



May 31, 2019

Andrew Gottlieb
Executive Director

Senator Brendan Crighton, Chair
Representative Kevin Honan, Chair
Joint Committee on Housing
State House, Boston MA 02133

BOARD OF DIRECTORS

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President

RE: An Act to Promote Housing Choices (H.3507)

Charles Sumner
Vice President

Dear Chair Crighton and Chair Honan:

Bob Ciolek
Treasurer

The Association to Preserve Cape Cod (APCC), the Cape region's leading nonprofit environmental advocacy and education organization, offers the following written testimony for *An Act to Promote Housing Choices* (H.3507).

Maureen O'Shea
Clerk

Michael Corrigan

Since 1968, APCC has worked for the protection, preservation and restoration of the Cape's natural resources. APCC efforts are focused on the protection of groundwater, surface water and wetland resources, the preservation of open space, and the promotion of responsible planned growth. Sound land use decisions play a critical role in efforts to protect natural resources, just as they do in efforts to create vibrant communities that support diverse and sufficient housing opportunities. Good land use planning is dependent upon the effectiveness of local zoning bylaws, which, unfortunately, are constrained in what they can achieve due to Massachusetts' antiquated and ineffective state zoning laws. For nearly two decades, APCC has been at the forefront in the effort to enact meaningful reforms to state zoning laws, working closely with members of the State Legislature and with a diverse coalition of state organizations and land use professionals on several legislative initiatives. It is in this context that we provide the following comments on H.3507.

DeeDee Holt

Thomas Huettner

Pat Hughes

Cheryl Lubin

Elysse Magnotto-Cleary

Blue Magruder

Eliza McClennen

Stephen Mealy

Maureen O'Shea

Kris Ramsay

Robert Summersgill

Taryn Wilson

Simple Majority Vote: APCC believes much of H.3507 is a positive first step in addressing the Commonwealth's housing crisis, and in doing so it identifies one of the roadblocks in Massachusetts' zoning law that stands in the way of meaningful zoning reform. Massachusetts is one of the few states in the nation, and the only New England state, that requires a two-thirds majority

vote to adopt a zoning change. And, it is the only state to require a two-thirds majority vote while also having a town meeting form of government in most of its municipalities. H.3507 moves in the right direction by requiring a simple majority vote for certain “smart growth” zoning that promotes housing production. However, in addition to housing production, there are numerous valuable municipal planning goals that advance legitimate community interests that must be enacted through zoning. The local decision-making process for zoning should be consistent; a simple majority vote should be applicable for all proposed zoning changes. It is time for Massachusetts to join with other states and adopt a simple majority vote for all zoning, not just zoning that promotes housing.

Natural Resource Protection Zoning: As it is described in H.3507, the definition of Natural Resource Protection Zoning (NRPZ) is incorrect. The NRPZ zoning tool, as it was intended, and as it is currently used in municipalities across Massachusetts, employs all three of the following components to protect identified natural resource values:

- Reduce overall densities within the NRPZ zoning district
- Create compact development patterns
- Preserve large areas of open space within the natural resource area

NRPZ, as it is defined and used in H.3507, is inconsistent with its intended use as an effective natural resource protection tool that limits development in specified sensitive natural resource areas. The H.3507 definition as currently written undermines the actual purpose of NRPZ and would be in conflict with how it is used in Massachusetts. If NRPZ is to remain a part of H.3507, APCC recommends that the definition be changed to reflect its correct use, as follows:

“Natural Resource Protection Zoning”, zoning ordinances or by-laws enacted principally to protect natural resources by establishing lower overall densities in compact patterns of development relative to other areas, 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: In Section 3 of H.3507, the definition of Transfer of Development Rights (TDR) is inconsistent with the definition of TDR in Chapter 40A section 9. However, the definition as it is currently written in H.3507 is a more appropriate definition and gives communities more flexibility in using TDR—as well as more incentive to use TDR—by not requiring the density bonus inserted into the definition in Chapter 40A section 9. APCC recommends that an amendment to Chapter 40A section 9 be added to H.3507, changing that definition to match the definition currently in H.3507, which would provide consistency in statute.

Open Space: The inclusion of the term "open space" in Section 4 (3) suggests that the zoning changes by a simple majority vote encouraged by H.3507 could result in less open space being preserved across the state as a consequence of increased housing production. APCC recommends deleting "open space" from this paragraph. Open space preservation should not be a sanctioned casualty of the state's housing production strategies.

Conclusion: APCC respectfully urges the committee to consider the above comments and recommended changes to H.3507. These proposed amendments would insert more consistency in the adoption of zoning reform measures, bring Massachusetts closer to the national mainstream of modern zoning law, and protect existing, valuable land use tools that preserve and protect the Commonwealth's natural resources, all while still achieving the "smart growth" housing production goals identified in H.3507. As a supplement to these written comments, we are also including as reference a redline version of H.3507 that identifies our recommended language changes.

There is much more that needs to be done to comprehensively reform and update Massachusetts' state zoning laws. We hope the State Legislature looks at H.3507 as a first step, and that it commits itself to moving forward on reforms for other important aspects of zoning law and land use policy.

APCC thanks the chairs and members of the committee for this opportunity to provide comments. We welcome any request by the committee or its staff to provide further input or clarification regarding our comments.

Sincerely,



Andrew Gottlieb
Executive Director



Don Keeran
Assistant Director

cc: Senator Julian Cyr
Senator Viriato deMacedo
Representative Sarah Peake
Representative Timothy Whelan
Representative William Crocker
Representative David Vieira
Representative Dylan Fernandes
Representative Randy Hunt