

Out of Bounds?
Rhetoric of Urban Form and
Its Influence on State Legislation in Massachusetts

By

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A.B. in Social Studies (2003)
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Submitted to the Department of Urban Studies and Planning
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ABSTRACT

Urban form is the product of the actions of a multitude of actors, from governments to individuals, from corporations to activist organizations. It is the result of rules, ideas, assumptions, and arguments, all of which accumulate and evolve over many years. Among these many paths of influence, urban form is the outcome of state policy, including the laws of the Commonwealth of Massachusetts. In turn, state policy is a product of multiple objectives and is shaped, often indirectly, by shared ideas about urban form.

In order to understand the ways in which policy and form are intertwined, this thesis explores the influence of ideas about urban form on three recent state laws in Massachusetts: the Community Preservation Act from 2000, 40R/40S (Smart Growth Zoning and Housing Production) from 2004 and 2005, and landlocked tidelands legislation from 2007. Each law has plausibly significant impacts on urban form, but urban form is not the driving factor in any of these cases.

In each case study, rhetoric of urban form emerged indirectly in the discussions about the legislation. The prevalence of this rhetoric indicates that it was essential that the legislation be consistent with shared conceptions of the urban forms native to Massachusetts. These ideas of vernacular form are dominated by the idea of New England village, but also include a secondary urban vernacular that is applied to select urban locations. Each piece of legislation had to be consistent enough with an idea of vernacular urban form so that it could be presented and advocated in terms of the vernacular. Chapter three explores the variety of paths along which ideas of the vernacular form operate in each case study.

This analysis of the ways that ideas about urban form shape state legislation suggests lessons that could improve the physical setting of the Commonwealth. Ultimately, the lessons have the potential to positively influence the lives of the Commonwealth's inhabitants, workers, and visitors.

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CHAPTER ONE: INTRODUCTION

When you wake up in the morning and look out the window, you see urban form.

When you travel to work, you travel through urban form.

When you fly in an airplane, you can gaze down at urban form.

When you decide where to eat or where to have fun, you navigate urban form.

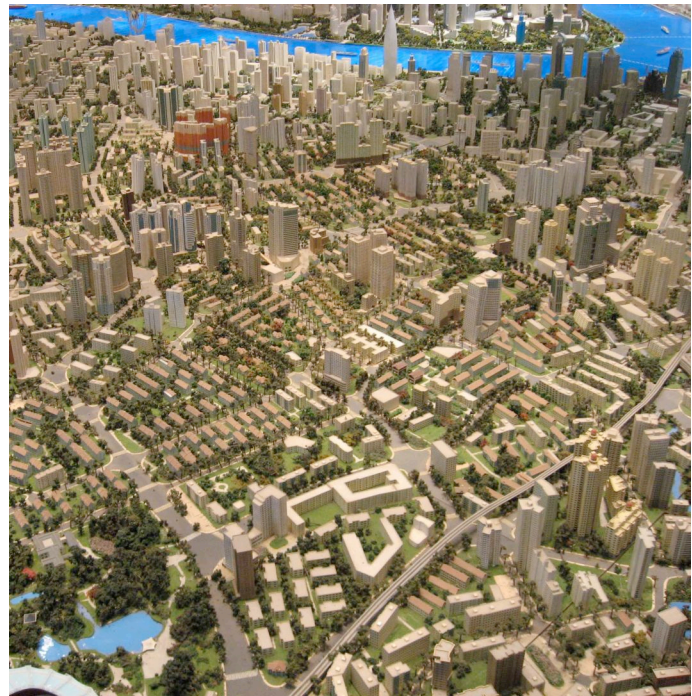
Urban form is everywhere, but it is not a fact of nature. It is the product of the actions of a multitude of actors, from governments to individuals, from corporations to activist organizations. It is the result of rules, ideas, assumptions, and arguments, all of which accumulate and evolve over many years. Among these many paths of influence, urban form is the outcome of state policy, including the laws of the Commonwealth of Massachusetts. In turn, state policy is a product of multiple objectives and is shaped, often indirectly, by shared ideas about urban form. In order to understand the ways in which policy and form are intertwined, this thesis explores the influence of ideas about urban form on three state laws in Massachusetts.

What is Urban Form?

Kevin Lynch tackles the form of cities as a comprehensive phenomenon in his seminal work *Good City Form*. He explores the physical component of society and its impact on the people within it. Lynch wrote:

I will take the view that settlement form is the spatial arrangement of persons doing things, the resulting spatial flows of persons, goods, and information, and the physical features which modify space in some way significant to those actions, including enclosures, surfaces, channels, ambiances, and objects. (Lynch 1984, p. 48)

This definition transcends scales: the relationship of a house and its owner to their neighbors is merely a different facet of the same phenomenon as the large-scale patterns of settlement on the landscape that are only visible from a satellite. The use of “city form” in Lynch’s title is a proxy for this concept of settlement form. To denote the same phenomenon, this thesis uses the term “urban form” because of its linguistic link with the practices of urban planning and urban design and because of colloquial comfort in using “urban” rather than “settlement.” Finally, the use of urban form is preferable to the related “built environment,” which focuses on those areas with significant human construction. For the purpose of this research, urban form includes both the absence of permanent residents in Yosemite and the intense concentration of them in Manhattan.



**Urban form crosses scales, from the individual building to the pattern of a dense city.
Source: Benjamin Solomon-Schwartz.**

While many writers and artists hint at urban form in their depictions of places and the human experiences linked to them, Lynch’s definition of the seemingly basic concept of settlement form is a reminder that it is not a common conceptual category. Outside the realm of urban planning, urban design and architecture, urban form is not commonly considered a distinct component of society that can be discussed and debated. Urban form is not often considered either as a tool of policy or as a target of policy. However, governmental policy has a significant impact on urban form whether as an intentional policy, as the expected by-product of another program, or as the unexpected result of public policies. Just as Lynch argues that it is important to read urban form in the landscape, so too is it revealing to read urban form in the multitude of arguments that shape these very forms—even though form itself is not a common conceptual category. The way that policy actors discuss form is revealing both about the actors’ fundamental beliefs about the built environment and about the ways that they employ ideas about urban form as strategic tools to achieve other goals. To understand the shaping of urban form, it is critical to examine the forces that mold public policies that have impacts on it.

Who Shapes Urban Form?

A broad array of actors shapes the built and natural environments: governments at all levels, financial institutions, advocacy groups, developers, and, of course, the residents and workers that inhabit these environments. Because the United States is a federal democracy with a market economy, the responsibility of shaping its landscape is shared among these many actors. Many of these actors influence the built environment both when they are attending to it and when they are focusing on other matters. Federal policies from urban renewal to infrastructure funding have shaped urban form across the country, as have local policies from economic development strategies to land use regulation. Given these significant impacts of government policy on urban form, it is important to listen to policy debates for the role that urban form plays within them.

Among governmental actors in the United States, the impact of the federal government and local governments frequently overshadows those of state governments. The federal government is big and powerful, addressing the entire nation and dominating the national news media. At the opposite extreme, local governments receive attention because they are the most intimately linked with the daily lives of individuals. With responsibilities that range from schools to snow plows, local government is the governmental actor people see most often. However, in between these visible extremes is a critical intermediate zone: the realm of state government. While the devolution of programs from the federal to state government in the last thirty years has brought increased attention to states, they still merit more research and attention (Teaford 2002).

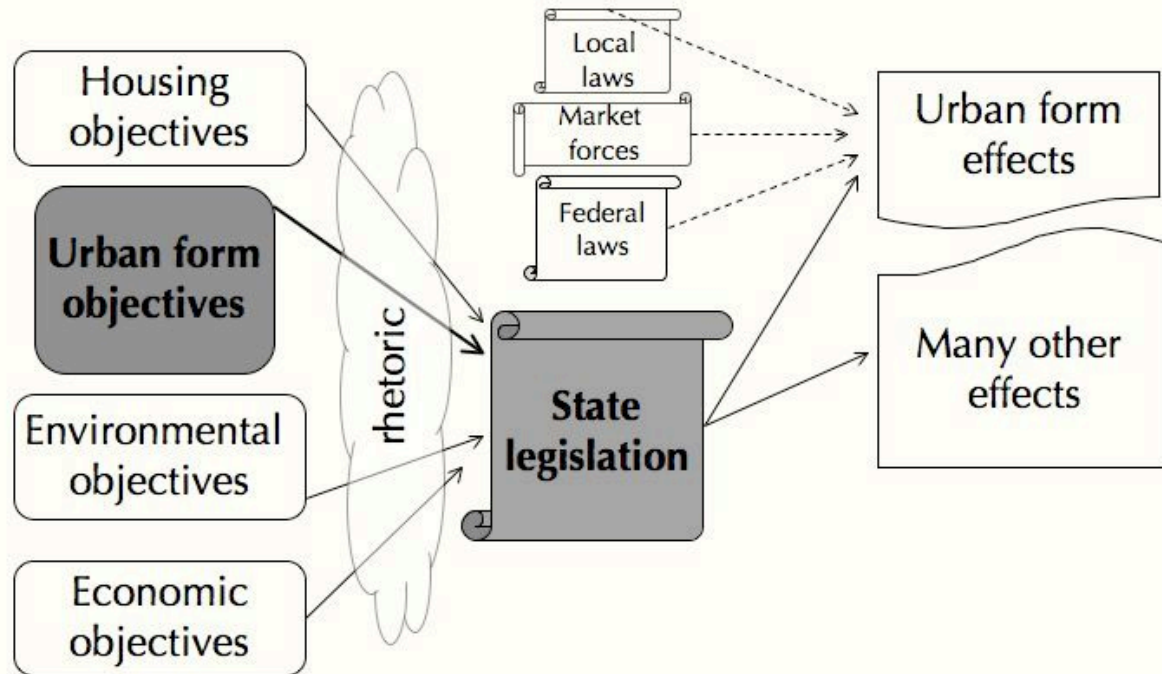
The analysis of policies that impact the built environment typically focuses on the governmental extremes—on the federal government and on local governments. For example, some scholars explain suburbanization as a partial result of federal subsidies for highways and single-family housing (Jackson 1984). Others understand it as a result of restrictive local land use regulation (Levine 2005). Fewer, however, look to state policy as a key force in shaping the built environment. Nevertheless, state policies in Massachusetts and across the nation have had dramatic impacts on the built environment. From highway building projects and environmental laws to the rules that structure local governments, actions of state governments have a profound impact on urban form (Frug and Barron 2007). In Massachusetts, the role of state government is particularly important because of the state's tradition of policy innovation. For example, the state's highway system was substantially complete before the federal interstate system was created, and the Massachusetts Wetlands Protection Act preceded federal legislation by several years. Furthermore, state policy is

particularly important in Massachusetts because of the negligible role of county government and small size of many of the Commonwealth's 351 cities and towns. State policy, thus, is often the most relevant counter-point to the local concerns of the municipalities. In particular, despite the rhetoric of home rule independence of the municipalities, the state continues to shape and constrain the actions of local government to a remarkable degree, when compared with other major metropolitan areas. In turn, these constraints have substantial impacts on the built environment (Frug and Barron 2007). Finally, with a state limited to 7,840 square miles and 6.4 million residents, the Massachusetts government can have a relatively intimate relationship with its people (U.S. Census Bureau 2008).

Because of the impact of state government on urban form, it is important to explore the genesis of relevant state policies. What is the role of different actors in shaping legislation and enabling its passage? In what circumstances do the actors involved in shaping policy use arguments that refer to urban form? Do they refer to vernacular visions of urban form? If so, do state policies pursue these vernaculars?

State government is a significant arena for debates over policies that shape urban form, attracting the involvement of many other actors in shaping policy. The participants include sector-specific advocates, such as housing or environmental advocates, representatives of industry groups, representatives of governmental actors such as municipalities and local planners, members of the administration serving in the Commonwealth's executive agencies, and the legislators that propose and vote on legislation. These actors use arguments about a variety of issues, including rhetoric and logic linked to urban form, in order to pursue their goals. Understanding the dynamics of these debates about state policy sheds light on how urban form enters into broader policy conversations, how government and others shape urban form, and, ultimately, how one might intervene to improve the ways in which urban form is governed in the future.

Model of Legislation and Urban Form



This working model depicts the relationships among urban form objectives, legislation, and urban form effects. This paper specifically focuses on the connections between urban form objectives, rhetoric, and state legislation.

Among the multiple arenas in state government for shaping policy, including regulation and the quotidian actions of bureaucrats (Wilson 1989), the legislative arena is well suited to the research questions posed above. The creation of legislation is crucial because it sets the stage for the other phases of policymaking, because of its very public nature, and because of the broad range of the stakeholders involved. The legislative process is an appropriate focus for research because the process has a clear goal and ending point. Furthermore, a study of the legislative process is particularly suitable to examining arguments about urban form because many parties find it necessary to identify a clear position about any given piece of legislation. Legislation is a lightning rod that encourages various actors to clarify their substantive positions and then to present their positions to others involved in the legislative process and to the general public.

Methodology

In order to understand the role that arguments and ideas about urban form have in shaping state policy, this investigation focuses on three pieces of state legislation with potentially substantial influences on urban form. The three cases are the Community Preservation Act from 2000,

Chapters 40R and 40S of the Massachusetts General Laws (Smart Growth Zoning and Housing Production) enacted in 2004 and 2005, and landlocked tidelands legislation enacted in 2007. Each of these statutes has a plausibly significant impact on the built environment such that it is reasonable to listen for discussions about urban form. The choice of three legislative cases allows sufficient comparison among cases with varying substance and different actors while achieving sufficient depth. Because each of the statutes has been enacted into law within the last ten years, sufficient first-hand information is available. Moreover, the recent vintage of the cases suggests that my conclusions could inform similar contemporary issues. Focusing on laws that have been successfully enacted ensures that I can compare similar legislative processes.

Among the laws enacted in the past ten years, I chose three non-appropriations pieces of legislation whose passage had at least potentially significant impacts on urban form. I excluded infrastructure funding because it is not easily comparable to policy legislation that meets the other criteria for analysis. Legislation regarding projects that require federal environmental impact statements follows a substantially different process over time than the statutory cases under examination here. In comparison to municipal policy, state policy has the challenge of grappling with a wider variety of natural and human landscapes that lie within its scope. To this end, the cases chosen focus on statutory policies that potentially affect a broad swath of land rather than targeting specific projects. The cases are collectively relevant to a wide range of areas of the state, including downtown Boston, inner-ring suburbs, and rural communities. With these criteria in mind, three cases stood out:

- **The Community Preservation Act.** Enacted in 2000, the Community Preservation Act (CPA) provides funding to municipalities for open space preservation, affordable housing, and historic preservation. The legislation encourages cities and towns to fund expenditures on those areas by allowing municipalities to establish a local property tax surcharge dedicated to these purposes that will be matched by state funds. Minimum expenditures are set for each program area, but there is a considerable local flexibility in the use of the funds.
- **Chapters 40R and 40S (Smart Growth Zoning and Housing Production).** This legislation establishes financial incentives for municipalities to create zoning districts for relatively dense areas of housing. The districts are confined to areas near transit stops, existing town centers, or other suitable locations (such as former industrial properties). Chapter 40R, passed in 2004, provides funding for the creation of these zoning overlay districts and for the construction of

housing within them. Enacted in 2005, 40S provides state funding for local public schools, insuring municipalities against cost increases that may be incurred by enabling new residential development.

- **Landlocked Tidelands.** The Commonwealth regulates development on tidelands, property that is intermittently covered by tidal waters. In 2007, the state's Supreme Judicial Court invalidated a long-standing administrative exemption for filled tidelands that are landlocked and, thus, no longer adjacent to water. Enacted later in 2007, tidelands legislation restores the prior status quo of exempting these lands from the Chapter 91 tidelands licensing process. It also adds a minor public benefits review for some of the exempted properties. The majority of affected lands, approximately 3000 acres, are in the City of Boston.

Each of these three legislative case studies involves a complex array of ideas and strategies that shaped the legislative outcome.

Different actors pursued disparate interests and agendas in becoming involved with the legislation, whether as a key proponent, as a reluctant supporter or as an opponent. Each brought their own understandings of the problems addressed by the legislation and their understanding of links between specific laws and larger public policy goals. Based on this premise, the author undertook a set of interviews with a variety of actors who shaped the legislation to provide the primary source of data for this research. The 34 interview subjects included environmental advocates, housing advocates, industry/business representatives, government officials, representatives of several governmental subgroups, legislators, selected design professionals, and other involved parties. The purpose of these interviews was to encourage the subjects to relate their own involvement with the legislation in each case, the motivations behind it, and the strategies they used to achieve their goals. It was critical to encourage the subjects to relate their entire involvement rather than leading them directly towards discussions of urban form, which would discredit the data. Instead, I attempted to listen carefully to their narratives and then followed-up, as appropriate, on matters relating to urban form that they introduced. Afterwards, I analyzed the substantive issues they raised, the ways in which they talked about urban form (if at all), and tried to develop an understanding of the role of urban form in each case for each subject. Although the set of interview subjects defies simple categorization, it is helpful to introduce several of the primary groups of interview subjects.

- **Legislators.** By virtue of their positions, legislators typically take positions on a wide variety of issues in addition to their personal legislative priorities. The legislators interviewed included sponsors of the cases of legislation as well as others minimally involved with it.
- **State government officials.** Members of several gubernatorial administrations were involved with the cases of legislation as members of various state agencies, including the state housing and environmental agencies.
- **Representatives of government groups.** Local governments, regional planning agencies and local planning officials brought their perspectives to the table through organizations such as the Massachusetts Municipal Association and the Massachusetts Association of Planning Directors.
- **Housing advocates.** Some housing advocates wish to ensure that people with low incomes can afford decent shelter. Others are concerned with housing prices because they impact economic development.
- **Environmental advocates.** Environmental advocates pursue a wide range of causes including open space for human enjoyment, promotion of biodiversity, resource conservation, and pollution reduction.
- **Preservationists.** Preservation advocates argue for the protection of historic resources that provide tangible links to Massachusetts' past.
- **Industry advocates.** Real estate and development interests wish to preserve continued opportunities for development and real estate transactions. More general business interests wish to minimize regulatory burdens that they fear would be detrimental to business viability.
- **Design professionals.** These professionals are involved with and care about shaping the built environment. They include organizations of professionals, such as the Boston Society of Architects, and design professionals in governmental practice, such as planning officials.

The interviews were supplemented by a review of the text of the legislation itself, by newspaper articles and opinion pieces written about the cases of legislation, and other miscellaneous materials produced about the legislative processes. These documents help to provide a more comprehensive picture of each legislative process. Due to time constraints, it was not possible to examine the complete testimony submitted by a variety of advocates during committee hearings about the legislation.

Roadmap

In addition to interviews and other primary sources, several bodies of secondary literature and theory inform this research. The first considers the form of cities, including the ways in which different entities shape these forms. The second explores legislative policy, particularly at the state level. In particular, it considers the way in which actors involved in state policy interact and produce public policy. The final area of literature discusses the use of rhetoric in pursuing strategic ends in the political arena. This literature is presented in chapter two.

Chapter three contains a detailed analysis of each legislative case, including an argument about the role of urban form in it. Each case study includes analysis of the roles of specific actors in shaping the legislation. Although urban form operates in fundamentally similar ways in all of the cases, this chapter presents the nuanced differences among the cases as well as the fundamental similarities.

The three legislative case studies support an argument about the role of ideas about urban form in shaping state legislation in Massachusetts. In a context that values local control over policies that shape land use and urban form, the data reveal that concern about urban form is neither the driving factor behind any of the legislation nor does it affirmatively determine the specific tools used by the legislation. Instead, the common assumptions about urban form in Massachusetts set the bounds for possible legislative action. By establishing norms with regard to urban form that are sufficiently powerful, they can constrain legislation that addresses discrete substantive concerns, such as housing or environmental policy. These background parameters about form operate most strongly in the Community Preservation Act and least strongly in the case of tidelands legislation. This holistic analysis is presented in chapter four.

Ultimately, the analysis of all of the material with regard to the three cases yields lessons for future attempts to influence urban form in Massachusetts; these recommendations are presented in chapter five.

CHAPTER TWO: LITERATURE AND THEORY

In exploring the role of ideas about urban form in shaping state legislation in Massachusetts through several case studies, this thesis builds on distinct bodies of scholarship on policymaking and urban form. One group of writers focuses explicitly on existing urban forms and posits ideal forms for development. They also explore how different actors currently shape urban form, and how different actors *ought* to shape urban form. Another group of scholars investigates how different stakeholders shape policy and about how government functions on a state level. However, these scholars focus less directly on urban form. Some members of this latter group explicitly tackle the role of rhetoric in shaping policy. Based on these frameworks, it is critical to listen to the arguments of a variety of actors in pursuing their interests through the legislative process in order to understand the mechanisms of the relationship between urban form and state policy.

Theories of Form

Normative judgments about form help define the boundaries of urban form as a distinct phenomenon. Writers from Lewis Mumford to Richard Sennett have examined city form, positing optimal relationships among humans and the physical environment (Mumford 1961; Sennett 1992). The literature offers a working theory of urban form as the physical totality of the city, from the kinds of buildings in which people work, live, and play, to the proximity of one to another, to the qualities of public and private places in this setting. Urban form is the space in which people's lives unfold, as Kevin Lynch argues in *Good City Form* (Lynch 1984). The micro-scale element of urban form brings us to the shape and quality of a specific place as experienced by individuals; the single-family cottage and the office block are different manifestations urban form. Andres Duany and the other New Urbanists have recently popularized ideas about form on this scale (Duany et al. 2000). Macro-scale urban form describes a metropolitan area, including its pattern of settlement; the dispersed city and the linear city are different alternatives for macro-scale urban form. Large-scale patterns of growth and their consequences have entered into popular debate from Ebenezer Howard's *Garden Cities of To-Morrow* to David Brooks' contemporary writings (Howard 1902; Brooks 2004). These writings establish that the broad category of urban form operates at these multiple scales.

Kevin Lynch's work underscores the importance of impacts of physical environments on people's experiences within them. Daunted by the impossible task of setting performance standards

for cities, but convinced that observers should compare the performance of different cities, Lynch enumerates several performance dimensions along which city form can be evaluated: vitality, sense, fit, access, and control (Lynch 1984). Drawing out the human experience embedded in cities, Lynch's identification of these dimensions highlights the importance of elements of the built environment that impact people's lifestyles. These elements include the density of development, design of neighborhoods, mix of uses, the presence of open space, the age of structures and developments, and the pace of physical change. These attributes of the physical environment, as well as others that might have a plausible impact on human lives, is within the scope of this study of Massachusetts state policy.

Among the many normative visions of the built environment proposed by writers, the idea of a low-density urban form appears frequently with regard to the United States. A location-specific version of this concept plays a critical role in shaping two of the cases of legislation investigated in this thesis. Leo Marx presents the deeply rooted pastoral ideal in America, tracing it back to Thomas Jefferson's writings in *Notes on the State of Virginia* and his presentation of the yeoman farmer as the archetype of the new American citizen (Marx 1964). Peter Rowe describes the perpetual American love affair with the middle landscape, his term for the suburbia between the city and the country that Americans inhabit, both in reality and in their imagination (Rowe 1991). In recent decades, James Kunstler has decried the evils and banalities of this suburban development pattern (Kunstler 1993). Robert Bruegmann responds that these landscapes reflect the desires of Americans, arguing that it is both fruitless and elitist to rail against them (Bruegmann 2005). While others argue whether a low-density ideal is culturally specific or a manifestation of a universal phenomenon, it is clear that ideas about lower density and rural settlement patterns have been particularly important in describing and molding urban form in America. Specific manifestations of this idea that are particular to New England shape the built and natural environments in Massachusetts and play critical roles in the case studies examined in the following chapters.

Normative debates about the physical development of the landscape are intertwined with arguments about the relative merits of different levels of governments in influencing urban form. Some analysts propose regionalism as a solution to the problems of self-interested local governments, blamed for inequity (Orfield 1997) and sprawl (Abott 1987, Levine 2005). Others argue that powerful local governments facilitate the best in American life (Tiebout 1956). William Fischel argues against dismantling what he sees as a largely successful localized system in favor of

utopian regionalist dreams (Fischel 2001). At the opposite end of the scale, some argue that the federal government should acknowledge its indirect role in land-use planning and take up that mantle with foresight (Babbitt 2005, Fishman 2007). Others tell cautionary tales about any federal involvement in land use planning. The 1970s failure of federal land use legislation, which would have vested states with additional land use planning responsibilities, suggests a note of caution about the pervasive institutional barriers against planning on this level (Weir 2000). In the popular imagination, the negative impacts of federal urban renewal policies serve as further caution that federal land use policy can backfire even when it is successfully implemented. Even though states receive less attention than other levels of government, especially in the more theoretical debates, they are also recognized as arenas for shaping urban form. Recently observers have lauded the accomplishments of Maryland and New Jersey in establishing statewide policy frameworks that encourage Smart Growth, thus addressing urban form (Cohen 2002). While Portland's success is often framed as a metropolitan planning initiative, growth management legislation by the State of Oregon spawned the achievements of metropolitan planning (Abbott 1983).

Other observers debate the relative roles of government as a whole, of the market, and of design professionals in shaping urban form. The socialist planning tradition argues that the government ought to play the primary role in shaping the built environment. In the United States, this tradition was most prominently realized in the several government-funded new towns and had less force elsewhere. By contrast, this tradition was much stronger in the Great Britain, with multiple waves of government-funded new towns (Hall 2002). At the opposite extreme, some property rights advocates argue that government should minimize its involvement in land use policy, giving way to the free market. For instance, Bernard Siegan argues that the absence of local zoning in Houston produces outcomes that are superior to the many other circumstances under government land use planning (Siegan 2005). Robert Ellickson argues that agreements among private parties ought to replace government involvement in land use (Ellickson 1975). In between these extreme positions of the socialists and the property rights advocates, many others agree that both government and the market do and should play important roles in shaping the built environment.

Other scholars propose the involvement of design professionals as an alternative to government intervention and to an unregulated free market of lay actors. Eran Ben-Joseph highlights the negative impact of rigid government rules and standards with regard to urban form. Instead, he argues for the use of place-based design rather than rigid and place-neutral regulations

(Ben-Joseph 2005). Rather than emphasizing the powers of the market as do Ellickson and Siegan, Ben-Joseph represents a stream that argues that good professionals—architects, landscape architects, and urban designers—are best suited to produce optimal outcomes through their personal involvement with design projects. Therefore, he argues that it is difficult to achieve good urban form in the policy sphere rather than in the project-specific arena. This argument is skeptical of the ability of governmental actors to intervene successfully in urban form, especially with regard to the federal government as proposed by Bruce Babbitt (Babbitt 2005). Together these arguments about who ought to shape urban form and these normative visions of urban form provide critical background to the case studies presented in the following chapter.

Theories of Governance and the States

Writers focused on urban form recognize multiple levels of government as arenas for the production of urban form. Those discussions, however, do not indicate *how* policy gets made in these institutional contexts. Other writers and scholars explore the ways that government entities make policy, including the actors involved, the substantive factors considered, and the variety of institutional structures that shape the policy environment. Both the general literature on policy production in democracies and the literature focusing specifically on state government serve as critical foundations for the exploration of three cases of state legislation in this thesis. They suggest how discussions of urban form fit into the process of creating legislation. Although the distinctions between politics, public policy formation, and planning are the source of much interesting debate, this review collapses those interrelated traditions into the broader category of government action.

Policy analysts and planning scholars have two proposed two primary models for democratic policymaking: government action as a representation of the public interest, and government action as the result of struggles between interest groups, called pluralism. Examining the ways different actors use rhetoric to pursue their goals provides a modified version of pluralism, which serves as the primary foundation for this research.

One tradition understands actors in government as channeling the interest of society as a whole into productive ends. Political theorists from Plato to Machiavelli have proposed the enlightened despot as a model for governance. Twentieth century rational planners, such as Rex Tugwell, argued that they were best able to pursue the interest of society as a whole. Inspired by the perceived venalities of democratic politics, they suggested that a scientific understanding of the

underlying problems in society would facilitate the best policy solutions, free from the influence of politics (Friedmann 1987). While the twentieth century planners emphasized scientific knowledge more than their predecessors, they shared a belief in the effective impact of wise and enlightened leadership.

By contrast, the tradition of pluralism understands government as a competition between interests. Martin Meyerson and Edward Banfield tender a fundamental principle of social behavior that groups of people sharing interests jointly pursue their needs in the public realm. Meyerson and Banfield argue that it is impossible to escape this conflict regardless of the category of political system (Meyerson and Banfield 1955). Some argue that this interest-based competition produces optimal results for society overall (Friedmann 1987). Marxist thinkers claim that people's essential interests are material, trumping any seemingly non-economic ideologies. In the Marxist worldview, politics is a perennial conflict between the classes. The pluralist framework spawned advocacy planning, which urged planners to advocate for the interests of the poor and disadvantaged. Planners like Paul Davidoff argued that advocating for the general public interest would not be sufficient to produce positive outcomes for those that came from a weak position (Friedmann 1987, Healey 2005).

While Marxist pluralism devalues rhetoric that strays from this economically determinist worldview, others suggest that is essential to understand the ways in which political actors argue in order to understand the political process. Michel Foucault and Jacques Derrida assert the importance of language (Derrida 1998; Foucault 1983). Because language is an essential tool in promoting people's desires, listening to the use of language enhances the ability to understand people and their actions. Historian Emanuel Ringelblum emphasized the power of words in his craft by quoting Polish Jewish poet Gustawa Jarecka:

We hate words because they too often have served as a cover for emptiness or meanness. We despise them for they pale in comparison with the emotion tormenting us. And yet in the past the word meant human dignity and was man's best possession—an instrument of communication between people. (Miller 2008, p. 38)

Written during the Holocaust, this passage emphasizes the tension between a necessary skepticism of words and a recognition of the deep meaning behind them. Both of these lenses are important to use in the context of political argument as well. Despite this tension, Jarecka and Ringelblum conclude that the words must be taken seriously, just as other do in the realms of planning and politics. John Forester builds on the importance of rhetoric to emphasize the role of listening in the

planning profession, and Patsy Healey expands it to emphasize the fundamentally deliberative nature of planning itself (Friedmann 1987.)

Integrating an emphasis on rhetoric with a pluralist model suggests that individuals use rhetoric and other tools in order pursue their own interests, which stem from a variety of ideological and economic factors. This rhetoric is both revealing about their essential interests and important in shaping the outcomes of any political confrontation. This combined model will serve as the most useful lens in understanding the narratives of each of the three case studies examined in this thesis, in which a variety of interest groups pursue their ends.

In addition to these overarching models, John Kingdon's agenda-setting model delineates how policies come into being. Kingdon enumerates three prerequisites for a successful policy change: a clear problem, a politically feasible route to action, and an already formulated available solution to the problem (Kingdon 1995). John McDonough later applies this model to state-level government in Massachusetts (McDonough 2000). Although each of the case studies presented below follows a different path, none of them were enacted until they included Kingdon's three prerequisites. This model employs a modified pluralist understanding of state policy with regard to urban form. This perspective understands actors inside and outside of government as pursuing their own interests with some acknowledgment of the importance of the public interest.

The final element of a model of government policy addresses the means by which governments can implement their policies. Mark Schuster delineates five categories of tools of government action: ownership and operation, regulation, incentives, the definition of property rights, and information (Schuster 1997). Ownership and operation entails direct government control over a valued resource. Through regulation, the government can require the behavior of private actors to fulfill government objectives. With incentives, the government provides funding or other desirable benefits to private parties or other levels of government that follow certain behaviors. By defining property rights, government specifies what activities private parties can undertake, and the government then enforces rights that protect those activities. Finally, the government can provide information that either explicitly urges particular behaviors or demonstrates the outcomes of desirable and undesirable behaviors. Although Schuster frames these tools in the context of historic preservation, he argues that they are applicable to all varieties of government policy. These categories are relevant to the policies explored here, and several of these tools are used in the legislation examined in this paper.

In addition to this general analysis of public policy making, other scholars present research about state government in the United States. While the popular image of state government as paralyzed by parochial interests is affirmed by some researchers (Lachman 2005), others argue that state legislatures are successful arenas for policymaking. Jon Teaford argues that state governments have been consistently important in the face of changing perceptions about their effectiveness over the past century (Teaford 2002). Alan Rosenthal presents increasing direct connections between citizens and the state through the media and citizen's groups as he traces the decline of a representative form of democracy (Rosenthal 1998).

Virginia Gray and Russell Hanson emphasize the fundamental similarities among state governments (Gray and Hanson 2004). Their research indicates that the most influential interests in the states are general business organizations, school teachers, utilities, insurance, and hospitals/nursing homes. While environmental groups are the most influential public interest or citizen group, they are far less influential than these other interests. Gray and Hanson argue that a recent major change in state government has been its embrace of economic development programs in seeking competitiveness in a global context. These fundamental characteristics are relevant in the case studies examined below.

State governments pursue a wide range of activities across geographic scales. Based on his experience as a Massachusetts legislator, John McDonough argues that state legislators are charged with creating policies that apply across a broad spectrum of people and places, as well as solving problems within the districts they represent (McDonough 2000). Tom Loftus, former speaker of the Wisconsin State Assembly, presents state legislatures as the embodiment of a democratic institution (Loftus 1994). Myron Orfield presents his attempts in the Minnesota state legislature to create a metropolitan coalition around issues facing Minneapolis and St. Paul. Orfield found the state legislature to be a good arena for addressing equity and infrastructure on the metropolitan scale (Orfield 1997). Ethan Rarick's biography of California Governor Pat Brown emphasizes the immense potential scale of state initiatives, including the creation of a system of public universities and of a vast series of water projects, which greatly exceed the potential scope of local activities (Rarick 2005). Together these accounts show the potential of state government to accomplish projects across scales, from individual neighborhood projects to public works that stretch across hundreds of miles.

Among many other areas of activity, state government is a critical arena for shaping urban form. While Kevin Lynch minimizes the role of state governments in shaping urban form, in favor of the complexities of balancing elements of form on the local level (Lynch 1984), this dichotomy between generic state policy and nuanced local planning does not stand up to scrutiny. While it is often a rough tool compared to local land use policy, state policy is an important and complex arena for policymaking that directly and indirectly affects urban form. At the same time, the city can be seen as a “growth machine” rather than a neutral ground for nuanced planning (Logan and Molotch 1987).

State policymaking involves conflict and negotiation among various advocacy groups, local governments, individual state legislators, and government agencies that themselves include diverse factions themselves. All of these actors could potentially employ arguments about urban form in pursuing their goals. Moreover, their arguments shape urban form regardless of whether or not the arguments are based in urban form. The following cases studies build on this literature to show three instances in which a variety of actors have shaped pieces of legislation with potential effects on urban form. The analysis highlights the role of ideas about urban form in shaping the legislation.

CHAPTER 3: LEGISLATIVE CASE STUDIES

The Community Preservation Act, 40R and 40S (Smart Growth Zoning and Housing Production), and landlocked tidelands legislation tackle issues that are closely linked with patterns of growth and development in the Commonwealth of Massachusetts. They influence a wide range of facets of development, including housing production, the provision of affordable housing, open space production, compactness of development patterns, development in the Commonwealth's coastal areas, licensing procedures for development, and historic preservation. Influencing urban form was not the primary motivation for any of these initiatives. However, it was important for the policymakers that the statutes were consistent with ideas of the vernacular urban forms of Massachusetts even though the problems they were addressing were distinct from urban form. Thus, ideas about urban form set the bounds of solutions that were possible in each situation. This parameter setting occurs largely at the subconscious level for the actors involved with shaping policy. While some participants intentionally pursue specific visions of urban form, many more have internalized the current vernacular visions such that the solutions they pursue are consistent with these conventions. Solutions that deviate excessively from the vernacular are likely to be rejected either by individuals before they publicly share their ideas or during public discussions of such ideas.

Beyond these fundamental similarities among the case studies, there are nuanced differences about the way urban form constraints operated in each case. For example, in setting boundaries, urban form considerations operate most strongly with regard to the Community Preservation Act and least strongly with regard to landlocked tidelands. This chapter presents the content and history of each case in order to explore the ways in which urban form operates within it.

Community Preservation Act

The Community Preservation Act (CPA) of 2000 supports affordable housing provision, open space protection, historic preservation, and the expansion of recreational opportunities. These largely independent components were joined together in a single piece of legislation primarily because it enabled a successful legislative coalition to be forged. While each of these goals and each of the program elements has connections to urban form, these connections were not the primary driving force behind the act or behind the specific components. However, the components are consistent with a vernacular idea of urban form—derived from ideas about the New England village—that sets the parameters for legislative solutions. The narratives of many interview subjects reveal that it is unlikely that the legislation would have been successfully enacted if the proposed legislation had violated these parameters. Ideas about urban form were used in the rhetoric about the legislation as a whole even when they were not used in justifying the individual components, thus ensuring consistency of the legislation overall with the vernacular vision of the New England village. After describing the content and history of the legislation in detail, this section analyzes the role of urban form in shaping the legislation.

The Legislation

CPA promotes local funding for open space, affordable housing, and historic preservation by matching local outlays for these projects with a state grant, while allowing significant flexibility for the local expenditures. CPA allows municipalities to adopt a property tax surcharge of between 1% and 3%. The state then matches this funding annually with funds from a real estate deed-recording fee of \$10 per transaction. In order to levy the surcharge locally and to receive the matching funds, the act and the specific surcharge must be adopted by the legislative body of the municipality and by a popular referendum of the voters. The act requires that 10% of the combined state and local funds be used for historic preservation, 10% for affordable housing, and 10% for open space. Affordable housing is defined as serving households with incomes at or below the area median income. The remaining 70% can be used to further any of those three goals, as well as to fund recreational facilities. The act establishes broad parameters for all of the components, allowing the acquisition, preservation, and rehabilitation of appropriate resources within each category. In each municipality, the legislative body (whether a city council or town meeting) approves any expenditure of the funds (Hatch 2008). According to Schuster's typology of the tools of government

action presented in chapter two, this act is an incentive-based tool from the perspective of the state government, providing funds to encourage local governments to prioritize certain expenditures. From the perspective of the local governments, the legislation provides a combination of tools, including incentives (providing funds to private entities to realize the goals of the act) and ownership and operation (enabling the local governments to create and maintain facilities such as parks).

Many of the interview subjects emphasized the importance of the local discretion embedded in the law. Because municipalities are required to contribute funds in order to receive the state match, they would not participate without control over the funding. However, the importance of local control goes much deeper. Clarissa Rowe, chair of the Community Preservation Coalition and former chair of Historic Massachusetts, described the local aspects of the act:

The success of the act is that it becomes local money. It's spent by a municipality on things the community cares about. Take a little town in Western Massachusetts with a beautiful old town hall and lots of open space and lots of affordable housing, the important thing would be restoring town hall. It's the local priorities not state priorities. (Rowe 2008)

Similarly, the Massachusetts Municipal Association became a supporter of the act because it provided local governments with a new revenue stream even though it had some restrictions (Baier 2008). For others, the local control is strategically important. For example, the Trust for Public Land supported the local flavor of the legislation because it provides funding for open space and the other goals that the organization supports (Hatch 2008).

The History of the Community Preservation Act

The passage of the Community Preservation Act in 2000 was preceded by a twenty-year history of activity. Initial demands for local land banks were transformed into a statewide program with multiple components, gaining a strong coalition of supporters. The act's main challenge was achieving agreement on a funding mechanism among proponents and the real estate industry.

CPA was preceded by attempts to create local land banks. In the early 1980s, development pressures on Martha's Vineyard and Nantucket led the state legislature to establish land banks for open space preservation on each island, at the request of the local governments. These land banks used local real estate transfer taxes to fund the preservation of open spaces on these scenic islands (Clarke 2008). As growth pressures increased elsewhere in Massachusetts, many other municipalities clamored for legislation creating similar land banks even though these requests were continually denied. For fifteen years, the municipalities on Cape Cod unsuccessfully lobbied for a Cape-wide

land bank because their environmental resources were fundamental to their economy just like their Island neighbors. This measure was defeated by real estate interests repeatedly until it was enacted in the late 1990s (Clarke 2008).

As the local requests were transformed into support for a statewide land bank bill, the programmatic components of affordable housing and historic preservation also became linked to the original open space program. Tom Callahan, executive director of the Massachusetts Affordable Housing Alliance (MAHA), recalled discussions of a growing coalition of organizations that supported the nascent Community Preservation Act. “Instead of having the state react separately and do 40 separate things, let’s create an enabling act that would give local communities the power to do this,” Callahan said (Callahan 2008). At the same time as the idea of statewide legislation emerged, so did the idea that it should include both affordable housing and open space. This change broadened the constituency behind the act and helped to address concerns that open space preservation could threaten potential affordable housing developments (Gornstein 2008). While housing and open space were both included in the proposal for the Cape Code land bank, the housing component was removed before it was enacted.

Former state legislator Bob Durand spearheaded the efforts to create multi-purpose statewide legislation in the statehouse. He broadened the proposed program by adding historic preservation to open space preservation and affordable housing, dubbing the resultant bill the “Community Preservation Act” (Clarke 2008). Rowe argues that historic preservation was fundamental to the legislation. Rowe said, “I think of Preservation Massachusetts as the home of CPA. They really came up with the idea. I don’t think it’s a by-product [of the other components].” Nonetheless, Rowe acknowledges that historic preservation was itself not as potent a political force in the Commonwealth as affordable housing and open space. Senator Marc Pacheco, one of the legislative sponsors, argued that the preservation component helped to extend the relevance of the act to the urban areas that were not originally the focus of the land banking movement. By making the act relevant to legislators from across the state, the inclusion of preservation facilitated the act’s enactment.

The vociferousness of local requests with regard to open space and affordable housing stems in part from the impact of Proposition 2 ½, the Massachusetts-wide referendum that limited the amount of revenue that cities and towns can raise from property taxes even though it is their primary source of funding. Municipalities were looking for new sources of revenues, particularly for

items like open space, affordable housing, and historic preservation that could not easily survive the hurdles that Proposition 2 ½ establishes for raising taxes (Hatch 2008; Rowe 2008). Despite the town-wide referendum required to adopt CPA locally, the matching state funds encourage municipalities to adopt it (Baier 2008).

The inclusion of housing and preservation in CPA minimized the opposition of real estate interests to an open space bill. Ben Fierro, a representative of the Home Builders Association of Massachusetts, explains the organization's opposition: "Initially we were strongly opposed to CPA because it was aimed at preserving open space, to protect undeveloped land from new development. The taking of land off the market, reducing the potential for residential development, is a concern for us" (Fierro 2008). The real estate lobby saw funding for both historic preservation and affordable housing as compatible with development, thus enabling their support (Fierro 2008).

Once the coalition had coalesced around proposed multi-faceted legislation, the primary opposition was focused on the legislation's funding mechanism. Real estate interests strongly opposed an initial proposal for funding the act through local real estate transfer taxes, even while some of CPA's supporters were wedded to the transfer tax because it was directly linked to development and its the negative impacts (Petersen 2008). Because of real estate opposition, the proposed legislation that emerged in the late 1990s included a choice between a real estate transfer tax and a property tax surcharge. Further opposition led to the elimination real estate tax option in favor of the local property tax surcharge matched by funds from a fixed state deed recording fee. Marc Draisen, executive director of the Metropolitan Area Planning Council (MAPC), lauded the financial resolution: "Speaker Finneran came up with the brilliant idea that the state match would come from a real estate tax, and would be uniform across the state" (Draisen 2008).

The act gained a strong supporter in the administration when Bob Durand became Governor Paul Cellucci's secretary for environmental affairs in the late 1990s. At the same time, the legislative momentum increased as growth pressures increased throughout the metro Boston region. Given these growth pressures, Durand launched the state's Community Preservation Initiative, which projected a build-out scenario for each municipality according to its current local zoning. The initiative aimed to stimulate discussion about future patterns of land use and to create momentum behind CPA. The program engaged the planning community by using them to work with local communities to understand the implications of the build-out analyses (Lowitt 2008). When the legislation passed more quickly than some expected, the larger purpose in the build-out initiative

eclipsed its value in creating momentum behind CPA (Wickersham 2008). According Schuster's typology presented in chapter two, this is a classic use of an information tool by government. In the initiative, the state government provided information about the status quo, shaping the behavior of local governments and private actors without directing them to act in any specific manner.

Since the law was in enacted in 2000, 127 municipalities have adopted the act. Over the six years of the program, the state has contributed a total of \$249 million for open space, affordable housing, historic preservation and recreation, providing a 100% match of the local contributions for each of those years (Community Preservation Coalition 2008).

The Impact of Urban Form on the Community Preservation Act

The Community Preservation Act was intended to support several independent substantive goals, within a context of local control over policy. Although these components have links to urban form, the goals emerged as responses to issues distinct from form. Instead, a general consensus about the urban forms native to Massachusetts sets the parameters for what legislative solutions are possible in areas such as environmental and housing policy. These parameters are formed by ideas of the New England village as the vernacular urban form. The prevalence of rhetoric about this vernacular suggests that it was quite important that the act as a whole was consistent with this vision, even though the specific components emerged from distinct motivations.

Unlike the other two case studies discussed below, the text of the Community Preservation Act does not include an explicit statement of purpose. The absence of a clearly stated purpose for the entire act suggests the relative importance of the individual components of the legislation, affirming the arguments of the majority of the interview subjects.

The legislation includes three primary program components and a secondary component (recreation). There was substantial consensus around the importance of each of these distinct components. "It's mom and apple pie. Who doesn't want open space? Who's going to say they don't want affordable housing? Who was going to say they don't want to preserve historic buildings? Nobody," according to Doug Petersen, one of the CPA sponsors in the Senate (Petersen 2008). Indeed, multiple interview subjects described the act as "motherhood and apple pie," suggesting that no reasonable person could oppose the individual goals.

Supporters argued that open space in and of itself had a value, regardless of where it was or how it related to more general patterns of development. For them, it addressed the problem of

continually losing ground as open space was developed; the fact of preserving additional land was more important rather than the location or the attributes of the land preserved (Clarke 2008; Goodman 2008). Supporters of the act argued that attempts to ensure a reasonable supply of affordable housing also had value in and of themselves, regardless of how they fit into the larger urban structure (Callahan 2008). They also argued that preservation of any historic resources, regardless of content or context, was also important and should be encouraged (Rowe 2008). While recreational facilities were judged to be less critical and thus an optional component of the legislation, they were also seen as a categorical good that should be encouraged. Because recreation is a secondary component of the act, the analysis below focuses on the other components.

Beyond general support for components of the act, strong support for different goals by different geographic and substantive constituencies was essential to the act's enactment. Statewide environmental groups, like the Environmental League of Massachusetts (ELM), Mass Audubon, and the Trust for Public Land (TPL), were quite supportive of the open space provisions because of its ecological benefits (Clarke 2008; Gomes 2008; Hatch 2008). Preservation groups like Historic Massachusetts (now Preservation Massachusetts) and the National Trust for Historic Preservation supported the historic preservation component (Rowe 2008). Some housing groups like the Massachusetts Affordable Housing Alliance (MAHA) were strong supporters of the housing component and thus of the act; others like the Citizens' Housing and Planning Association (CHAPA) were supportive of the existence of the housing component but were not strong advocates for the act (Callahan 2008; Gornstein 2008). Industry and real estate groups did not have strong positions on the act other than the opposition of the real estate industry to any form of transfer tax. The strong support of many of these groups was essential to the passage of the legislation.

The legislation attracted different supporters from different geographic backgrounds, which is essential in a legislative system with representation based on geographic districts. The open space provisions attracted supporters in suburban and rapidly developing rural municipalities. In the 1990s, communities in the MetroWest region (past Route 128 to the west of Boston) were experiencing rapid growth. Many of them wished to preserve open space before it was developed and relished the opportunity to receive state funding towards that end, according to former State Senator Dave Magnani, who represented this region. Bob Durand, the steward of the legislation, also represented this same region in the legislature. Magnani also suggested the some of the rhetoric

about open space preservation was a proxy for a desire to slow growth in general in order to reduce the costs of a growing school age population; however, no other interview subjects echoed this understanding (Magnani 2008). Even if school issues motivated other stakeholders, they used the rhetoric of open space instead.

Many urban communities did not see themselves as benefiting from the open space provisions. Others saw it as potentially more detrimental: “The concern on the part of urban communities was that it would result in suburban communities putting up fences,” said Magnani (Magnani 2008). For these reasons, the other components of the act were critical. Both affordable housing and historic preservation were important to urban communities, many of which featured high housing prices and many of which had historic resources that could be threatened by neglect or by development. Senator Marc Pacheco, one of the legislative leaders behind the bill, emphasized the spatial aspect of the coalition. “That’s why they included housing and historic preservation. For the urban legislators, it’s not about open space or the farms because they are all gone. Many of them are interested in historic preservation or in housing. We had to create legislation that would serve urban, suburban, and rural legislators. They have different interests, but they could have a common interest in a comprehensive bill,” Pacheco said (Pacheco 2008). Given the power of the legislative leadership, which then represented Boston and the inner suburbs, it was particularly important that legislation served urban communities as well as urban and suburban areas (Hatch 2008).

The act’s status as a local option law, which had to be adopted by each community in order to be active in it, helped garner significant support. According to Senator Pacheco, it helped to neutralize the opposition from real estate interests. “If they [municipalities] wanted it, they would vote for it. If not, they wouldn’t. It’s hard to oppose. If you opposed, then we said, are you opposed to giving people the right to vote over the future of their community? That was a powerful counter-argument,” said Pacheco (Pacheco 2008). It became relatively hard to oppose *enabling* the cities and towns to implement the goals they deemed important.

Each of the goals embedded in the legislation has weak implications in terms of urban form, which did not have a powerful influence on the legislation. Preserving or creating any quantity of open space impacts urban form by substituting a natural landscape for a built landscape. However, the link is weak because the statute does not frame open space in terms of connections to patterns of development locally or regionally. While local communities *can choose* to link their open space purchases to any patterns they wish, these linkages were not a priority at the legislative level. Few

interview subjects framed land preservation as part of a larger pattern of land use; rather they repeatedly suggested any open space was beneficial (Clarke 2008; Gomes 2008).

The implications of affordable housing in terms of urban form are even weaker than those of the open space provisions. While some housing types are more likely to be associated with housing that is affordable—apartments are often more affordable than small houses, small houses more affordable than large houses—a range of housing types can be affordable depending on the context. Encouraging marginally more affordable housing, especially housing that targets 100% of the area median income, does not imply much about physical form. Furthermore, the rhetoric about affordable housing did not link it to form at all in the context of CPA.

The historic preservation component also has a moderately weak connection to urban form, on the merits and in terms of rhetoric. By definition, historic preservation implies something about the built environment. However, like the other components of CPA, historic preservation is promoted outside of any context rather than in a way that is grounded in urban form. Similarly, the preservation of any historic resource is promoted as a categorically positive step regardless of context (Rowe 2008). The rhetoric does not link this goal to urban form either on a neighborhood scale or on a regional scale.

While advocates did not frame the individual components in terms of form, rhetoric about urban form emerged in discussions about the act. Rhetoric frequently used by the interview subjects implies consistency between the act and a vernacular urban form, the form of the New England village.

While it is not clear that CPA promotes Smart Growth, the alleged linkage between the act and this movement is evidence that supporters discuss the act in terms of urban form. Because the Smart Growth perspective argues that patterns of land use must accommodate competing needs, any act that is motivated by Smart Growth, by definition, is addressing issues of urban form. The Community Preservation Coalition, a group of CPA supporters, introduced the act in the context of Smart Growth (Community Preservation Coalition 2008). Similarly, CPA supporter Senator Pam Resor labels CPA a Smart Growth tool. In describing the vision of the act for less developed areas, Resor said, “They wanted to preserve the historic quality, they need a mix of housing, and they want to preserve open space to make it green and beautiful. For suburban areas, it ties in to the growth patterns they want to share. In that way, it’s a Smart Growth plan” (Resor 2008). The substantive vision of CPA is far weaker than the vision of Smart Growth. CPA neither requires tradeoffs

between actual uses nor does it imagine a regional context for land use decisions as do many Smart Growth proponents. Some supporters claim that the multi-stakeholder community preservation committees, which help recommend uses for the funds in each municipality, feature the kind of cross-boundary discourse that is fundamental to Smart Growth (Rowe 2008). However, other supporters like Marc Draisen, executive director of the Metropolitan Area Planning Council (MAPC) reject this connection. “There’s a lot of talk about it being Smart Growth before there was Smart Growth because it includes three things that are parts of Smart Growth. I don’t think it is. Most communities look at them separately, most focus on open space and some on housing. I think that all three are important and all need money if they are going to happen, and this helps to pay the bill,” said Draisen (Draisen 2008). While Draisen’s argument is convincing that the act does not fall within the parameters of Smart Growth, it is important that multiple sources consider it to do so. This Smart Growth argument is evidence that the act is linked to urban form in the minds of some supporters. It seems that they are using Smart Growth as a loose proxy for the larger category of urban form considerations. Ultimately, the act is not fundamentally a Smart Growth tool but it is nested in rhetoric about urban form.

Smart Growth aside, CPA is located more directly in rhetoric about urban form. Senator Pacheco framed the legislation in terms of his own experience of place. “I grew up in a city [Taunton] with 60,000 people in 50 square miles. There was a lot of mixed use, a lot of open space but very definable villages within the community. It’s very similar to a lot of places within Massachusetts. You had mixed use areas where people walked to church, to school and to the town hall,” he said (Pacheco 2008). This evocation of earlier forms of development served as an explanation of why CPA was necessary and provides an indication of the kinds of things it tries to accomplish. While Pacheco acknowledges that the act is not a comprehensive piece of planning legislation that would change patterns of development, he argues that it contains components that could contribute to improved urban form. In explaining the importance of the act, Clarissa Rowe likewise links an emphasis on better quality of life with a vision of urban form similar to a traditional village:

It’s a local issue, so that the quality of the playing fields where the kids play soccer, town hall that needs a new roof and isn’t wheelchair accessible, the fireman and policewoman that have to live 45 minutes away because they can’t afford it. It’s about making the community the most accessible in the full meaning. You want the people who work there to be able to live there. You want to be able to preserve open space. You want to preserve historic landscapes, the places that exist in Massachusetts and Virginia. (Rowe 2008)

She frames quality of life as the sum of a set of independent goals, including instrumental reasons like the importance of historic resources for the tourism industry. More importantly, her language in this and other responses constantly returns to elements that evoke traditional New England towns, from the church to the open space to the farming tradition. She does not claim that CPA would recreate this vision, but this vision lies in the background of her understanding of the legislation. Many of the other interview subjects joined her in referring to this ideal.

Although urban form objectives are not the primary motivation behind the Community Preservation Act, they played several roles in shaping the act. Ideas about urban form set the parameters for legislation that address the distinct issues of open space preservation, housing affordability, and historic preservation. The interviews revealed that a vernacular idea of form, particularly the New England village, sets the boundaries for possible legislative answers. The substance of CPA is minimally consistent with this traditional notion of form. All the components of the act can contribute to the creation of a traditional village, even though they can also abet the creation of places that are quite different from the traditional village. It is not critical for the legislation affirmatively to achieve the village form; it is essential only that it does not facially violate the common vernacular. Because of the importance of consistency of the legislation with the vernacular, the interview subjects repeatedly used rhetoric about these traditional forms in referring to CPA.

While the rhetoric is secondary to arguments about the individual components, ideas about the traditional New England village insinuate themselves into the discussion even beyond the merits of the actual programmatic components. CPA can be used as a tool to keep communities as they imagine they always have been. Moreover, the act is a tool that is consistent with rhetoric about preserving an existing model of urban form, which produced the label the *Community Preservation Act*. Preservation refers to both the community and the look and feel of its physical surroundings. Ultimately, CPA does not actively seek to produce a particular urban form. The act's components and supporters are focused on the categorically beneficial goals, rather than goals nested in a particular kind of urban form. However, ideas about urban form—in particular a nostalgic preference for a village form—shaped the parameters of what legislation is possible and insinuates itself into rhetoric about the act as a whole.

40R and 40S (Smart Growth Zoning and Housing Production)

Chapters 40R and 40S of the Massachusetts General Laws, titled Smart Growth Zoning and Housing Production, respond to high housing costs by providing incentives for individual municipalities to create zoning for dense nodes of housing. Although 40R was passed in 2004 and 40S was passed in 2005, they will be considered together because they form a single program and they are part of a single legislative story. The fundamental purpose of these laws is to increase housing production with the aim of facilitating economic development. The primary role that urban form played was in setting the parameters for possible legislation. The zoning districts enabled by 40R were a plausible response to the housing problem only because they could be seen as consistent with an idea of vernacular urban form, particularly the traditional New England village. However, active attempts to re-establish this vernacular form *did not* guide the content of the legislation, including elements that some observers framed in terms of Smart Growth. These ways in which urban form operates in this case are a variation on the ways in which it operated in the context of CPA; the details are presented below.

The Legislation

Enacted in June 2004, 40R establishes incentives for cities and towns to establish higher density overlay zoning districts in Smart Growth locations within their boundaries. Permissible locations for these districts include transit nodes, town centers, and other suitable locations like abandoned industrial properties. While the requirements were essential for some environmental advocates (Heart 2008), some housing proponents were concerned that they would undermine the core goal of housing production (Gornstein 2008). The act caps the total land area of the zoning districts at 25% of the total land area of the municipality, emphasizing the district approach (M.G.L. 40R, Section 6).

The act sets density requirements for housing in these districts. The requirements are specified by housing type, with minimum allowable density caps of 20 du/acre for multi-family units, of 12 du/acre for 2-3 family homes, and 8 du/acre for single-family homes. The law requires the zoning districts to allow densities that are at least as high as these thresholds. These requirements address the fact that zoning, particularly in Massachusetts, caps densities and thus contributes to higher housing prices (Bluestone 2008).

The act requires 20% of the homes built within the overlay districted to be restricted as affordable units for households with 80% of the area median income. The act also requires that each project within the overlay district that has more than 12 units contain at least 20% restricted affordable housing. The restrictions on the units remain active for thirty years after the completion of construction (M.G.L. 40R, Section 6). Requiring the towns to allow greater densities makes it feasible to require housing to be dedicated to low-income households. “The higher density allows affordable housing. Like inclusionary zoning, you can’t require it without density bonuses,” said Gornstein (Gornstein 2008).

Housing developments that meet the density requirements and affordability requirements must be allowed as-of-right in the overlay districts. By eliminating the discretion of the local planning authorities, the act attempts to facilitate the creation of housing, gaining the support of organizations like Home Builders Association of Massachusetts (Fierro 2008). Within the as-of-right framework, the legislation invites municipalities to determine a set of design standards for each overlay district. While ensuring that these standards do not place an excessive burden on project proponents, these standards allayed concerns from local planners and municipalities about undermining their control (Lowitt 2008).

Once a district is approved, the municipality can receive incentive payments from the state. First, each municipality must adopt an overlay zoning ordinance meeting the criteria of the law; unlike CPA, the act does not have to be adopted by a municipal referendum. Then, the local zoning ordinances must receive approval by the Commonwealth’s Department of Housing and Community Development (Schmidt 2008). Upon DHCD approval, it provides payments according to the number of additional units allowed by the new zoning. The payments range from \$10,000 for an increase of under 20 units to \$600,000 for an increase of more than 501 housing units. In addition, 40R specifies an additional payment of \$3000 for each unit of housing that receives an actual building permit. This combined incentive system encourages actual construction rather than mere regulatory changes. These two payment streams were funded initially through the sale of surplus state land. After this funding source declined, the legislature has appropriated other funding sources from the budget each year in order to fund these payments (Draisen 2008).

Chapter 40S provides an additional financial incentive for adopting the zoning districts. The Commonwealth promises to pay the differential between the property taxes received from the dwelling unit and the local cost of schooling the children associated with it. This component

provides insurance against rising school costs associated with permitting additional development (M.G.L. 40S, Section 2). This component is based on the argument that municipalities use zoning to exclude inexpensive units whose property taxes that would not cover the cost of the associated services, particular public school costs (White 2008). Because the school component has never had a dedicated source of funding, municipalities are skeptical about changing their zoning based on a state promise to pay the school costs for the long term (Draisen 2008).

The programmatic elements of 40R/40S fall into several categories of tools according to Mark Schuster's typology of government action that was presented in chapter two. First, the state government provides financial incentives to the local governments to change their zoning. Then, participating municipal governments modify their zoning regulations to allow increased housing density. Because zoning caps development density, liberalizing these regulations constitutes an incentive for private actors to produce housing. Thus, state government pursues its goals in this legislation by using several types of tools at these two distinct layers of government.

The History of 40R/40S

In the context of ongoing debates about affordable housing in Massachusetts, Massachusetts's primary affordable housing law, 40R and 40S emerged from a small independent group, the Commonwealth Housing Task Force (CHTF), and were quickly passed into law. As Massachusetts experienced high housing prices early in the 21st century, for-profit developers, non-profit developers, and housing advocates came together to form CHTF. Eleanor White, one of the leaders of CHTF, pinpointed the problem: "Employers were finding it difficult to attract new talent and to keep talent here, given the cost of living. Much of this was attributable to the high cost of housing" (White 2008). Housing was increasingly unaffordable for a broad swath of the population, creating obstacles to economic development.

The legislation originated from a politically mainstream attempt to address concerns about housing and economic development. Barry Bluestone, another CHTF leader, emphasized the distinction between this logic and the affordable housing advocacy. "Normally when we think about housing, people think about it in terms of shelter. What I did in a number of papers is to show how critical housing had become in terms of economic development. Because of a lack of housing and very high prices, we have trouble holding on to young people, losing people to other places," he said (Bluestone 2008). Bluestone traced the beginning of the economic analysis that shaped the

legislation to a request from the Greater Boston Chamber of Commerce and the archdiocese of Boston. Jim Klocke, executive vice president of the Chamber of Commerce, explained his organization's motivations. "We had been hearing about the housing issue from our members for several years. Companies were having difficulty hiring at different levels of their work force. Not just recent college students, but faculty members for universities, doctors for hospitals. It was hard to get people to come to Boston because housing prices were so high," said Klocke (Klocke 2008). This attempt to address housing prices in the context of economic development began to bring together interested parties in what became the CHTF.

In addition to the economic development imperative behind this legislation, 40R emerged amidst attempts to weaken 40B, the state's primary affordable housing law. Just as rising housing prices had caused economic development concerns, they had encouraged significant 40B development as well. This activity in turn spurred legislative attempts to provide greater protection to municipalities from 40B housing developments. By providing direct funding for housing, 40R provided an escape valve from the 40B process, thus taking energy away from efforts to weaken the existing housing programs (Gornstein 2008).

Beyond the general housing pressures, the failure of the City of Boston to adopt the Community Preservation Act in 2001 fostered the momentum that led to 40R. Because CPA requires a popular referendum in order to be adopted locally, it became a visible public battle in Boston. The affordable housing community constituted the primary support for the act. Business and real estate interests strongly opposed an increase in property taxes in the city and spearheaded a campaign to defeat the local legislation (Klocke 2008). Several observers argued that the public opposition by business ensured the defeat (Callahan 2008). As CPA approached defeat in Boston, representatives of the business community approached the housing advocates about working together towards a different solution towards the affordability problem. They had been opposed to the specific characteristics of CPA (Callahan 2008). As this coalition continued to meet, it was formalized as the Commonwealth Housing Task Force.

On behalf of the task force, Barry Bluestone, Ted Carman, and Eleanor White wrote a report that provided the backbone of the solutions found in 40R and 40S. The report, "Building on our Heritage: A Housing Strategy for Smart Growth and Economic Development," builds on Bluestone's economic analysis that a modest increase in housing production would stem the continual rise on housing prices. (The title suggests a program located in the context of a backward-

looking idea of urban form that includes components aimed at several goals outside of the realm of urban form; this rhetoric is discussed further below).) “If you don't have enough supply, why don't you? The answer our team came up with was that zoning in Massachusetts does not allow for multi-family and single-family housing on small lots,” said White. The report then advocated a district-based approach to escaping the local zoning constraints on development. The reports’ proposal for “Smart Growth Zoning Districts” was adopted by the CHTF with few changes and the legislation that was ultimately passed did not deviate far from the CHTF report (White 2008). The report proposed state financial incentives for municipalities to create higher density zoning overlay districts in Smart Growth locations. The proposed incentives include funds in exchange for greater density zoning, assumption of school costs, and priorities in state infrastructure funding (CHTF 2003).

To gain the support of necessary allies, the developing proposal of the CHTF included auxiliary components beyond those that strictly promoted housing production as a component of economic development. The locational standards were critical in securing environmentalist support. “If the state is going to fund the 40R program, it should limit the eligible locations to those that promote other goals that we share as a commonwealth. If we had no other goals, then anywhere would be just fine. Because we have other goals, such as the revitalization of our urban areas and town centers, making use of existing underutilized facilities, and being responsible stewards of our natural resources, for the 40R program parameters for development in keeping with these other goals were established,” said Bennet Heart, a lawyer then with the Conservation Law Foundation who drafted the locational requirements in the legislation (Heart 2008). Similarly, White emphasized that the affordability requirement was necessary to maintain the support of the affordability advocates like CHAPA. She also emphasized that an affordability requirement would be essential to gaining support in the legislature. In the absence of the affordability requirement, White imagined that legislators would ask, “Why should we spend lots of money, and not get an important benefit?” (White 2008).

After achieving significant agreement within the Commonwealth Housing Task Force, the group brought its proposal to the legislature. When the legislation itself was drafted, the authors saw their task as realizing the existing proposal without modifying it (Heart 2008; Wickersham 2008). Representative Kevin Honan and Senator Harriet Chandler championed the bills in their respective chambers of the legislature, and Larry DiCara, a politically connected member of the CHTF, helped usher the bill through the legislature. DiCara attributed the rapid passage of 40R to the legislature’s

eagerness to address heightened public concern about housing costs. In addition, 40R provided an incentive-based path for municipalities to meet their obligations under 40B, the state's existing housing law that was facing legislative challenges (Gornstein 2008). The circumstances satisfy the criteria of John Kingdon's agenda setting model because the housing crisis provided the impetus for action and the work of the CHTF provided a potential solution.

The main legislative obstacle to the passage of the legislation proposed by CHTF was Speaker Tom Finneran's opposition to funding the school cost reimbursement component of the program. He was concerned that it was not appropriate to give wealthy suburban communities funds for allowing school children when poorer communities were already doing so without receiving funds. Other groups were concerned as well about the school cost component either because they thought it would not be necessary or because they felt it was not the best use of state funds (Gornstein 2008). Because of this opposition, the school cost component was removed from the bill, and 40R passed as an outside section of the 2004 budget. As part of the budget, it received less public scrutiny than many other bills, to the chagrin of some advocacy groups (Draisen 2008).

Few players outside the circle of the CHTF were involved until very late in the process. Due to a successful political campaign, the bill gained quick support in the legislature. Some groups, like the Metropolitan Area Planning Council (MAPC) and the staff of DHCD, only became aware of the legislation several weeks before it was passed. Because the philosophy of the act had already been set, MAPC focused its comments on technical details of the legislation (Draisen 2008). Other groups, including the official organs of the planning community, only learned about the legislation after it was passed (Lowitt 2008). This process was strikingly different from the open and drawn out process of shaping CPA.

After the failure to include school funding in 40R, CHTF set out to produce additional research to show that it would be essential to achieving the goals of the legislation. In 2005, they produced "Chapter 40R School Cost Analysis and Proposed Smart Growth School Cost Insurance Supplement," which argued that modest school funding could make a significant difference in the willingness of cities and towns to implement 40R districts (CHTF 2005). With this additional research and Sal DiMasi's ascension to the speaker's chair, the school-funding piece was passed as 40S in fall 2005.

Chapters 40R and 40S went into effect in 2006 and communities began to adopt the districts. As of 2008, 21 municipalities have adopted 40R/40S, and a number of projects are currently underway.

The Impact of Urban Form on 40R/40S

Ideas about urban form are notably absent from the historical presentation above even though the act specifies a narrow vision of dense districts near transit stations and town centers. This absence is intentional because the primary objective of the act was not to address urban form. Similarly, Smart Growth was not discussed extensively, even though 40R is titled “Smart Growth Zoning and Housing Production,” because the act has weak links with Smart Growth. As in the case of CPA, ideas about vernacular urban form set the parameters about for potential policies. Because 40R is consistent with an idea of the traditional village form of Massachusetts, it is within the range of possibilities for state policy. The act includes components that are linked to urban form, including the locational requirements, in order to accommodate potential supporters. However, even these compromises were largely motivated by factors other than urban form. In addition, there is some general rhetoric about how this act plays into good forms, but this rhetoric is weaker and less prominent than the rhetoric surrounding CPA, despite the formal name of the 40R legislation.

On its face 40R is framed in terms of Smart Growth, with some references to urban form embedded in this link. In addition to the phrase Smart Growth in its title, the law begins with the following language:

It is the purpose of this chapter to encourage Smart Growth and increased housing production in Massachusetts. Smart Growth is a principle of land development that emphasizes mixing land uses, increases the availability of affordable housing by creating a range of housing opportunities in neighborhoods, takes advantage of compact design, fosters distinctive and attractive communities, preserves open space, farmland, natural beauty and critical environmental areas, strengthens existing communities, provides a variety of transportation choices, makes development decisions predictable, fair and cost effective and encourages community and stakeholder collaboration in development decisions.
(M.G.L. 40R, Section 1)

The act defines Smart Growth in uncontroversial terms without specifying which of the many precepts this act addresses. Mixed use development is not addressed by the law. Others components are indirectly addressed. The compact districts encouraged by the act will indirectly protect open spaces, but are likely to have a marginal impact on critical environmental resources. Moreover, some of these components relate to urban form, like compact design, while others are unrelated, such as

predictable development decisions. Despite this rhetoric, this passage says very little about the importance of Smart Growth in the law or about the importance of urban form in shaping the law.

Despite the rhetoric about Smart Growth, the interviews revealed that primary motivation of the legislation was to facilitate housing production in order to relieve housing costs. This primary goal shaped the components of the legislation. CHTF leader Eleanor White indicated that the purpose of the district approach was to limit the incursion of state authority on municipal discretion in zoning. The Massachusetts Municipal Association (MMA) supported the act because it was seen as an additional tool that could be used at discrete locations rather than the imposition of the state's will across cities or towns. "We are of the opinion that home rule with regard to land use decision-making should be maintained. So we would never support a program that would mandate us to do anything or strip away the powers of planning boards or zoning boards of appeal," said Matt Feher, a legislative analyst for the MMA involved with the legislation (Feher 2008). Because of the political strength of the municipalities in Massachusetts, it would be much more difficult to pass legislation about zoning over the objections of the municipalities. The district approach itself was not derived from ideas about urban form, such as those about creating nodes of development, but rather it emerged as a strategy to convince the municipality that the law would not excessively infringe on municipal prerogatives in land use planning.

Like the district approach, the density requirements stem from a strategy to increase housing production rather than from a normative idea about urban form, according to the leaders of the CHTF. Increases in density are the act's primary tool for increasing the production of housing. The density also serves a secondary purpose in terms of enabling income-restricted affordable housing. Because the legislation does not provides targeted subsidies for the affordable units, Aaron Gornstein argued that the increased densities are necessary in order to require the 20% set aside of affordable units. Although one interview subject argued that the density requirements helped to obtain the support of environmentalists, many others minimized this connection (Bluestone 2008). Thus, even though the density requirement is a clear intervention in urban form, none of the reasons for these requirements stems from ideas about urban form.

Even though the act's design standards enable local officials to control the urban form, they do not suggest that the urban form is critical part of the legislation. The standards address the perception that high-density environments reduce quality of life by affording the municipalities some control over the districts. The presence of the standards is a minor component that helps to re-

assure municipalities that they will retain some discretion when they adopt 40R. White commented, “I am sure that planners and architects and urban designers are happy that [design standards are] in the statute but they are not an organized constituency. The Boston Society of Architects agreed that it would make better places, which is much better than them saying it would create horrible, ugly things. It’s great that they were in favor, but they are not a big presence in the statehouse, not who we were playing to” (White 2008). Instead, the standards are intended as a signal to the municipalities that 40R would not necessitate a loss of local control. White’s argument about the peripheral place of the design standards reflects the minor role of rhetoric about urban form in shaping the legislation.

While the district approach and the density requirements do not result from ideas about urban form, the locational requirements have a weak connection to form. Bluestone indicated that the presence of the environmentalists in the task force encouraged it to include provisions that would discourage sprawl rather than encourage it. By limiting district locations to areas near public transit, town centers, and former industrial properties, the act would not increase sprawl. Heart argued that environmental values necessitated the inclusion of the locational requirements, but did not motivate the legislation overall. Thus, an environmental idea about form, that specific locations were appropriate for new development, shaped the legislation with regard to this one component.

Even strong supporters of 40R and Smart Growth framed the legislation in terms of housing affordability rather than urban form. Doug Foy, then the Secretary for Commonwealth Development, was a strong a supporter of Smart Growth and used the rhetoric of Smart Growth in the context of 40R. He spoke frequently about how compact development enables people to walk to a transit station or to get a quart of milk. However, Foy indicated in an interview that the most important impact of compact, transit-oriented development in 40R was the contribution to housing affordability. He noted that it could lower the combination of housing and transportation costs because it would allow some people to avoid the expense of owning a car. He emphasized that this effect was more important than effects on urban form itself. If prominent Smart Growth advocate Foy minimized the connections to form, then clearly ideas of form did not drive the content of the legislation.

While the components of 40R/40S did not stem from objectives linked to urban form, the entire package promoted by the legislation describes a distinct urban form. Together, the district approach, the density criteria, and the locational requirements paint a picture of compact

development, associated with transit and linked to existing development. Indeed, the persistent rhetoric about form remains at the level of general discussion of the act rather than engaging with the specific components. The original CHTF report references the “New England village center” as an ideal even while it does not frame this vision as the purpose of the legislation (CHTF 2003).

Report author Eleanor White describes how urban form has a modest level of importance for some stakeholders although it did not motivate her and the other key proponents:

We’re trying to accomplish the ability to replicate the New England village. That's what we had in our mind. It’s not legal to build the New England village, but people talk about how they love villages, postcard towns, with a church and houses. That’s what we wanted to facilitate. Obviously the legislation is much broader, nothing that says you can’t do skyscrapers. The political vision is the New England village, whether in an urban area or a suburban one. The first 40R in Boston is actually a New England village, a village in Mattapan. (White 2008)

White suggests that there is a latent idea of village form even as she argues it was not a primary factor in motivating or shaping legislation. It is particularly notable that she extends this village idea to a development in Mattapan. The mere idea that a village could be within the borders of the City Boston, a city of 500,000 at the core of the metropolitan area, confirms the flexibility of the village vernacular. The vernacular reflects an idea about the lifestyles and land use patterns of Massachusetts, an idea that is not necessarily linked to physical patterns. Instead it reflects the importance of the shared idea of the village form, as well as the importance of the act’s consistency with that idea.

Looking for a concrete connection between this idea of form and the legislation, White suggests that it was important to getting the support of the municipalities and the regional planning agencies. However, this direct connection is illusory. According to Matt Feher of the MMA, the municipalities were resistant to a state model of urban form. This preference for funding without a specified form suggests that the village form was not essential in securing their support. They agreed to this act because it provides a new optional tool for them without constraining their existing abilities (Feher 2008). As to White’s claim about the regional planning agencies, they were not highly involved in the process. The most prominent agency, MAPC, became aware of the legislation only a couple of weeks before it passed and then had a number of concerns with the legislation (Draisen 2008). Therefore, it seems unlikely that the support of the municipalities or the RPAs was the motivation for creating legislation that was consistent with the vernacular village form.

While urban form did not play a direct role in shaping any of the components of the legislation, the rhetoric is persistently present. While it would be easy to dismiss the rhetoric as irrelevant on top of the essential economic issues, the presence of the language about the New England vernacular appears meaningful, according to the ideas of Foucault presented in chapter two. Instead of being confined to a single stakeholder, as White suggested, the vernacular idea is shared at a modest level by a range of stakeholders involved with the legislation. These ideas set the parameters for feasible responses to high housing prices, ensuring that 40R would be consistent with a vernacular New England urban form. While the results of 40R are not necessarily the perfect fulfillment of the village vision, the legislation clearly evokes a vision of a compact village. This vision is perceived by observers to be consistent with latent ideas about the forms native to Massachusetts. Ultimately, while the specific components of the act did not emerge from ideas about urban form. The act and the vernacular are, thus, consistent enough to allow supporters to speak about the legislation using the language of this particular urban form.

Landlocked Tidelands

Compared to CPA and 40R/40S, landlocked tidelands legislation has the narrowest scope and was enacted in the shortest amount time. The main legislative activity occurred over a single year, from conception to enactment, compared to almost twenty years for CPA and several years for 40R/40S. The law applies to approximately seven square miles total (4500 acres), primarily in Boston and some surrounding coastal communities. The legislation basically reinstated a regulatory regime that was ruled invalid by a state court earlier in the year in which the law passed. As in the previous two cases, urban form was not the primary objective for this legislation. The motivation for the legislation was the continuation of a clear permitting regime and removal of doubt about property titles created by the prior court ruling. An idea of urban form exists in the background of this legislation, just as ideas of form existed in the other two cases. In this case, however, the relevant vernacular is one of the city rather than the vernacular of the New England village. Because Boston is seen as a locus of urban development, this urban vernacular set the parameters for legislation that primarily affects the City of Boston, allowing new legislation to facilitate development.

The Legislation

Tidelands in the Commonwealth are subject to the Chapter 91 licensing process to ensure public access to the water and to enable public benefits from non-water dependent uses. Also subject to this process are historic tidelands, areas which had been tidal until changes in the landscape changed their status. The most common type of historic tidelands are lands that were filled in order to support development. In the Boston area, this includes the entire Back Bay, much of the MIT campus, and many other areas around downtown.

The 2007 legislation exempts filled former tidelands that are landlocked from the Chapter 91 licensing process that governs other tidelands. Landlocked tidelands are defined as those that are both separated from the water by a public way and that are more than 250 feet from tidal waters. By establishing this exemption and this definition in statute, the legislature reinstated an exemption that had been recognized administratively for the previous twenty years (Chapter 168 of the Acts of 2007, Massachusetts).

For development projects that already meet the threshold for Massachusetts Environmental Protection Act (MEPA) review, the tidelands legislation adds an additional review of impacts on public access. While large projects on filled tidelands will be subject to review of the impacts on public access during the MEPA process, most projects will continue to be fully exempt from any tidelands review. In areas identified as having low groundwater levels, the legislation also requires an analysis of impacts on groundwater resources during the MEPA process. Projects in low-groundwater areas on filled tidelands are then required to minimize or mitigate impacts on groundwater. Representative Frank Smizik noted that this component was not fundamentally linked to the goal of the legislation, but was added because of the concerns of some groundwater advocates from Boston (Smizik 2008).

According to Mark Schuster's typology of the tools of government action presented in chapter two, this legislation falls primarily within the regulatory category. The Chapter 91 licensing process constrains the type of development possible on tidelands. This legislation exempts landlocked tidelands from the licensing process, enabling a greater range of development on these properties. The additional public benefits review for select projects within the MEPA process includes an information element because MEPA is structured to generate information for use by other government agencies.

The History of Landlocked Tidelands Legislation

The rights of the public to tidelands in Massachusetts originate in colonial common law rights of the public to waterways. In 1866, these rights were formalized in Chapter 91. By regulating structures in the water and at the water's edge, the 1866 law ensures public access to waterways for fishing, fowling, and general access. The legislation initially required individual licenses from the legislature when creating any structures in the water or on tidelands in order to preserve these rights of access. The legislation applies to structures on tidelands, in bodies of water larger than ten acres ("Great Ponds"), and selected streams or rivers.

In the early 1990s, a comprehensive set of regulations implementing the Chapter 91 statute were issued in order to guide development in a more systematic fashion along the Commonwealth's bodies of water. The regulations were the subject of consensus among the many stakeholders that were involved in the process, including environmentalists, business advocates, planners, city officials, and others. For more than fifteen years, none of these stakeholders broke with the consensus and

challenged the regulations (Clarke 2008; Kimmell 2008). This regulation ushered in the modern era of Chapter 91 licensing, including 55 foot height limits along the waters edge, stepped setbacks, the role of municipal harbor plans, and the rules for facilities of public accommodation along the water. These were tied together in an administrative licensing process implemented by the Massachusetts Department of Environmental Protection (DEP). At that time, the regulations administratively exempted landlocked tidelands from the processes that it established. Jack Clarke, the legislative director of MassAudubon who was involved drafting these regulations, explained the necessity of the exemption. “Just because the state said you can fill [the land] doesn’t mean that the rights have been extinguished. That said, we can’t require developers to put in public benefits in areas not near water, where there’s no connection. So we said, let’s draw a line in the sand. The area of centerfield in Fenway Park, that has no connection to water,” said Clarke (Clarke 2008). The drafters understood it as a common sense exemption that distinguished between properties with some current connection to waterways and those with only historic connections to water.

The consensus was unchallenged by any party until the North Point project in Somerville instigated controversy about the exemption, according to Clarke. The North Point project is a large master planned project near the Lechmere MBTA station in Somerville and in a small portion of East Cambridge. Neighbors opposed to the project joined together in the Association of Cambridge Neighbors and sought to defeat the project at many stages, including local zoning and state environmental licensing. After being defeated in those arenas, the neighbors litigated against the project on the grounds that it required a Chapter 91 license because it was on a historic tideland. They argued that DEP had improperly exempted it from a Chapter 91 license. While DEP argued defended the administrative exemption of landlocked tidelands, the Supreme Judicial Court (SJC) ruled in *Moot vs. DEP* that DEP exceeded their statutory authority in exempting these lands, and thus relinquishing rights held by the public. The court indicated that only the legislature could modify Chapter 91 and exempt these lands (*Moot vs. DEP*, SJC-09774, Massachusetts). They returned the matter to the legislature in early 2007.

Absent a legislative response, the SJC ruling had the potential to significantly influence the pattern of development in Metro Boston and along other tidelands. Because over 3000 acres were affected in Boston, including the Back Bay and part of Fenway park, as well as other landlocked areas of the city, the administration moved to develop a rapid legislative resolution to the uncertainties created by the SJC ruling. According to Ken Kimmell, the general counsel of the

Executive Office of Energy and Environmental Affairs, the court ruling threatened DEP's ability to appropriately permit those lands that deserved heightened scrutiny because of their proximity to water (Kimmell 2008). At the same time, the ruling placed into doubt the title of many properties far from water.

The Patrick administration quickly filed legislation that would resolve the doubts created by the SJC ruling by reinstating the prior status quo. The supporters of a quick resolution first grappled with a proposal from Speaker of the House of Representatives Sal DiMasi, who argued that all tidelands licensing should be returned to the legislature. While this proposal received attention in the press, Kimmell said that DiMasi's move was intended to provoke debate rather than being a serious proposal. While the Patrick administration favored a return to the status quo, the interests of some environmental groups and the priorities of some local legislators ensured a public benefits review was added to the legislation. This legislation was signed into law on November 15, 2007.

The Impact of Urban Form on Landlocked Tidelands Legislation

At its core, the legislation about landlocked tidelands in 2007 was not about urban form. The proponents of the legislation sought to clarify whether the Chapter 91 licensing procedure applies properties not adjacent to water. They also wanted to remove doubt from the ability to develop properties on filled tidelands. Alongside these fundamental motivations, an idea about urban form operated in the background—the idea that that the landlocked tidelands are fundamentally urban and, thus, appropriate locations for development.

The objectives of the legislation are presented in several initial “whereas” clauses. While some of these clauses explain how the legislation fulfills the criteria set out by the prior SJC ruling, the third clause presents the legislation's substantive goal:

Whereas exempting existing and future uses, structures, and improvements on landlocked tidelands from the licensing requirements established by chapter 91 of the General Laws, serves proper public purposes, including, but not limited to, maintaining marketable titles, continuing the beneficial redevelopment and revitalization of landlocked tidelands, and encouraging public access to the waterfront . . . (M.G.L., Chapter 168 of the Acts of 2007, Section 1)

The first objective mentioned, “maintaining marketable titles,” reflects the consensus of the interview subjects that the primary objective of the legislation was to avoid creating obstacles within the existing process of development and permitting. The second objective, “continuing beneficial

redevelopment and revitalization of landlocked tidelands,” reflects an idea that continued development is appropriate for the urban contexts where the landlocked tidelands are situated. The interview data suggests that this background idea is relatively less important than is suggested by its presence as the second objective listed in the legislative preamble. The final objective, “encouraging public access to the waterfront,” is not an attempt to argue that the legislation will *increase* public access beyond the status quo, but rather that the exemption will not improperly *decrease* such access.

According to the many interview subjects, the physical impact of development on landlocked tidelands—or the lack thereof—was not the driving factor behind the legislation. Some of the parties involved with the legislation did not consider potential physical outcomes of the enactment of legislation. These actors focused on the process by which development would happen rather than whether it would happen. Among those people was Representative Frank Smizik, who helped to shape and shepherd the legislation as the co-chairman of the Joint Committee on Environment, Natural Resources and Agriculture, which was assigned the legislation. Smizik emphasized that his priorities were to ensure that developers who had behaved according to the prior rules were not punished and to maintain existing environmental protections (or expand them if possible).

Other involved parties acknowledged potential impacts on urban form but indicated that they were not critical in shaping the legislation. “Let’s say the legislation didn’t pass, we would have to establish criteria for the properties and that’s an unknown. If we tried to apply the criteria that apply to the waterfront, then it would have dramatic results. There are height limits of 55 feet, and then stepping back, open space requirements. It would be a dramatic imposition of state standards,” said Kimmell (Kimmell 2008). The fact of the intrusion of the state into the realm of land use policy, traditionally left to local governments in Massachusetts, was of more concern than actually restricting buildings to 55 feet in significant areas of the city. Thus, he emphasizes the imposition of a state standard in and of itself rather than the physical impact of the standard.

Even though proponents of the legislation did not primarily argue for a specific physical outcome of the legislation, they referred to the existing built environment in their arguments. Proponents of the pre-*Moot* status quo used the existing built environment as a baseline. They suggested that the development of the Back Bay, for example, is reasonable and ought to be able to continue along similar lines. In addition to being an argument about regulatory simplicity, this is also

an argument for the continuation of status quo of the built environment, including the continuation of development projects already underway (Kimmell 2008; Serafin 2008).

For the critics of the legislation from the environmental movement, the extension of procedures that protect the public interest was more important than physical impacts on urban form. The Conservation Law Foundation (CLF) became one of the most outspoken critics even though they had previously been supporters of the regulatory exemption for landlocked tidelands. According to Peter Shelley, the Massachusetts advocacy director for CLF, they came to the conclusion that there was a persistent public interest in filled tidelands regardless of where there were located (Shelley 2008). CLF argued that the state should continue to safeguard these interests by applying Chapter 91 to these lands as well. Shelley did not believe that the application of Chapter 91 to these lands would have a significant impact on development, in part, because he assumed that any Chapter 91 regulations applied to these lands would require a license but would not treat the land as if it were adjacent to the water. Thus, the physical impact played little role in CLF's advocacy around the legislation. The Charles River Watershed Association (CRWA) was concerned with the legislation as written because it wanted to see public benefits and access from areas that were landlocked, according to Margaret Van Deusen, deputy director of the association (Van Deusen 2008). The CRWA advocated for a public benefits review for all projects over five acres on landlocked tidelands. This idea was motivated by a desire to extend procedures that would enable public benefits. Beyond these procedural arguments, form played a peripheral role in the advocacy of these two organizations. Both Shelley and Van Deusen argued that applying Chapter 91 to landlocked tidelands would deepen public access. In particular, they argued that it would increase radial access to the water from the landlocked interior to the water along multiple paths, while the current system focuses on lateral access along the waterfront. However, form was subordinated to procedure in their advocacy. The opposition of these environmental groups to simply restoring the pre-*Moot* status quo was based on a perspective that the public should use every point of leverage available to shape development projects. Because the SJC had handed environmentalists and local advocates another entry point through which to seek the public welfare, these advocates argued that the public should use this opportunity for its own benefit. None of these arguments was sufficiently persuasive to stop the legislation.

The primary objective of the legislation as a whole was to restore the status quo, which had previously enjoyed a broad consensus, and to achieve regulatory clarity for development permitting.

This was particularly important for the 3000 acres of filled tidelands in Boston, as well as 1500 additional acres in surrounding communities. According to environmentalist Vivien Li, executive director of the Boston Harbor Association, “we felt the status quo was fine with us, it would protect areas of interest that we have” (Li 2008). With regard to the landlocked properties, the consensus had an intuitive simplicity that was desirable. It appeared natural to a layperson that properties in the middle of the city and filled for 100 years need not go through a licensing process meant for properties along bodies of water.

Nonetheless, some background ideas about urban form create the conditions that make this solution possible. People involved with the legislation shared the assumption that the landlocked tidelands are in longstanding urban areas, such as Boston and Cambridge, and therefore appropriate for development. Because of this common understanding of urban form, there was negligible debate about the legislation’s physical impacts on the landlocked tidelands. All those involved acknowledged a consensus that the development would proceed apace, even if some public benefits review were to be required.

As in the case of CPA and 40R/40S, an idea about vernacular urban form helped to establish expectations about what legislation solutions are feasible. Here, the conventional idea of form is of a dense urban area rather than the New England village vernacular applied across the state. The landlocked tidelands legislation was, thus, able to succeed because it was consistent with the urban vernacular, even though the idea of the urban vernacular was not the driving force behind the legislation and did not lead to the addition of any programmatic components. It was sufficient that proponents could speak about the legislation and its potential impacts in the language of this urban vernacular. Further comparisons with CPA and 40R/40S are found in the following chapter.

CHAPTER FOUR: URBAN FORM AND ITS IMPACT

The Community Preservation Act, 40R/40S, and landlocked tidelands legislation each have plausible impacts on urban form. There is a fundamental similarity in the influence of urban form on the legislation examined in each of the case studies, suggesting a general framework in which urban form operates with regard to Massachusetts state legislation. Urban form is not the driving factor in any of these cases. Instead the driving factors range from housing affordability to environmental protection to the establishment of clear permitting procedures. All of these policy objectives are presented in non-spatial terms. However, in each case study, rhetoric of urban form emerged in the discussions about the legislation. The prevalence of this rhetoric indicates that it was essential that the legislation be consistent with shared conceptions of the urban forms native to Massachusetts. These ideas of the vernacular are dominated by the idea of the New England village, but also include a secondary urban vernacular. While the village vernacular is applied across the entire state, the added layer of the urban vernacular is confined to select urban locations. Each piece of legislation had to be consistent enough with an idea of vernacular urban form so that it could be presented and advocated in terms of the vernacular. Each case study revealed a variation on this basic pattern; these variations are explored below.

Two Vernaculars of Urban Form

Two versions of the vernacular urban form emerge through the three legislative case studies. CPA and 40R/40S rely on the primary vernacular idea of urban form in Massachusetts, the New England village. The tidelands legislation looks to a secondary urban form, the idea of the developed city core, that is overlaid on the village vernacular in selected urban places. Because these two substantive visions are quite different from each other, it is important to examine these visions before comparing the ways in which the visions operate in the three case studies.

The idea of the New England village that emerges in the discussion of CPA and 40R/40S reflects how many Massachusetts residents see themselves and their urban environment. This vision emphasizes compact, largely self-sufficient nodes that are integrated with the rural areas around them. The vision is based in the history of the state that stretches back to colonial days. By preserving elements of the state's historic fabric, state residents link themselves and their surroundings to this history.

This idea of the New England village is linked to the American idea of the middle landscape presented in chapter two. Like the more general pastoral ideal articulated by Thomas Jefferson and others, the New England village archetype promotes a less crowded setting than those of the dense metropolises that it tries to ignore. The New England village is a middle landscape, between the farms and the city. Each ideal includes an agricultural component: Thomas Jefferson wanted everyone to be a farmer, but modern day New Englanders just want to look at farms. The Massachusetts vernacular admits the importance of nodes of development, but also recoils from increases in density that might create those nodes. Ultimately, the modern idea of the New England vernacular is a much more shallow vision than Jefferson's vision of a network of lifestyles that he dreamed would characterize the new country.

This nostalgic vision for a pastoral landscape is largely disconnected from the modern reality. From highways to high-speed internet, the systems that connect the state and its people create a modern landscape rather than a landscape of independent villages. While few would mistake Boston for Houston, big box retail environments and highways characterize much of the settlement pattern that runs between Boston and the Berkshires. While many residents value the existing farms, agriculture is largely a matter of the past in the state. The vernacular is, thus, an imagined vision about the present based on ideas about the past, rather than a realistic descriptive or normative understanding of the urban form of Massachusetts.

While the village ideal is applied across Massachusetts, even in parts of the core of the region, a secondary vernacular applies specifically to the City of Boston and its nearby neighbors. As the analysis of the landlocked tidelands reveals, there is a latent idea of Boston and its neighbors as fundamentally urban places. They are relatively dense places where relative density is, generally, appropriate. The vernacular indicates that continued change and development are appropriate, laying the groundwork for the general consensus that tidelands legislation should not be used to stymie development across the City of Boston. While neighbors and others often resist increases in density because of the negative impacts they bring, this resistance is found in a wide range of contexts with a wide range of vernaculars of urban form. Instances of resistance to density do not contradict the urban vernacular in Boston. The urban vernacular is strikingly different from the village vernacular, which idealizes the small scale and the pastoral.

Both the village and the urban vernaculars emerge from existing patterns of development. The urban vernacular is based on discrete locations of dense urban development; the village

vernacular is inspired by the historical low-density patterns found throughout the state. Policymakers at the state level give significant deference to each vernacular where relevant. A legislative policy initiative can only be successful if advocates can frame the policy in the terms of the relevant vernacular. Because there are no fixed criteria for consistency, the degree of congruency between the ideal and the policies varies from case to case, based on the substance and the actors involved. In all cases, the congruency must be sufficient so that the legislation can be framed in the terms of the vernacular.

The Rhetoric of Urban Form

The three cases examined in this study can be seen as consistent with existing vernaculars of urban form. Urban form drives neither the acts overall nor their components, and it is constrained by a powerful idea that state government ought to delegate control over urban form to the municipalities. However, rhetoric about urban form is present in discussion of each law, with CPA and 40R/40S referring to the village vernacular and tidelands legislation referring to the urban vernacular. While the consistency operates most strongly in CPA and least strongly in tidelands, in all of them it confirms the importance of fundamental consistency between policy and latent ideas about urban form.

The Community Preservation Act was motivated by three discrete ideas outside the realm of urban form (Draisen 2008). First, environmentalists support the preservation of open space (Gomes 2008). Second, groups concerned with meeting the basic needs of all of society's members support affordable housing (Gornstein 2008). Third, people advocating the importance of tangible links to the Commonwealth's past support the historic preservation pillar (Rowe 2008). Each of these motivations is framed in non-spatial terms and not in terms of its connection to a large-scale or small-scale pattern of urban form.

Among the three cases studies, 40R/40S has the most defined implications in terms of urban form because of its prescriptions for dense districts in qualifying areas. However, the goals of the act are unrelated to urban form. The legislation was motivated by a desire to relieve housing prices in order facilitate economic development across the Commonwealth. Even though the law includes several spatial elements for strategic reasons, all but one of these elements are motivated by reasons unrelated to urban form. For example, the district approach of the law, which focuses development

in discrete areas, is motivated by the need to minimize the interference with municipal land use policy rather than by a vision of urban form (Feher 2008; White 2008).

So too, the 2007 landlocked tidelands legislation was motivated by concerns other than urban form. Sparked by a court ruling that invalidated the administrative exemption of landlocked properties from tidelands licensing, the 2007 legislation sought to re-establish the previous status quo. The proponents wished to re-establish a clear and intuitive licensing process. Representatives of environmental groups, the real estate industry and government argued that it was counter-intuitive to apply tidelands rules to inland properties (Kimmell 2008; Li 2008; Serafin 2008). Others emphasize that it was important to focus the limited regulatory resources on the most environmentally sensitive areas along waterways (Goodman 2008). Moreover, proponents of the legislation wished to ensure that the court ruling did not cause confusion about existing titles to land on tidelands, including projects already underway. None of these goals is focused on urban form.

Despite the fact that the primary motivations for each of these three cases are outside the realm of urban form, rhetoric about urban form enters into the discussion of each case. Former state Senator Doug Petersen argued that the Community Preservation Act aimed at creating communities that would “look pretty” (Petersen 2008). This response links CPA to ideas about how communities in Massachusetts should look and feel, and it frames the act as an attempt to advance that vision. The frequent rhetoric about preserving communities is both related and unrelated to urban form. The vast majority of the CPA proponents offer a vision of preserving the physical form of communities that includes open space, modest housing, and historic resources. This vision looks towards the historic pattern of the New England village. In addition to supporting community preservation in order to foster a vernacular form, some proponents of the act supported open space funding in order to exclude new school children (Magnani 2008) or to preempt affordable housing projects (Gornstein 2008).

It is critical that the substance of CPA is consistent with the vision of a New England village held in common by the act’s supporters. Taking the rhetoric about the vernacular seriously, its prevalence implies that this vision of urban form exists in the minds of the policymakers while shaping the legislation. At a minimum, if the act clearly violated that vernacular urban form, it would not have been a viable legislative option. While the evidence does not suggest that the act was created in order to realize a particular vision of the vernacular, this logic of consistency operates more strongly with regard to CPA than in 40R/40S and landlocked tidelands. Here, this vague vision

of urban form seems to exist in a background for a significant number of the act's advocates, whether historic preservationists or environmentalists. While the primary goals of these advocates are historic preservation and open space support, respectively, the primary supporters of the act embedded language of urban form in the idea of community preservation that they promote. For example, Senator Pacheco, one of the act's legislative sponsors, described the act in terms of creating livable communities that would resemble the mixed-use community of Taunton in which he spent his youth (Pacheco 2008). The use of this language confirms the strong consistency between the idea of a vernacular of form and the content of the legislation.

Proponents of 40R and 40S used rhetoric about urban form that is framed in the context of Smart Growth even though Smart Growth and urban form are not the primary objectives of the act. The legislative text is framed in terms of Smart Growth, as described in chapter three. Several of the key proponents and other advocates understand the act in terms of Smart Growth and use the language of a more compact urban form in describing the legislation (Goodman 2008; White 2008). These arguments indicate that it is better to create dense nodes of development around transit stations and town centers than to facilitate development elsewhere in the state (Foy 2008). The language used explicitly contrasts the pattern of development facilitated by this legislation with sprawl.

Ideas about urban form directly shape only one component of the act, the locational criteria for the districts. Restricting the districts to Smart Growth locations—near transit stops, in town centers, on old industrial properties—enabled the act to gain the support of environmentalists (White 2008). This component reflects a contemporary environmental idea about form: that it is better to build near public transportation or in already-built areas than to build on undeveloped land, known as “greenfields” (Heart 2008). Even this is a relatively shallow idea about form. This logic is rooted in a desire to *avoid* a potential negative impact of a bill promoting housing production, which could easily have promoted sprawl in the absence of these criteria. It is not rooted in an affirmative vision of encouraging nodes of compact development.

The use of mild rhetoric of Smart Growth and urban form emerges from the importance of consistency between the legislation and the vernaculars of form. The Smart Growth movement in Massachusetts is insufficiently strong to support an argument that the phrase was essential to receiving general political support. Instead the use of the language of Smart Growth is evidence that 40R/40S is viewed as consistent with the New England village vernacular. The references to open space, housing, and historic patterns in discussions of 40R/40S are more closely aligned with

the vernacular than with the regional planning emphasis embedded in Smart Growth. Eleanor White argued, “It’s not legal to build the New England village, but people talk about how they love villages, postcard towns, with a church and houses. That’s what we wanted to facilitate” (White 2008). This idea of the vernacular was the baseline for legislation aimed at ameliorating high housing costs. Absent the consistency, the legislation would have little chance of successful passage. The role of the vernacular does not extend far beyond the importance of ensuring this consistency.

With regard to landlocked tidelands, the primary arguments about clear permitting processes and clarifying property titles were accompanied by rhetoric about urban form. Legislative proponents drew a fundamental distinction between landlocked areas and properties along the water (Li 2008). When their opponents argued that filled tidelands had the same *legal status* as tidal properties and that the same public rights should apply (Shelley 2008), the legislation’s proponents parried this argument in terms of urban form: these lands fall into fundamentally separate categories of urban development and, thus, deserve different treatment. This distinction provides the basis for the argument that landlocked areas are fundamentally appropriate for development from the perspective of the state, while areas along water deserve a much more strict process of review (Goodman 2008). Some opponents of the legislation sought to minimize this distinction to argue for stricter review of development on landlocked tidelands. They argue that inland properties have latent connections to the water that are similar to the direct connections of tidal properties. They argue that these latent connections ought to be revealed through urban design that fosters radial connections from the water to the landlocked interior (Shelley 2008; Van Deusen 2008). This distinction in the realm of urban form supports the primary argument about a simple and intuitive permitting process.

The discussions about tidelands reveal an urban vernacular that applies particularly to the City of Boston. Because the majority of the tidelands are in Boston and similar neighboring communities, these fundamentally urban properties are regarded as appropriate for development. The argument for ensuring a clear permitting process on landlocked tidelands is consistent with the urban vernacular. The consistency was important in ensuring this legislation’s viability. Indeed, many of the parties believed that any resolution adopted would not radically alter the pattern of development under the prior status quo. This belief is rooted in a fundamental understanding of Boston as a place of density, development, and change; this understanding constitutes the urban version of the vernacular idea of form. Legislative opponents of the landlocked tidelands legislation

who desired stricter state constraints on development in the urban core risked irrelevance because of their position's inconsistency with the urban vernacular. This vernacular is simpler than the village vernacular because it emphasizes continued development rather than an affirmative village form. Nonetheless, it was critical in setting the parameters for legislation that would shape the urban core of the region.

Urban Form and the Actors

Housing advocates, environmentalists, representatives of the real estate industry, local government representatives, and state agency representatives all have engaged in the legislative debates recounted in chapter three. There is a fundamental similarity among them in that their arguments are not motivated, at root, by urban form. From the representatives of environmental organizations to the home builders, they argue in terms of categorical characteristics rather than in terms of spatial patterns. Environmentalists argue that the more habitat preserved the better, while home builders argue that the fewer restrictions on building the better (Clarke 2008; Fierro 2008). Moreover, clear links do not exist between the use of rhetoric about urban form and the background of the interview subjects. For example, because the agendas of environmental advocacy organizations diverge, it would be inappropriate to attempt to identify a single environmental perspective on urban form. Similarly, while some legislators used a fairly strong rhetoric of urban form (Pacheco 2008), others with similar positions on environmental issues used far weaker rhetoric (Resor 2008).

Even among actors that might seem to be positioned to use ideas about urban form to shape legislation, few use it actively. Local planners attend to issues of urban form in their daily work. However, in their minimal advocacy at the state level, the local planners argue that good outcomes with regard to urban form are best achieved through more robust local planning processes. They do not often advocate for state legislation in terms of the direct physical impacts on urban form (Fields 2008; Lowitt 2008). Thus, for instance, the state-level advocacy of regional planners such as the Metropolitan Area Planning Council focuses on process. Regional planners often emphasize the importance of regional planning processes, as well as other non-spatial goals supported by their local members such as environmental or housing needs (Draisen 2008). Like the local planners, they do not often advocate for specific urban form.

The Massachusetts Smart Growth Alliances (MSGA) is a coalition of seven independent organizations devoted issues that comprise Smart Growth, including a balanced approach to development, environment, housing, and equity. Although the MSGA has been engaged in many cases that impact urban form, including the cases that are the center of this thesis, they act primarily through their members. A single member organization takes the lead on each case, working with the representatives of the other constituents. This organizational structure may foster the dominance of the constituent voices that do not focus on ideas of urban form. Moreover, the rhetoric of the MSGA focuses on the balance between the goals they delineate rather than focusing on the spatial implications of policies (MSGA 2008). While the Boston Society of Architects is a member of the MSGA and itself is concerned with urban form, it does not have a strong presence in the statehouse and does not conceive of itself as a state-level advocate (Wickersham 2008).

None of the actors involved with state legislation, including the ones most closely associated with urban form, advocate for legislation that will impact urban form by directly using arguments about urban form. Instead, background ideas about the two urban vernaculars that characterize the Commonwealth of Massachusetts seep into the general rhetoric all parties use to describe and advocate for state legislation. This rhetoric sets the boundaries for possible state legislative action but is itself constrained by a strong idea of local control over urban form. This understanding of the use of urban form in the three legislative case studies inspires the recommendations that are offered in the concluding chapter.

CHAPTER FIVE: LESSONS FOR THE FUTURE

The three legislative case studies presented in the previous chapters suggest several recommendations about ways to facilitate better outcomes regarding the built and natural environments through the use of arguments about urban form at the state level. Because the Community Preservation Act, 40R/40S, and landlocked tidelands legislation were enacted between 2000 and 2007, the analysis of these cases sheds direct light on the contemporary legislative context in Massachusetts and provides lessons for other contexts as well.

The case studies suggest that people who are concerned about urban form ought to attend to the relationship between state legislation and urban form. In particular, such people should be cognizant of the ways in which language about urban form is used in the state policy arena, including the ways in which it sets the boundaries for possible state legislation. The argument presented here transcends the conventional debate between those who contend that urban form has no impact on legislation and those who argue that it should be a significant factor in determining policy. A more nuanced understanding of the actual paths of influence of ideas about urban form would facilitate translating urban objectives into policy.

The analysis of the case studies in this paper can help to guide the work of advocates for improvements in urban form, including local organizations like the Massachusetts Smart Growth Alliance. These advocates are mostly likely to succeed when their tactics are consistent with the constraints of the state policy arena. While improving urban form is unlikely to be persuasive as a primary motivation behind legislation, advocates can pursue this objective by tying it to other non-spatial causes, such as environment, housing, or economic development. Because successful legislation about those other arenas must be consistent with vernacular ideas about urban form, urban form advocates can use this connection as leverage to achieve improvements in urban form. By collaborating with people engaged in otherwise unrelated legislative efforts, urban form advocates can promote their own agenda and help others achieve their goals by ensuring that such legislation is consistent with vernacular urban forms. Whenever urban form advocates become engaged with a legislative project, they should understand that successful form components must be structured such that they can be portrayed as consistent with vernacular patterns of form.

The strategies offered so far treat the urban vernaculars as static. However, ideas about urban form change over time. For the long term, advocates concerned with urban form may find it productive to attempt to create alternative acceptable ideas of form. This long-term project could

involve education about how existing patterns already diverge from the commonly accepted ideas about form or advocacy about the benefits of alternative patterns. While it is difficult to change accepted ideas about form, doing so may be critical to promoting spatial visions that depart from the status quo, such as those that address climate change and other important problems.

Several existing approaches towards shaping government policy affirm the importance of analysis, education and advocacy around questions of land use and urban form. Through the Community Preservation Initiative, Massachusetts' state government distributed build-out projections according to current land use regulation for each municipality in the state. While the tool was originally intended to create support for the Community Preservation Act, the information provided ultimately spurred increased local land use planning across the state. This information initiative by state government played a key role in facilitating additional activity by local governments. In the non-governmental realm, the Regional Plan Association conducts analysis, education, and advocacy with regard to land use in the New York City metropolitan region. A mainstream planning organization, RPA grapples explicitly with the intersecting spatial dimensions of a variety of problems, including housing, transportation and the environment. RPA has been successful in shaping government policy from neighborhood-scale projects to city-scale initiatives like New York City's recent sustainability initiative, planYC. These two examples affirm the multiple ways that engagement by actors inside and outside of government with ideas about urban form can raise the quality of government policy with regard to urban form, particularly by providing information to the public and to the government.

The success of the recommendations proposed here requires increased attention from a variety of advocates, government officials, and design professionals, as well as scholars. This paper is but a small piece of a larger puzzle related to questions about urban form, suggesting several avenues for further research. Exploring additional data about the cases that are the subject of this thesis would yield an even better understanding of the ways in which urban form shaped these pieces of legislation. It would be revealing to examine the testimony presented at the hearings and the legislative sessions that were devoted to these pieces of legislation. In addition, because 40R/40S and CPA only take effect after a municipality adopts the legislation, it would be interesting to use the analytical frame of this paper to examine arguments about implementing the legislation in a variety of cities and towns. Finally, this essay suggests a challenge involved in generalizing the phenomenon detailed in this paper beyond Massachusetts. Specifically, because this essay argues that an important

force in setting the boundaries for state legislation is the *New England* village, what other ideals of urban form are relevant both inside and outside of New England? How do those ideas operate in other contexts with regard to governmental traditions and with regard to extant urban form? It would, thus, be fruitful to compare the Massachusetts experience with legislative initiatives in other states, such as Maryland or Oregon that have addressed questions of land use more directly. Comparative projects could be especially useful in understanding how governments can and should shape the built environment as they aim to better the lives of their inhabitants. Further research can extend the lessons for future practice beyond those suggested by the examination of CPA, 40R/40S, and landlocked tidelands in this paper, facilitating improved land use policies in Massachusetts and elsewhere in the United States.

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Begelfer, David	National Association of Industrial and Office Properties – Massachusetts (NAIOP)	industry advocate	March 4, 2008
Bluestone, Barry	Northeastern Center for Urban and Regional Policy, Commonwealth Housing Task Force (CHTF)	housing advocate	February 26, 2008
Callahan, Tom	Massachusetts Affordable Housing Alliance (MAHA)	housing advocate	February 29, 2008
Clarke, Jack	Massachusetts Audubon Society (MassAudubon)	environmental advocate	March 12, 2008
DiCara, Larry	CHTF	housing advocate	February 29, 2008
Draisen, Marc	Metropolitan Area Planning Council (MAPC)	representative of government group	March 21, 2008
Feher, Matt	MMA	representative of government group	March 7, 2008
Fields, Tony	Massachusetts Association of Planning Directors (MAPD)	representative of government group	March 10, 2008
Fierro, Ben	Home Builders Association of Massachusetts	industry advocate	February 27, 2008
Foy, Doug	Massachusetts Office of Commonwealth Development (prior affiliation)	state government official	March 5, 2008
Gomes, Jim	Environmental League of Massachusetts (ELM) (prior affiliation)	environmental advocate	March 3, 2008
Goodman, Nancy	ELM	environmental advocate	March 10, 2008
Gornstein, Aaron	Citizens Housing and Planning Association (CHAPA)	housing advocate	March 11, 2008
Hatch, Whitney	Trust for Public Land (TPL)	environmental advocate	March 3, 2008
Heart, Bennet	Conservation Law Foundation (CLF) (prior affiliation)	environmental advocate	March 18, 2008
Jennings, Angus	CHTF	design professional	February 28, 2008
Kimmell, Ken	Massachusetts Executive	state government	March 11, 2008

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Subject Name	Organization	Subject Category	Date of Interview
	Office of Energy and Environmental Affairs	official	
Klocke, Jim	Greater Boston Chamber of Commerce	industry advocate	March 14, 2008
Li, Vivien	Boston Harbor Association	environmental advocate	April 8, 2008
Lowitt, Peter	Massachusetts Chapter of the American Planning Association	representative of government group	February 28, 2008
Magnani, Dave	Former state senator	legislator	February 25, 2008
Pacheco, Marc	State senator	legislator	March 18, 2008
Petersen, Doug	Former state senator	legislator	March 12, 2008
Resor, Pam	State senator	legislator	March 3, 2008
Rowe, Clarissa	Preservation Massachusetts, Community Preservation Coalition	historic preservation advocate	March 24, 2008
Russell, Carrie	CLF	environmental advocate	February 26, 2008
Schmidt, Don	Massachusetts Department of Housing and Community Development (DHCD)	state government official	March 26, 2008
Serafin, Lisa	Jones Lang Lasalle	industry advocate	March 20, 2008
Shelley, Peter	CLF	environmental advocate	February 28, 2008
Smizik, Frank	State representative	legislator	March 14, 2008
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Regional Plan Association website. <http://www.rpa.org>. Downloaded April 1, 2008.

Massachusetts General Laws available through the website of the Massachusetts General Court (the state legislature). Legislative text for the case studies is available at the following locations
Community Preservation Act: <http://www.mass.gov/legis/laws/seslaw00/sl000267.htm>.
40R: <http://www.mass.gov/legis/laws/seslaw04/sl040149.htm> (see section 92).
40S: <http://www.mass.gov/legis/laws/seslaw05/sl050141.htm>.
Landlocked tidelands: <http://www.mass.gov/legis/laws/seslaw07/sl070168.htm>.

United States Census Bureau. "Quick Facts." <http://quickfacts.census.gov/qfd/states/25000.html>.