

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE**

TITLE: Policy for Consideration of Comprehensive Plans and Zoning Ordinances in DEP Review of Grants and Funding for Facilities and Infrastructure.

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ANTICIPATED EFFECTIVE DATE: August 28, 2004

AUTHORITY: The Municipalities Planning Code, 53 P.S. §10101 *et seq.*, as amended by Acts 67 and 68 of 2000.

POLICY: The Department of Environmental Protection (DEP) will promote sound land use planning and development by considering comprehensive plans and generally consistent zoning ordinances in DEP's decision making process for grants and funding decisions related to facilities and infrastructure.

PURPOSE: The purpose of this guidance is to provide direction to DEP staff for the implementation of Acts 67 and 68 of 2000 in the administration of current DEP grants and funding decisions to avoid or minimize conflicts with local land use decisions. This guidance addresses how DEP will consider comprehensive plans and generally consistent zoning ordinances when reviewing grant applications for facilities or infrastructure development.

APPLICABILITY: DEP staff will apply this policy when evaluating grants and/or funding requests for the development of facilities or infrastructure. This policy applies to grant and/or funding requests from any public or private entity.

This policy applies only to applications for proposed projects in counties and local municipalities covered under the Municipal Planning Code (MPC). The MPC does not apply to first and second-class cities (Philadelphia and Pittsburgh) or first class counties (Philadelphia).

DEP has the authority to rely on comprehensive plans and zoning ordinances when evaluating grant or funding applications for facilities or infrastructure projects in municipalities that fit into one or more of the following three categories:

- 1) Under § 619.2(a) of the MPC:
 - a. The municipality is located in a county where there is a county comprehensive plan; and
 - b. The municipality has adopted a comprehensive plan or is part of a multi-municipal comprehensive plan; and
 - c. The county or municipality has enacted zoning ordinances; and

- d. The municipal zoning ordinance, the municipal comprehensive plan and county comprehensive plan are generally consistent as defined by §107 of the MPC.
- 2) Under § 619.2(c) of the MPC: The municipality has adopted a joint zoning ordinance.
- 3) Under §1105 of the MPC: The municipality has entered into an implementing cooperative agreement and adopted zoning ordinances as described in §§ 1104 and 1105 of the MPC.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policy and procedures herein are not adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference.

PAGE LENGTH: 12

LOCATION: volume 1, Tab 5C

I. INTRODUCTION & POLICY OBJECTIVES

Acts 67 and 68 of 2000 amended the Municipalities Planning Code (MPC) to provide new tools for local governments to plan for and manage growth. The MPC grants municipalities that choose to plan and zone considerable authority in developing local land use controls. Sections 1105 of Act 67 and 619.2 of Act 68 direct that state agencies "...shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing *applications for the funding and permitting of infrastructure or facilities*" (emphasis supplied). Acts 67 and 68 give DEP the authority to make permitting and funding decisions based on consistency with local land use plans and implementing regulations for certain municipalities. For purposes of this policy, Acts 67 and 68 have two broad purposes. The first is to encourage municipalities to adopt and implement land use plans and ordinances that meet one of three criteria in those statutes. These criteria are intended to encourage comprehensive and coordinated land use planning and zoning. Acts 67 and 68 are applicable only to such municipalities. The second purpose is to discourage the awarding of financial assistance from DEP for infrastructure or facilities development if the proposed project is inconsistent with comprehensive and coordinated local land use plans and implementing laws.

Thus, under this policy, if the proposed project would be in a municipality that meets at least one of the three MPC criteria, the application will receive higher priority or increased ranking in the scoring of their grant proposals. Lower priority or ranking will be provided to grant proposals for projects in areas that do not have land use plans and ordinances that meet at least one of these three criteria. In addition, DEP may deny funding or condition grants to projects originating from areas of the state that meet at

least one of these three criteria, but which are not consistent with comprehensive plans and appropriate implementing ordinances.

This policy is a companion document to the *Applications for Technical or Financial Assistance Proposals Consistent with Multi-Municipal Planning Under Acts 67 & 68*. The goal of this policy is to encourage multi-municipal planning by giving priority in the ranking or scoring of those applications coming from areas of the state that have undertaken planning on a regional basis.. The operation of both of these policies should ensure that the Department promotes local and regional comprehensive land use planning through the funding decisions it makes.

The goal of comprehensive land use planning is to provide for a variety of public needs, including protection of natural and historic resources, housing, transportation, utility infrastructure, agricultural and rural uses, in a coordinated and integrated way. Proper planning for future growth and development is essential for those regions, counties and municipalities choosing to manage and direct growth within their borders. DEP is encouraging comprehensive planning through the grant funding process by highlighting sound land use policy; by encouraging the development and use of environmental inventories; and by encouraging local governments to seek consistency among their land use plans and implementing ordinances. Both the Department and local governments need to take an active role in directing growth throughout the Commonwealth in a manner that serves the economy, the community, and the environment.

II. DEFINITIONS:

“Comprehensive plans and zoning ordinances” are county, municipal or multi-municipal comprehensive plans adopted under the MPC and zoning ordinances adopted under the MPC.

“Consistency” is an agreement or correspondence between matters being compared which denotes a reasonable, rational, similar connection or relationship.

“De Minimis Proposals” are applications for the development of facilities or infrastructure that are minor in scope; they involve a modification of an existing facility or infrastructure project that does not change the basic nature of the facility or infrastructure and that does not alter the associated land use impacts. For example, a grant to hold a public meeting to determine whether there is support for the creation of a greenway or park, the planting of trees in a park to replace an expanse of grass, or construction of a source separated drop off box at a municipally owned property would be considered a de minimis proposal qualifying for the early-opt provisions in this policy.

“Facilities” are buildings and other structures that involve new land development, or result in a change to existing use of land.

“Infrastructure” is permanent structures for transportation, sewer and water facilities, schools, parks, greenways and open space, electric and gas delivery systems, stormwater facilities and telecommunications networks.

III. APPLICATION PROCESS

A. APPLICABILITY OF THIS POLICY

This policy applies if all three of the following apply:

1. The proposal is for facilities or infrastructure (Section 1).
2. The proposals are contained in applications filed under grant programs identified under Section 2.
3. The facilities or infrastructure would be constructed or installed in a municipality that meets the requirements of Section 3.

This policy does not apply to current grant rounds or grant applications currently under review by DEP. The policies and procedures outlined herein will apply after final publication of this policy in the *Pennsylvania Bulletin* to the next grant round as established by each of the affected grant programs

1: Facilities or Infrastructure. This policy applies to the DEP decision making process for grants and funding requests related to developing facilities and infrastructure within the Commonwealth. “Facilities” are buildings or other structures that involve new land development or result in changes to the existing uses of land. “Infrastructure” is permanent structures constructed for transportation, sewer and water facilities and delivery systems, schools, parks, greenways, and open space, electric and gas delivery systems and telecommunications networks.

2: Grant Programs. The application must be for funding for facilities or infrastructure under one of the following grant programs:

- a. **Environmental Stewardship Fund:** This is the “Growing Greener” grant program authorized by the Watershed Protection Act. The program funds watershed restoration and protection activities. The types of activities that make this program subject to the land use review requirement would involve the installation of non-point source management techniques that would fall under the definition of a “facility”. Examples include storm water detention basins, routine stream restoration projects, construction of passive treatment systems, and construction of wetlands, but not educational and outreach programs. The Growing Greener Program also provides grants for sewer and water infrastructure that would fall under this policy. These grants fund the design and construction of new and innovative sewer and water technologies.

- b. **Act 198 Resource Recovery Development Fund:** Provides grants to municipalities and the private sector to establish new and innovative resource recovery projects. This could include the construction of a permanent facility.
- c. **Act 101 Recycling Fund:** As part of § 902 Municipal Recycling Facility Grants, municipalities can apply for funding to construct recycling facilities such as collection, transfer stations, materials processing centers and composting facilities.
- d. **Coastal Zone Management Grant:** This program can provide funding for the design and construction of coastal zone management practices that would fall under the definition of a “facility”. An example might be the construction of a bluff retention system to control erosion.
- e. **Chesapeake Bay Financial Assistance Funding Program:** This program can provide funding to landowners for the construction of facilities designed to address agricultural runoff and non-point source pollution. An example would be an agricultural waste storage facility.
- f. **Future Grant Programs Administered by DEP for the funding of infrastructure or facilities.** If in the future, DEP initiates an additional grant program if regulations for an existing program are changed to allow for the application of this policy, that demonstrates a relationship to this policy, the policies and procedures outlined herein will apply.

3: Applicable Municipalities. DEP’s authority to rely on comprehensive plan and zoning ordinance information in its grant decision making only applies to those projects located in areas of the state that meet the conditions described in any of the following three categories:

- 1) Under § 619.2 (a) of the MPC:
 - a) The municipality is located in a county where there is a county comprehensive plan; and
 - b) The municipality has a comprehensive plan or is a part of a multi-municipal comprehensive plan; and
 - c) The county or municipality has enacted zoning ordinances; and
 - d) The municipal zoning ordinances, the local municipal comprehensive plan and the county comprehensive plan are

generally consistent with each other as defined in § 107 of the MPC.

or

2) Under § 619.2 (c) of the MPC:

The municipality has adopted a joint ordinance.

or

3) Under § 1105 of the MPC:

The municipality has entered into an implementing cooperative agreement and adopted zoning ordinances as described in §§ 1104 and 1105 of the MPC.

Applications meeting these three requirements will be evaluated for consistency of the proposed project with the comprehensive plan and zoning ordinances.

B. LAND USE PLANNING FORM (LPF)

Applications submitted under one of the affected grant programs submitted on or after the effective date of this policy will be evaluated for their consistency with comprehensive plans and zoning ordinances. Grant applicants will be asked to complete the Land Use Planning Form (LPF) contained in Appendix A. The questions in this form correspond to the issues described in Section A above.

IV. DEPARTMENTAL REVIEW

Acts 67 and 68 provide DEP with the authority to rely upon comprehensive plans and zoning ordinances when reviewing applications for funding infrastructure and facilities development projects. Acts 67 and 68 do not define what the term “rely upon” means, and therefore DEP has discretion in applying this language. When reviewing grant applications for facilities or infrastructure projects, the Department will rely on an applicant’s completed LPF or on any approval letters submitted with a completed application.

DEP will follow a two-step review process when evaluating grant applications for facilities and infrastructure funding. First, DEP will analyze the grant application to ensure that the applicant has complied with all of the required application procedures applicable to the grant sought, submitted the appropriate supporting documentation with their applications. Second, DEP will consider the land use information received as part of the application when reviewing or ranking grant applications. Applications originating from areas of the state meeting the MPC criteria, and demonstrating consistency between the proposed project and local comprehensive plans and implementing ordinances, will receive priority in the ranking or scoring of their applications. Lower priority or ranking

will be provided to grant proposals for projects in areas that do not have land use plans and ordinances that meet at least one of the three MPC criteria.

DEP may exercise one of several choices for applications originating from areas that do meet one of the three MPC criteria, but where there is a conflict between local plans and ordinances and the project. Those applications may be denied funding, a special condition may be imposed on their grant, or DEP may also approve the grant application regardless of whether a conflict exists. In making this decision, DEP may evaluate the extent to which a project would provide a public health or environmental benefit, and whether the project will comply with other applicable environmental laws and regulations.

V. EARLY OPT-OUT OPTIONS COUNTY AND/ OR MUNICIPAL NOTICE

Applicants have the option of submitting with their completed application package approval letters signed by the elected officials of the municipal governing body and county or by planning agencies specifically designated by an action of the elected officials. The letters should describe the proposed project and explain why the project is consistent with local comprehensive plans and zoning ordinances. If these letters are obtained and submitted by an applicant with its grant application package, then the applicant does not need to submit a completed LPF¹. If the proposed project will be located in or will benefit more than one municipality or county, such approval letters must be submitted from each municipal and county governing body involved. Private entities submitting a grant application to the Department subject to this policy are required to provide written notification of the application for a grant to the county and municipality if not otherwise required by the grant application.

DE MINIMIS PROJECTS

Applicants submitting applications for facilities or infrastructure grants that are “de minimis” in nature are not required to complete either the LPF or provide the Department with county or municipal approval letters. “De minimis” projects are facilities or infrastructure projects that are minor in scope. For example, a grant to hold a public meeting to determine whether there is support for the creation of a greenway or park or the planting of trees in a park to replace an expanse of grass would be considered a de minimis proposal qualifying for the early-opt provisions in this policy. Applicants must be aware that inaccurate or incomplete information regarding a “de minimis” project will result in a lower score in the ranking of their completed application.

VI. CONCLUSION

The goal of comprehensive land use planning is to provide for a whole variety of the public’s needs, including protection of natural and historic resources, housing, transportation, utility infrastructure, agricultural and rural uses, in a coordinated and

¹ Applicants are encouraged to complete the LPF even if it is not a required part of an applicant’s submission. Completion of this form should help applicants as they manage growth throughout their communities.

integrated way. The structure of the MPC allows the Department to rely upon county and municipal plans in grants and funding decisions if participating municipalities adopt and implement ordinances that are generally consistent with the associated comprehensive plan. The objectives of this policy are to ensure that the Department, in making its grant decisions for facilities or infrastructure planning or projects, strives to encourage local and regional comprehensive land use planning and insist on the consistent application of local development choices with the proposed project.

APPENDIX A

LAND USE PLANNING FORM (LPF)

Directions. This form is to be used by applicants submitting grant applications under with the Policy for Consideration of Comprehensive Plans & Zoning Ordinances in DEP Review of Grants and Funding for Facilities or Infrastructure and meeting the requirements of either the §§ 619.2 and 1105 MPC. Please answer the appropriate questions relating to the policy that applies to your grant application on the form provided. If you need additional space, please attach additional page(s) as necessary, identifying the applicant and the question being answered.

MPC Criteria:

DEP has the authority to rely on comprehensive plans and zoning ordinances when evaluating grant or funding applications for projects located in areas of the state meeting the conditions described in any of the following three categories:

1. Are you applying for one of the affected grant programs listed in this policy? Please indicate the grant program applied for in the space provided.

YES: _____ NO: _____

GRANT PROGRAM: _____

If YES, please proceed to question 2.

If NO, this policy does not apply to your application.

2. Under § 619.2(a) of the MPC:

(a) Is the municipality where the proposed project will be located in a county where there is a county comprehensive plan?

YES: _____ NO: _____

(b) Has the municipality where the proposed project will be located adopted a comprehensive plan or is it part of a multi-municipal comprehensive plan?

YES: _____ NO: _____

(c) Has either the county or municipality where the proposed project will be located enacted zoning ordinances?

YES: _____ NO: _____

(d) Are the municipal zoning ordinances, the municipal comprehensive plan and the county comprehensive plan generally consistent?

YES: _____ NO: _____

Identify each relevant zoning ordinance by title and date of enactment and by appropriate section, subsection or paragraph number.

8. Will the proposed project serve more than the local community where the project will be located?

YES: _____ NO: _____

9. If YES, please indicate the additional communities that will be served in the space provided below and indicate if you have provided notice of the proposed project to these communities?

10. Will the proposed project be consistent with the requirements of the relevant zoning ordinances, including plans for community facilities and utilities? Please explain in detail. Identify each relevant zoning ordinance by title and date of enactment and by appropriate section, subsection or paragraph number.

11. Verification. Applicants are required to obtain the signature of the Director of the county planning agency, or multi-municipal planning agency, if one has been designated, prior to submitting this form to the Department. County Planning Directors or directors of the relevant multi-municipal planning agency, are to verify that the applicant's answers on the MMPF accurately describe and reflect the multi-municipal comprehensive plan and zoning ordinances.

(signature)

(title)

(date)