

Building Community Resilience Through Local Regulations

Participant Guide to Massachusetts Bylaws & Best Practices



Module 3: The Power of a Bylaw, Part I

Roles and Responsibilities for Implementing Bylaws

Context

This document is part of a comprehensive curriculum program, *Building Climate Resilience Through Local Regulations*, developed by Mass Audubon in collaboration with other nonprofit organizations and federal, state and regional agencies. The curriculum contains 8 modules, each of which guides the user through different components of improving community resilience through local regulations that support green designs and nature-based climate solutions. Each module includes a participant guide (e.g., this document) and a PowerPoint presentation.

The full curriculum, supplemental resources and additional information on bylaw review and best practices are available through: [Massachusetts Rivers Alliance](#) and [Mass Audubon](#). The [SNEP Network's website](#) provides additional resources including an interactive virtual storymap and webinar recordings.

Acknowledgements

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The Southeast New England Program (SNEP) Network brings together local environmental organizations, academic institutions, regional planners, and consultants who collaborate to provide municipalities, tribes and organizations in Rhode Island and Southeast Massachusetts access to free training and technical assistance to advance stormwater management, ecological restoration, and sustainable financing goals across the region. The SNEP Network is administered through EPA's partnership with the New England Environmental Finance Center, a non-profit technical assistance provider for EPA Region 1. The SNEP Network supports this bylaw review curriculum as a key resource for communities to update their local regulations for improved nature-based climate solution implementation. Find out more about the SNEP Network at www.snepnetwork.org.

Introduction

Massachusetts (MA) is a “home rule” state, which means that municipal governing bodies have the power to set local land use policies according to community needs and priorities. Home rule only extends to those powers not reserved by the state or federal governments; i.e., state and federal laws still play a major role in local decision-making on environmental issues. This module examines local, state, and federal regulations that shape community land use, and demonstrates how municipalities can amend their regulations or adopt new ones to promote Low Impact Development (LID) and other nature-based solutions.

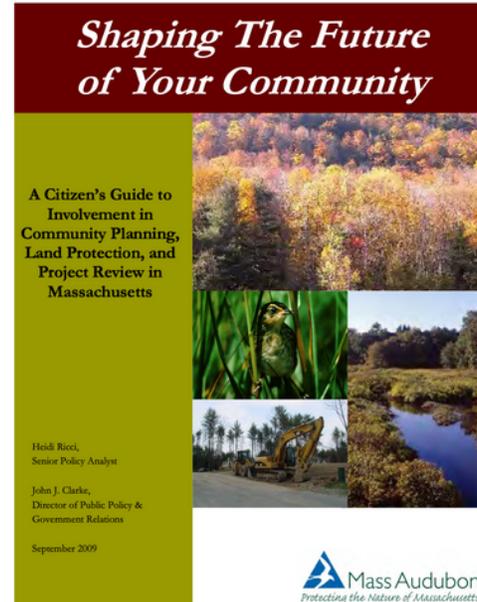
Objectives

After completing this module, participants will be able to answer the following questions:

- How do federal and state regulations impact municipal land use policy?
- How can communities better regulate land use and protect natural resources?
- How do communities amend or adopt bylaws and/or ordinances?

Federal Regulations

While municipalities in MA have strong control over local regulations, state and federal laws/policies still apply, and cannot be changed at the municipal level. Local entities can collaborate with federal or state agencies to fund and implement climate resilience strategies in the context of existing federal regulations.



Major Federal Agencies and Legislation

Mass Audubon's [Guidebook to Involvement in Community Planning](#) provides a succinct summary of the role federal agencies play in municipal projects:

“Federal laws generally regulate large, publicly funded activities but can apply to many midsize projects. Some federal agencies acquire land or provide technical and acquisition assistance to municipalities and nonprofit organizations to assist with land conservation or restoration.”¹

Table 1 on Page 4 summarizes the primary federal agencies that are involved in environmental regulation and stewardship. Table 2 describes some of the federal environmental laws these agencies administer, which intersect with municipal rules and regulations as well as local development projects.

Module 3: The Power of a Bylaw, Part I

Agency	Mission Statement	Role
US Army Corps of Engineers	"To deliver vital engineering solutions, in collaboration with our partners, to secure our Nation, energize our economy, and reduce disaster risk." ²	Administrates and provides support for natural disaster preparedness and mitigation. Collaborates on land stewardship; regulates construction, discharge, and other disturbances in navigable waterways.
US Fish and Wildlife Service (FWS)	"To work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people." ³	Enforces environmental laws to protect endangered species and preserve vital habitats, such as wetlands.
Environmental Protection Agency (EPA)	"To protect human health and the environment." ⁴	Enforces policies on public and environmental health; ensures clean air, land, and water; and reduces environmental risk.
National Oceanic and Atmospheric Administration (NOAA)	"To better understand our natural world and help protect its precious resources extends beyond national borders to monitor global weather and climate, and work with partners around the world." ⁵	Manages fisheries, monitors climate, and shapes and enforces environmental regulations.

Law	Administered By	Description
National Environmental Policy Act (NEPA)	EPA	Assures that all branches of government adequately consider the environment prior to conducting any major federal action that could significantly affect the environment. ⁶ NEPA requirements are invoked when an agency proposes a "major activity" under federal jurisdiction such as construction work on highways or in national parks. The required "Environmental Assessments" (EA) and "Environmental Impact Statements" (EIS) assess the potential environmental impacts of the proposed work.
Coastal Zone Management Act (CZMA)	NOAA, in partnership with state CZM offices	Manages the nation's coastal resources, with the goal to "preserve, protect, develop, and where possible, to restore or enhance the resources of the nation's coastal zone." ⁷ NOAA partners with coastal states (e.g., Massachusetts) to form state coastal zone management agencies and further the Act's goals. The MA coastal zone includes all land within a half-mile of coastal waters and salt marshes, and all islands.
Clean Water Act (CWA)	EPA, Army Corps of Engineers	Regulates water quality standards for surface waters and any discharge of pollutants into US waterways. ⁸ The Act applies to municipal stormwater systems and construction areas over one acre. The EPA sets wastewater standards for industry and creates water quality criteria for pollutants in surface waters.
Endangered Species Act (ESA)	US Fish & Wildlife Service, NOAA	Requires federal agencies (in consultation with FWS and/or NOAA) to ensure that their actions or programs do not jeopardize any threatened or endangered species or their habitats. ⁹

Module 3: The Power of a Bylaw, Part I



State Regulations

State agencies are more likely to be involved in local municipal projects than federal agencies. The most relevant state agencies for this module are described below.

Executive Office of Energy and Environmental Affairs (EEA)

The EEA works to protect the Commonwealth’s environmental resources by preserving open space and enhancing clean energy initiatives. Table 3 to the right describes the offices and departments of the EEA. Municipal compliance with state-level environmental regulations will likely involve contact with at least one of these departments. EEA is also responsible for administering several of Massachusetts’ primary environmental laws outlined below.

Offices	Departments
<ul style="list-style-type: none"> ● Coastal Zone Management (CZM) ● Division of Conservation Services (DCS) ● Massachusetts Environmental Policy Act (MEPA) ● Massachusetts Environmental Trust (MET) ● Massachusetts Geographic Information System (MassGIS) 	<ul style="list-style-type: none"> ● Department of Agricultural Resources (DAR) ● Department of Public Utilities (DPU) ● Department of Energy Resources (DOER) ● Department of Conservation and Recreation (DCR) ● Department of Environmental Protection (DEP) ● Department of Fish and Game (DFG)

Department of Housing and Community Development (DHCD)

DHCD is the state’s chief agency for both housing and community planning. Some of their programs directly promote LID practices in land use planning. For example, implementation of Chapter 40R Smart Growth Districts encourages

cluster development into smaller lots that disturb less natural area and maintain open space. DHCD also administers funding programs such as Low Income Housing Tax Credits that local projects can utilize.

Massachusetts Environmental Policy Act (MEPA)

MEPA is a state-level mirror of the National Environmental Policy Act administered by the EEA. The Act 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.”¹⁰

Municipal Separate Storm Sewer System (MS4) Permits

The MS4 Permit is a federal stormwater permit jointly issued by the EPA and the Massachusetts Department of Environmental Protection (MassDEP). “MS4 permits authorize public entities, such as cities, counties, transportation agencies, and military bases, to discharge pollutants from public stormwater systems to waters of the United States.” Stormwater standards for MS4 permits are discussed in greater detail in Module 4.¹¹





Massachusetts Wetlands Protection Act

The MA Wetlands Protection Act “protects wetlands and the public interests they serve, including flood control, prevention of pollution and storm damage, and protection of public and private water supplies, groundwater supply, fisheries, land containing shellfish, and wildlife habitat.”¹² In MA, wetlands include areas such as the 100-year floodplain and riverfronts, in addition to other areas that are not designated as wetlands federally. The Act is enforced through local Conservation Commissions charged with protecting these jurisdictional wetlands. These state wetlands regulations also include state stormwater management standards.

Municipal Regulations

This section describes major policy tools used by municipalities to regulate local land use and stormwater runoff in MA. The “Home Rule” principle, adopted by the state in 1966, grants municipalities all regulatory powers not expressly denied to them. This authority gives cities and towns wide-reaching powers to regulate land use within their borders. Municipalities adopt laws and regulations to codify their land use preferences. Towns in the state generally refer to their laws and regulations as “Bylaws” while Cities refer to them as “Ordinances.”

For more information, the [Citizen Planner Training Collaborative](#) provides a useful and in-depth

explanation of Massachusetts municipal land use regulations and practices. Subsequent modules 4 and 5 explain how you can leverage these various rules and regulations to advance the goals of Low Impact Development and enhance your community’s climate resilience.

Planning and Zoning Boards

Two major bodies govern land use for municipalities in Massachusetts: the Planning Board (PB) and the Zoning Board of Appeals (ZBA, or Zoning Board). The Conservation Commission and Board of Health often undertake project review and make recommendations; they also have direct authority over certain aspects of planning and zoning. Figure 1 below diagrams the main bodies and typical duties of municipal governments involved in land use decisions.

Cities and towns in MA organize their boards in a variety of ways. A municipality’s executive branch often appoints members to the ZBA while citizens elect members to the PB. Alternatively, in some communities both the Zoning and Planning Boards are created by appointment or by a combination of elections and appointments. The PB and ZBA may share Special Permit granting authority depending on the type of application, or this authority falls to either one Board or the other. A community’s bylaws or ordinances will clearly define which entities are responsible for administering and enforcing local land use decisions. It is important to be familiar with your own community’s practices. Figure 1 on the following page diagrams the basic structure of Massachusetts municipalities.

General Bylaws

As stated above, cities and towns have their own sets of laws that regulate all aspects of their governance authority under the Home Rule principle. These regulations cover a wide range of topics; the following section describes those most relevant to land use and the environment. Note: we use the term bylaw below, but your community may refer to them as either bylaws or ordinances.

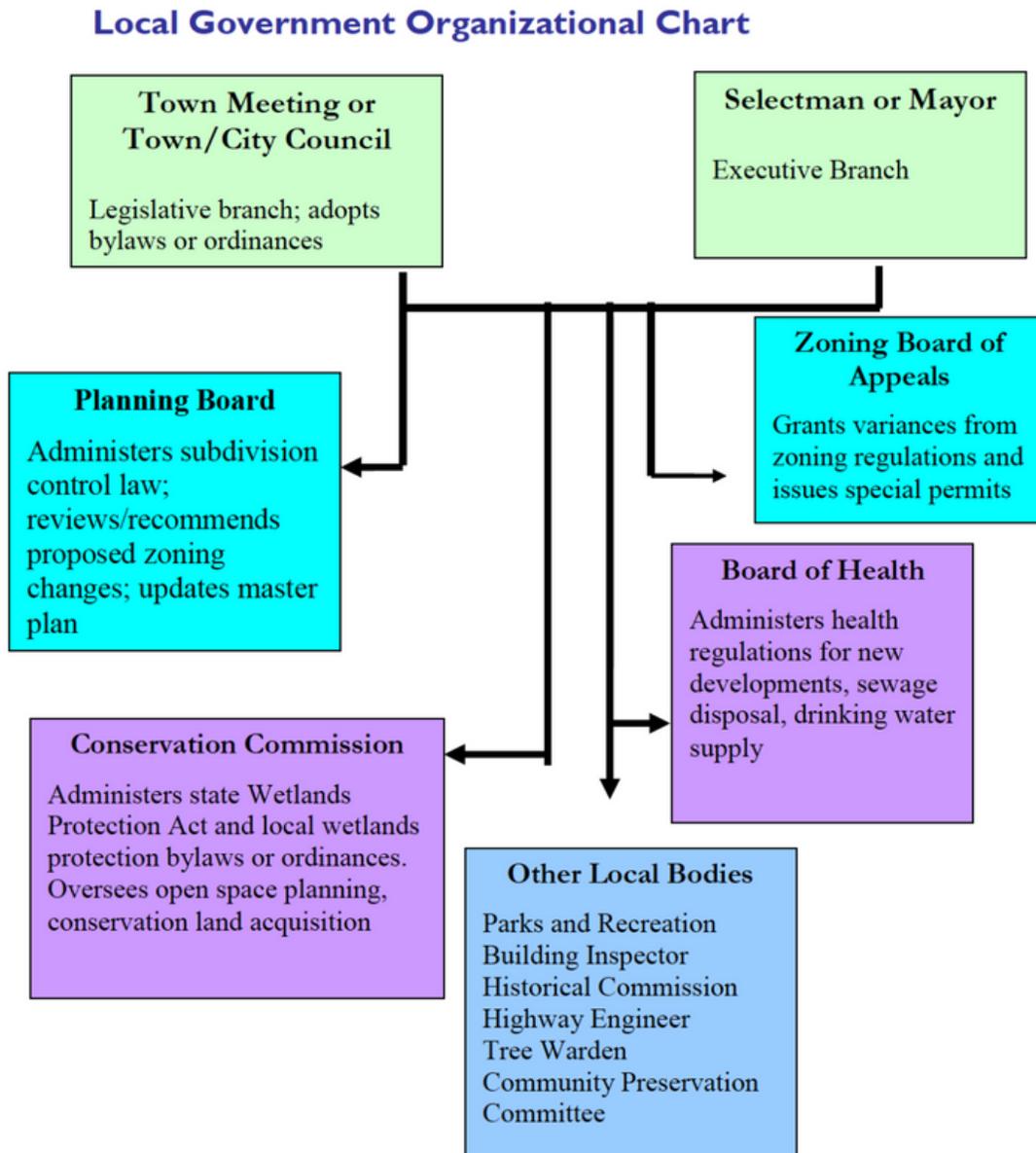


Figure 1. Diagram depicting how local governments in Massachusetts are generally organized. Source: “*Shaping the Future of Your Community: A Citizen’s Guide to Involvement in Community Planning, Land Protection, and Project Review in Massachusetts*,” Mass. Audubon.

Wetlands Bylaw

The Massachusetts Wetlands Protection Act (see above) is administered locally by the Conservation Commission, under state regulations issued by MassDEP. These regulations include the state’s stormwater management standards. State law also empowers municipalities to adopt a local wetlands bylaw in addition to and more stringent than state law.

Stormwater Bylaw

In many communities, a patchwork of local codes (including but not limited to the General Zoning Bylaw, the Subdivision Rules and Regulations, and the Board of Health regulations) may provide overlapping and sometimes conflicting regulation of stormwater discharges. The Conservation Commission’s jurisdiction over stormwater only applies to projects within their purview under the Wetlands Protection Act and local bylaw (if any).

Module 3: The Power of a Bylaw, Part I

Projects located entirely in uplands may not be subject to review, but can be regulated under other local regulations. The Commonwealth recommends that municipalities consolidate their stormwater regulations into a single stormwater bylaw. Stormwater bylaws designate a Stormwater Authority (usually the PB, Conservation Commission, Building Inspector, another municipal entity, or some combination thereof) and requires that all projects larger than a certain threshold obtain a stormwater permit from the designated Stormwater Authority.¹³

Stormwater bylaws include performance standards for new development and redevelopment projects. They can create exemptions for minor projects, typically based on size and activity (e.g., minor landscaping, fence installation, typical maintenance for a single-family residence, etc.), that pose limited stormwater consequences.¹⁴ The goal of stormwater bylaws is to reduce the impact of stormwater runoff from large projects, without overburdening parties performing regular activities.



There are many additional ways to incorporate LID principles into your community's general bylaws; crafting a standalone LID bylaw, for example, rather than spreading LID regulations across multiple separate documents. This and other techniques are further explained in Module

4. Other local land use regulations including zoning, Site plan review, and subdivision regulations also play a significant role in influencing whether, and to what degree, LID is incorporated into project design. Conventional zoning, for example, often requires large lots, frontage, and setbacks that lead to extensive land clearing and grading. Conservation subdivision or open space design zoning on the other hand retains more of the existing trees and other native vegetation on a site. Similarly, site plan review and subdivision regulations need to be aligned with LID best practices; e.g., minimizing impervious surfaces and supporting dispersed treatment of stormwater in rain gardens and bioswales rather than requiring closed drainage systems. The Bylaw Review Tool helps identify which provisions of all of these local rules align with or deviate from LID best practices. Using the tool, communities can prioritize updates to their local land use regulations to support LID and provide consistency across all of the applicable rules.

Consistency across local regulations is important. Adoption of a stormwater bylaw that encourages LID will be most effective if the zoning, Site plan review, and subdivision regulations also support use of LID designs.

Zoning Bylaws

A community's Zoning Bylaw (ZBL) is its primary tool for regulating land use within its jurisdiction. Zoning Bylaws are enabled by MA General Law Ch. 40A, known as the Zoning Act:

*"Every city and town in the Commonwealth has a zoning ordinance or bylaw. The statute allows municipalities great flexibility in land use regulation and is bounded only by consistency with the constitution and other statutes."*¹⁵

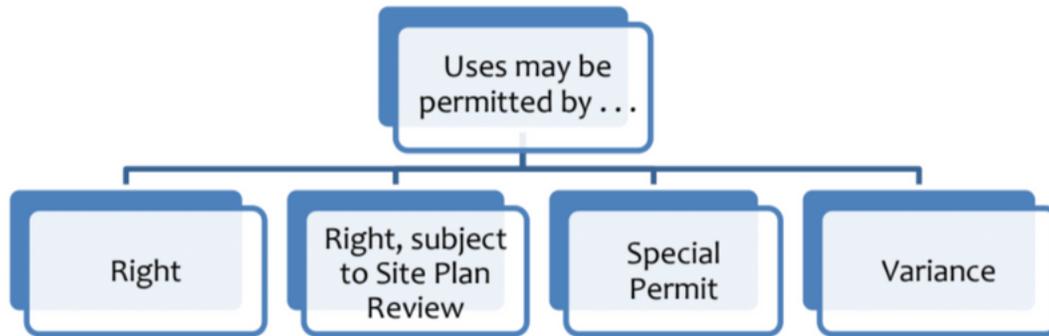


Figure 2. Diagram of communities' zoning permitting mechanisms. Source: [Citizen Planner Training Collaborative, Planning and Land Use Training Module 1](#).

Zoning can be complex, but at its core it regulates land use in two primary ways:

- **Built Form:** A ZBL dictates dimensional standards for all new and existing buildings, placing minimums and maximums on measurements such as the distance between buildings, the height of structures, and the percentage of a lot that may be impervious surface.
- **Allowable Uses:** A ZBL contains a list of allowable and prohibited uses within a specific zoning district. These districts, or zones, are typically categorized as Residential, Industrial, Commercial, or Mixed Use. A municipality can also identify other specialized zones, such as Redevelopment, Conservation, or Open Space. See Figure 2 below for the ways in which a ZBL may permit a particular use.

Zoning divides a municipality into multiple zoning districts, which have dimensional and use regulations that apply uniformly within the district. By drawing and regulating zoning districts, communities across the Commonwealth control how and where development may occur. In some ways, a ZBL is just another section of the General Bylaws. There are some legal distinctions, though, that arise when bylaws are amended. These differences are further explored in the next section, "Adopting and Amending Municipal Regulations."

By-Right

A "by-right" use is one that may be undertaken without special permission from any governing authority, as long as it complies with all local, state, and federal laws.

In general, by-right development is preferred in any particular district, as it provides the greatest retention of natural green infrastructure (trees and other native vegetation), minimizes land clearing and grading), and incorporates LID design. For example, Residential Zoning Districts should have Open Space or Natural Resource Protection design be the preferred by-right option. Conventional large-lot designs that sprawl across all upland available on the site should be allowed only by Special Permit.



Module 3: The Power of a Bylaw, Part I

Special Permit

Special permits are issued for uses that are normally not allowed, but may be permitted by the local governing board. The Board can stipulate specific conditions and limitations within the Special Permit, and deny or revoke the permit if those standards are not met.

Variance

The governing board (e.g., ZBA) can grant a variance to a project, which is a one-time permission to vary or reduce a specific provision of a local zoning bylaw. To receive a variance, the applicant must demonstrate that the proposed project meets specific standards despite not complying with the zoning code, and that compliance with the code would inflict undue hardship on the applicant.

Site Plan Review

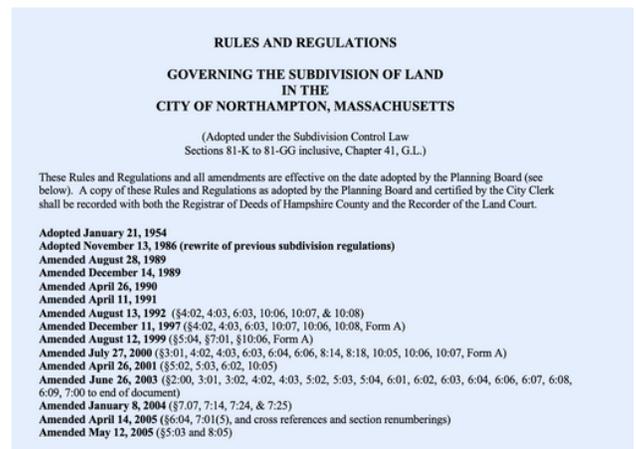
Site plan review (SPR) is a process – generally outlined in the Zoning Bylaw and often accompanying Rules and Regulations—through which a board (usually the PB) reviews proposed development projects to ensure that the municipality’s environmental, dimensional, and use requirements are met. (Note: “Site plan review is primarily a technical review; it is not a process for reviewing and approving or disapproving a proposed land use.”)¹⁶ SPR, however, can be a useful tool for municipalities that have concerns about a project’s potential impacts, but do not wish to prohibit a specific use outright. During SPR, the municipality can influence the layout, appearance, safety, and environmental impacts of the project while reassuring developers that the project will still be approved. Proposed projects may trigger SPR depending on:

- Size (e.g., any use large enough to require more than a certain number of parking spaces), or
- Use category (e.g., any multifamily housing development).

SPR should be targeted towards projects that would benefit from extra consideration and community input.

The Zoning Act (Chapter 40A) does not specifically mention site plan review, but because MA is a Home Rule state, the SPR process has been upheld in court as a reasonable way to regulate proposed developments. Despite some outstanding legal questions (due to its ad-hoc origins), SPR is an effective and well-established tool in municipalities’ regulatory authority.

Subdivision Rules and Regulations



The term “subdivision” is often associated with a post-World War II pattern of suburban residential development with a series of free-standing single-family dwellings, each on its own lot, located on a road built solely to serve those dwellings. Yet “Subdivision” is defined under MA General Law as “the division of a tract of land into two or more lots” for any purpose. In practice, defining a subdivision is slightly more complicated. A development is *not* considered a subdivision if all of the new lots will have the necessary frontage on an appropriate, existing road. For a project to fall under the Subdivision Control Law, it must necessitate the construction of a *new road* that provides frontage to *new lots*.

Subdivision Rules and Regulations are not part of a municipality’s general Zoning Bylaw; the Planning Board adopts them separately.

Module 3: The Power of a Bylaw, Part I

The purpose of the Subdivision Control Law is to regulate:

*“the laying out and construction of [road]ways in subdivisions providing access to the several lots therein... and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas.”*¹⁷

*“The rules and regulations must specify the requirements for the location, construction, width, and grades of proposed [road]ways and the installation of municipal services.”*¹⁸

The PB determines through public hearings whether a proposed subdivision meets these goals according to the municipality’s own rules and regulations. If it does, and with the board of Health’s recommendations, the Planning Board is required to approve the subdivision plan.

SPR and subdivision rules should be aligned with Best practices for LID, including retention of natural green infrastructure, minimizing impervious surfaces, and dispersed treatment of stormwater runoff through green infrastructure features, such as rain gardens and infiltration areas. Many communities have adopted LID in a stand alone stormwater bylaw without also updating their zoning, SPR and subdivision rules, which makes it difficult to actually achieve LID in project design and permitting. The Bylaw Review Tool helps communities identify and prioritize addressing these inconsistencies.

These regulations can also be updated by the Planning Board without the need for approval by Town Meeting or City Council (see following sections). Therefore, it often makes sense to prioritize updating of regulations first, before tackling more difficult Zoning amendments.

Other Rules and Regulations

Local Conservation Commissions or Boards of Health have more specific and limited jurisdiction on land use decisions, although they are both typically called upon to provide recommendations to land use boards, as well as to handle their own approvals related to stormwater runoff. Like Planning Boards, LCCs and BOHs have their own rules and regulations (which they adopt as a board) to set guidelines and administrative procedures. Conservation Commissions regulate work in or in proximity to wetlands, and review stormwater systems for compliance with state standards (and sometimes local stormwater rules). Boards of Health also approve septic systems and water supply wells.

The process for amending or adopting new health regulations is easier than the process for amending zoning Bylaws. Changes to zoning Bylaws generally require at least two-third approval, and are subject to an extensive public hearing process; Boards of Health can adopt new regulations without public input. For a health regulation to be struck down, it must be found to be “unreasonable,” a difficult to meet standard that potentially grants boards of health extensive influence on local development conditions and criteria.

Adopting and Amending Municipal Regulations

General Bylaws

The process to amend a general bylaw differs depending on the municipality’s governance structure. (Note: The process may be different in cities for ordinances) In a Town Meeting scenario, the Select Board must compile a warrant consisting of individual articles for the town’s voters to consider. Articles may be proposed by municipal entities (e.g., Finance Committee recommending a budget proposal), or directly by citizens after submitting a voter petition

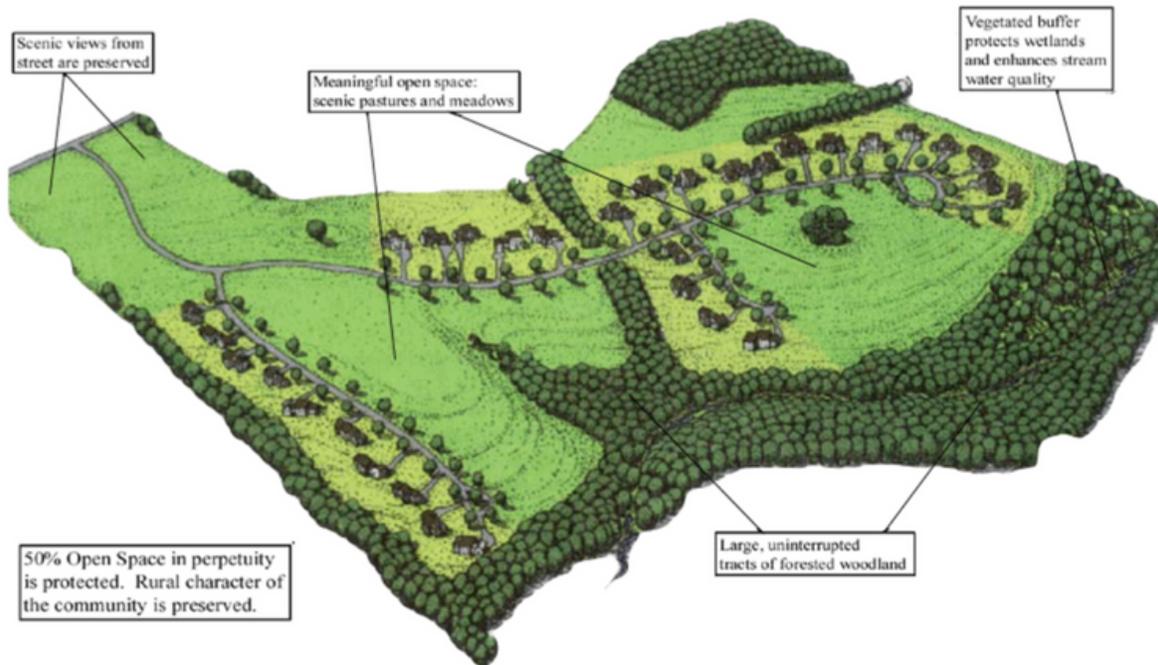


Figure 2. Illustration of conservation site development. *Source: Rhode Island Department of Environmental Management, Rhode Island Conservation Development Manual (2003).*

(with ten signatures for a regular Town Meeting, or 100 for a Special Town Meeting). This method of amendment only requires a simple majority vote to approve. Once passed locally, the amendment is submitted to the Massachusetts Attorney General for final approval. This step is merely pro forma, to confirm the legality of the new bylaw.

Zoning Bylaws

Changing a zoning Bylaw is slightly more complicated than a general bylaw. Proposed changes may be submitted by any of the following entities:

- City Council or Select Board;
- Board of Appeals;
- Planning Board;
- Individuals owning land to be affected by the zoning; and/or
- Ten registered voters (or 100 for a Special Town Meeting).¹⁹

Once submitted, proposed amendments are referred to the PB or city council (depending on the municipality's governance structure). The PB/City Council then considers the proposal through public hearings. The date, time, place, and subject matter of the public hearing must be advertised no less than 14 days prior to the hearing. Following the hearing, the PB or Council provides a set of recommendations to the legislative body (which differs depending on the local governance structure) regarding the proposed amendments.

The proposed amendments are then presented for vote at Town Meeting (or Special Town Meeting). The amendment must pass by a "super majority," two thirds vote in favor, unless otherwise specified (see below). Therefore, a zoning amendment must have very strong community support in order to pass. In certain circumstances (such as when a council has fewer than twenty-five members or when owners of at least 20% of the impacted property submit letters of protest), amendments must be approved by at least three quarters vote in favor. Once the amendment passes, it

Module 3: The Power of a Bylaw, Part I

must be submitted to the Attorney General for final approval. If a proposed zoning code amendment does not pass, it cannot be reconsidered by the municipality for two years, unless it is recommended for adoption by the Planning Board.²⁰

Legislation passed in 2020 that reduces the voting threshold to pass certain zoning provisions from a super majority to a simple majority vote. These provisions are:

- Allowing open space residential development (preserving open space) “by-right;”
- Reducing parking requirements for residential or mixed-use development under Special Permit; and
- Transferring development rights or natural resource protection zoning to concentrate development in non-environmentally sensitive areas.²¹

All three of these provisions are supportive of LID principles.

Rules and Regulations

Unlike bylaw and zoning amendments, altering the subdivision or SPR rules and regulations requires only majority vote approval by the PB, so long as the PB holds a public hearing prior to adopting or amending their subdivision rules and regulations. The Subdivision Control Law grants Planning Boards significant autonomy to determine

subdivision standards, including “the location, construction, width, and grades of proposed [road]ways and the installation of municipal services.”²² Similarly, other boards (e.g., Board of Health, Conservation Commission, etc.) amend their own rules and regulations in the same way.

Conclusion

This module provided an overview of the major federal and state agencies that impact local land use and stormwater decision making, and highlighted the major programs, laws and regulations these agencies administer. The module described the various tools available for municipalities to regulate land use and environmental protections, as well as the boards and committees responsible for doing so. Finally, Module 3 outlined the procedures and responsible parties for adopting and amending local regulations. You should now be more equipped to engage your municipal government in environmental regulations. This also provides a foundation for using the Bylaw Review Tool. Module 4 will address how LID shapes a community’s land use patterns and identifies where nature-based solutions like LID can be encouraged in local bylaws and regulations.



End Notes

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