Chapter 4

Planning II:
Optional and Required Elements of the Multi-Municipal Plan Under Article XI

4.1 New Planning Powers

New Article XI entitled “Intergovernmental Cooperative Planning and Implementation Agreements” enables cooperating municipalities to go beyond the requirements of Section 301 and take a coordinated approach to both development and conservation in an area of contiguous municipalities. It gives authority for municipalities and counties to enter into cooperative planning and implementation agreements for the purpose of developing and implementing a multi-municipal comprehensive plan.

Section 1101 provides a list of twelve purposes for the intergovernmental cooperation provisions of Article XI. These purposes (quoted in Appendix 4A-1) are important to bear in mind and to refer to in developing and justifying a plan as they state the legislative objectives in enacting Article XI.

In summary, these legislative purposes direct cooperating municipalities to plan to prevent unnecessary and premature conversion of agricultural and rural lands to development and to continue historic community patterns while preparing for reasonable population, economic growth, and needed infrastructure in identified areas. Anticipated growth is to be

MPC Section 1102:
For the purpose of developing, adopting and implementing a comprehensive plan for the entire county or for any area within the county, the governing bodies of municipalities located within the county or counties may enter into intergovernmental cooperative agreements, as provided by 53 Pa C.S. Ch. 23 Such. A (relating to intergovernmental cooperation), except for any provisions permitting initiative and referendum. Such agreements may also be entered into between and among counties and municipalities for areas that include municipalities in more than one county, and between and among counties, municipalities, authorities and special districts providing water and sewer facilities,

Continued on next page
coordinated with the planned provision of a full range of public services. Growth is to be balanced with conservation. Neither is given greater emphasis.

The basic enabling authority for multi-municipal planning and implementation is given in Section 1102 quoted in the sidebar. It provides significant powers and much flexibility to municipalities that choose to use the provisions of Article XI.

Under Section 1103(a), municipalities may, by agreement, cooperatively prepare a comprehensive plan. Alternatively, the municipalities may request the county planning agency, or agencies where more than one county area would be involved, to prepare a comprehensive plan in cooperation with the municipalities. In either event all the elements required in Section 301 of the MPC shall be included in the plan, as well as a plan to meet the housing needs of present and future individuals and families that are anticipated to reside in the area. Reiterating the language of Section 301, 1103(a) says that the housing plan may include the conservation of presently sound housing, the rehabilitation of housing in declining neighborhoods and the accommodation of new housing in different dwelling types and of appropriate densities for households of all income levels.

4.2 Designation of Growth Areas and Rural Resource Areas

The most significant new power in the 2000 amendments is the power given to cooperating municipalities to designate growth areas and rural areas and to target public infrastructure to growth areas. If the participants choose to use these powers, the last major task for a planning committee or commission preparing a recommended plan to participating governing bodies will be the designation of growth and rural areas. The proposed plan will need to be as specific as possible about locations and densities for residential; commercial, mixed use, and industrial areas; infrastructure expansion and improvement needs; areas of agricultural and
rural lands; and natural and historic resources to be conserved. This will be a challenging job, but is critically important to achieving support from residents and businesses in the area and adoption of the plan by all the participating governing bodies.

A. Growth Areas

The new provisions in Section 301(d) of Article III and Section 1103 of Article XI allow both individual and multi-municipal plans to designate growth areas. However, the greater specificity of Section 1103 gives more power to direct growth and conserve rural lands to municipalities that plan together. For example, it gives them specific authority to designate growth areas where publicly financed infrastructure is or will be provided and rural resource areas where such infrastructure will not be provided with public funds, and the ability to distribute uses in a reasonable geographic area over the combined planning area. Using these new powers a managed approach to growth and conservation within a multi-municipal area can be achieved.

Public Infrastructure Areas. The 2000 MPC amendments contemplate that growth and future growth areas will also be “public infrastructure areas” where “public infrastructure services,” as defined in Section 107 (see sidebar, page 4-4), are provided or planned. The location and capacities of public infrastructure are strong stimulants for growth. An effective multi-municipal comprehensive plan will meld the stated plan objectives, the land use and resource protection policies, and plans for the provision and expansion of a wide range of public facilities and services. The designation of growth areas will be based upon the information for all the participating municipalities brought together through the process of collection, analysis, and evaluation described in Chapter 3 for each element of the plan.

Growth areas would accommodate the development of new commercial, industrial, and institutional uses to provide for the economic and employ-
ment needs of the area and to ensure the region is supported by an ade-
quate tax base. Areas designated as nonresidential growth areas should
be based on reasonable locational considerations, such as existing or
planned highway and transportation facilities with suitable capacities.
Water services and wastewater collection, transportation, treatment and
disposal capacities should be adequate or planned. Compatibility with
existing and future land uses should be considered.

Where the participants have designated growth and public infrastruc-
ture areas, they may want to consider use of adequate facility ordinances,
adopted either by the county or each participant for the planning area, to
assure that more dense development goes to the areas planned for growth
and not in rural areas where public infrastructure is not provided. De-
scription of this implementation tool, as well as more in depth analysis of
infrastructure issues is found in Chapter 7.1 and 7.2.

Areas designated as growth areas should not contain large areas of limit-
ing natural features. Broad areas of floodplains, wetlands, or steep slopes
should not accommodate more intensive residential and nonresidential
development. Where the protection of productive farmland is a goal, ar-
eas of less productive soils or areas without active farming should be con-
sidered for such development.

For residential uses in growth areas, proximity to schools, particularly
elementary schools, should be considered. Areas close to existing schools
and schools with expansion capacity that would minimize the need for
busing, and where children would have the opportunity to walk or bike
to school, should be chosen. Although some school districts are reluctant
to publicize long-term facilities plans, others are willing to cooperate in
the municipal planning process. Since the public school system takes the
lion’s share of the local tax dollar, multi-municipal planning may result in
 savings or efficiencies advantageous to the school system, as well as coop-
erating municipalities. As pointed out in Chapter 2, the geographic area
of a school district may serve as a good, functional basis for multi-
municipal comprehensive planning.
The impacts of new commercial uses on existing commercial uses within the region should be discussed. One of the important advantages of multi-municipal planning is the consideration of likely negative impacts on existing commercial areas, particularly those located in neighboring municipalities, that are usually not considered when planning on an individual municipality basis. Along with planning for a regional mall, consideration should also be given to measures such as improved street design, parking, and mixed uses that will help keep smaller stores in older town centers attractive and viable. Within the overall area, commercial areas to serve regional, community, and neighborhood or village needs may be designated. Use of the specific plan provision of Section 1106, discussed in Chapter 7.6, may make sense for regional commercial areas.

In planning for residential, commercial, and industrial redevelopment in developed areas, consideration should be given to promoting such development on “brownfields.” These are areas of previous industrial or commercial use that have been abandoned from active use. Frequently, they are well-located in terms of infrastructure and access. Pennsylvania’s Land Recycling Program administered by DEP, facilitates reuse of these areas when cleaned up to DEP standards. Buyers, putting the site to productive reuse, are protected from liability for past contamination. Funding is available through DCED, DEP, and EPA to assess and help clean up these sites. Brownfields are discussed further in Chapter 7.8.1.

B. Future Growth Areas

These are areas adjacent to growth areas where future development might occur at densities to accompany the orderly extension and provision of services. Such areas may already be developed at lesser densities and have some public infrastructure or they may be relatively undeveloped without any public infrastructure. They may, for example, be suburban in character with some public infrastructure that offers potential for further development. By identifying areas in the plan that participants agree would be sensible areas for future growth, the plan has a built in safeguard for accommodating growth beyond the five, ten, or
C. Rural Resource Areas

If the planning areas contain rural lands and uses (some developed urban and suburban planning areas may not), the participants may choose to designate one or more rural resource areas under Section 1103(a)(3). As defined in Section 107 (see sidebar) rural resource areas are areas where described rural uses are planned for and where development densities are compatible with these rural resource uses. That section also states that infrastructure extensions or improvements are not intended to be publicly financed by municipalities, except in villages, unless the participating and affected municipalities agree that services should be provided to an area for health or safety reasons or to accomplish one or more of the purposes listed in Section 1101.

It will be particularly challenging for cooperating municipalities to plan how to keep rural lands rural. Historically, rural lands remained rural without zoning or other measures to keep them rural. The attraction of jobs, social and economic life in cities and towns, the lack of access by highways and automobiles, and the greater reliance on large areas of land to produce agricultural products, timber, and minerals are among the factors that tended to preserve the rural countryside through most of the twenty year horizon of the designated growth area. Also, the future growth area designation will inform developers, residents, and businesses of future plans for the area so that they can plan accordingly.

Evaluation of the physical and locational characteristics suitable for future growth areas would be the same as described above for the growth areas. Since population and housing projections beyond the twenty-year period used to designate the growth areas are inherently limited, the area designated for future growth areas would be shown or described as tentative. When the multi-municipal comprehensive plan is reviewed, at five years ideally, or at least at the required ten-year period, expansion of the growth areas into the most appropriate portions of the future growth areas should be evaluated.
first two hundred years of America’s history. Since World War II, the pressure to move ever outward has increased dramatically with the coming of the automobile, the building of a network of highways, federal loan guarantees favoring suburban housing, greater affluence, and city dwellers seeking respite from crowded, deteriorating neighborhoods, and other urban ills. Many cities and boroughs in Pennsylvania (and elsewhere) were built in areas of prime farmland, and the outward push has consumed much of this farmland for development of suburban communities.

The issue of providing for residential uses in rural areas is especially challenging because urban and suburban densities are not appropriate to rural lands if they are to remain rural. Under Pennsylvania law any municipality that chooses to plan and zone must zone the entire municipality (MPC Section 605) and provide for all categories of use. The courts have ruled on substantive due process, exclusionary zoning, and occasionally confiscatory or “takings” grounds that any lot area requirement greater than two acres per unit requires extraordinary justification, and justification has proved difficult except in the case of prime agricultural lands. The law thus helps to force the conversion of rural places into suburban or urban places if rural property owners choose to develop or sell to developers who seek to build more dense development. The new multi-municipal provisions state that in rural resource areas development can be “at densities that are compatible with rural uses.” The question is what will that mean in the context of the Pennsylvania court cases.

Although density regulation in particular zoning districts will be an ingredient of implementing plans for rural resource areas, it is only one of a number of tools that cooperating municipalities can employ to conserve rural lands. Major implementing tools that can be used are:

1. Keep public infrastructure and facilities—four lane highways, public water and sewer facilities, large regional

Agricultural and Forestry Zoning

Agricultural and forestry zoning for tracts of 20 to 50 or more acres will preserve the rural character of a community and be more compatible with rural uses—agriculture, forestry, mining and extractive industries, as well as tourism and recreation, particularly hunting and fishing. These densities will also help achieve conservation goals for surface and groundwater, air quality, and habitat protection.

It is important to point out that successful agricultural zoning has not designated 20 to 50 acres as minimum lot sizes, but rather defined density of residential units in relation to overall tract size. For example, the courts have recognized that preservation of agriculture is a valid zoning purpose and upheld zoning for residential units based on a sliding scale approach to agricultural lot size—e.g., 1 unit for 5 acres; 2 for 5-15 acres; 3 for 15-30 acres; and one dwelling for every 30 acres for larger tracts in Boundary Drive Associates v. Shrewsbury Township, 81 PA Cmwlth 7 (1984) affd 507 PA 481 (1985). In Codorous Township v. Rodgers, 89 PA Cmwlth 79 (1985), the Court upheld agricultural zoning prohibiting subdivision of productive farmland (not prime soils) into less than 50 acres with limited exceptions for adding parcels to smaller tracts or for a small allotment of residential units with a maximum size of 1 acre. In C&M Developers, Inc. v. Bedminster Township, 772 A2nd 99 (Pa Cmnwlth 2001), the court upheld as reasonable and not overly restrictive,
schools that induce development—out of rural areas.

2. Use agricultural and forest district zoning ranging from 10 or 20 acres for small farms and 50 to 100 or more acres for large farms. In metropolitan areas where there are niche markets for produce or nurseries, smaller acreage farms may be successful.

3. Adopt transfer of development rights programs that enable farmers and owners of forested lands to sell development rights to developers in growth areas, thereby allowing rural landowners to realize value for their land, but to keep their lands in rural uses.

4. Use state (PDA) farmland preservation programs and private land trust programs that provide funds for acquisition to prevent conversion of critically located agricultural lands to urban uses.

5. Work with the state and local land trusts to encourage use of conservation easements by rural landowners for purposes of keeping land in rural uses.

6. Use performance zoning, which sets environmental and agricultural or forestry objectives for use of land within rural districts, and may be flexible as to particular densities for residential and commercial development so long as such development is compatible with those objectives.

7. Provide for more dense residential and commercial development of one acre or more in and around existing villages, as well as neighboring cities and boroughs.

Villages. Most of the above tools are discussed more fully in other sections. It is important here to emphasize the intent of the new provisions to encourage use of existing villages for more intense development. Villages are an important part of Pennsylvania’s rural landscape that represent the “historic community patterns” that are to be continued under the objectives of Section 1101. They also represent opportunities for the kind of more modern town development that some homebuyers and busi-
nesses are seeking in rural areas. Pennsylvania has thousands of unincorporated villages within its townships—places that are crossroads, centers of farming and grocery supplies, and places to congregate for school, church, or social events. Many of these villages have public infrastructure that could be improved and extended to serve new development. If more dense development is to occur in rural resource areas, the prime location may be in or adjacent to these villages.

Under Article XI cooperating municipalities do have the ability to direct where more intense development goes within rural areas. The location of new towns or cluster developments should not be dependent simply on private transactions between developers and particular landowners. Rather than approve proposals for new towns on farm fields (“greenfields”), municipal officials should bear in mind that Pennsylvania does not have a population or demographic need for new towns in greenfields. Pennsylvania has thousands of existing towns. If more dense rural development is desired, it is appropriate to provide for it in or adjacent to Pennsylvania’s existing boroughs or villages. Investment by developers should be encouraged in these places where it can both sustain existing developed areas and conserve rural lands for rural uses.

4.3 Zoning Regulation of Uses and Densities

Throughout the multi-municipal planning process, it will be important to consider how the plan will be implemented through subdivision and zoning regulations and capital improvement plans. Zoning is especially critical because it establishes districts for particular uses and densities for such uses, which will be essential to carrying out the multi-municipal plan. Fundamental to the land use authority of local governments are the basic zoning provisions of Section 603 quoted in the adjacent sidebar.

These zoning provisions confer significant power. They provide the real authority over land use that has been delegated to local governments. Additional powers in 603 in sections (c) through (k), some of which were

MPC Section 603:

(a) Zoning ordinances should reflect the policy goals of the statement of community development objectives required in section 606, and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality.

(b) Zoning ordinances [except to the extent superseded by certain listed state laws governing mineral extraction and agricultural activities primarily] may permit, prohibit, regulate, restrict and determine:

(1) Uses of land, water-courses and other bodies of water.

(2) Size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal and use of structures.

(3) Areas and dimensions of land and bodies of water to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures.

(4) Density of population and intensity of use.

(5) Protection and preservation of natural and historic resources and prime agricultural land and activities.
added by the 2000 MPC amendments, both enlarge upon and restrict the zoning power. For example, in (c) zoning ordinances may “include provisions regulating the siting, density, and design of residential, commercial, industrial and other developments in order to assure the availability of reliable, safe and adequate water supplies to support the intended land uses within the capacity of available water resources.” This is a powerful direction to local governments to regulate development in such a way as to ensure sustainable use of ground and surface water resources. Multi-municipal planning and implementing regulation offers the best approach to management of water resources, particularly if it is done on a watershed basis as suggested in the discussion of water resources planning in Chapter 7.3.

New Section 603(g) states that zoning ordinances shall protect prime agricultural lands and natural and historic features and resources. This is a strong directive that will depend upon cooperating municipalities doing a thorough, responsible planning job of identifying and describing these resources in order to provide a sound basis for the required implementing zoning.

On the other hand, new Sections 603(f), (h), and (i) limit local government’s ability to restrict forestry, agricultural operations, and reasonable development of minerals in each municipality. Questions as to how local governments can use their regulatory powers in relation to these industries are considered in Appendices 3A-2 and 3A-3.

Planning together can enhance the ability of cooperating municipalities to adopt reasonable regulations that support existing locations for rural industries, while addressing their compatibility with other uses through issues that zoning can address—e.g., location and intensity of use; size, height, setback of structures, and open space requirements. Open space requirements, for example, can be crafted to serve both the interests of rural industries in keeping contiguous rural lands from becoming fragmented by suburban development that gradually makes farming and other rural industries difficult to sustain. They can also serve the public

For more information on forestry and timber harvesting, including sources of forestry assistance and the forest districts of Pennsylvania, please consult:

Additional resources on forestry and agriculture:
interest need to provide for these uses in a way that reduces conflict among residents of suburban subdivisions and rural industries using land for agriculture, forestry, or extractive industries.

Densities. Zoning regulations relating to size, height, bulk, etc. of structures and areas and open space under Section 603(b)(2) and (3) will be very important to each of the individual participants in a multi-municipal plan for achieving their own local objectives under 603(a). The power to determine density of population and intensity of use under 603(b)(4) is the most important zoning power for purposes of carrying out the multi-municipal plan. It is this power that will enable the participants to distribute uses to areas of the plan in such a way as to both accommodate growth and conserve resources. Density is a major factor in determining the character of a community—whether it is urban, suburban, or rural. Density has many consequences. Greater density usually means less cost and more efficiency in providing utility and other services to a greater number of people and households. The density of urban and some suburban neighborhoods provides transportation options by enabling residents to walk or to use available public transportation to community destinations. These neighborhoods usually have some private open space that does not require a great deal of maintenance.

Some homebuyers want larger houses and more private open space, which they are willing to pay for and maintain. Certainly a range of density and open space choices for homebuyers is desirable in a multi-municipal area. However, it is also important to locate lower densities carefully and to recognize that building houses in rural areas on 2-5 acre lots in farmland or woodlands will change the character of a rural community to a suburban one.

Local officials working with the planning committee or commission in making density decisions will want to consider the points raised in the sidebars on pages 4-12 and 4-13.

"Many worthy projects, including both greenfield and urban infill development, have met with community opposition. A friend of mine in the homebuilding industry likes to say that the American public doesn’t like two things: ‘sprawl and density.’ There is some truth to this. The problem, however, is that in many projects density comes without any compensating amenity. Density with amenity will sell. For most people, the ‘character of the neighborhood’ is far more important than the ‘size of the lot.’ A greater emphasis on high quality, place-responsive design could greatly alleviate opposition to innovative new development.”


Website: www.plannersweb.com.
Suburban Densities

Suburban densities range anywhere from an eighth to a quarter of an acre per unit, to one and two acre lots, depending on the planning, subdivision, and zoning choices that suburban municipalities have made for their residential areas. Multi-family apartment buildings must also be provided for in some zones to accommodate the need for such housing.

It will be advisable to increase densities in some suburban areas to take advantage of existing public infrastructure, and reduce the outward progression of sprawl. For example, in southeastern Pennsylvania where an excellent public rail system exists through suburban communities to the north, west, and south of Philadelphia, building more dense residential and commercial development within 1,500 yards of these train stations—known as transit-oriented development or “TOD”—would enable these municipalities to accommodate growth and density using existing water and sewer facilities, schools, and public transportation.

Well-planned higher suburban densities can encourage walking and the use of public transportation; lower densities in suburban areas will not do this.

Urban Densities

Many of the most desirable communities in America—in Boston, New York, San Francisco, Annapolis, Philadelphia’s historic neighborhoods, and new towns such as Seaside, Florida, Kentlands in Gaithersburg, Maryland, Eagleville in Chester County, or Pittsburgh’s recent downtown development Crawford Square—include densities of 5-10 or even 20 units per acre.

Density can be good or bad depending on design and the amenities a neighborhood provides. When integrated with green space, historic buildings, and mixed uses that make shopping and entertainment accessible by walking, neighborhoods become very attractive to many homebuyers who relish the combination of private space, convenience, and community these places provide.

With reinvestment in infrastructure, new housing and mixed use development where possible, and improved greenspace amenities, Pennsylvania’s over 1,000 cities and towns can be attractive to homebuyers by taking advantage of the walkable and sociable community features that density offers. Because of reduced growth expectations in many of these places, some may want to reduce densities on new development sites in order to attract homebuyers looking for the advantages of town living with more elbow room than traditional row houses provide. Good urban design that locates new houses around a square or green, and provides side yards and parking beside or behind the houses can provide characteristics that modern homebuyers are looking for, along with the attractions of older cities and towns.

Urban and town densities should be part of a multi-municipal plan in order to provide a large range of choices for people of many ages and abilities, and for the variety of family types that will be the homebuyers of any community.

Urban and town densities should be part of a multi-municipal plan in order to provide a large range of choices for people of many ages and abilities, and for the variety of family types that will be the homebuyers of any community.
Pennsylvania case law has created a presumption against the validity of zoning above two acres per dwelling unit. Larger lot sizes have been upheld in semi-rural areas, *DeCaro v. Washington Township*, 21 PA Commonwealth 252 (1975) (3 acres), and in cases where the court determines that a municipality is not in “the path of growth.”

In *Reimer v. Upper Mt. Bethel Township*, 150 PA Commonwealth Ct 323 (1992), an ordinance establishing varying large lot sizes where the tract included steep slopes, deep soils, high water tables, shallow bedrock, and floodplain or wetland conditions, was justified to protect landowners and water supply from pollution and contamination due to sewage or water problems.

The courts developed the two acre rule in the context of land use legislation that made no distinction among urban, suburban, and rural municipalities—all had to provide for all uses and densities in each municipality.

The courts might reconsider this presumption in rural resource areas within a multi-municipal plan in light of the specific direction in Section 1103(a)(3)(ii) that “development at densities that are compatible with rural uses are or may be permitted.” Where municipalities have developed and are implementing a plan that does accommodate projected growth at appropriate densities and have provided for infrastructure in urban and suburban growth areas and rural villages, they should be able to zone rural lands for truly rural densities.

Sustaining active farming requires large areas zoned for agriculture with limited residential and commercial development.

The two acre rule is based primarily on exclusionary zoning principles. However, the courts have also at times rested these decisions on the principle that overly restrictive zoning regulations are confiscatory as applied to a landowner if not supported by a sufficient public purpose. It will be important to justify larger lot zoning in terms of farmland preservation or protection of particular natural or rural resources.

Two acre zoning or even five acre zoning, if extensive, create a suburban rather than a rural community. As suggested in the cases described in the sidebars on pages 4-7 and 4-8, it is appropriate to have some residential zoning up to a maximum lot area of one acre on small portions of a large property in rural areas, in order to enable rural landowners to sell to individual buyers when they need to accommodate family members or raise funds. But allowing intense cluster development on farm fields, even with open space requirements, will not keep land rural. Experience seems to show that such development just creates more pressure for development of other rural lands.

One or two acre lots will impact and ultimately change the use of rural lands.
4.4 Distribution of Land Uses Among the Municipalities

A major aspect of multi-municipal planning in contrast to an individual planning effort is that all land uses may be distributed among the municipalities in reasonable geographic areas of the planning area. Section 1103(a) states that a multi-municipal comprehensive plan may include a plan for the accommodation of all categories of uses within the area of the plan, provided that all uses need not be provided in every municipality but shall be planned and provided for within a reasonable geographic area of the plan.

After determining what uses are appropriate to particular areas of the cooperating municipalities, the participants will need to determine what densities are needed in what desired places to accommodate growth projections for residential development. They will also need to agree on where major commercial, industrial, and institutional developments will be best located and with what area, open space, and other requirements. The discussion and negotiations among them will then be reflected in the implementation agreement described in Chapter 6.
4.5 Developments of Area-Wide Significance and Impact

Section 1103(a) further provides that cooperating municipalities may plan for developments of area-wide significance and impact, particularly those identified in Sections 301(3) and (4).

MPC Section 1103(a)(5):

Plan for developments of area wide significance and impact, particularly those identified in section 301(3) and (4).

NOTE: In the Section 107 definitions and in Section 301(7) these developments are called “developments of ‘regional’ rather than ‘area-wide’ significance and impact.” The abbreviated term “DRI” for “developments of regional impact” is used throughout this manual to refer to these developments as that is what they are generally called in planning practice.

The significance and impact of regional developments and facilities could be either positive or negative. Identified uses or developments should include large residential or commercial developments, expressways, highways, local street systems, parking facilities, pedestrian and bikeway systems, public transit routes, terminals, airfields, railroads, community facilities and utilities, which may include public and private education, recreation, municipal buildings, fire and police protection, libraries, hospitals, water supply and distribution systems, sewage and waste treatment systems, solid waste management, stormwater management systems, flood plain management improvements, utility corridors, and associated facilities and other similar uses and facilities. They can also include specifics such as residential developments over a certain number of units, commercial and business developments over a certain square footage and acreage, and potential traffic and school impacts.

Criteria for DRIs may be developed by the county and/or cooperating municipalities through the planning process and incorporated in their implementation agreements. General considerations for developing DRI criteria and thresholds are suggested in the sidebar references given on this page. Again, it will be important to work with the county in planning for DRIs as the county has the new responsibility of
identifying such developments under MPC Section 301(a)(7) as described in Chapter 3.3, and to consider how any DRI program will be implemented. Chapter 6, dealing with implementation, suggests that a DRI review committee be appointed in the implementation agreement that consists of both county and municipal representatives to review any development proposal qualifying as a DRI and make recommendations to the host community.

4.6 Plan for the Conservation and Enhancement of the Natural, Scenic, Historic, and Aesthetic Resources within the Area of the Plan

The planning considerations for developing a multi-municipal plan for these resources are thoroughly discussed in Chapter 3.4.F and 3.4.G, and in Chapter 7.4. This is an extremely important element of the multi-municipal plan (or any individual plan) because it identifies the resources the participants value, the public purposes for protecting them, and the ways in which they will be protected. There are a variety of means for protecting resources. Zoning is the most powerful, although it may not be as successful in achieving long term protection as acquisition, conservation easements, and purchase or transfer of development rights programs. However, zoning should be used by each participating municipality to the extent possible for protecting natural resources such as wetlands, floodplains, steep slopes, and aquifer recharge areas, and historic resources through the historic ordinance and review process described in Appendix 3A-4 to Chapter 3. Agricultural zoning and forest district zoning can be used as discussed in the sidebars on pages 4-7, 4-8 and 4-13, and in Appendices 3A-2 and 3A-3.

Zoning ordinance provisions may take several forms. Performance zoning describes performance standards applicable to identification and protection of particular resources on any particular tract proposed for development. An overlay zoning ordinance describes particular identified resources to be protected throughout the municipality, such as wetlands
and aquifer recharge areas. A wellhead protection ordinance may deal specifically with standards for recharge and pollution prevention around wells. Sources for zoning ordinance considerations and provisions are suggested in the sidebar on page 4-16.

As suggested in Chapter 3.4.F an innovative planning approach is to develop an open space plan for the entire multi-municipal area. This plan should identify, analyze, and prioritize the conservation of natural and cultural (scenic and historic) resources within the community or region, and promote creative implementation approaches involving both municipal and private-landowner actions. One meaningful way of grouping natural resources for implementation purposes is through a connected system of greenways along streams and rivers, or a proposed system of woodland corridors (whether existing or through reforestation) linking significant forested areas (often with even more critical forest interiors). Regulatory ordinance provisions could then readily follow to require riparian buffer area setbacks and riparian buffer re-establishment by new developments; or to limit the amount of clearing of woodland resources; or to establish mitigation measures such as forest replanting when fuller protection has been determined to be unfeasible. Open space has already been an important area of local government cooperation. Examples of multi-municipal open space plans are given in Chapter 7.4.

4.7 Standards of Review: Reasonable Geographic Area

The amendments add a new standard of review for zoning hearing boards and courts in reviewing challenges to zoning ordinances adopted under a multi-municipal plan. The essence of the provisions quoted in the sidebar on page 4-18 is: where municipalities have adopted a multi-municipal plan and are implementing it with generally consistent ordinances, the zoning hearing board and the courts are to consider the availability of uses under the zoning ordinances of the municipalities participating in the comprehensive plan “within a reasonable geographic area” and not limit their consideration to the ordinance of the municipality being challenged.
A key question of interpretation will be what is meant by “within a reasonable geographic area.” This will ultimately be a question for the courts, which will undoubtedly be addressed on a case by case basis. However, some general observations can be made that may aid participants in their planning and in making decisions about growth areas, future growth areas, and rural resource areas. This phrase appears to refer to the overall area of the plan since it follows “within the municipalities participating in the multimunicipal plan.” This suggests that the area of the plan must be reasonable for the provision of a particular use. See discussion in Ryan, Pennsylvania Zoning Law and Practice, Section 3.5.5 (Supp 2001).

For example, if all the municipalities in a county decided to adopt the county plan as developed with their input, it is likely that spreading all uses over the entire county would not be regarded as “reasonable.” Housing and commercial uses, particularly, need to be in every municipality to some extent, although not every type of housing or commercial use would need to be in every municipality. However, there are other uses like an airport or a landfill for which it may be reasonable to have only one or two such facilities in a county or counties depending on the population or commercial needs to be served.

Where planning is being done on a countywide basis, it will be wise to plan for both countywide facilities and to plan for sub-regions of the county that make sense in terms of area to accommodate projected growth in housing and commercial needs. Depending on the size of an area, industrial uses probably can be located in several industrial areas of a plan area, but need not be in every municipality unless they are desired. If the county and municipalities agree, it is possible that the county could adopt a zoning ordinance covering the countywide uses and the municipalities could incorporate those provisions in their own zoning ordinances if they chose to have them.
Where planning is being done among a group of contiguous municipalities with or without the county's participation, it will be necessary to plan for all uses in the area of the plan if there is no relation to the county plan.

In any event, municipalities and the county planning together should make a strong case for the reasonableness of their geographic area determinations by considering criteria for particular uses in relation to needs, economic, environmental, and social impacts, and public investment costs. “Needs” will differ depending on whether the area is a growth area or a non-growth area, an urban, suburban, or rural area, or a mixture of those areas, and the size of the planning area.

- **Housing Needs.** Consider projected population and housing growth projections in relation to existing housing and needed new housing, consulting government housing agencies and industry standards where available, as well as local survey information described in Chapter 3.

- **Commercial and Business Uses.** Consider industry standards as to local and regional markets that will support retail facilities and office buildings or parks, as well as public criteria such as cost and availability of infrastructure and impacts on existing commercial areas. The criteria should distinguish between large, regional shopping malls and office parks, and small retail establishments like the corner store, dry cleaner, drug store, etc, that are needed in many places, and should be part of all mixed use developments.

- **Industrial Uses.** Consider using brownfield sites in older communities or expanding existing industrial parks for new industries. Smaller industrial areas may serve smaller industries in appropriate locations throughout the plan area. In-
It should also be possible to zone large tracts for forestry since raising trees or horticultural products has the same commercial use zoning rationale as farmland, as suggested by the Section 107 definitions of “agricultural operation” and “forestry.” (See sidebars.) Zoning cannot “unreasonably restrict” forestry activities under Section 603(f); however, reasonable regulation can help to satisfy the requirement under 603(h) that “zoning ordinances shall encourage the continuity, development and viability of agricultural operations.”

Mineral Resources. Minerals can only be mined or extracted where they exist. Coal is required to be mined in every municipality, but obviously can’t be mined where it doesn’t exist in minable amounts, which is a large part of the state. Coal is unique because it is considered a “third estate” in land under Pennsylvania law, which suggests that mining cannot be prevented by state or local regulation without compensation for the private property being “taken” (although Pennsylvania courts and the U.S. Supreme Court have upheld state statutes regulating subsidence and suggested that mining could be regulated as a nuisance in this regard). See property rights discussion in Chapter 6 and Appendix 6A-4.
Quarrying is not treated as a special property interest under Pennsylvania law, and prior to these amendments, was subject to regulation like other land uses. Like all uses, it had to be accommodated under zoning ordinances and was usually accommodated in industrial zones. The new amendments quoted in the sidebar on page 4-20 raise the question whether municipalities planning together under Article XI can plan for quarrying in rural resource districts, and where they have adopted joint zoning as in Newtown, Bucks County. That jointure, which has been in effect since 1983, provides for quarrying in the rural townships.

It is certainly the intent of the multi-municipal planning provisions, which specifically refer to extractive industries, including quarrying, to enable municipalities to plan and zone for these uses in rural resource areas rather than in growth or future growth areas. Quarrying or mining of the various minerals listed in the definition and urban or suburban development present perhaps the ultimate conflict of uses. It makes sense to separate the areas in which they can occur—a fundamental premise of land use regulation. Here the county’s new duties under Section 301(7), including identification of “appropriate utilization of existing minerals,” can help support the “appropriateness” of such separation and distribution of uses.

Land use regulation (setbacks, building requirements) as opposed to regulation of operations of mining activities has been upheld in cases where it has been determined that statutes governing mining do not preempt local land use regulation.

MPC Section 107 Definition:
“Minerals,” any aggregate or mass of mineral matter, whether or not coherent. The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite and clay, anthracite and bituminous coal, coal refuse, peat and crude oil and natural gas.

MPC Section 301(7) provides:
In addition to any other requirements of this act, a county comprehensive plan shall:
(i) Identify land uses as they relate to important natural resources and appropriate utilization of existing minerals...
4.8 Conclusion

After considering the appropriate density and locations of all these uses in the particular geography and demographics of the planning area, the municipalities and the planning committee should develop their plans realizing that the intent of the multi-municipal planning and implementation provisions as stated in the purpose clauses of Section 1101 (Appendix 4A-1 to this Chapter) is to give municipalities the ability to plan cooperatively on a larger scale for development that is regional in nature, as well as for areas of more intense development within the planning area that will be served by public infrastructure. The new provisions of both Article III and Article XI also give a firm direction to counties and municipalities to plan together for conservation of rural lands by identification of rural resource areas where public infrastructure will not be provided, and to plan for protection of natural and historic resources.

It is worth reemphasizing: Article III and Article XI contain new mandates and opportunities that were not previously authorized by express statement of the legislature. In reviewing land use decisions, the courts will have to take account of these legislative directions. If municipalities and counties do a careful, thorough job of planning together and provide a rationale for their designation of growth areas and rural areas and distribution of uses, their implementing regulations should withstand challenge. Most importantly, they will be able to shape the future of their communities, revitalize their older developed areas, accommodate growth and housing needs, and conserve natural, historic, and rural resources—goals that reflect the desires of most Pennsylvania’s citizens.

Appendices to this Chapter:
- Section 1101 Purpose Clause for Article XI, Appendix 4A-1
- APA Recommended List Of DRI Threshold Considerations,