3A.[4] Those regulations delineate, among other things, administrative steps that municipalities must take to achieve compliance, and deadlines by which they must do so. *See* 760 CMR 72.00, *et seq*.

D. The State Auditor's Opinion

The State Auditor issued the Opinion in response to requests from three municipalities—Wrentham, Middleborough, and Methuen—under G.L. c. 29, § 27C(d).[5] The Opinion, which is materially identical as issued to all three municipalities, does not make any "deficiency" determinations pursuant to G.L. c. 29, § 27C(d). Instead, it undertakes a "legal and policy review" before broadly concluding that "the provisions of the MBTA Communities Act impose an unfunded mandate."[6] In support of this conclusion, the Opinion states that "it is apparent that … direct costs exist in developing compliant zoning that amount to more than incidental local administration expenses."[7] But it never identifies what those costs are. Ultimately, it acknowledges that "[w]hether a particular expense is imposed by the MBTA Communities Act … will require further data collection and analysis" and states that it will "implement data collection measures necessary to determine the estimated and actual financial effects on each MBTA Community…."[8]

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[4] *See* Press Release, HLC, Implementation of MBTA Communities Law Continues with Filing of Emergency Regulations (Jan. 14, 2025), https://www.mass.gov/news/implementation-of-mbta-communities-law-continues-with-filing-of-emergency-regulations.

[5] Marshfield's Complaint incorporates all three Opinions by reference and the version issued to Wrentham is attached to Wrentham's complaint. *See Marshfield v. Comm.*, No. 2583CV00184, Dkt. No. 1 ("Marshfield Complaint") at ¶ 37; *Wrentham v. Comm.*, No. 2582CV00259, Dkt. No. 1 ("Wrentham Complaint"), Ex. 1 All three versions are also available at https://www.mass.gov/lists/all-local-mandate-determinations and will hereinafter be referred to as "[applicable Town] Opinion" at __ (e.g., Wrentham Opinion at 3).

[6] *See* Wrentham Opinion at 2; Middleborough Opinion at 1-2; Methuen Opinion at 1-2.

[7] *See* Wrentham Opinion at 6; Middleborough Opinion at 6; Methuen Opinion at 6.

[8] *See* Wrentham Opinion at 8; Middleborough Opinion at 8; Methuen Opinion at 8.

III. Argument

None of the Towns in these cases have carried their burden to establish that Section 3A is an unfunded mandate. This is true whether the Court applies the preliminary injunction standard or the pleading standard. The Towns simply have not alleged or produced evidence of costs that are anything other than indirect, speculative, or voluntary and, therefore, they have not satisfied the "direct costs" element of the unfunded mandate test. Although the Towns reach for the State Auditor's Opinion to prop up their unfunded mandate claims, they are grasping at straws because the Opinion suffers from precisely the same defect.

This means that the Towns have neither pleaded sufficient facts to support their unfunded mandate claims, nor demonstrated a likelihood of success on those claims. The Court should deny the Towns' requests for preliminary relief and grant the Commonwealth's Cross Motion to Dismiss as to those claims for that reason alone. Moreover, to the extent the Court reaches the "public interest" factor of the preliminary injunction test, the harm wrought by the affordable housing crisis counsels strongly against preliminary injunctive relief here.

A. The Towns Have Failed to Plead or Present Any Evidence that Section 3A Forces them to Incur Direct Costs or Service Increases

As the Attorney General points out, the Towns raise two general categories of costs that Section 3A allegedly imposes on them: (1) infrastructure-related costs; and (2) costs to implement a compliant zoning district. *Amicus* discusses these categories of alleged costs in turn and explains why they are insufficient to warrant preliminary relief or state an unfunded mandate claim.

i. Infrastructure-Related Costs Are Speculative and, if Incurred, Voluntary

Three of the four towns—Hanson, Middleton, and Wrentham—allege that Section 3A forces them to expend resources on infrastructure upgrades and/or expanded municipal services.

But Section 3A, which is silent about what happens in municipalities after they have compliant zoning districts in place, does no such thing.

Hanson, Middleton, and Wrentham's complaints all identically allege that Section 3A requires them to "enact zoning bylaws that allow, as a matter of right, 750 multi-family units" and that "the construction of 750 housing units will result in substantial infrastructure impacts on the Town, including … impacts on the Town's water system, public safety services, educational services and buildings, roads, and other general governmental services."[9] They then assert that "mitigating such impacts" will require them to spend money on "the expenses and improvements necessary to service" the new housing.[10] Further, referencing the Opinion, all three complaints allege that "as stated in [the Opinion], the mandate established under [Section 3A] … will result in material impacts to the Town's infrastructure, necessitating new investment therein."[11]

These allegations fail for several different reasons. First, they erroneously conflate zoning with development. Section 3A requires each MBTA Community to provide parties with the right to build multi-family housing on a portion of land within its borders, but that does not ensure that anyone will exercise that right. Section 3A itself neither mentions nor requires the *construction* of multi-family units, making it entirely possible that, due to other obstacles to development, no multi-family units get built in compliant zoning districts at all. Indeed, as CHAPA and its partners are constantly reminded in their work, the non-zoning impediments to development are many and varied. They include, *inter alia*, a lack of developable land, the high cost of land, expensive

[9] *Hanson v. Comm.*, No. 2583CV00209, Dkt. No. 1 ("Hanson Complaint") at ¶¶ 21, 27, 31; *Middleton v. Comm.*, No. 2577CV00249, Dkt. No. 1 ("Middleton Complaint") at ¶¶ 21, 29, 33; Wrentham Complaint at ¶¶ 20, 27, 29.

[10] *Id.*

[11] *Id.*

building materials, supply chain issues, stringent and inconsistent environmental regulations, and challenges for developers in obtaining labor and financing.[12] All of these factors combine to limit the ability of developers to take on new projects. Thus, it is purely speculative to assert that any multi-family units will be built in these three towns due to Section 3A, let alone that those hypothetical units will have any effect on local infrastructure or services.

Second, even if more development was certain, nothing in Section 3A compels municipalities to respond by upgrading infrastructure or services. The plain text of Section 3A mandates that towns have a compliant zoning district, nothing more. What municipalities decide to do, or not do, once they have met that obligation is up to them as far as Section 3A is concerned. Any policy choices the Towns make related to development in a compliant zoning district are, therefore, voluntary. It may be "appropriate" or "practical" for MBTA Communities to upgrade infrastructure or constituent services in anticipation of—or in response to—new housing, but like the expanded course offerings in *Worcester v. Governor*, those actions are not "mandatory" under the statute. 416 Mass. at 761. Because Towns would not run afoul of Section 3A if they took no infrastructure-related actions, such actions are irrelevant to the unfunded mandate calculus. *See id.* What is more, Hanson, Middleton, and Wrentham all fail to mention that municipalities have the authority to charge fees of developers to cover costs associated with expanded municipal services

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[12] *See* UNLOCKING HOUSING PRODUCTION COMM'N, BUILDING FOR TOMORROW: RECOMMENDATIONS FOR ADDRESSING MASSACHUSETTS' HOUSING CRISIS 41 (2025), https://www.mhp.net/assets/resources/documents/unlocking_the_commonwealth_nov2014.Pdf; Tim Logan *et al.*, *The $600,000 Problem. Why does it cost so much to build housing in Boston, and what can we do about it?*, BOS. GLOBE, Dec. 22, 2023, https://www.bostonglobe.com/2023/12/22/metro/share-your-thoughts-this-story-600000-problem-why-does-it-cost-so-much-build-housing-boston-what-can-we-do-about-it/.

stemming from development.[13] All that is to say that costs incurred by the Towns in these areas, and not shifted to developers, would be voluntary and not covered by the unfunded mandate law.

Third, costs incurred to mitigate increased strain on infrastructure or respond to greater demand for services are, at most, indirectly related to Section 3A. Any such costs would be generated by increases in development and population rather than zoning itself. Those kinds of increases— which may never come to fruition, depend on the decisions of private actors (to build or move into new housing), and are impossible to predict—cannot be said to stem directly from Section 3A. Therefore, like the allegation of "possible" cost increases raised by the plaintiff in *Kennedy*, they do not support that Section 3A is an unfunded mandate. 92 Mass. App. Ct. at 65.

Fourth, Hanson, Middleton, and Wrentham's references to the State Auditor's Opinion do nothing to cure these defects. Although each alleges that the Opinion establishes Section 3A "will result in material impacts to the Town's infrastructure", that is inaccurate.[14] In fact, the Opinion explicitly acknowledges that DLM has yet to determine the financial impact of Section 3A on any specific MBTA Community and that it will have to "implement data collection measures" to make those determinations.[15] The Opinion's unfunded mandate determination does not purport to rely on infrastructure impacts at all. Rather, it cites "direct costs [that] exist in developing compliant zoning" as the basis for its determination.[16] This basis does not help the Towns either. As DLM

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[13] *See Denver St. LLC v. Saugus*, 462 Mass. 651, 663 (2012) (inflow and infiltration (I/I) fees on new development allowed to address town's deteriorating sewer system); *Bertone v. Dep't of Pub. Utils.*, 411 Mass. 536, 549 (1992) (fees permissible even if they must be paid in order to exercise the right to develop one's land); *Emerson Coll. v. Boston*, 391 Mass. 415, 424 (1984) (fees chargeable to development if done so in exchange for a service benefiting the development, paid by choice, and charged to compensate the governmental entity providing the services for its expenses).

[14] Hanson Complaint at ¶ 31; Middleton Complaint at ¶ 33; Wrentham Complaint at ¶ 29.

[15] Wrentham Opinion at 8; Middleborough Opinion at 8; Methuen Opinion at 8.

[16] Wrentham Opinion at 6; Middleborough Opinion at 6; Methuen Opinion at 6.

has neither collected data supporting its assertion that "direct costs exist" in any particular municipality, nor identified any specific costs that necessarily arise as part of the Section 3A compliance process, it is entirely speculative. *See Kennedy*, 92 Mass. App. Ct. at 65.

ii. Marshfield's Vague and Speculative Allegations of Administrative Compliance Costs Cannot Satisfy the Unfunded Mandate Test

Marshfield, on the other hand, does allege that it has incurred costs in its effort to comply with Section 3A. Its unverified complaint states that "Marshfield Parties have incurred costs and expenses in evaluating and drafting proposed zoning bylaws and presenting them to Town Meetings that have not been paid by the Commonwealth and/or HLC."[17] Marshfield also submitted an affidavit from its Town Administrator, Michael Maresco, in support of its preliminary injunction request. The affidavit states that the complaint is true based on "information and belief" but otherwise does not provide details about, or support for, these compliance costs.[18]

This falls well short of stating an unfunded mandate claim or satisfying the preliminary injunction standard. As an initial point, neither "unverified allegations of the pleadings," *Planned Parenthood League of Mass., Inc. v. Operation Rescue*, 406 Mass. 701, 713 (1990), nor "allegations based only on information and belief," *Eaton v. Fed. Nat. Mortg. Ass'n*, 462 Mass. 569, 590 (2012), provide an adequate factual basis for the issuance of a preliminary injunction. The Court's preliminary relief inquiry as to the alleged administrative expenses could end there.

In a similar vein, Marshfield's allegations do not demonstrate how any costs or expenses incurred in evaluating and drafting zoning proposals, or presenting them to town meeting, were directly imposed by Section 3A. G.L. c. 29, § 27C(a). This is so for several reasons. First, each of these steps to enact a zoning change—the development and submission of a proposal, evaluation

[17] Marshfield Complaint at ¶ 51.

[18] *Marshfield v. Comm.*, No. 2583CV00184, Dkt. No. 14.1 at ¶ 2.

of that proposal by officials, and presentation to the legislative body for a vote—are mandated not by Section 3A, but by Section 5 of the Zoning Act, which was codified before 1981 and is not subject to the unfunded mandate law. *See 81 Spooner Road*, 452 Mass. at 113-114. Second, without providing details about the scope of Marshfield's compliance efforts, including what actions were taken, by whom, and at what specific cost, the allegations are far too vague to establish that the town's efforts or related costs were obligatory to achieve compliance with Section 3A. *See Worcester*, 416 Mass. at 761 (refusing to consider the costs of non "mandatory" actions).

Third, Marshfield has not identified any new costs incurred, or new services required, related to its compliance effort. As Mr. Maresco's affidavit acknowledges, Marshfield already has officials in place—in the form of a "Town Planner" and "Planning Board"—whose duties include bylaw evaluation and drafting.[19] Even if the time of salaried employees or elected officials could be considered a "cost," such a cost is too "indirect and … speculative" to be relevant. *See Kennedy*, 92 Mass. App. Ct. at 651. Moreover, the minor costs of a Town Meeting—preparing and mailing warrant articles to residents, public notice, and arranging meeting logistics—are costs that must be incurred by a municipality on an annual basis, regardless of Section 3A. *See supra* Section II.A.

B. The Severe Harm Inflicted on Bay State Residents by the Ongoing Housing Crisis Weighs Heavily Against Granting Preliminary Relief to the Towns

The SJC has already held that "the public has an interest in the enforcement of § 3A." *Milton*, 495 Mass. at 192. This is no doubt because Section 3A was "designed to address the ongoing housing crisis," *id.* at 185, which continues to cause severe harm to Massachusetts residents. That harm, which CHAPA discusses briefly below, counsels strongly against granting the Towns preliminary relief that would further delay Section 3A implementation.

[19] *Id.* at ¶ 5.

All the way back in 2016, a report from the State Senate Committee on Housing identified the Commonwealth's lack of multifamily zoning as "*the most significant barrier* to building affordable and market rate housing," and concluded that such zoning "is so basic a requirement that no other long-term production goals can be achieved successfully without it."[20] As things stand, the Commonwealth's inadequate housing supply drives rent and home prices that are some of the highest in the country.[21] These high housing costs, in turn, force families to make financial sacrifices they might not otherwise make, contribute to the Commonwealth's increasing homelessness rate,[22] and help to drive the ongoing shelter crisis.[23]

Section 3A is designed to generate the zoning needed to spur production and start combatting these problems. However, it can only be fully effective if all MBTA Communities contribute. As the Towns' requests for preliminary relief would give them leave not to do their part, those requests are counter to the public's interest in ending the housing crisis.

CONCLUSION

Based on the forgoing, *Amicus* respectfully urges the Court to reject the Towns' requests for preliminary relief and to instead grant the Commonwealth's Cross Motion to Dismiss.

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[20] *See* SPECIAL S. COMM. ON HOUSING, FACING MASSACHUSETTS' HOUSING CRISIS: SPECIAL SENATE COMMITTEE ON HOUSING REPORT 22 (2016) *(emphasis added)*.

[21] *See* Sury Chakroborty, *Report: Mass has 2nd highest cost of living in U.S.*, BOSTON.COM (July 16, 2024), https://www.boston.com/real-estate/real-estate/2024/07/16/massachusetts-ranked-2nd-highest-cost-living/.

[22] See Leah Crowley, *Report: Massachusetts sees 74% increase in family homelessness*, WPRI.COM (Jan. 3, 2025), https://www.wpri.com/target-12/housing-crisis/report-massachusetts-sees-74-increase-in-family-homelessness/.

[23] *See* Yvonne Abraham, *There's another shelter crisis happening in Massachusetts*, BOS. GLOBE (April 6, 2024), https://www.bostonglobe.com/2024/04/06/metro/other-shelter-crisis/.

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CERTIFICATE OF SERVICE

I, Jack J. Tierney, hereby certify that on April 1, 2025 copies of the foregoing document was served via hand delivery on all counsel of record.

/s/ Jack J. Tierney
Jack J. Tierney

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY and ERIC KELLEY as they constitute the TOWN OF MARSHFIELD SELECT BOARD, Plaintiffs, v. COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES, Defendants. Defendants	No. 2583CV00184 **CASE ASSIGNED TO HON. MARK C. GILDEA**

THE TOWN OF MARSHFIELD AND MARSHFIELD SELECT BOARD'S[1] REPLY TO BRIEF OF AMICUS CURIAE: CITIZENS' HOUSING AND PLANNING ASSOCIATION

INTRODUCTION

On April 1, 2025, the Citizens' Housing and Planning Association (CHAPA) filed this Motion for Leave to Submit an Amicus Brief and a proposed Amicus Brief intended to support the position of the Commonwealth of Massachusetts and all other Defendants' Opposition to the Plaintiffs' Motion for Preliminary Injunctions and Motions to Dismiss. In its Brief, CHAPA asserts that it has a unique perspective on the issues that the MBTA Communities Law (Section

[1] Specifically, Lynne Fidler, Stephen Darcy and Eric Kelley as they constate the Town of Marshfield Select Board.

3A) seeks to address and in particular zoning ordinances, asserts, as did the Commonwealth, that Section 3A does not actually mandate any additional costs to be paid by the Towns, repeats that local zoning based barriers are the first and most crucial step to address the state's housing crisis, and seeks to minimize the concerns of the towns that have "resisted" compliance.

For the reasons set forth below, as well as referenced in the Response of the Towns of Hanson, Middleton, Wrentham and Holden, Marshfield asserts that preliminary injunction should issue and the Commonwealth and other Defendants' Motion to Dismiss should be denied.

ARGUMENT AND DISCUSSION

I. Marshfield has Met Its Burden to Establish an Unfunded Mandate by Pleading and Asserting Direct Costs Emanating from the Section 3A Mandate.

In its first argument, CHAPA asserts that none of the plaintiffs, including Marshfield[2], have pleaded sufficient facts to support their unfunded mandate claims. In this respect, CHAPA is parroting similar claims by the Commonwealth and other Defendants. *Commonwealth Brief at p. 14, 15-16.* These claims are false and without merit. The plain and straightforward allegations of the Marshfield Complaint as well as the additional affidavits of the various Marshfield town officials who submitted affidavits in connection with Marshfield's Motion for a Preliminary Injunction and Reply to the Commonwealth's Opposition to Marshfield's Motion for a Preliminary Injunction conclusively prove otherwise.

[2] On page 13 of its Amicus Brief admits Marshfield did plead that it has incurred costs to comply with Section 3A; however, refers to the complaint and allegations as being not verified. The Affidavit of Michael Maresco contains the verification that the allegations are true, accurate and complete.

Some of the relevant allegations of Marshfield's Complaint are as follows:

35. As the **direct and proximate result** of the actions of the Commonwealth and HLC [in adopting Section 3A and regulations**], the Town of Marshfield has suffered monetary damages, costs and expense**s.

39. **The MBTA Communities Act does not provide a funding mechanism for compliance with its provisions**.

43. Based on the foregoing, the Town of Marshfield is entitled to seek an exemption from compliance with the MBTA Communities Act and its enabling/implementing regulations pursuant to Gen. L c. 29 §27C(e) **until and unless the Commonwealth and/or HLC as an agency of the Commonwealth provide funding to the Town of Marshfield to comply with the requirements of the law and regulations**.

51. **Marshfield Parties have incurred costs and expenses in evaluating and drafting proposed zoning bylaws and presenting them to Town Meetings that have not been paid by the Commonwealth and/or HLC**;

52. **Marshfield Parties expect to incur additional costs as the direct result of the mandatory requirements of the MBTA Communities Act and HLC's emergency regulations.**

See Complaint at ¶¶*35, 39, 43, 51, 52.*

In addition to the foregoing, the Marshfield Parties included various paragraphs of the Town Planner, Town Administrator, Police Chief, Town Engineer and Harbormaster that supplement the allegations of the complaint. *See Affidavits of Michael Maresco; Greg Guimond at* ¶¶ *31-33 & Ex. B, Phillip A. Tavares at* ¶¶*18, Michael Dimeo at* ¶¶ *3-8 and Roderic J. Procaccino at* ¶¶ *13-14.* Unlike any other community involved to date, Marshfield did not receive any grant funding of any type associated with attempting to understand, design, draft and

implement the mandated zoning changes and hundreds of hours were expended by the Town in an effort to try unsuccessfully to develop a proposed zoning district, obtain Attorney General approvals of draft bylaws, comply with the procedural requirements of Gen. L. c. 40A §5, and bring proposed compliant zoning bylaws to Marshfield Town Meeting for consideration of its voters. *See Guimond Affidavit.* Further, as is clear from the opinion of the Division of Local Mandates (DLM), evident from the Commonwealth's independent provision of technical grant funding, evident from the numerous other technical grant funding by other nonprofit group, and as alleged by Marshfield, that Section 3A is no ordinary statute and required time, expense and in most cases technical assistance and expense to understand and comply with. Accordingly, under the standards applicable at this stage of the case where all of the allegations are deemed to be true and al reasonable inferences must be favorable to Marshfield, CHAPA's arguments fail. Additionally, if the Commonwealth and other Defendants were to prevail in this case, it is axiomatic that Marshfield will incur the expense of an additional third town meeting to approve the zoning bylaws. Although Marshfield clearly has a long history of developing and approving ordinary zoning bylaws as was claimed by the Commonwealth, it should be evident to the Court that nothing ever prepared Marshfield for time, effort and expense it incurred in its failed efforts to try and comply with the requirements of Section 3A since this statute is unique and requires the town to identify a qualifying area, design a compliant district and then try and gain approval for it at Town Meeting. Finally, the Affidavits of the Town Planner and Police Chief clearly establish that if the Town is obligated to approve by-right 1276 new multi-family dwelling units (the minimum required number of units to achieve compliance) and the Town is without any discretionary authority to deny them, irrespective of infrastructure improvements, there will be millions of dollars of increased cost to the town for additional students, increased cost to employ

and equip police and firefighters, and other governmental personnel. *See Guimond Affidavit.* Marshfield also pled and argues that, if there is water and sewer where the units are proposed it is not a *fait accompli* that the increased cost will be borne by the developer. In the context of the development of low- and moderate- income housing, where the town's infrastructure cannot support the additional density of proposed development, towns have been already repeatedly prevented by the MA Housing Appeals Committee from denying projects due to a lack of municipal services or capacity and responsibility for improvements rests on the communities. *Compare Dexter Street, LLC. v. North Attleborough, No. 2000-01 (Mass. Housing Appeals Comm. July 12, 2000) slip. op. at 16 (HAC holds that "when municipal services are involved, a town may not block the development of affordable housing by refusing to fulfill its normal obligations."); citing Mapleleaf Dev. Assocs. v. Haverhill, No. 1988-14, slip op. at 22 (Mass. Housing Appeals Comm. Jan. 27, 1993) (stating municipality cannot use lack of capacity for which it has duty to remedy as grounds to deny permit, and argue it cannot afford to fix issue); Lever Dev. LLC v. West Boylston, No. 2004-10, slip op. at 21-25 (Mass. Housing Appeals Comm. Dec. 10, 2007); Franklin Commons v. Franklin, No. 2000-09, slip op. at 11 (Mass. Housing Appeals Comm. Sept. 27, 2001); Walpole, supra, No. 2000-11, slip op. at 25-26, 29.*

II. Marshfield Has Also Argued and Claimed that Section 3A Disenfranchises Voters and is In Excess of the State's Authority.

Although not addressed by CHAPA, Count I of Marshfield Complaint seeks a determination that Section 3A unlawfully compels Town Meeting voters to vote to approve a zoning bylaw engaged on the process of complying with Mass. Gen. L. c. 40A §5. As argued at the hearings on Marshfield's Motion for a Preliminary Injunction and in Opposition to the

Commonwealth and Other Defendants' Motion to Dismiss, if town meeting voters are afforded the "right to vote" under the Zoning Act (c. 40A §5) to adopt, amend or repeal zoning bylaws for the protection of the public health, safety and welfare and the right to vote is a fundamental constitutional right protected by the Massachusetts Constitution in both art. 9 of the Massachusetts Declaration of Rights and in art. 3 of the Amendments to the Massachusetts Constitution, *see Dane v. Registrars of Voters of Concord, 374 Mass. 152, 160 (1978) (right to vote is protected as "natural, essential, and unalienable right[]" under art. 1 of Declaration of Rights [citation omitted]); Swift v. Registrars of Voters of Quincy, 281 Mass. 271, 276 (1932) ("The right to vote is a precious personal prerogative to be sedulously guarded" under "[a]rts. 4, 7, 8, [and] 9 of the Declaration of Rights"); Attorney Gen. v. Suffolk County Apportionment Comm'rs, 224 Mass. 598, 601 (1916) ("The right to vote is a fundamental personal and political right" protected under arts. 1 through 9 of Declaration of Rights),* if compelled to vote to approve Section 3A, Marshfield Town Meeting voters are disenfranchised in the free exercise of their voting rights. Marshfield contends as it did at the hearing that any law, like Section 3A, that undermines or significantly burdens that right, disenfranchising a voter, is be subject to strict scrutiny and cannot stand. *Grossman v. Sec'y of the Commonwealth, 485 Mass. 541, 546. 547 (2020). Chelsea Collaborative, Inc. v. Sec'y of Commonwealth, 480 Mass. 27, 33–34, (2018); Langone v. Secretary of the Commonwealth, 388 Mass. 185, 196 (1983) (strict scrutiny is required for a substantial infringement of a fundamental right).* Marshfield submits that any statute like Section 3A that purports the ability override a vote of the people of Marshfield cannot withstand any level of review as an untenable infringement of the constitutional right to vote.

III. Marshfield's Future Costs to Comply with Section 3A are Not Speculative or Voluntary.

CHAPA, like the Commonwealth and other Defendants also contends that the towns' claims that they will incur substantial infrastructure impacts, including without limitation, impacts to its water system, public safety services, educational services and buildings, roads and other general governmental services are speculative since Section 3A only compels a town to zone and not develop and therefore at most, all such costs and expenses, are an indirect consequence of Section 3A. CHAPA also posits that given other potential local limitations it is speculative that developers will take on any new projects under an approved Section 3A bylaw. These claims are an absurdity. If there is no discretion as to the ability to deny a project as there would be with a proposed project under a Section 3A compliant district, as set forth in the supporting affidavits, Marshfield will most assuredly will incur future expenses to implement the production of multi-family consistent with the primary purpose of the MBTA Communities Act and although the exact total of these expenses will need to be determined through the discovery process and likely through expert opinion and may even change from year to year; those expenses are not speculative. Marshfield's contentions are supported by the fact that HLC's own regulations admit that the "Commonwealth will provide funding for infrastructure upgrades as needed for individual projects" conclusively establishing the nexus between zoning and infrastructure costs. Also the fact that the Commonwealth has established, independently of the MBTA Communities Act, an MBTA Communities Catalyst Fund with the primary purpose supporting multi-family housing production in communities with an approved 3A district with grants ranging from $250,000 to $1,000,000 that may be permissibly spent on infrastructure projects including "construction of new or improved infrastructure, including roadway/streetscape improvements, bridge/culvert repair or replacement, water/sewer, public

utilities (gas, electric, etc.)" as well as design and engineering of infrastructure projects and to provide pass through funds for housing production, rehabilitation, and preservation, is the most clear and convincing admission that municipalities, like will necessarily incur and have incurred such direct service expenses and cost obligations. While the sum total of Marshfield's costs and expenses will ultimately depend on where and how in Marshfield's 1276 new multi-family housing units are constructed and what infrastructure is needed in the vicinity of the development is needed to accommodate this development which is variable, the Local Mandate Law was clearly intended to require laws and regulations to contemporaneously appropriate sufficient funds over whatever period of time for Marshfield and the other communities need accommodate the direct expenses of by-right multi-family development. The plain language of Mass. Gen. L. c. 29 §27C(a) also contemplates that such direct costs must be provided for "by an appropriation in each successive year for such assumption" and therefore the language of the statute contemplates and supports Marshfield and the other communities' positions that the exact figures of direct costs are matters that will need to be proven by competent evidence. Moreover, Marshfield and the other communities have the statutory right to present evidence in accordance with Mass. Gen. L. c. 29 §27C(e) to request in the absence of any determination by DLM that superior court shall determine the amount of the deficiency, if any, and to request an order that town be exempt from such general or special law, or rule or regulation of any administrative agency until the commonwealth shall reimburse such city or town the amount of said deficiency or additional costs or shall repeal such exemption from local taxation. See Mass. Gen. L. c. 29 §27C(e). The fact that HLC simply claimed no financial impact without any supporting evidence or basis is rather an indication that there is no reasonable factual or legal support for its claim of no financial impact. Accordingly, dismissal of this matter for failure to

state a claim would deprive Marshfield of the ability to develop and present competent evidence as to direct service or cost expenses and the amount of deficiency.

IV. CHAPA's Claim of Severe Harm to Massachusetts Residents from the Ongoing Housing Crisis Weighs Against Granting Preliminary Relief Does Not Outweigh the Public Interest in Enacting Laws that Disenfranchise Voters or Constituting an Unfunded Mandate.

`When the government [such as Marshfield] acts to enforce a statute or make effective a declared policy of [the Legislature], the standard of public interest [asserted by the governmental body seeking the injunction] and not the requirements of private litigation measure the propriety and need for injunctive relief'" (citation omitted). *Commonwealth v. Mass. Crinc, 392 Mass 79, 89 (1984) quoting from United States v. D'Annolfo, 474 F. Supp. 220, 222 (D. Mass. 1979).* Thus, before issuing the preliminary injunction, this Court is only required to determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public. *Id. citing generally Planned Parenthood League v. Bellotti, 641 F.2d 1006 (1st Cir. 1981); United States v. Lit Drug Co., 333 F. Supp. 990, 998 (D.N.J. 1971).* Marshfield asserts that Section 3A disenfranchises voters in violation of their constitutional right to the free exercise of their right to vote by compelling Town Meeting voters to vote yes to zone a portion of the town in the manner mandated by law and also constitutes an unfunded mandate in violation of Gen. L. c. 29 §27C. While a housing crisis is alleged to exist (and may even exist in parts of the state) and Section 3A is believed to be a law that will actually result in the production of dense multi-family housing[3], any law that infringes on/disenfranchises the

[3] CHAPA and the state assert that effect of Section 3A is zoning; however, zoning in and of itself that may not ever result in multi-family development will not solve the housing crisis. If the effect of Section 3A is to zone and not produce new housing, there is no valid purpose to the statute to begin with.

fundamental voting rights of Town Meeting voters or, alternatively, compels a town to incur direct service and cost expense without sufficient appropriation is beyond the scope of its authority and unlawful and can supersede those rights and laws.

V. Marshfield Incorporates by Reference All Arguments by the Other Plaintiff Communities.

Marshfield incorporates by reference the arguments by the other Plaintiff Communities.

CONCLUSION

For the foregoing reasons, Marshfield has set forth sufficient facts at this stage of this case to demonstrate that the MBTA Communities Act violates voters' rights by disenfranchising them of their right to vote and constitutes an unfunded mandate in violation of Mass. Gen. L. c. 29 §27C entitling them to immediate injunctive relief and obligating the Court to deny the Commonwealth's Motion to Dismiss. Nothing in CHAPA's Amicus Brief alters this conclusion.

Respectfully submitted,
Town of Marshfield and
by their Town Counsel,

Dated: April 9, 2025 /s/ Robert W. Galvin

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CERTIFICATE OF SERVICE

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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2583CV00303
2583CV00184

TOWN OF DUXBURY, et al.

vs.

COMMONWEALTH OF MASSACHUSETTS, et al.
(and eight specially assigned cases[1])

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' MOTIONS FOR A PRELIMINARY INJUNCTION AND DEFENDANTS' MOTIONS TO DISMISS

The Towns of Duxbury, Hamilton,[2] Hanson, Holden, Marshfield, Middleton, Wenham, Weston, and Wrentham (collectively, the "Municipalities" or "plaintiffs") filed complaints

[1]Together with Duxbury, the following matters involving the MBTA Communities Act have been specially assigned to this court:

- Ten Taxable Inhabitants of Hamilton vs. Commonwealth of Massachusetts, et al., Suffolk Superior Court, Civil No. 2584CV01171;
- Town of Hanson, et al. vs. Commonwealth of Massachusetts, et al., Plymouth Superior Court, Civil No. 2583CV00209;
- Town of Holden, et al. vs. Commonwealth of Massachusetts, et al., Worcester Superior Court, Civil No. 2585CV00431;
- Town of Marshfield, et al. vs. Commonwealth of Massachusetts, et al., Plymouth Superior Court, Civil No. 2583CV00184;
- Town of Middleton, et al. vs. Commonwealth of Massachusetts, et al., Essex Superior Court, Civil No. 2577CV00249;
- Town of Wenham, et al. vs. Commonwealth of Massachusetts, Essex Superior Court, Civil No. 2577CV00430;
- Town of Weston vs. Commonwealth of Massachusetts, Middlesex Superior Court, Civil No. 2581CV00917; and
- Town of Wrentham, et al. vs. Commonwealth of Massachusetts, et al., Norfolk Superior Court, Civil No. 2582CV00259

[2] This complaint is filed on behalf of "Ten Taxable Inhabitants of Hamilton," rather than Hamilton itself. In moving to dismiss Hamilton's complaint, the defendants raise questions of standing. For purposes of efficiency in cumulatively resolving complaints asserted by Municipalities, the court will treat such complaint as though filed on behalf of Hamilton itself such that it can rule upon substantive issues regarding to the impact of § 3A upon the town, rather than disposing of certain discrete issues on the basis of standing.

alleging that General Laws chapter 40A, Section 3A ("§ 3A"), the Massachusetts Bay Transportation Authority ("MBTA") Communities Act, imposes improper compliance requirements upon municipalities as a condition to receive certain state funding.[3] They named the Commonwealth of Massachusetts (the "Commonwealth") and various state agencies, including the Executive Office of Housing and Livable Communities ("EOHLC"), the Massachusetts Development Finance Agency ("MassDevelopment"), and the Massachusetts Executive Office of Economic Development ("EOED") (collectively, the "defendants"), as defendants.

The Municipalities now seek preliminary injunctions, enjoining the defendants from enforcing the compliance requirements set forth in § 3A and related regulations set forth in 760 Code Mass. Regs. § 72.00. The defendants oppose the motions for a preliminary injunction and move to dismiss the Municipalities' complaints. For the following reasons, the Municipalities' motions for a preliminary injunction are **DENIED** and the defendants' motions to dismiss are **ALLOWED**.

BACKGROUND

The Municipalities are all towns located within the Commonwealth. The EOHLC, established in 2023, is a state agency that seeks to create more homes and lower housing costs throughout Massachusetts. MassDevelopment provides funding and resources to municipalities

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[3] Briefly stated, the Municipalities' complaints 1) request declarations that § 3A constitutes an unfunded mandate; 2) seek injunctive relief requiring that various Massachusetts executive offices release grant funding; and 3) assert counts for mandamus and accounting that would require various Commonwealth executive offices and departments to provide information concerning the fiscal impact of § 3A.

As to more specific counts of their complaints, several Municipalities seek declarations that they are not properly characterized by EOHLC as either MBTA Adjacent Communities or MBTA Communities. Several Municipalities seek declarations that the regulations concerning § 3A are arbitrary and capricious. Marshfield seeks a declaration that § 3A violates its Town Meeting authority. Hamilton seeks a declaration that the regulations are improperly applied because the EOHLC excluded available land in making its determinations.

in Massachusetts for economic development. The EOED is a cabinet-level office of the Commonwealth that provides grant funding and resources through the MassWorks Infrastructure Program to the Commonwealth's municipalities for economic development.

The Division of Local Mandates ("DLM"), an agency of the Office of the State Auditor, has authorization under G. L. c. 29, § 27C ("§ 27C"), the Massachusetts Local Mandate Statute, to conduct inquiries and issue determinations regarding the fiscal propriety of new statutes and regulations.

I. The Massachusetts Bay Transportation Communities Act

On January 14, 2021, § 3A went into effect.[4] The Legislature created § 3A to combat Massachusetts' ongoing housing crisis. Section 3A creates new zoning requirements mandating that all MBTA communities zone at least one district in which multi-family housing is permitted as of right, subject to other requirements. See G. L. c. 40A, § 3A. An "MBTA community" is defined as, among other things, "one of the 51 cities and towns as defined in section 1 of chapter 161A; . . . [or one of the] other served communities as defined in said section 1 . . . ." G. L. c. 40A, § 1A. Middleton has been designated one of the "51 cities and towns" that must comply with § 3A. G. L. c. 161A, § 1. Marshfield, Hanson, Wrentham, and Holden are designated as "other served communities" that also must comply with § 3A. *Id.*

Duxbury is designated an MBTA "Adjacent Community" because it borders the Town of Kingston, which has a commuter rail station. Wenham and Hamilton are designated a "Commuter Rail Community" as a commuter rail station straddles the boundary line of the two

[4] The Legislature has since amended § 3A on several occasions. See § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024, and further amended by §§ 2, 2A, 2B, and 20-26 of Chapter 238 of the Acts of 2024, effective November 20, 2024.

towns. Weston is also considered a "Commuter Rail Community" due to the Kendal Green station in the town.[5]

Section 3A requires MBTA communities to

> have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

G. L. c. 40A, § 3A(a)(1). An MBTA community that fails to comply with § 3A becomes ineligible for funds from the Housing Choice Initiative, the Local Capital Projects Fund, the MassWorks Infrastructure Program, and the HousingWorks Infrastructure Program. *Id.* at (b). Section 3A directs the EOHLC, in consultation with other state agencies, to promulgate regulations to determine if an MBTA community complies with § 3A. *Id.* at (c).

The EOHLC passed its final guidelines on August 17, 2023. On January 8, 2025, the Supreme Judicial Court ("SJC"), however, invalidated the guidelines because the EOHLC did not comply with the Administrative Procedure Act ("APA"). See *Attorney General* v. *Milton*, 495 Mass. 183, 185, 193-196 (2025) ("*Milton*"). The SJC otherwise found § 3A to be constitutional and that the Attorney General could enforce it. *Id.* at 185, 188-193.

II. Revised Regulations

Six days after the SJC's decision in *Milton*, EOHLC filed emergency regulations with the Secretary of the Commonwealth, and committed to adopt new regulations complying with the

[5] Weston alleges that the Massachusetts Department of Transportation plans to close Kendal Green in the near future.

APA within ninety days. See 760 Code Mass. Regs. § 72.00.[6] The emergency regulations provided MBTA communities an additional six months to adopt compliant zoning bylaws, provided they filed an interim action plan with EOHLC by February 13, 2025. If a timely interim action plan was submitted, the MBTA community would have until July 14, 2025, to submit a "District Compliance Application" to EOHLC. The District Compliance Application would set forth information about current zoning, past planning for multi-family housing, and potential locations for a multi-family zoning district, including a timeline for compliance with § 3A and EOHLC's regulations.

III. DLM Review of § 3A

Wrentham, Middleborough, and Methuen filed written requests with DLM seeking a determination that § 3A imposed an unfunded mandate on the cities and towns required to comply with § 3A. See G. L. c. 29, § 27C.[7] In short, § 27C, provides that any state rule, law, or regulation taking effect after January 1, 1981, that imposes additional costs on a city or town, excluding incidental local administration expenses, is conditional on local acceptance or full funding by the Commonwealth. *Id.*

On February 21, 2025, DLM concluded that § 3A constituted an unfunded mandate. In its letter, DLM stated that § 3A "imposes direct service or cost obligations on municipalities by the Commonwealth that amount to more than incidental local administrative expenses." DLM stated, however, that it could not determine the amount of such deficiency, in part, because EOHLC had failed to provide a fiscal impact analysis as required by chapter 30A, § 5. DLM stated such analysis would be completed when EOHLC provided its statutorily required fiscal

[6] The defendants submitted a copy of the regulations with their submissions. See Appendix at 271-289.

[7] The requests pre-dated the SJC's ruling in *Milton*. DLM initially indicated that it could not make such a determination given the pending litigation.

impact analysis. DLM further indicated that affected MBTA communities could petition the Superior Court to seek exemptions from compliance pending funding or reimbursement of direct costs imposed by the statute or regulation.

Based on DLM's determination, many towns sent letters to their legislators seeking funding to comply with § 3A or an exemption from compliance.

On March 6, 2025, EOHLC sent DLM a statement regarding the fiscal impact analysis, finding that there would be no fiscal effect. Included therein was also a small business impact statement, which indicated that there would be no impact on small businesses.

IV. The Municipalities' Motions for Preliminary Injunction

In their respective motions for preliminary injunction, the Municipalities collectively seek to enjoin enforcement of § 3A and the accompanying regulations. The Municipalities allege that the construction of 750 housing units, or more, in their respective communities would lead to substantial infrastructure impacts including, but not limited to, impacts to water systems, public safety services, educational services, and buildings, roads, and other general governmental services. The Municipalities further allege that this requires a substantial appropriation of funds for the expenses and improvements necessary to service the additional housing.

Moreover, some Municipalities raise issues unique to their circumstances, seeking further injunctive relief in addition to the universal injunctive relief requested.

A. Marshfield

On April 22 and December 16, 2024, Marshfield held special town meetings seeking to approve new zoning bylaws. On both occasions, majority votes defeated the articles.[8] On February 10, 2025, during a public town meeting of the Marshfield Select Board to discuss a

[8] The Commonwealth submitted copies of the articles with its submissions. See Appendix at 7-20 (Article 18 and 19), and 22-35 (Articles 12 and 13).

proposed interim action plan, the board voted unanimously not to approve one. On February 19, 2025, EOHLC notified Marshfield in writing that it was not compliant with § 3A, and that continued noncompliance would risk them losing grant programs expressly identified in § 3A, as well as funding from all discretionary grant programs.

On December 12, 2024, Marshfield received a notification from the EOED's Seaport Economic Council that its application for the "Permitting North/South River Dredging" project had been approved in the amount of $261,600. The award letter indicated that the award was contingent on Marshfield's compliance with § 3A, and a final executed contract with EOED. As of February 19, 2025, Marshfield had yet to execute a contract finalizing its award with EOED. EOED alleges that it cannot enter into the contract with Marshfield, and subsequently release the funds, until Marshfield complies with § 3A.

In fiscal year 2024, the Commonwealth's Department of Early Education ("EEC") awarded Marshfield a Coordinated Family and Community Engagement ("CFCE") grant in the amount of $45,700. Marshfield and the EEC executed the contract on July 1, 2023. An affidavit provided by the administrator of that grant, Haji Shearer, attested that the funds from that grant would not be rescinded and Marshfield could seek a renewal of the grant, regardless of their compliance with § 3A.

Other than the universal relief requested above, Marshfield also seeks injunctive relief providing that (1) grant funds already approved by the Commonwealth be released and that Marshfield not be excluded from other grants; and (2) § 3A violates G. L. c. 40A, § 5, which delegates the right to approve zoning amendments to cities and towns.

B. Middleton

The EOHLC's emergency regulations identify four categories of MBTA communities that must submit a District Compliance Application: "Adjacent community," "Adjacent small town," "Commuter rail community," and "Rapid transit community." 760 Code Mass. Regs. § 72.02. Middleton alleges that it contains no MBTA facilities and is not immediately adjacent to any communities with mass transit services. Therefore, Middleton alleges it is improperly classified as an MBTA community.

On October 11, 2024, Middleton learned that EOED approved its grant application through the MassWorks Infrastructure Program in the amount of $2 million to support improvements to the intersection of Routes 62 and 114. EOED indicated that Middleton had to comply with § 3, as determined by EOHLC. Furthermore, the award was contingent upon execution of a final contract between Middleton and EOHLC.

Middleton did not submit an interim action plan by February 13, 2025. As such, on February 19, 2025, EOHLC notified Middleton in writing that it was not compliant with § 3A, and that continued noncompliance would risk them losing grant programs in § 3A, as well as all discretionary grant programs. As of that date, Middleton had yet to execute a contract finalizing its award with EOED.

On September 25, 2023, EOHLC notified Middleton of approval of its application for a Community Planning Grant in the amount of $75,000. Middleton executed a contract for the grant on November 17, 2023. Middleton thus far has received $13,250 of the grant, and the remainder of the grant remains available to Middleton provided they submit expenses related to the grant by June 30, 2025.

Aside from the universal relief sought, Middleton seeks injunctive relief enjoining (1) enforcement of § 3A because it is improperly classified as an MBTA Community and is not an "Adjacent community"; and (2) EOED from not signing grants or dispensing funds.

C. Wrentham/Hanson/Holden

Wrentham, Hanson, and Holden are all in interim compliance with EOHLC.

As to Hanson, on October 15, 2024, MassDevelopment awarded a grant to Hanson in the amount of $237,000 from the Brownsfield Redevelopment Fund to support the 100 Hawks Avenue Rear Site Remediation. Grant funds would not be disbursed until Hanson fully executed a grant agreement and all disbursement conditions were met, including compliance with Chapter 40A, § 3A.

Hanson seeks injunctive relief enjoining MassDevelopment from not signing or dispensing grants.

With respect to Holden, it alleges it is not an MBTA community because it does not meet the definition of an "Adjacent community," as defined by 760 Code Mass. Regs. § 72.02. Under the regulation, an "adjacent community" must have "within its boundaries less than 100 acres of Developable station area." *Id.* A "developable station area" is defined as "developable land within 0.5 miles of a Transit station." *Id.* Holden alleges it neither contains any MBTA facilities, nor any developable land within one-half mile from a facility. Holden further alleges that the town line to the nearest MBTA facility is approximately four miles away.

Holden seeks injunctive relief that § 3A does not apply to it because it does not meet the definition of MBTA community in the regulations.

D. Duxbury and Weston

In their Verified Complaints, Duxbury and Weston seek injunctive and declaratory relief alleging that (1) chapter 40A, § 3A is an unfunded mandate, in violation of the Local Mandate Law, and is thus unenforceable because it imposes significant costs exceeding administrative expenses; and (2) the revised regulations are invalid because they mimic the guidelines struck down by the SJC in *Milton*, and are thus *ultra vires*, arbitrary, capricious, invalid on their face, and an abuse of EOHLC's discretion.

E. Wenham

Wenham makes the same allegations and requests for relief as Duxbury and Weston in its Verified Complaint, but also seeks (1) mandamus relief alleging that EOHLC did not provide its fiscal analysis in good faith and a court order requiring that EOHLC provide an updated analysis; and (2) an accounting and financing from the defendants so Wenham knows the direct costs for complying with the statute.

F. Hamilton

Hamilton seeks an exemption from § 3A, alleging that it violates the Local Mandate Law because it imposes direct costs on municipalities as opposed to just incidental local administration expenses. It further alleges that Hamilton cannot be considered an "MBTA Community" because one commuter rail station straddles the boundary between Hamilton and Wenham. Instead of an "MBTA Community," Hamilton alleges it should be defined as an "Adjacent Community" because the town does not have at least 100 acres of "Developable Station Area" within a half mile of the station but has "less than 100 acres of Developable station area." 760 Code Mass. Regs. § 72.02.[9]

[9] The regulations define "Developable Station Area" as "land that is within 0.5 miles of a Transit station." 760 Code Mass. Regs. § 72.02.

V. Procedural History

By Order for Special Assignment from the Chief Justice of the Superior Court, on March 7, 2025, the Hanson, Marshfield, Middleton, and Wrentham matters were assigned to this court.[10] The defendants filed a motion to dismiss on March 18, 2025. Holden filed its Verified Complaint and moved for a preliminary injunction on March 27, 2025. The defendants filed a motion to dismiss on March 18, 2025.

On April 1, 2025, Citizen Housing and Planning Association moved for leave to file an amicus brief in support of the Commonwealth's motion and other defendants' opposition to plaintiffs' motions for preliminary injunctions and in support of the Commonwealth and other defendants' cross-motion to dismiss.[11] On April 2, 2025, the court held a hearing on motions for preliminary injunction filed by Hanson, Holden, Marshfield, Middleton, and Wrentham, and on motions to dismiss filed by the defendants. After the hearing, the court took the matters under advisement.

On April 4, 2025, Duxbury filed a Verified Complaint against the defendants. On April 11, 2025, Weston filed a similar Verified Complaint, as did Wenham on April 22, 2025. On April 30, 2025, the Hamilton Inhabitants filed a Complaint against the defendants and subsequently filed an Amended Complaint on May 7, 2025. On May 9, 2025, the court held a hearing on the Municipalities' respective motions for preliminary injunction and the defendants' motions to dismiss, taking the matters under advisement.

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[10] A suit from the Town of Middleborough was also assigned. On March 27, 2025, Middleborough voluntarily dismissed its lawsuit in accordance with Massachusetts Rule of Civil Procedure 41(a)(1).

[11] The motion was allowed without objection at the hearing on April 2, 2025.

DISCUSSION

I. Standard of Review

There are two separate, but interrelated, motions before this court: the Municipalities' motions for a preliminary injunction, and the defendants' motions to dismiss.

As to the Municipalities' motions, a party seeking a preliminary injunction must demonstrate "(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction" (citations omitted). *Garcia* v. *Department of Hous. and Community Dev.*, 480 Mass. 736, 747 (2018). "Where a party seeks to enjoin government action, the judge also must determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public" (quotations and citations omitted). *Garcia*, 480 Mass. at 747.

As to the defendants' motions, to survive a motion to dismiss for failure to state a claim pursuant to Mass. R. Civ. P. 12 (b)(6), a complaint must contain "factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief." *Iannacchino* v. *Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 557 (2007). The factual allegations must be "more than labels and conclusions" and "raise a right to relief above the speculative level." *Iannacchino*, 451 Mass. at 636, quoting *Bell Atl. Corp.*, 550 U.S. at 555. In assessing a complaint under Rule 12(b)(6), the court accepts as true the well-pleaded factual allegations in the complaint and draws all reasonable inferences in the claimant's favor. See *Fairhaven Hous. Auth.* v. *Commonwealth*, 493 Mass. 27, 30 (2023). The extent of the court's review generally is limited to the factual allegations in the complaint and any facts

contained in any attached exhibits. See *Eigerman* v. *Putnam Invs., Inc.*, 450 Mass. 281, 285 n.6 (2007). However, the court also may consider matters of public record, items in the record of the case, and documents cited and relied upon in the complaint. See *Marram* v. *Kobrick Offshore Fund, Ltd*, 442 Mass. 43, 45 n.4 (2004); *Schaer* v. *Brandeis Univ.*, 432 Mass. 474, 477 (2000).

Taken together, the Municipalities cannot show a likelihood of success on the merits if their complaints are dismissed for failure to state a claim under Mass. R. Civ. P. 12(b)(6). Thus, dismissal of their claims would require denial of their motions for a preliminary injunction.

II. Unfunded Mandate Analysis as to Alleged Future Infrastructure Costs[12]

A. Statutory Framework

The parties' dispute whether § 3A is an unfunded mandate. The Municipalities argue they will incur significant costs to improve their infrastructure to accommodate an influx of new residents if § 3A is enforced, and that the Commonwealth must appropriate sufficient funds to absorb the anticipated costs. They further argue they should not be required to comply with § 3A until such funding is appropriated. In moving to dismiss the complaints, the defendants argue that § 3A is not an unfunded mandate and that the statute does not impose any direct service or cost obligation within the meaning of § 27C. Section 27C statute states in pertinent part:

> (a) Any law taking effect on or after January 1, 1981 imposing any direct service or cost obligation upon any city or town shall be effective in any city or town only if such law is accepted by vote or by the appropriation of money for such purposes, in the case of a city by the city council in accordance with its charter, and in the case of a town by a town meeting, unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses and unless the general court provides by appropriation in each successive year for such assumption.

As such, in addressing § 27C, a court must consider whether, and how much, funding should be appropriated to a municipality pursuant to a statute. "Appropriations are made, not in

[12] Costs associated with developing § 3A districts requires a separate analysis, which is set forth below.

the General Laws, but through the operation of the annual budget and appropriation process described in art. 63 of the Amendments to the Constitution of the Commonwealth." *Milton* v. *Commonwealth*, 416 Mass. 471, 473, (1993) ("*Milton*"). "Article 63 describes the process by which the General Court appropriates, i.e., receives and disburses, State revenues." *Mazzone* v. *Attorney Gen.*, 432 Mass. 515, 522 (2000). "The constitutional convention understood the term 'appropriation' to mean something more than legislative authority to spend." *Id.*

Thus, this court must determine whether any possible anticipated costs resulting from increased residential housing pursuant to § 3A may be deemed direct service or cost obligations as classified by § 27C, and thus must be funded through appropriations.

B. Unfunded Mandate Caselaw

The unfunded mandate law was enacted to "free[ ] cities and towns from expenditures mandated by State law and of preventing the involuntary imposition on cities and towns of certain direct service cost obligations resulting from statutes and administrative rules or regulations" (quotations omitted). *Norfolk* v. *Department of Env't Quality Eng'g*, 407 Mass. 233, 236 (1990). In this context, the court must look to what constitutes "direct service or cost obligations." G. L. c. 29 § 27C. The juxtaposition between two cases, *Lexington* v. *Commissioner of Educ.*, 393 Mass. 693 (1985) ("*Lexington*") and *Kennedy* v. *Commonwealth*, 92 Mass. App. Ct. 644 (2018) ("*Kennedy*"), demonstrates the contours of § 27C in the context of appropriating funds to support direct costs for public infrastructure.

Lexington concerned a statute requiring municipalities to provide transportation services for students at private schools in a manner more extensive, and thus expensive, than previously required. *Lexington*, 393 Mass. at 694. Lexington and Newton opposed the new statute, arguing it constituted an unfunded mandate. They identified specific line-item calculations reflecting the

related costs that would be imposed upon them under the statute. The SJC agreed, ruling that the statute was an unfunded mandate and thus ineffective. *Id.* at 698 ("We conclude that [the disputed statute], because it is a 'law taking effect on or after January first, nineteen hundred and eighty-one imposing [a] direct service or cost obligation upon' cities and towns, is subject to G.L. c. 29, § 27C(a).").

In *Kennedy*, several municipalities operated a regional school district, which included shared costs by the member towns. *Kennedy*, 92 Mass. App. Ct. at 645-646. One of the towns ultimately decided to withdraw from the district. Such withdrawal was subject to a statutory process. *Id.* at 646-647. The regional school district, a member town, and two parents brought suit challenging the withdrawal, arguing that if required to comply with the statutory withdrawal process, the remaining towns would incur increased expenses to support the district with one less school, and thus funds should be appropriated to address this increase. The Appeals Court rejected this argument, stating:

> The amended complaint does not plead any facts that support Huntington's or the school district's position that either is likely to incur direct cost obligations other than a possible increase in what the remaining towns may be required to pay to support the school district. These alleged costs are indirect and in any event are speculative; therefore, they are not sufficient under § 27C(a) to support the plaintiffs' claim.

Id. at 651.

Here, the anticipated possible costs alleged by the Municipalities, which are set forth below, closely mirror those in *Kennedy*. In both instances, municipalities are projecting "a possible increase" in infrastructure costs. Thus, consistent with *Kennedy*, the anticipated possible costs asserted by the Municipalities here are indirect and, therefore, § 3A does not constitute an unfunded mandate.

C. Anticipated Infrastructure Costs Alleged by the Municipalities

Even if § 3A was an unfunded mandate, the Municipalities have failed to allege sufficient facts concerning any anticipated amounts associated with future infrastructure costs beyond a speculative level. As to purported direct costs stemming from large-scale infrastructure improvements, the Municipalities' complaints do not set forth any specific, direct costs. Instead, their respective complaints make the following averments

- Duxbury:
  - The Town will see significant increases across all operating budgets due to the need for additional services resulting from new development authorized as a matter of right under MBTA compliant zoning, particularly with respect to public safety, public schools, transportation, and health and human services. These increases will be ongoing and escalating from year-to-year.

- Hanson:
  - The construction of 750 housing units will result in substantial infrastructure impacts to the Town, including, without limitation, impacts to the Town's water system, public safety services, educational services and buildings, roads, and other general governmental services. Mitigating such impacts will require a substantial appropriation of funds for the expenses and improvements necessary to service 750 new units of housing.

- Holden:
  - The construction of 750 housing units will result in substantial infrastructure impacts to the Town, including, without limitation, impacts to the Town's water system, public safety services, educational services and buildings, roads, and other general governmental services. Mitigating such impacts will require a substantial appropriation of funds for the expenses and improvements necessary to service 750 new units of housing.
  - Specifically, as to public safety, the Town will be compelled to retain several new fire fighters and police officers, and purchase equipment and supplies to support the same, including but not limited new fire and police vehicles.
  - As to education, the unanticipated influx of 750 new units would result in well over two hundred new students. The cost for each student to the taxpayers would be approximately $20,000. Additionally, it is likely that capital improvements would be necessitated to accommodate such new students.

- The influx of new units would also significantly strain existing sewer and water services. The Town would be compelled to allocate substantial operational and capital funds to connect 750 new units to the Town's water and sewer services.
- While 750 new units of housing will result in increased revenue through property taxation, such new growth would be dwarfed by the expenses associated with the services discussed in the preceding paragraphs.

- Marshfield:
  - Marshfield expects to incur additional costs as the direct result of the mandatory requirements of the MBTA Communities Act and HLC's emergency regulations.

- Middleton:
  - The construction of 750 housing units will result in substantial infrastructure impacts to the Town, including, without limitation, impacts to the Town's water system, public safety services, educational services and buildings, roads, and other general governmental services. Mitigating such impacts will require a substantial appropriation of funds for the expenses and improvements necessary to service 750 new units of housing.

- Wenham:
  - The construction of 365 housing units will result in substantial infrastructure impacts to the Town, including, without limitation, impacts to the Town's water system, public safety services, educational services and buildings, roads, and other general governmental services. Mitigating such impacts will require a substantial appropriation of funds for the expenses and improvements necessary to service 365 new units of housing.
  - Specifically, as to public safety, the Town will be compelling to retain several new fire fighters and police officers in order to comply with accepted standards to ensure public health and safety, and purchase equipment and supplies to support the same, including but not limited to new fire and police vehicles.
  - As to education, the unanticipated influx of 365 new units would likely result in more than one hundred new students. While the Town of Wenham is committed to providing a high-quality education to each and every student that enters into its school district, the cost for each such additional students to taxpayers could be substantial. Additionally, it is likely that capital improvements would be needed to accommodate such new students given space limitations and accepted standards for class sizes.
  - The influx of new units would also significantly strain existing water services. The Town would be compelled to allocate substantial operating and capital funds to connect up to 365 new units to the Town's water

services. Additional expenses relating to expanded services and equipment for waste disposal would also be required.

- Weston:
  - The Town will see significant increases across all operating budgets due to the need for additional services resulting from new development that will have to be allowed as a matter of right under the Act, particularly with respect to public safety, public schools, transportation, and health and human services.
  - The Town recently hired another outside consultant . . . to conduct a fiscal impact analysis of the Act on the Town, who concluded that the total projected municipal costs for Weston to provide necessary services for the required 750 units is $1,288,454, not including projected education costs, which could exceed $5 million by itself.

- Wrentham:
  - The construction of 750 housing units will result in substantial infrastructure impacts to the Town, including, but without limitation, impacts to the Town's water system, public safety services, educational services and buildings, roads, and other general governmental services. Mitigating such impacts will require a substantial appropriation of funds for the expenses and improvements necessary to service 750 new units of housing.

In this regard, the Municipalities have neither pled specific costs for anticipated infrastructure costs, nor provided any specific timeline for anticipated construction projects. Instead, the only allegations and averments before the court are generalized comments about large-scale issues they foresee, which are insufficient to sustain the Municipalities' claims. They merely reference "a possible increase" in infrastructure costs, see *Kennedy*, 92 Mass. App. Ct. at 651, and have thus failed to allege any substantive information about where to appropriate funds in the manner contemplated by § 27C.

In their submissions, the Municipalities provided affidavits and letters from various municipal officials attempting to itemize anticipated costs. However, none of these documents were appended to the complaints, and thus, exceed the bounds of the courts review on a motion to dismiss. Even with considering the various affidavits, in the context of the Municipalities' motions for preliminary injunction, they underscore the speculation demonstrated in the

Municipalities' complaints concerning direct costs. The affidavits repeatedly include terms such as "may," "expect," "possibly," "anticipate," and "estimated." Such speculative averments fail to demonstrate actual, direct costs.

Accordingly, the Municipalities' complaints set forth mere "labels and conclusions," and do not "raise a right to relief above the speculative level." *Iannacchino*, 451 Mass. at 636. Therefore, even if § 3A was an unfunded mandate, the Municipalities' have merely alleged speculative averments regarding any anticipated costs. The speculative nature of such claim is fatal to the Municipalities' claims in the same manner speculative claims were rejected in *Kennedy*.

D. Deference to DLM

The Municipalities argue that this court should defer to the DLM's determination that § 3A constitutes an unfunded mandate, as defined by § 27C. Pursuant to § 27C, a municipality

> may submit written notice to the division of local mandates, established under section 6 of chapter 11, requesting that the division determine whether the costs imposed by the commonwealth by any law, rule or regulation subject to this section have been paid in full by the commonwealth in the preceding year and, if not, the amount of any deficiency in such payments.

G. L. c. 29, § 27C (d).

Upon receipt of such request, DLM "shall have the responsibility of determining to the best of its ability and in a timely manner the estimated and actual financial effects on each city and town of laws, and rules and regulations of administrative agencies of the commonwealth either proposed or in effect." G. L. c. 11, § 6B. The Municipalities state that Wrentham, Middleborough, and Methuen followed this statutory process by issuing a determination request to DLM, then DLM performed its statutory role pursuant to G. L. c. 11, § 6B. They argue that the court is bound by the DLM's determination that § 3A constitutes an unfunded mandate.

In *City of Worcester* v. *The Governor*, 416 Mass. 751 (1994), DLM issued a determination that several statutes, rulings, and regulations constituted unfunded mandates. *Id.* at 754. The plaintiffs "then filed a complaint in the Superior Court pursuant to § 27C (e) requesting the court to declare that all the statutes, rules, and regulations examined by DLM, plus others not examined by that office, constitute unfunded local mandates." *Id.* The SJC held "[t]he questions presented are questions of law for this court to resolve. We conclude that none of the statutes, rules, or regulations involved herein constitutes unfunded local mandates." *Id.* Thus, the SJC rejected the notion that the court was bound by the DLM's determination and reached a different conclusion in its unfunded mandate analysis.

Further, the plain language of § 27C states "determination of the amount of deficiency provided by the division of local mandates under subsection (d) of this section shall be **prima facie evidence** of the amount necessary" (emphasis added). G. L. c. 29, § 27C(e). Thus, even if DLM had authority to make an unfunded mandate determination, the statute provides that the court may look to the DLM's determination, however it is not expressly bound by it.

The Municipalities set forth a litany of cases stating that a court owes deference to a department's application of a law or regulation for which the Legislature has delegated decision-making authority. Pursuant to G. L. c. 11, § 6B, DLM is charged with "determining to the best of its ability and in a timely manner the estimated and actual financial effects on each city and town of laws, and rules and regulations of administrative agencies of the commonwealth either proposed or in effect." The court therefore agrees that DLM is entitled to some deference. However, such deference is not unfettered. Instead, a court will not defer to a departments' decisions that "are flawed by an error of law, lack support by substantial evidence, [or] are arbitrary or capricious." *Wolf* v. *Department of Pub. Utilities*, 407 Mass. 363, 367 (1990). In the

manner discussed herein, the DLM's determination was flawed as a matter of law, because § 3A is not an unfunded mandate.[13]

Finally, the Municipalities misinterpret the scope of the DLM's § 3A determination. The DLM's decision speaks specifically to zoning, not large-scale infrastructure considerations. In interpreting § 3A, DLM states "[a]s for costs of implementation, the MBTA Communities Act requires MBTA communities to have 'a zoning ordinance or by-law' providing for a district that meets specific criteria." Further, while the court disagrees with this ultimate conclusion, the DLM's determination stated "[i]t is apparent that, at a minimum, direct costs exist in developing compliant zoning that amount to more than incidental local administrative expenses." Thus, the DLM's "direct cost" consideration focused upon costs incurred in designating a § 3A district.[14]

Therefore, this court is not required to defer to the DLM's unfunded mandate determination in the context of the Municipalities' claims for future infrastructure projects.[15]

E. Athol and Halifax DLM Letters

The record includes two DLM determination letters issued to two non-party municipalities, Athol and Halifax, regarding an unrelated statute, G. L. c. 111, § 150A½. This statute involved municipal management of solid waste facilities. Prior to the change in the law, the Massachusetts Department of Environmental Protection ("DEP") reviewed applications and

[13] DLM states in its letter that "the total fiscal impact of implementation cannot be determined without further data collection" and "DLM requires additional time to perform a thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined. Such analysis will include review of the required fiscal impact statements by EOHLC and implementing other data collection measures as necessary." As such, DLM did not even reach a specific financial conclusion. This further belies a claim that the court owes deference to the DLM's determination.

[14] The court acknowledges that the DLM's determination references larger scale infrastructure costs. However, the specific findings relative to its unfunded mandate determination turns on funding towards designating § 3A districts.

[15] As discussed below, costs associated with developing § 3A districts are distinguishable from costs associated with funding future infrastructure projects in the Municipalities.

issued a "site suitability report" for entities seeking permits to operate solid waste facilities. This required review to determine if the proposed facility satisfied statutory criteria for public health, safety, and the environment. Additionally, prior to the change in the law, the DEP was tasked with reviewing applications for entities seeking permits to operate small transfer stations.

Under the new law, the towns would be required to independently review applications for such solid waste and transfer station facilities. Athol and Halifax both sought unfunded mandate determinations, stating that they anticipated that their respective Boards of Health would need to hire consultants to review the applications to determine whether the proposed project complied with necessary public health, safety, and environmental concerns.

Although these DLM determinations concerned potentially hiring experts in the context of performing municipal functions, the issues before the DLM for Athol and Halifax's requests are distinguishable from those asserted by the Municipalities here. Under the new statute, Athol and Halifax were required to perform an entirely new task in reviewing applications for solid waste facilities and transfer stations. The DEP had previously handled such municipal work. Here, by contrast, the new legislation, § 3A, requires the Municipalities to develop zoning bylaws, a municipal role that they continuously play as bylaws are regularly updated. Although the scope and complexity of the zoning responsibilities in implementing § 3A are arguably more complex than those regularly undertaken by a municipality, they remain an aspect of the Municipalities' ongoing role.

F. Zoning vs. Construction

Under § 3A, the Municipalities "shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right." G. L. c. 40A, § 3A(a). Pursuant to Chapter 40A, the statutory chapter controlling zoning, "as of

right" development is "development that **may proceed** under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver or other discretionary zoning approval" (emphasis added). G. L. c. 40A, § 1A. Taken together, the Municipalities must adopt a zoning ordinance for development that may, but not necessarily will, proceed. In interpreting § 3A, the SJC recently "declare[d] that the act creates an affirmative duty for each MBTA community to have a zoning bylaw that allows for at least one district of reasonable size where multifamily housing is permitted as of right." *Milton*, 495 Mass. at 196. Additionally, an applicable regulations states in part:

> Nothing in M.G.L. c. 40A, § 3A or 760 CMR 72.00 should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target. Demonstrating compliance with the minimum multi-family unit capacity requires only that an MBTA community show that the zoning allows multi-family housing as of right and that a sufficient number of multi-family housing units could be added to or replace existing uses and structures over time-even though such additions or replacements may be unlikely to occur soon.

760 Mass. Code Regs. § 72.05 (1)(d)(2).

As such, this applicable regulation expressly states that § 3A does require municipalities to engage in construction projects. Further, the stated "purpose of M.G.L. c. 40A, § 3A is to encourage the production of Multi-family housing by requiring MBTA communities to adopt zoning districts where Multi-family housing is allowed As of right, and that meet other requirements set forth in the statute." 760 Mass. Code Regs. § 72.01. "[T]here is a distinction between legislative encouragement and the imposition of binding obligations on the cities and towns" (quotations omitted). *School Comm. of Lexington* v. *Commissioner of Educ.*, 397 Mass. 593, 598 (1986) (Abrams, J., concurring). Thus, § 3A and the related regulations do not compel construction. They merely encourage it.

G. Grant Funding Process

Notably, the Commonwealth, EOHLC more specifically, has not left the Municipalities without any financial recourse should they incur infrastructure costs upon development of § 3A districts. Instead of receiving appropriations pursuant to § 27C, the Municipalities may be eligible for grant funding specific to the infrastructure improvements they allege will exist in the future. The MBTA Communities legislation specifically contemplates two such grant programs tailored to fund the types of concerns raised by the Municipalities: the MassWorks Infrastructure Program[16] and the HousingWorks Infrastructure Program.[17] The statute expressly states that such grant programs are directly tied to enforcement of § 3A.

Thus, funding projects through grants, rather than appropriations, provides the type of specific funding for such future infrastructure projects that are too speculative under § 27C. As such, the Legislature was mindful of the concerns raised by the Municipalities, and specifically contemplated funding infrastructure updates that a municipality could expressly identify in applying for a grant. This model is consistent with *Lexington* and *Kennedy*, which demonstrate that a municipality was entitled to appropriations upon identifying anticipated and specific line-item costs to be incurred subject to a new law or regulation, but speculative costs did not reflect an unfunded mandate. The parties also mention multiple grants that have already been dispersed,

[16] Per the Commonwealth's official website, the MassWorks Infrastructure Program is identified as "a competitive grant program that provides the largest and most flexible source of capital funds to municipalities and other eligible public entities primarily for public infrastructure projects that support and accelerate housing production, spur private development, and create jobs throughout the Commonwealth."

[17] The HousingWorks Infrastructure Program shares a similar objective, identified as "a competitive grant to municipalities and other public entities for a variety of infrastructure projects associated with housing development. This grant program awards funds based on the project's nexus with housing, transportation, infrastructure, and community development needs."

which further indicates that such funding is the appropriate mechanism for assisting municipalities establishing § 3A districts.

To be sure, there may be shortcomings in costs associated with future projects and the grant funding received by the Municipalities. However, even if appropriations were fashioned in some manner, there could be similar shortcomings as the Legislature is constrained by budgetary concerns. The appropriation process does not create a blank check to municipalities in requesting and obtaining funding, but instead is limited to state funds that are actually accessible. See *Mazzone*, 432 Mass. at 522 ("The constitutional convention understood the term 'appropriation' to mean something more than legislative authority to spend."). Thus, the Municipalities will be able to obtain grant certain funds if they are able to identify spending needs that are more than speculative.

H. Unfunded Mandate Conclusions

In summation, the court concludes that: 1) § 3A is not an unfunded mandate; 2) the Municipalities have failed to identify nonspeculative direct costs requiring appropriation for anticipated infrastructure costs; 3) the court is not bound by DLM's determination; 4) § 3A is a zoning regulation that does not compel construction; and 5) the Municipalities have recourse in pursuing grants specifically intended to fund infrastructure considerations upon compliance with § 3A. Thus, the defendants' motions to dismiss the counts of the Municipalities' complaints seeking declaratory and/or injunctive relief specific to deeming § 3A an unfunded mandate as to future anticipated costs are therefore **ALLOWED**.

Given such conclusion, the Municipalities have not shown a likelihood of success on the merits of their claims that § 3A constitutes an unfunded mandate as to future anticipated

infrastructure costs. Their motions for a preliminary injunction are therefore **DENIED** as to this category of costs.

III. Unfunded Mandate Analysis as to Costs for Designating a § 3A District

In addition to their above arguments concerning anticipated infrastructure costs, several Municipalities argue § 3A is an unfunded mandate because they have incurred costs in designating a compliant district, but funds have not been appropriated for this task. However, several Municipalities acknowledge that they have already received grant funding in their attempts to designate a § 3A district.[18] This underscores the nature of § 3A, for which municipalities can look to grant programs, rather that appropriations, to fund tasks associated with designating compliant districts.

Several municipalities, most notably Duxbury, referenced a protracted course whereby they contacted multiple consultants in their efforts to designate a § 3A district. They argue that the nature and conditions of the geography in the municipality make it seemingly impossible to comply with regulatory requirements and that EOHLC does not take such factors into account in deemed communities noncompliant. However, in *Milton*, the SJC stated:

> Tasking [EOHLC], in consultation with other relevant agencies, to determine whether a city or town has complied with the requirement that it have a zoning ordinance or bylaw providing for a "district of reasonable size" where multifamily housing is permitted "as of right," G. L. c. 40A, § 3A (a) (1), allows subject-matter experts to tailor the guidelines to fit the "real-world" conditions of each MBTA community affected by the act by, for example, taking into account a community's land area, population, existing housing stock, or other relevant factors.

Id. at 190.

[18] The Commonwealth's pleadings also identify grants previously received by several municipalities in connection with designating § 3A districts. Although not specifically included in the complaints, such information may be considered by this court as it constitutes matters of public record regarding disbursement of state funds. See *Marram*, 442 Mass. at 45 n.4.

Thus, the SJC held that EOHLC and other relevant agencies are the "subject matter experts" to address the very issues that several Municipalities raise here, namely complexity of factors impacting their options for designating compliant districts. Given such deference by the SJC, this court similarly credits the EOHLC's determination in this context. The mere fact that the Municipalities dispute how and whether § 3A applies to their community does not render the EOHLC's analysis process incorrect. An overwhelming number of communities were able to designate a compliant § 3A district without resorting to litigation. The Commonwealth, with reference to other municipalities that zoned the requisite § 3A districts, notes that some of the Municipalities are attempting to design "bespoke" districts that are nuanced in a manner far beyond the contemplated regulations concerning § 3A. On this basis, the Municipalities that dispute the costs associated with making such designation have not set forth a sufficient legal or factual basis for this court to conclude that they are unique such that the Legislature should appropriate funds to establish a § 3A compliant district.

Further, there does not appear to be any dispute that municipalities are regularly required to amend or add zoning bylaws or, in some instances, hold Town Meetings. Here, the Municipalities have failed to set forth any legal or factual basis for this court to conclude that designating a § 3A district exceeds such regular zoning tasks required by municipalities and therefore are more than "incidental local administration expense[s]." See G. L. c. 29, §27C(a). Such incidental expenses are expressly excluded from the "direct service cost or obligation" requirement for appropriation under § 27C.

As discussed above, the DLM determination stated "[i]t is apparent that, at a minimum, direct costs exist in developing compliant zoning that amount to more than incidental local administrative expenses." However, the court is not bound by DLM's determination concerning

the unfunded mandate statute as applied to this category of costs. As demonstrated in *City of Worcester*, the SJC rejected the DLM's determination and reached a different conclusion from DLM in its own unfunded mandate analysis. Lastly, the DLM's determination is merely prima facia evidence, which this court finds was flawed as a matter of law.

Thus, the defendants' motions to dismiss the counts of the Municipalities' complaints seeking declaratory and/or injunctive relief specific to deeming § 3A an unfunded mandate for costs associated with designating a § 3A district are therefore **ALLOWED**.

Given such conclusion, the Municipalities have not shown a likelihood of success on the merits of their argument that § 3A is an unfunded mandate as to costs incurred in designating a § 3A district, and their motions for a preliminary injunction are therefore **DENIED** as to this category of costs.

IV. Payment of Alleged Outstanding Grant Funds

Hanson, Middleton, and Marshfield seek disbursement of grant funds they allege were previously promised to them but are now withheld based upon § 3A compliance requirements. Relatedly, they also seek preliminary injunctions holding § 3A in abeyance so that such grants can now be disbursed.

Hanson states in its complaint that it submitted, and received approval of, two grant applications. It appended an October 11, 2024, letter from MassDevelopment that stated "[o]n behalf of the Healy-Driscoll Administration, I am pleased to inform you that a grant in the amount of $70,000 from the Site Readiness Program has been approved to support the 212 Industrial Boulevard project." However, the letter further stated:

> Please be advised that this letter does not constitute an agreement or contract with MassDevelopment or the Commonwealth of Massachusetts, and the grant award is not final until the organization has executed a contract with MassDevelopment. You should not proceed with any grant activities until a contract is in place.

Hanson also appended an October 15, 2024, letter from MassDevelopment that stated "[o]n behalf of the Healy-Driscoll Administration, I am pleased to inform you that a grant in the amount of $237,000 from the Brownfields Redevelopment Fund has been approved to support the 100 Hawks Avenue Rear Site Remediation." However, the letter further stated:

> Please be advised that this letter does not constitute an agreement or contract with MassDevelopment or the Commonwealth of Massachusetts. No MassDevelopment funds will be disbursed until the Grant Agreement is fully executed and all disbursement conditions are met.

Middleton also states in its complaint that it submitted, and received approval of, a grant application. It appended an October 11, 2024, letter from EOED that stated "[o]n behalf of the Healey-Driscoll Administration, I am pleased to you inform you that a grant in the amount of $2,000,000 from the MassWorks Infrastructure Program has been approved to support the Route 62 & Route 114 Project." However, the letter further stated:

> Please be advised that this letter does not constitute an agreement or contract with EOED or the Commonwealth of Massachusetts, and the grant award is not final until the organization has executed a contract with EOED. You should not proceed with any grant activities until a contract is in place.

Each of the letters also stated: "If this project is located in an MBTA Community, please note that a contract will not be executed if the community is noncompliant with Section 3A of M.G.L. Chapter 40A as determined by EOHLC."

Marshfield has similarly identified several grants for which it alleges the defendants have withheld funding. It points to a December 12, 2024, letter that stated, "[o]n behalf of the Seaport Economic Council, I am pleased to inform you that the Council has conditionally approved the Town of Marshfield's application for a grant in the amount of $261,600 for the Permitting North/South River Dredging project." However, the letter stated "[t]he grant award is not final until the Town of Marshfield has executed a contract with EOED. . . . You should not proceed

with any purchases or construction work until a contract is in place." The letter further stated "[p]lease note that this grant award is contingent on the Town of Marshfield being in compliance with the multifamily zoning requirements set forth in section 3A of chapter 40A of the Massachusetts General Laws. Compliance is determined by the Executive Office of Housing and Livable Communities."

On this basis, none of these towns have set forth sufficient facts to establish that they are entitled to disbursement of such grants. Instead, they have alleged that their applications were accepted, but the letters expressly indicated that they did not constitute a contract or confirm that the grant award was finalized. Additionally, the letters expressly stated that they must comply with § 3A before any contracts are executed. Given these conditions, to which these Municipalities object to complying, they are not entitled to disbursement of these grant funds.

Marshfield's motion also states the "Town believes that it is ineligible for a further $400,000 grant from the State Dredge Grant Program for which it the Town has permits in hand for the competition of dredging of Green Harbor" and the "Town School Department is advised that it also will not be eligible for a FY2025 Coordinated Family and Community Engagement Grant offered by the MA Department of Early Education and Care in the amount of $45,700 for which it applied and was otherwise eligible for." None of these statements are supported by documents establishing that any grant contracts were confirmed or that Marshfield had any reliable basis to believe it would receive such grants.

Therefore, none of these municipalities have shown a likelihood of success on the merits that they are entitled to disbursement of these grants. Their motions for a preliminary injunction are therefore **DENIED** as to this argument.[19]

[19] The defendants to not substantively address this issue in their motions to dismiss.

V. Holden, Middleton, Hamilton, and Wenham's Status as MBTA Communities

Holden and Middleton argue that they should not be subject § 3A because they were improperly classified an "adjacent community" under the statute. They point to the pertinent regulation, 760 Code Mass. Regs. § 72.02, which provides the following definitions:

> Adjacent Community means an MBTA community that:
>
> (a) has within its boundaries less than 100 acres of Developable station area; and
>
> (b) is not an Adjacent small town.
>
> Adjacent Small Town means an MBTA community that:
>
> (a) has within its boundaries less than 100 acres of Developable station area; and
>
> (b) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published *United States Decennial Census of Population and Housing*.

760 Code Mass. Regs. 72.02

Holden and Middleton state that they are not adjacent to any communities with MBTA services. In making this argument, they incorrectly apply the term "adjacent." Black's Law Dictionary defines adjacent as "Lying near or close to, but not necessarily touching." Black's Law Dictionary (12th ed. 2024). Thus, proximity to a community with MBTA services establishes the "adjacent" consideration. Holden and Middleton seemingly misconstrue "adjacent" with "contiguous," which is defined as "[t]ouching at a point or along a boundary" or "adjoining," which is defined as "touching; sharing a common boundary." *Id.*

Further, the only information reflected in these Municipalities' complaints are their general averments that they are not adjacent to a municipality with MBTA service. Neither of their complaints substantially addresses both considerations for an adjacent community: population and the amount of developable station area. They do not provide any information to

substantiate their averments regarding developable land in the municipality.[20] Per the applicable regulations,

> Developable Land means land on which Multi-family housing can be permitted and constructed. For purposes of 760 CMR 72.00, Developable land consists of:
>
> > (a) all privately-owned land except Lots or portions of Lots that meet the definition of Excluded land; and
> >
> > (b) Developable public land.
>
> Developable Public Land means any Publicly-owned land that:
>
> > (a) is used by a local housing authority;
> >
> > (b) has been identified as a site for housing development in a housing production plan approved by EOHLC; or
> >
> > (c) has been designated by the public owner for disposition and redevelopment. Other Publicly-owned land may qualify as Developable public land if EOHLC determines, at the request of an MBTA community and after consultation with the public owner, that such land is the location of obsolete structures or uses, or otherwise is suitable for conversion to Multi-family housing, and will be converted to or made available for Multi-family housing within a reasonable period of time.

760 Mass. Code Regs. § 72.02

There is insufficient information in these Municipalities' complaints regarding the factual assessment of data reflected in 760 Code Mass. Regs. § 72.02. Middleton summarily states that it "contains no MBTA facilities and is not immediately adjacent to any communities with mass transit services." Holden's averments are somewhat more informative, in stating it does not have the requisite "developable land" as set forth in the applicable regulations. However, this constitutes the type of "labels and conclusions" that do not survive a motion to dismiss. *Iannacchino*, 451 Mass. at 636.

[20] Per the regulation, population considerations are "determined in the most recently published *United States Decennial Census of Population and Housing*." 760 Code Mass. Regs. § 72.02

Further, irrespective of the regulations set forth in Title 760, Chapter 72 of the Code of Massachusetts Regulations, Holden and Middleton have been statutorily classified as MBTA communities. Chapter 40A, which sets forth the Commonwealth's statutory zoning scheme, defines an MBTA Community as:

> a city or town that is: (i) **one of the 51 cities and towns as defined in section 1 of chapter 161A**; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) **other served communities as defined in said section 1 of said chapter 161A;** or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority (emphasis added).

G. L. c. 40A, § 1A.

The statutory framework for the MBTA is set forth in Chapter 161A. Per this chapter, Middleton is one of the "51 cities and towns" identified in G. L. c. 161A, § 1, and Holden is one of the "Other served communities." Neither Municipality has set forth a sufficient factual or legal basis for this court to conclude that these municipalities were improperly deemed MBTA adjacent communities, as defined by this statute.

Hamilton and Wenham each argue they were improperly classified as an MBTA Commuter Rail Community. An MBTA station, the Hamilton/Wenham Station, straddles the boundary between the Municipalities. These Municipalities argue that they cannot both be deemed a Commuter Rail Community where the entire station is not within its boundaries.[21] [22]

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[21] Wenham states:

> The Town does host an MBTA station, referred to by the MBTA as the "Hamilton/Wenham Station" on the Newbury/Rockport Line of the Commuter Rail System. However, this station is a shared station between the Towns of Wenham and Hamilton, as the station sits on the shared town-line with its formal address in Hamilton.

Based on the record before this court, however, Wenham has not provided any basis for this court to conclude that the formal address of a station is dispositive of its characterization under the applicable regulations.

[22] Hamilton's motion references "split lots" in the context of zoning. It argues that the "active" portions of the station, namely the platform, building, and parking, are all located in Wenham, and thus the Hamilton portion only reflects the "passive" portion of the station. However, Hamilton has not provided any basis for this court to

However, neither Municipality has set forth any legal or factual basis for this court to conclude that the geographic nature of the shared Hamilton/Wenham Station disqualifies it from characterization as a Commuter Rail Community.

The defendants' motions to dismiss are therefore **ALLOWED** as to this issue. Given such conclusion, the Municipalities have not shown a likelihood of success on the merits of these regulatory characterization arguments, and their motions for a preliminary injunction are therefore **DENIED** as to this argument.

VI. Arbitrary and Capricious Analysis

Several Municipalities argue the standards and calculations set forth in the various regulations are arbitrary and capricious. In substance, they argue the calculations do not properly reflect the conditions and character of the land within the municipality and the means by which development may be executed. Of note, Duxbury states:

> The Regulations are arbitrary and capricious and invalid on their face insofar as they do not require EOHLC to determine the amount of required land area and unit density based on each regulated community's unique characteristics, and they do not provide any mechanism for an aggrieved community to challenge the output of the computer model or to appeal the decision.

This position is in direct contrast to the *Milton* decision, as the SJC declared that the applicable regulations "allow[ ] subject-matter experts to tailor the guidelines to fit the 'real-world' conditions of each MBTA community affected by the act by, for example, taking into account a community's land area, population, existing housing stock, or other relevant factors." *Milton*, 495 Mass. at 190. As such, the SJC interpreted the applicable regulations as directly requiring EOHLC to consider any unique factors within a municipality. None of the Municipalities have set forth any basis for this court to conclude that EHOLC, or any other

conclude that location of the "active" portion of the MBTA Commuter Rail stop is dispositive of Hamilton's characterization under the applicable regulations.

related entity, did not fully perform the type of analysis contemplated by the SJC in *Milton*. Thus, the regulations are not arbitrary and capricious in the context of factors for EOHLC to consider.

Several Municipalities also argue that the EOHLC's determinations are arbitrary and capricious because the EOHLC stated that implementing § 3A and the related regulations would have no fiscal impact upon municipalities. A state office or agency submitting a fiscal impact statement must do so in good faith. *American Grain Prods. Processing Ints.* v. *Department of Pub. Health*, 392 Mass. 309, 326 (1984).

Here, the Municipalities' complaints fail to set forth sufficient facts to state a claim that the EOHLC acted in bad faith or arbitrary and capriciously when stating there was no fiscal impact. As discussed herein, the court finds that § 3A and its related regulations do not impose any direct costs requiring funding appropriations. Thus, EOHLC correctly stated there was no fiscal impact.

Relatedly, several Municipalities assert claims, in the nature of mandamus and requests for accounting, that various Commonwealth offices and departments must provide information concerning the fiscal impact of § 3A. In this regard, several Municipalities allege that the Commonwealth's failure to provide necessary information to DLM prevents DLM from making its final determination. Again, where this court finds there were no direct costs, there is no basis to compel EOHLC or any other offices to provide additional information.

Weston further argues that the regulations are arbitrary and capricious because "they fail to provide notice and an opportunity to be heard prior to receiving an adverse decision, nor any meaningful opportunity to appeal such decision." However, there is no legal or factual basis in

the record requiring that the EOHLC classification system is subject to any due process considerations triggering a right to a hearing or an appeal.

The defendants' motions to dismissed are therefore **ALLOWED** as to this issue. Given such conclusion, the Municipalities have not shown a likelihood of success on the merits of their arbitrary and capricious arguments, and their motions for a preliminary injunction are therefore **DENIED** as to this argument.

VII. Marshfield Town Meeting Authority

Marshfield argues § 3A infringes upon its authority to develop and enforce zoning regulations through its Town Meeting. More specifically, it argues that the Town Meeting has rejected the zoning requirements set forth in § 3A and therefore Marshfield should not be required to comply. In making this argument, Marshfield ignores the well settled principle that "the powers of a town and of its town meeting, and the very existence of the town, are subject to the will of the Legislature." *Commonwealth* v. *Hudson*, 315 Mass. 335, 345 (1943). The SJC has "upheld repeatedly the Legislature's 'supreme' power in zoning matters. *Board of Appeals of Hanover* v. *Housing Appeals Comm.*, 363 Mass. 339, 356 (1973)

Further, there is an "elementary principle that a town is merely a subordinate agency of State government created for convenient administration and has only those powers which are expressly conferred by statute or necessarily implied from those expressly conferred or from undoubted municipal rights or privileges." *Atherton* v. *Selectmen of Bourne*, 337 Mass. 250, 255–256 (1958). Taking a position that "the town's vote in enacting the by-law is a judicially unreviewable act" is an "astonishing contention." *Id.* Accordingly, Marshfield's Town Meeting rights are subordinate to the Legislature's enactment of § 3A and Marshfield is thus subject to the terms of § 3A.

The defendants' motions to dismiss are therefore **ALLOWED** as to this issue. Given such conclusion, Marshfield has not shown a likelihood of success on the merits of its Town Meeting argument, and its motion for a preliminary injunction is therefore **DENIED** as to this argument.

VIII. Hamilton Excluded Land

The Gordon-Conwell Theological Seminary ("the Seminary") sits within Hamilton's borders. Per the regulations, "[p]rivately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university" is "excluded land." 760 Code Mass Regs. 72.02. Hamilton argues that there are limitations to such excluded land characterization, as the regulation further states "[i]f privately owned land that would otherwise be excluded is no longer being used for such educational or institutional uses, EOHLC may determine that such land no longer being so used is Developable Land." *Id.* Hamilton states that construction is underway on Seminary property and therefore the EOHLC should deem it developable.

However, Hamilton seemingly ignores a critical word in the excluded land definition. Per 760 Code Mass. Regs. 72.02, the EOHLC "may" determine whether to characterize land like the Seminary property, which purportedly is no longer used for such educational purposes, as developable. Thus, EOHLC is not required to deem the Seminary property developable simply because its current use has purportedly changed.

Hamilton states that excluding the Seminary as undevelopable land under § 3A significantly decreases the available acreage in the town and "[i]ncluding the Seminary property would materially change Hamilton's ability to comply by opening up over a hundred additional acres for multi-family housing in the Town of Hamilton." While this may be true, Hamilton has

not alleged sufficient facts to show that this factor makes it unique and thus exempt from § 3A compliance. Instead, as discussed herein, all municipalities are faced with various considerations in designating their § 3A district and, per the *Milton* decision, EOHLC and related entities are the "subject matter experts" in assessing all factors when determining § 3A compliance.

Therefore, Hamilton has not shown a likelihood of success on the merits of its Town Meeting argument, and its motion for a preliminary injunction is therefore **DENIED** as to this argument.[23]

IX. Affordability Considerations

In its submissions, Wenham argues that implementing § 3A will impede upon affordable housing in Massachusetts. More specifically, it argues:

> Contrary to the goal of creating more affordable housing stock, G.L. c. 40A, § 3A does not permit zoning districts under the statute to include an affordable-unit requirement exceeding 10%. This restrict is at cross-purposes with Wenham's inclusionary zoning goals and its Master Plan, and may also serve to reduce the Town's SHI% from its current level of 12.5%

As stated herein, the purpose of § 3A "is to encourage the production of Multi-family housing by requiring MBTA communities to adopt zoning districts where Multi-family housing is allowed As of right." 760 Mass. Code Regs. § 72.01. Pursuant to 760 Mass. Code Regs. 72.04(1)(b), "§ 3A does not include any express requirement or authorization for an MBTA community to require Affordable units in a Multi-family housing project that is allowed As of right." The regulations set forth the following calculus for addressing affordability:

> 1. For purposes of making compliance determinations with M.G.L. c. 40A, § 3A, **EOHLC will consider an affordability requirement to be consistent with As of right zoning as long as the zoning requires not more than 10% of the units in a project to be Affordable units**, and the cap on the income of families or individuals who are

[23] The defendants to not substantively address this issue in their motions to dismiss. Instead, they state that Hamilton filed an amended complaint, and the excluded land argument is an "artifact[ ] of legal claims that had appeared in the plaintiffs' original complaint, but which have now been dropped in the plaintiffs' operative Amended Complaint."

eligible to occupy the Affordable units is not less than 80% of area median income. **Notwithstanding the foregoing, EOHLC may, in its discretion, approve a greater percentage of affordable units, or deeper affordability for some or all of the affordable units,** in either of the following circumstances:

a. The affordability requirements applicable in the Multi-family zoning district are reviewed and approved by EOHLC as part of a smart growth district under M.G.L. c. 40R, or under another zoning incentive program administered by EOHLC; or
b. The affordability requirements applicable in the Multi-family zoning district are supported by an economic feasibility analysis, prepared for the municipality by a qualified and independent third party acceptable to EOHLC, and using a methodology and format acceptable to EOHLC. The analysis must demonstrate that a reasonable variety of Multi-family housing types can be feasibly developed at the proposed affordability levels, taking into account the densities allowed As of right in the district, the dimensional requirements applicable within the district, and the minimum number of parking spaces required.

760 Mass. Code Regs. 72.04(1)(b) (emphasis added).

Thus, the regulations provide a 10% limitation on affordable units as a general rule. However, the regulations also explicitly confer EOHLC with discretion to approve a greater number of affordable units in appropriate circumstances. On this basis, § 3A does not conflict with other statutes and regulations that encourage affordable housing. Instead, it reflects the understanding that "[i]f affordability requirements are excessive . . . they can make it economically infeasible to construct new Multi-family housing." *Id.* As such, § 3A does not deter affordable housing, but instead considers its merits in the broader context of construction cost considerations.

Therefore, Wenham has not shown a likelihood of success on the merits of its affordability argument, and its motion for a preliminary injunction is therefore **DENIED** as to this argument.[24]

[24] The defendants to not substantively address this issue in their motions to dismiss.

ORDER

For the aforementioned reasons, the Municipalities' motions for a preliminary injunction are **DENIED** and the defendants' motions to dismiss are **ALLOWED**.

June 6, 2025

Mark C. Gildea
Justice of the Superior Court

JUDGMENT ON MOTION TO DISMISS

Trial Court of Massachusetts
The Superior Court

Robert S. Creedon, Jr., Clerk of Courts
Plymouth County

DOCKET NUMBER
2583CV00184

CASE NAME
Town of Marshfield et al
vs.
Commonwealth of Massachusetts et al

COURT NAME & ADDRESS
Plymouth County Superior Court - Plymouth
52 Obery Street - Suite 2041
Plymouth, MA 02360

JUDGMENT FOR THE FOLLOWING DEFENDANT(S)
Commonwealth of Massachusetts
Executive Office of Housing and Livable Communities

JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S)
Town of Marshfield
Fidler, Lynne
Darcy, Stephen
Kelley, Eric

This action came on before the Court, Hon. Mark Gildea, presiding, and upon review of the motion to dismiss pursuant to Mass. R.Civ.P. 12(b),

It is **ORDERED AND ADJUDGED:**

The complaint of the Plaintiffs, Town of Marshfield, Lynne Fidler, Stephen Darcy, and Eric Kelley, is hereby dismissed.

DATE JUDGMENT ENTERED	CLERK OF COURTS/ ASST. CLERK
06/09/2025	X

Date/Time Printed: 06-09-2025 11:35:10 SCV083\ 03/2016

RECEIVED

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT

TOWN OF MARSHFIELD and LYNNE FIDLER, STEPHEN DARCY and ERIC KELLEY as they constitute the TOWN OF MARSHFIELD SELECT BOARD,

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS AND EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,

Defendants.
Defendants

Docket No. 2583CV00184

CASE ASSIGNED TO HON. MARK C. GILDEA

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

JUL 1 2025

Clerk of Court

PLAINTIFFS, TOWN OF MARSHFIELD AND MARSHFIELD SELECT BOARD'S, NOTICE OF APPEAL

NOW COME the plaintiffs, the Town of Marshfield and Lynne Fidler, Stephen Darcy and Eric Kelley, as they constitute the Town of Marshfield Select Board (collectively the "Marshfield Parties"), by their counsel, and hereby gives notice of their appeal of the Court's Memorandum of Decision and Order and Judgment dated June 6, 2025.

Respectfully submitted,
Town of Marshfield and
by their Town Counsel,

Dated: July 1, 2025

/s/ Robert W. Galvin

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CERTIFICATE OF SERVICE

I, Robert W. Galvin, counsel for the Town of Marshfield, hereby certify that I served a copy of the foregoing document on counsel for the Commonwealth of Massachusetts counsel this 1st day of July 2025 by efiling and email. They are:

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/s/ Robert W. Galvin

Robert W. Galvin