

**Interagency Letter of Understanding
Regarding Consistency in Implementation of 2000 Amendments to PA MPC**

I. Background

Section 619.2 of the Pennsylvania Municipalities Planning Code (Act of July 31, 1968, P.L. 805, No. 247, as reenacted and amended) (PA MPC), 53 P.S. § 10619.2, among other things requires that Commonwealth agencies “shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities.” Many agencies have put in place policies and procedures implementing this requirement.

In practice, there have been differences among agencies in how this requirement is applied. As a result of suggestions from the county planning community, the Interagency Land Use Team formed a subcommittee to study the current practices among agencies in relation to county and local government planning and regulation, and devise a more consistent approach to applying the PA MPC across the Commonwealth agencies party to this Letter of Understanding. The result of that exercise is this Letter.

II. Concurrence

The following agencies shall establish policies and procedures to implement the PA MPC in accordance with this Letter: Department of Community and Economic Development, Department of Agriculture, Pennsylvania Historic and Museum Commission.

The following agencies shall revise existing policies and procedures that implement the PA MPC to reflect the provisions of this Letter: Department of Environmental Protection, Department of Conservation and Natural Resources, Department of Transportation, Pennsylvania Infrastructure Investment Authority, Public Utility Commission, Pennsylvania Emergency Management Agency, Department of Education.

These agencies shall take reasonable measures to accomplish the above no later than July 1, 2005.

The Consistency Review Subcommittee of the Interagency Land Use Team shall reconvene no later than July 1, 2005, and at least annually thereafter, to review progress towards implementation of this Letter, assess the effectiveness of agency policies established hereunder, and evaluate the need for adjustments. Each agency noted above agrees to provide a copy of any proposed policies or policy revisions developed under this Letter to all other signatory agencies.

III. Components

In order to achieve consistency among Commonwealth agencies in the application and treatment of the PA MPC policies and procedures, all parties shall implement the following:

A. Affected Actions

Each agency shall clearly identify all programs that include an application for the funding or permitting of infrastructure or facilities.

The PA MPC does not define the terms facilities or infrastructure. To achieve the goals of this Letter, it is important for all Commonwealth agencies to use a common definition of these terms. For purposes of this Letter, facilities and infrastructure are defined as follows:

“Facilities and Infrastructure” includes buildings, and permanent structures for transportation, sewer and water, schools, parks and recreation, electric and gas delivery systems and telecommunications networks.

B. Scope of Agency Authority to Act Under PA MPC

All state agency policies and procedures should reflect that obligations and authority under the PA MPC (Sections 1105 and 619.2) occur only when one of the following conditions are met:

- 1) When there is a county comprehensive plan, a municipal comprehensive plan, a county or municipal zoning ordinance, and they are all generally consistent.
- 2) When there is a joint zoning ordinance based on a joint municipal comprehensive plan.
- 3) Where municipalities have adopted a county plan or a multi-municipal plan is adopted under Article XI of the PA MPC and the participating municipalities have conformed their local plans and ordinances to the county or multi-municipal plan by implementing cooperative agreements and adopting resolutions and ordinances according to Section 1105.

C. Obtaining information about Planning and Zoning

All state agencies shall obtain initial information from an applicant concerning comprehensive planning and zoning ordinances through both of the following:

1) Require the applicant to answer questions regarding comprehensive planning and zoning ordinances to determine the applicability of the PA MPC. At a minimum, the questions shall include the following:

Is there an adopted municipal comprehensive plan?

Is there an adopted county comprehensive plan?

Is there an adopted multi-municipal or multi-county comprehensive plan?

Is there an adopted county or municipal zoning ordinance or a joint municipal zoning ordinance?

Is the proposed project consistent with these comprehensive plans and/or zoning ordinances?

2) If the relevant PA MPC provisions are applicable, require the applicant to provide a letter or equivalent written certification from the municipality and the county planning agency that the application is consistent with the applicable comprehensive plans and zoning ordinance. Also see Section F below.

D. Local Government Notification

Each state agency shall ensure that the municipality and the county planning agency are notified of any applications received by the agency for the funding or permitting of infrastructure or facilities. Agencies may also notify other parties as appropriate. Either the agency or the applicant, at the discretion of the agency, may complete any notification under this section.

E. Determining General Consistency Among County and Local Comprehensive Plans and Zoning Ordinances

State agencies shall not make determinations regarding general consistency. It will be assumed that the County comprehensive plan, the municipal comprehensive plan and the zoning ordinances referenced in an application all are generally consistent. State agencies must include provisions in their policies and procedures allowing an applicant or government entity to challenge this assumption. If there is a challenge to the general consistency among county and municipal comprehensive plans and zoning ordinances, agencies shall request a determination on this issue from either 1) the relevant county and municipal governments or planning agencies or 2) the entity designated by the county and local municipality to make a general consistency determination. If the relevant county or municipal governments or planning entities do not reply in writing within the timeframe requested by the Agency, the Agency shall assume the County comprehensive plan, the municipal comprehensive plan and the zoning ordinances are not generally consistent and the provisions of Section 619.2 and 1105 of the PA MPC shall not be applicable.

F. Determining Consistency Between a Proposed Project and County and Local Planning and Zoning

When MPC Sections 619.2 and/or 1105 are applicable, and the applicant has not complied with the requirements in Section C.2 of the Letter, state agencies may make determinations regarding project consistency with the applicable comprehensive plans and zoning ordinances. In such cases, state agencies shall request the municipal and county governments or planning agencies to provide an analysis regarding the consistency of the project with the applicable comprehensive plans and zoning ordinances. State Agencies may rely upon such analysis to determine project consistency with the applicable comprehensive plans and zoning ordinances. The state agency shall provide the county and municipal government the information submitted to the Agency by the applicant relating to the consistency of the project and the applicable comprehensive plans and zoning ordinances. If the relevant county or municipal governments or planning agencies do not reply in writing within the time frame requested by the state agency, the state agency shall assume the project is consistent with the applicable comprehensive plans and zoning ordinances. State agencies must include provisions in their policies and procedures allowing an applicant or government entity to challenge this analysis.

G. Agency Review

A state agency shall review all related PA MPC information according to the policies and procedures established by that agency. The agency will confirm its authority under PA MPC, establish whether or not the municipality, county or planning agency has provided sufficient information to determine consistency or potential inconsistency between the proposed project and the applicable comprehensive plans and zoning ordinances.

Agency review of permit applications where MPC provisions are applicable, shall consider the consistency of the proposed project with applicable comprehensive plans and zoning ordinances. If an agency decides to use its discretion to rely upon this information for a decision, the agency may rely upon the zoning ordinance and, to the extent possible, the comprehensive plans.

In establishing a process for evaluating competitive funding, an agency must use priority ranking or scoring to evaluate the request, to ensure that, with all things being equal, they are giving priority consideration to projects that are consistent with a county or multi-municipal plan.

An agency is not required to determine the validity of a potential inconsistency between a project and comprehensive planning and zoning ordinances that has been identified, nor is it expected to determine the validity of a comprehensive plan or zoning ordinance.

H. Agency Actions

State agency policies and procedures regarding applications subject to MPC Sections 619.2 and/or 1105 shall consider the following outcomes:

For all funding requests:

- Approve an application
- Deny an application
- Approve an application, placing conditions on the approval

For competitive funding requests:

- In addition to the above, an agency may also:
 - Approve or deny a request, in whole or in part, based on a ranking or scoring system that, all things being equal, gives priority consideration to applications that are consistent with a county or multi-municipal plan.

For permit/approval applications:

- Approve an application
- Deny an application
- Approve an application, placing conditions on the approval

Agencies may also include the following outcome at the agency's discretion:

- Suspend the review of an application or funding request pending resolution, where suspension is a valid option under applicable law.

I. Notification Requirements

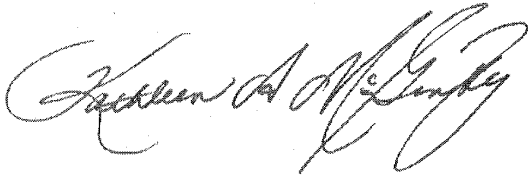
If a conflict has been identified between the project and applicable plans and zoning ordinance, state agencies may notify the following of the outcome of the review:

- Appropriate internal staff
- Applicant
- Municipality
- County Planning Agency
- Interagency Land Use Team

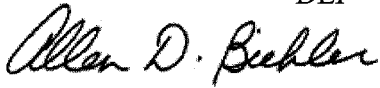
IV. General:

1. This Letter is not intended to and does not create any contractual rights or obligations with respect to the signatory agencies or any other parties.
2. Any disputes related to the implementation of this Letter shall be considered by the Interagency Land Use Team (ILUT) for resolution. If the ILUT is unable to resolve the disputes, the ILUT shall submit the disputes to the Office of General Counsel for final resolution. This provision is not meant to address any particular application to an agency, but to provide a forum for discussing issues that may arise during implementation.

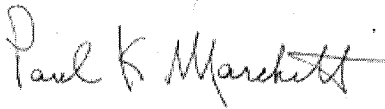
Signed:



DEP



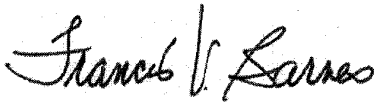
DOT



PennVest



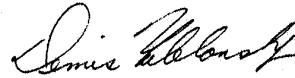
Agriculture



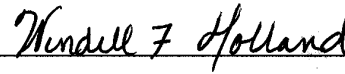
Education



DCNR



DCED



PUC



PHMC



PEMA