



February 6, 2018

Andrew Gottlieb
Executive Director

Senator Joseph Boncore, Senate Chair
Representative Kevin Honan, House Chair
Joint Committee on Housing
State House
Boston, MA 02133

BOARD OF DIRECTORS

Margo L. Fenn
President

RE: *An Act to Promote Housing Choices* (H.4075)

Charles Sumner
Vice President

Dear Chairman Boncore and Chairman Honan:

Robert Summersgill
Treasurer

The Association to Preserve Cape Cod (APCC) submits the following written testimony regarding Governor Baker's *An Act to Promote Housing Choices* (H.4075).

Maureen O'Shea
Clerk

Elliott Carr

Founded in 1968, APCC is the Cape Cod region's leading nonprofit environment advocacy and education organization, working for the adoption of laws, policies and programs that protect and enhance Cape Cod's natural resources and quality of life. As an organization that advocates for responsible, planned growth for the Cape Cod region, APCC has extensive firsthand experience in understanding the vital role that smart land use planning plays in our ability to improve the livability of Massachusetts' communities as well as our ability to protect our environment. In that capacity, for nearly two decades APCC has been actively engaged in efforts to update and modernize the state's zoning and land use laws, which currently provide disincentives and roadblocks to housing production as well as to efforts to plan effectively, curb sprawl, preserve community character and protect natural resources.

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APCC believes H.4075 provides a valuable first step in addressing the critical housing shortage in the Commonwealth by providing incentives to communities to adopt local bylaws and provisions that will allow for the increased production of housing. In addition to the provisions found in H.4075, we also see the opportunity for the adoption of other housing provisions that will help increase the availability of affordable housing; for example, a provision enabling communities to adopt inclusionary zoning bylaws would help those communities keep affordable housing production in pace with the development of market-rate housing.

While H.4075 offers incentive-based provisions to address housing—most through changes to state zoning law—APCC is concerned that the Governor's bill only addresses one aspect of a more universal need to modernize the state's woefully outdated and ineffective zoning and land use laws. As stated previously, current state law has worked against local efforts (and state goals) to implement effective planning for the creation of livable communities in smart locations that incorporate transportation infrastructure, mixed-use walkable neighborhoods, and a variety of housing choices, and which also protect open spaces and natural resource areas outside of designated growth areas.

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We strongly encourage the legislature to integrate the provisions of H.4075 with H.2420, *An Act Building for the Future of the Commonwealth*, sponsored by Rep. Kulik and Rep. Peake. H.2420 offers a comprehensive and balanced approach that fixes currently broken statutes that have caused Massachusetts to lag behind the nation in the adoption of modern community planning tools and concepts. It addresses housing needs such as accessory dwellings, multi-family housing, affordable housing and compact development. It also provides reforms to extremely problematic aspects of current statute. Two in particular, the current overly-generous vesting rights and the so-called approval not required provision, have both tied the hands of municipalities in their efforts to prevent sprawl and adopt smart local planning.

We must not focus exclusively on one aspect of our dysfunctional zoning laws while ignoring the other components that are broken, and then expect a successful outcome for our communities. Together, H.4075 and H.2420 would be a giant leap forward in creating vibrant, successful, livable communities for the Commonwealth.

In reviewing H.4075, APCC has several recommended changes to the bill:

Natural Resource Protection Zoning (NRPZ): The specific purpose for the establishment of NRPZ is to create reduced-density zoning districts where one or more identified natural resource or agricultural resource values are in need of special protections. The definition of NRPZ in H.4075 does not include this fundamental purpose. Without it, NRPZ is indistinguishable from cluster development, which does not change the underlying density and does not offer the same protections. APCC recommends that the H.4075 definition of NRPZ be replaced with the definition in H.2420, which is as follows:

“Natural resource protection zoning”, zoning ordinances or by-laws enacted principally to protect natural resources by establishing higher underlying density divisors relative to other areas, a formulaic method to calculate development rights and compact patterns of development so that a significant majority of the land remains permanently undeveloped and available for agriculture, forestry, recreation, watershed management, carbon sequestration, wildlife habitat or other natural resource values.

Transfer of Development Rights (TDR): APCC supports the TDR definition in Section 3 of H.4075, which is the same as in H.2420, as a replacement for the definition as it exists in current statute. The nationally-recognized uses for TDR are flexible and are not limited to density-neutral situations or to requirements of a density bonus, although TDR can certainly be applied in local bylaws to density-neutral uses or for the purposes of increasing the number of units transferred. But in other cases, development at full underlying zoning density is likely to never occur in some designated TDR sending areas because they are remote, landlocked or environmentally sensitive places. However, the receiving area still benefits from greater concentration of development. TDR as described in Section 4 (d) in H.4075 does not reflect this flexibility. APCC recommends that Section 4 (d) eliminate the requirement that the use of TDR must result, at minimum, in an overall neutral housing unit potential within a municipality.

Section 4, Simple Majority Zoning Vote Under Certain Conditions: This provision in H.4075 allows a simple majority vote by the municipal legislative body for changes to zoning that increase housing density. As written, this section has the potential to create confusion in determining the proper voting majority required for a zoning change, given that many times proposed zoning bylaw amendments contain multiple elements that could increase density in one aspect of the bylaw and decrease density in another. APCC has advocated for a change in current statute to provide, through a local option, the

ability for a municipality to adopt a simple majority up to a 2/3 majority vote for all zoning changes, as written in H.2420:

SECTION 10. The fifth paragraph of said section 5 of said chapter 40A, as so appearing, is hereby amended by adding the following sentence:-

Any change in the voting majority required to adopt a zoning ordinance, by-law or amendment shall be made by the voting majority then in effect and shall not become effective until 6 months have elapsed after the vote; provided, however, that a voting change shall be limited to a range between a simple majority and a 2/3 majority vote. A majority vote of less than 2/3 shall not be allowed for a specific zoning amendment if the amendment is the subject of a landowner protest.

Section 4 (e): This provision in H.4075 would allow a simple majority vote “to modify regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow provision of additional housing units beyond what would otherwise be permitted under the existing zoning ordinance or by-law.” The qualifying language found elsewhere in Section 4, “in a location that would qualify as an eligible location for a smart growth zoning district under section 2 of chapter 40R of the general laws” should be added to Section 4 (e) to avoid sprawling development in sensitive natural resource areas where increased density would be inappropriate.

In deliberating H.4075, APCC asks the committee to consider this bill in the light of a more holistic approach to reform and update the state’s zoning laws, one that incorporates the Governor’s housing bill—with the recommended changes described above—along with the comprehensive and balanced reforms in H.2420.

We thank the committee for this opportunity to provide comments and for the committee’s attention to this important issue.

Sincerely,



Andrew Gottlieb
Executive Director

cc: Sen. Julian Cyr
Sen. Viriato deMacedo
Rep. Sarah Peake
Rep. Timothy Whelan
Rep. William Crocker
Rep. David Vieira
Rep. Dylan Fernandes
Rep. Randy Hunt
Rep. Stephen Kulik