6.1 New Implementation Powers

One of the most important features of the new multi-municipal provisions of MPC Article XI is the authority to distribute land uses among the participating municipalities in appropriate locations through agreements and the individual ordinances and actions of each participant. Before these amendments, municipalities cooperating on a joint plan had to adopt a joint zoning ordinance in order to avoid providing for all uses within each municipality. While joint zoning remains an available tool under Article VIII-A, it is no longer necessary to adopt a joint ordinance in order to distribute uses over the area of a plan.

The implementation provisions make it possible for a multi-municipal plan to become reality if the participating municipalities each do their part by adopting “generally consistent” regulations. It is through consistent actions by each participating municipality that the plan takes legal effect. Ordinances enacted in conformity with the plan are likely to withstand legal challenge because the legislature has directed the courts to look at the plan and implementing ordinances in the entire area of the plan, not just in the municipality whose ordinance is being challenged. (See discussion in Chapter 4-7.)
6.2 Implementation Agreements Differ from Planning Agreements, Although Both are Governed by the Requirements of the Intergovernmental Cooperation Law

The planning agreement is adopted and entered into by the governing bodies of contiguous municipalities that agree to plan together, and, optionally, the county or counties in which they are located. Planning agreements may also be entered into with other entities, such as authorities or school districts as to particular aspects of developing and adopting the plan. There are no specific requirements for planning agreements in the MPC; they must conform to the general requirements of the Intergovernmental Cooperation Law, as discussed in Chapter 2.

Implementation agreements are entered into for the purpose of carrying out the plan and giving it legal effect through generally consistent ordinances and actions. They deal with each participant’s responsibilities for its part of the plan—for example, its share of certain residential densities or commercial and industrial facilities, and its commitment for infrastructure improvements or conservation of agricultural and other rural lands. The basic implementation agreement that covers the responsibilities of each participant must also contain some specific provisions required in Section 1104, as discussed below.

In addition to a basic agreement covering general responsibilities and distribution of uses, there may be separate agreements to deal with subjects that the participants agree are important to implementing the plan—for example, a transfer of development rights program, adoption of a specific plan for a commercial and industrial development area of the plan, or a tax or revenue sharing agreement to spread the benefits of particular economic development projects among participants in the plan. These may be agreed to at the time the basic agreement is entered into, but may take more time to develop and can be adopted as soon as they are agreed to.
6.3 Who Enters Into Implementation Agreements

Sections 1102 and 1104(a) of Article XI give broad authority to counties and municipalities to enter into implementation agreements. As we interpret these provisions and 1104(b) and (d), implementation agreements can be between a county and each of the participant municipalities in a multi-municipal area; or between and among municipalities without the county if municipalities have chosen to develop a plan without the county’s participation. They can also be entered into with school districts, authorities, private utilities or other entities that will carry out some part of the plan, such as school facilities, or provision of water and sewer services in areas of the plan.

In Chapter 2, the basic entity suggested for developing the multi-municipal plan is an “XYZ” area planning committee established in the planning agreement. The plan can also be developed by a joint or regional planning commission if one exists, or if the participants choose to establish a more formal joint planning commission. In either case, it makes sense for the committee or commission to have oversight responsibility for implementation agreements that will carry out the plan they developed together. However, it will ease the process to have one entity responsible for getting adopted and signed agreements from all parties—either the county, if it is a participant or serving as technical assistant, or a subcommittee of the planning committee or commission if not.

Section 1104(d) clearly gives the county authority to negotiate implementation agreements with public or private entities providing public infrastructure services, and to provide or contract for dispute resolution services.

Using the County as Facilitator, Technical Assistant, and Negotiator. Just as counties are ideal partners to help develop a plan for an area of the county, they are also ideal partners to help carry out that plan by

MPC Section 1104(a):
In order to implement multi-municipal comprehensive plans, under section 1103 counties and municipalities shall have authority to enter into intergovernmental cooperative agreements.

MPC Section 1104(d):
The county may facilitate convening representatives of municipalities, municipal authorities, special districts, public utilities, whether public or private, or other agencies that provide or declare an interest in providing a public infrastructure service in a public infrastructure service area or a portion of a public infrastructure service area within a growth area, as established in a county or multi-municipal comprehensive plan, for the purpose of negotiating agreements for the provision of such services. The county may provide or contract with others to provide technical assistance, mediation or dispute resolution services in order to assist the parties in negotiating such agreements.
developing and securing the implementation agreements that are necessary to give the plan legal effect. They have planning staff, expertise, and legal counsel. Also, most counties have developed or are developing a county plan, which will take on new significance in view of the new emphasis on general consistency between local and county plans under Section 301.4 and other sections.

In some cases, the county and municipalities will be able to work together to develop plans for areas of the county that are based on or adapted from an existing county plan and municipal plans and ordinances. In others, the county may serve only to facilitate and provide technical assistance to a multi-municipal plan in which it is not a participant. In either case, the county, working with the committee, could take responsibility for getting individual implementation agreements adopted and signed by all the participants.

### 6.4 Sample Implementation Agreement Provisions

Suggested provisions for a basic implementation agreement can be found in Appendix 6A-1 to this chapter. It is recommended that the required and optional terms be contained in one basic agreement. The agreement incorporates the “Plan,” which presumably has been adopted by all the participants, and may include growth and infrastructure areas, future growth areas and rural areas, and plan for the distribution of uses. The implementation agreement must also cover the required provisions for consistency review, developments of regional impact, yearly reporting, and any other desired optional provisions. If for any reason, the participants wish to deal with some of these issues in separate agreements, they could do so. The law calls for certain required provisions in implementation agreements, but it clearly allows for more than one agreement to cover the subjects that the parties need to cover.

As with the sample planning agreement in Chapter 2, some alternative provisions are suggested, but these by no means exhaust the possibilities;
nor are they meant to be prescriptive in any way. It is expected that counties and municipalities developing and implementing a multi-municipal plan will work with their solicitors to develop agreements that will work for them.

The basic agreement suggested in Appendix 6A-1 would economize on the preparation of agreements by having one agreement applicable to all the municipal participants that includes both the required and permitted provisions that the participants see as essential to carrying out the plan. The agreement would have attachments where the particular responsibilities of each municipality are separately listed and agreed to.

6.5 The Required Provisions

Section 1104(b) spells out in general terms that give a lot of flexibility to the participants, the required provisions of a basic implementation agreement—what shall be in the plan. It is important to understand the need for these provisions. Since a joint zoning ordinance is no longer required to carry out a multi-municipal plan, there must be mechanisms for assuring that municipalities have adopted and are administering ordinances generally consistent with the plan in order for the parties, the state, and the courts to give the plan legal effect.

The processes and yearly reporting called for will help the participants, state agencies, and the courts in the event of challenges to make determinations as to consistency, to consider developments of regional significance, to assess progress in providing infrastructure and meeting affordable housing needs, and to determine whether and how the plan is being carried out by each municipality and what actions may need to be taken.

A. The Process for Achieving Consistency and Providing a Mechanism for Dispute Resolution

A simple approach to establishing a process for achieving consistency suggested in the sample agreement provision is:

MPC Section 1104(b):

Cooperative implementation agreements between a county and one or more municipalities shall:

(1) Establish the process that the participating municipalities will use to achieve general consistency between the county or multi-municipal comprehensive plan and zoning ordinances, subdivision and land development and capital improvement plans within participating municipalities, including adoption of conforming ordinances by participating municipalities within two years and a mechanism for resolving disputes over the interpretation of the multi-municipal comprehensive plan and the consistency of implementing plans and ordinances.

MPC Section 107 Definitions:

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

“General consistency, generally consistent,” that which exhibits consistency.
Why is consistency with a plan so important?

A basic premise of land use regulation is that zoning and subdivision regulations are tools to carry out a plan that provides the police power rationale—protection of public health, safety, morals, and general welfare.

In the early days of zoning (the first zoning ordinance was enacted in New York City in 1916, and zoning swept the country in the next decades), zoning was used primarily to separate noxious industrial uses from residential and commercial areas and to regulate height, setbacks, and density so as to provide light and air and prevent overcrowding. It was also used aggressively to enhance property values by maintaining the character and quality of particular areas and neighborhoods. (These criteria continue to be applicable justifications for zoning ordinances as set forth in MPC section 604, Zoning Purposes.) Although zoning rapidly became separated from planning in some states (in Pennsylvania for one), the courts look to zoning’s relation to a plan or planning principles to justify the imposition of restrictions on uses of property.

U.S. and state constitutional provisions have been interpreted by the courts as constraints against exclusion of people and uses and as potential “takings” if regulations go “too far” by imposing restrictions on a landowner’s use of land without sufficient “public purpose” justification. (See Ryan, section 3.1.7, property rights discussion in Chapter 6.7.A, and Appendix 6A-5.)

What is a Consistency Review? Participants may want to spell out in their agreement or in an appendix to it what a consistency review entails. The subject of “consistency” has been a contentious one in the history of the MPC, the case law interpreting it, and development of the recent amendments to the MPC.

In states that have adopted the most effective growth management programs—Florida, Oregon, Maryland, for example—what makes them work is a process for determining whether local zoning and other land use regulation is consistent with the county, regional, and/or local plan.

The significance of a consistency review varies. When made by regional or state agencies as in Florida or Oregon or Maryland, it may be the basis for approval or denial of state funding or permits for developments or infrastructure that are inconsistent with approved plans, or orders to conform ordinances or other actions to regional plans.
In keeping with Pennsylvania’s tradition respecting local governmental authority over land use decisions, Article XI gives counties and municipalities the power to shape their own consistency review process through the implementation agreement as emphasized in earlier chapters.

The planning and zoning provisions of the MPC are the only place in Pennsylvania law where the obligations of government to coordinate and integrate all land use activities are brought together. In Pennsylvania that job is entrusted to Pennsylvania’s county and local governments, not to the state. The state, through its agencies, is authorized to give priority consideration to funding projects that implement multi-municipal planning. However, state agencies “shall consider and may rely upon” the multi-municipal plan in making funding and permitting decisions. Section 1105(a)(3).

Interpreting the 2000 MPC amendments, the state has taken the position that state agencies can only consider local land use plans and ordinances if they are consistent with each other and with county and/or multi-municipal plans. Thus, adopting and implementing a multi-municipal plan will assure that the state must consider local land use decisions in funding and permitting. Therefore, it will be extremely important to have a multi-municipal process for determining whether implementing plans and ordinances are consistent.

The consistency review committee established under the implementation agreement, as suggested above, can determine and certify to state agencies, participants, or other entities seeking a consistency determination that an ordinance or infrastructure proposal or other implementing action is (or is not) generally consistent with the multi-municipal plan.

Appendix 6A-2 contains a discussion of consistency review and a review process drafted by Stuart Meck of the American Planning Association for the Growing Smarter Legislative Guidebook. Although these are legisla-
tive recommendations, they describe a process for determining general consistency that could be adapted to suit the parties to an implementation agreement. These provisions have the advantage of making clear that general consistency review is a process of comparing ordinance provisions to the goals and objectives of the plan and making a determination.

Dispute resolution provisions, which are required under Section 1104(1), are included in Section 7 of the Sample Implementation Agreement, Appendix 6A-1. These are purely sample provisions, but could be more detailed if the participants want to incorporate provisions from the American Arbitration Association or other models.

B. A Process for Review of Proposed Developments of Regional Significance and Impact—"DRIs"

Consideration of the location and impacts of developments of regional significance is an important reason for undertaking the development of a multi-municipal plan and incorporating a review of regional impacts in the subdivision approval process. Municipal officials, residents, and businesses are well aware of the issues created when a large shopping mall, industrial park, or residential or mixed use development that involves hundreds of units is proposed—especially where such developments are proposed in rural areas without adequate infrastructure to serve such development.

There is no doubt that some development at this scale is desired by many communities, and may be appropriate in some locations to accommodate projected growth in a well-planned way. However, the impacts of these developments, particularly on roads, utility needs, schools, municipal services, and downtowns may be significant and need to be carefully considered.
The first step for purposes of review is to determine what developments will be regarded as DRIs. Under new Section 301(7), counties are to identify “existing and proposed land uses which have regional impact and significance” in their comprehensive plans. In complying with this section, counties will need to go beyond the DRI definition in Section 107 as discussed in Chapter 4.5 and list threshold criteria for DRIs.

Again, a good way to approach the DRI review process is to use the planning committee or commission or a subcommittee of either to consider and advise any municipality considering a DRI. This job could be assigned to the consistency review subcommittee, depending on their workload and willingness, or it could be a separate committee appointed by agreement of all the municipalities. Because of the requirement that there be no more than one approval process, the host municipality where the DRI will be located must be the deciding body for purpose of approval or disapproval, but the host municipality can be advised by the DRI committee. The DRI review committee should include county representation since counties have responsibility under new Section 301(7) to identify DRIs.

In discharging its obligation under Section 301(7) the county may want to consider the APA’s recommended list of threshold considerations for DRIs, which were developed for state rule-making procedures, but can be adapted to the implementation agreement and local review process authorized in Pennsylvania. (See Appendix 4A-2.) The threshold criteria can be identified by the county, which may also want to include specific uses, acreage, parking, square footage, and floor area ratios considerations.

The county may also want to prepare a list of what will be presumed to be a DRI and what will not. These criteria can then be referred to in implementation agreements and used by the DRI committee and the host municipality to identify projects subject to a DRI review. Those criteria

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**MPC Section 107 Definition:**

“Development of regional significance and impact,” any land development that, because of its character, magnitude, or location will have substantial effect upon the health, safety, or welfare of citizens in more than one municipality.

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**Importance of Planning For and Review of DRIs**

When residents increasingly experience traffic congestion, higher taxes for schools and services, impacts on air quality and water quantity and quality, loss of farmland, open space, and rural character, they often oppose further large developments and lose confidence in the political leaders who make decisions favoring them.

From an economic point of view, competing large developments such as malls and industrial parks in neighboring municipalities may not be sustainable over the long term. Municipalities that plan together for desired locations and needed infrastructure to serve large developments will benefit by obtaining public support for a plan that informs people about how the area will grow and what public and private resources will be expended to do so. Rather than haphazard development that depends mostly on who owns or is able to buy what land and get zoning changes, planning for how and where large developments will be accommodated and public investments made in the area will help sustain the future economic, environmental, and social health of the participating municipalities.
should be incorporated into the subdivision and land development and zoning ordinances of participant municipalities so it is clear to applicants when a DRI review process will be invoked by the host municipality and what criteria will be looked at. As part of their responsibilities under Section 301.4(b), counties can assist by providing consistent ordinance language for local DRI reviews, which would include a recommendation from the DRI review committee where one is established.

Participating municipalities may want to assign the whole DRI review process to the county planning commission, while specifying some level of local government participation. If the county is willing to undertake that function, it would then make a recommendation to the host municipality for approval or disapproval. However, it is likely that participants in a multi-municipal plan will want to participate in the decision about large scale projects in the area of the plan. The DRI committee will serve that function.

C. Roles and Responsibilities of Participants with Respect to Implementation

The recommended basic agreement provisions in the appendix deal simply with the obligations of this section through an attachment to the agreement that lists the responsibilities of each municipality as to each of the items listed and any others the participants may want to specify.

1. Infrastructure. Most multi-municipal plans will have a transportation plan as an essential component since this is one of the subjects that most needs to be looked at from a regional perspective. So, for example, when the transportation plan that calls for improved road facilities in several municipalities, the implementation agreement attachment can specify that those municipalities will include those improvements in their capital improvement programs and proceed with them according to an estimated schedule, if contingent funding requirements or other conditions are met.

Similarly, the area plan will specify areas for public water and sewer facilities, and areas where such facilities are not planned and on-lot facili-
ties will be relied upon—essentially an area Act 537 plan. The implementation agreement can spell out each municipality’s commitment to that plan and to making land use decisions that are generally consistent with it. The agreement can also include provisions for considering any participant’s request to change the plan to permit more intense development in a particular location.

2. Affordable Housing. As to the provision for affordable housing, the agreement will specify the “fair share” of housing of all types, as well as commercial and industrial development that each municipality is providing or will provide through its zoning ordinance in order to meet projected growth needs for the area of the plan. This will include zoning for uses already planned and zoned for, but may also include increased densities for multi-family or single family housing in areas of the plan.

Zoning for all housing types rather than income levels is what is called for under Pennsylvania’s “fair share” case law. (See Chapter 3, Section 3.2 and Chapter 7.1.1.) Since the market in each area determines the price of housing, providing for housing types rarely results in “affordable” new housing for median income or low and moderate income homebuyers. In hot markets like some of the Philadelphia suburbs, multi-family and townhouse units are priced well above what most middle income families can afford. There is a need to provide new housing for such families close to where jobs are located, and often for middle income residents such as teachers, police, firefighters, clerks, and service providers who want to remain in a community where housing prices are rapidly appreciating.

The participants in a multi-municipal plan may want to consider and specify where and how such housing will be developed, using tools that go beyond simple zoning classifications for all types of housing. These include regulatory tools such as inclusionary zoning that requires a percentage of below market units in large developments and awards developers density bonuses for such units, accessory dwelling units, or funding tools such as available federal and state subsidies for low and moderate
income families, employer-assisted housing, and other programs. In planning for areas that include cities or boroughs with existing, but deteriorated housing stock, the plan could call for rehabilitation of specific areas or new housing to meet some of these housing needs. This will help stabilize the urban communities, as well as meet the housing needs of the planning area.

Whatever choices and decisions the participants make, the locations and housing program can be specifically referenced in the attachment to the agreement.

3. Purchase of Real Property, Including Rights-of-Way and Easements. Parts of the multi-municipal plan, such as the transportation or the open space plan, may require that the participants acquire certain lands, easements, or rights-of-way to complete highway improvements, a linked system of greenways and trails, or other facilities or amenities that the parties agree upon. These commitments would be referenced in the implementation agreement, again contingent upon funding or other conditions.

4. Official Maps. Section 1103(c) provides for adoption of the multi-municipal plan and says that adoption of the plan “...may be reflected in the official map of each participating municipality.” It will be desirable for the agreement to include a provision obligating the participants to revise their official maps to show designated growth, future growth, and rural areas along with potential corridors for public acquisition.

D. Yearly Reporting

The reporting required under this section is important to keep the participants informed about the progress that each is making toward carrying out the plan, and to relate the plan to action. In the event of desired consistent actions by state agencies or curative amendment or other challenges, such reporting will provide evidence of the participants’ implementing actions that can help support the requested state action or sus-
tain the challenged action based on the multi-municipal plan. The reports are to be made to the county planning agency and by the county planning agency to the participating municipalities. The county planning agency thus serves as a repository for information on implementing the plan, and all participants are kept up to date on how the plan is being implemented.

While the participants are required to plan for projected 20 year growth for the area, such growth does not have to be planned for all at once. As suggested in Chapter 3, the agreement can specify that the participants undertake that responsibility, and that the current plan provides for a 5 year or 10 year period that will be revisited according to a specified time table. Specifying future growth reserve areas enables the participants to make a broad plan for future growth that can be reassessed in these review periods. The yearly reports will help inform the participants as to when the growth area plan needs to be revisited or other adjustments—perhaps the expansion of a growth or rural resource area or additions to the open space plan—are appropriate.

1. **Summaries of Infrastructure Needs in Growth Areas.** The yearly report would simply summarize infrastructure improvements made, those needed, if there are any that were not specified in the original agreement, and where the municipality stands with respect to implementing its capital improvement program or share of the regional capital improvement program if it does not have its own. Where municipalities have chosen to adopt a joint transportation plan and establish an authority under Article V, the transportation advisory committee or the joint authority can be made responsible for this reporting as to transportation infrastructure. Similarly, water and sewer authorities can be given responsibility for reporting on water and sewer infrastructure through implementation agreements entered into with them.

2. **Reports on development applications and dispositions.** Yearly reports on residential, commercial, and industrial development applications and
dispositions are required so that the participants will be informed about implementation of the plan with respect to growth, and can judge whether they are providing for required uses over the area of the plan. This does not take away from each municipality’s ability to make decisions according to its own ordinances and to approve or disapprove developments according to those ordinances. The reports will also provide a source of information in the event of “fair share” or other challenges that depend upon a determination of whether a particular use is adequately provided for in the area of the plan.

6.6 The Optional Provisions

A. Other Duties and Responsibilities

This section enables the participants to provide for any other subjects or processes they wish to deal with in the implementation agreement or agreements. For instance, if the parties wish to incorporate a recreational plan and assign specific duties to the participants in order to carry it out, they can do so through the basic agreement or a separate implementation agreement.

They can also use this authority to assign specific implementation oversight or other tasks to specific participants or entities. This provision enhances the flexibility the new amendments give to multi-municipal plan participants to shape their own solutions in response to their particular needs.

B. Designation of Growth Areas, Future Growth Reserve Areas, and Rural Resource Areas and a Process for Amendment of Plan

To reiterate, the most significant new power in the 2000 MPC amendments is the power to designate and distinguish between growth and future growth areas and rural resource areas in planning and zoning. Although the ability to identify growth areas could be implied from prior
MPC provisions, there was no explicit legislative authority and direction to encourage development in developed areas with existing infrastructure and to conserve rural lands. Legislative purposes set forth in Section 1101 of Article XI (See Appendix 4A-1.) and the operative statutory language of Sections 1102-1106 make this legislative authority clear, particularly for multi-municipal planning areas.

Again, these are options—municipalities must choose to use them in order to get the benefits described in Chapter 1.

1. *Growth Areas*. If the participants in a multi-municipal plan do choose to designate growth areas, future growth reserve areas, and rural resource areas in their plan as a result of the planning process described in Chapter 3, they will need to incorporate those designations in their implementation agreement in order to give them legal effect. The agreement should describe these areas in terms of the geographic areas covered, and the responsibilities of each participant with regard to densities and infrastructure in growth areas, and appropriate densities and measures to conserve rural lands. They will want to include a map or maps showing these areas in relation to the location of infrastructure, schools, developments of regional impact, large areas of farm and forest land, and natural and historic resources to be preserved.

The definition of growth areas in Section 107 calls for residential densities of one acre or more in residential zones. This is an outside limit. Greater densities will generally be required in many areas to accomplish the objectives of accommodating growth and reducing sprawl in rural areas. A critical part of the negotiation among participants to an area plan will be determining the densities needed in growth areas to accommodate projected growth in 5 or 10 year increments. In areas where growth projections are high, the municipalities, preferably cities, boroughs, and villages where infrastructure already exists or could be extended, will need to accept densities of 5 to 10 or more units to the acre in some places in order to make efficient use of land and infrastructure.
2. **Future Growth Areas.** Participating municipalities may or may not decide to designate future growth areas in their multi-municipal plan. It is likely that these areas will be used more in fast developing counties than in more rural counties. Where growth pressures are high, it can be anticipated that future development of both infrastructure and more dense housing and commercial development may be needed to accommodate growth in the next 5 to 10 years. By designating future growth reserve areas where there is room for expansion and orderly extension of public infrastructure as the next logical areas for development, developers, businesses, and citizens will have notice of municipal intent as to the direction of development and future public investment.

As the definition of future growth reserve areas in Section 107 indicates, such areas may already have development at suburban densities and some public infrastructure, but may include areas that could be developed more densely to utilize or connect to existing public infrastructure.

3. **Rural Resource Areas.** As discussed in Chapter 4.2.C, the designation of rural resource areas decided upon in the plan will need to be implemented using a combination of tools—agricultural and forest district zoning; residential, commercial, and industrial district zones that are compatible with rural uses; and tools such as acquisition, conservation easements, purchase of development rights, and transfer of development rights to address landowner equity in property that is not zoned for development.

Rural zoning densities might be 5 to 10 or more acres for small farms or forest lands, depending on the nature of the area and the activities conducted there. If the area contains prime agricultural land, it can be zoned for densities of 20-50 or 100 acres, depending on what is appropriate for the type of farming being conducted. As discussed in the sidebars on rural densities, pages 4-7, 4-8 and 4-13, these acreages refer to the farmland area, not to minimum lot requirements for houses, which
should be specifically addressed in keeping with the case law (see page 4-13). Consultation with farmers in developing agricultural zoning is critical. Many farmers supported the passage of the MPC amendments because they recognize that agricultural zoning can help keep agricultural lands together rather than fragmented and thereby help keep agricultural activities viable.

4. Required Process for Amending the Multi-Municipal Plan and Redefining Growth, Future Growth, and Rural Resource Areas. If participants to a multi-municipal plan do decide to designate growth and rural areas, they must include in their agreement a process for amending the plan to redefine such areas if appropriate. A simple provision is suggested in the sample agreement requiring the planning committee and the participants to reevaluate their designations every 5 or 10 years, depending on growth pressures in the area. This process will allow the participants to adapt their plan to current realities and to amend or not amend the plan depending on the result of their analyses of projected growth and infrastructure needs, considerations as to rural lands, or other factors.

Included in Appendix 6A-3 are APA provisions for a process for amending urban growth boundaries. This process could be adapted to implementation agreements, if the parties wish to spell out the process for amending growth and rural area designations with more specificity.

6.7 Using Additional New Powers to Implement the Plan

Section 1105(b) and Section 1106 give new powers to cooperating municipalities that can greatly increase the ability of the participants to implement their multi-municipal plan if they choose to use them:

- Sharing of tax revenues and fees by municipalities within the region of the plan means that the participants can plan together to assure that economic development for the region
Existing Conditions—2002

This illustration, and the following possible development options on pages 6-20 to 6-23, are based on an aerial photograph of Schwenksville, Montgomery County, Pennsylvania.
Existing Forest and Wetland

Existing Farmland

Municipal Boundary

Illustration by Doug Julian.
Courtesy of DVRPC.
Development Under Current Trends and Zoning:

This type of low density, single use development that sprawls over the landscape and consumes farmland and open space, has been the norm in Pennsylvania’s rural and suburban areas. MPC Article XI makes it possible for municipalities to plan together to strengthen existing communities and conserve rural lands.
Municipal Boundary

(No Farmland Preserved)

Disturbed Forest

Typical Large Lot Suburban Development

Municipal Boundary

Illustration by Doug Julian.
Courtesy of DVRPC.
Alternate Plan for the Same Amount of Future Development:

MPC Article XI permits municipalities to collaborate in their planning and regulation. Use of growth areas and TDR foster more efficient development that integrates new mixed use and compact, walkable developments within existing communities and preserves farms, forests, and open spaces.
Preserved Forest and Wetland

Preserved Farmland

Compact Development

Municipal Boundary

Illustration by Doug Julian.
Courtesy of DVRPC.
benefits all of the participants and that revenues are adequate to meet the costs of services that each participant needs to provide.

- Adopting a transfer of development rights (TDR) program for the region of the plan can be a major tool for keeping the rural resource areas designated in the plan rural by establishing a program for the transfer of development rights from rural areas to growth areas (and possibly future growth areas).

- Adopting a specific plan or plans for nonresidential development (commercial, industrial, institutional) in the area of the county or multi-municipal plan means that the participants can identify the best locations and coordinate the transportation, utilities, and support services for such developments; adopt specific standards for density, land coverage, and design of these developments, and “standards for protection of significant open spaces, resource lands, and agricultural land within or adjacent to the area covered by the specific plan.”

These are significant new powers, which if used well, can be major tools for making a plan work. They address both the need for economic growth and the need to conserve resources. Used together with existing tools for planning and regulation, participants can shape distinct urban, suburban, and rural communities within their plan areas, and accommodate needed or desired growth without destroying the character and quality of their communities.

These special tools are discussed in depth in Chapter 7. The section that follows deals particularly with transfer of development rights in relation to constitutional issues of private property and substantive due process.

A. Transfer of Development Rights/ Private Property Rights

Objections to planning and land use regulation are often based on private property rights—the federal and state constitutional provisions stating
that “no property shall be taken for public use without just compensation.” Some landowners assert that this means “I’m entitled to do whatever I want with my land or you have to pay me.” As the sidebar on page 6-24 and Appendix 6A-5 outline, this is not what the courts have said in interpreting these provisions.

Transfer of development rights (TDR) programs address private property rights by enabling property owners whose land is zoned for rural uses or other more limited development to transfer their development rights to areas that are zoned for more dense development. Under Sections 603(2.2) and 619.2, TDR programs must be established by municipal ordinance creating development rights and designating sending areas from which development rights can be transferred and receiving areas to which they can be transferred.

Prior to the 2000 MPC amendments, TDRs could not be transferred across municipal boundaries unless the municipalities had adopted a joint zoning ordinance. Now such programs can transfer development rights across municipal boundaries by written agreement among two or more municipalities. Section 619.1(d). In the case of a multi-municipal plan, Section 1105(b)(2) makes clear that participants may adopt a TDR program for the region of the plan “so as to enable development rights to be transferred from rural resource areas in any municipality within the plan to designated growth areas in any municipality within the plan.”

These provisions provide great flexibility enabling individual municipalities that have adopted TDR ordinances to agree on transfers to other municipalities that have a TDR program. Multi-municipal plan participants can adopt one program, either by county ordinance applicable to the region of the plan or individual ordinances adopted in each participating municipality.

While not constitutionally required to sustain reasonable zoning regulation, TDR programs do address the equitable aspect of landowners’ inter-

Tips From Guiding Growth

Excerpted from **Guiding Growth**, Pennsylvania Environmental Council, Third Edition, September 1993, Chapter 4, pp 4-18 to 4-19, with several edits by the author. While a full analysis of the steps that local government might take is beyond the scope of this manual, here are a few:

E. **What Can a Municipality Do to Minimize the Chances of Being Found to Have “Taken” a Property?**

1. **Do your homework.** The clearer the showing that a particular restriction promotes one or several legitimate public purposes, the more likely it is that it will be sustained. One of the strongest reasons for undertaking comprehensive planning for growth management is that it provides the policy and legal bases for zoning, subdivision, timing control, and other municipal regulation. Determine whether there are any properties in the jurisdiction that present high potential for successful “takings” claims because proposed restrictions would eliminate all or nearly all viable economic use.

2. **Emphasize public health and safety and economic development objectives whenever possible, and avoid non-specific aesthetic and environmental purposes.**

3. **Permit as many economically benevolent uses of land as possible, consistent with the underlying purposes of the regulation, even if you use discretionary procedures such as special exceptions and conditional uses.**

4. **Allow for transfer of density to other parts of the tract or to other parcels in growth areas, through the use of such techniques as**

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planned unit development and transfer of development rights.

5. Use performance standards and site plan review rather than absolute lot size for zoning classifications. In determining developed area requirements and even permissible uses, such standards link permitted uses to their adverse environmental impacts and limit them accordingly.

6. Establish variance or special permit procedures that provide for administrative relaxation of the stringent regulations in tough cases. Attach protective conditions where such permits are granted. A municipality may have to recognize strong equities favoring the landowner in a few difficult cases in order to preserve its program as a whole.

7. Have the municipal solicitor review Pennsylvania’s law of private and public nuisance, to determine what kinds of activities can be prohibited. Such prohibitions would fall into the exception to Justice Scalia’s categorical taking principle in Lucas.

In Article I, Section 1 of PA’s Constitution, the peoples’ environmental rights include preservation of the “esthetic” values of the environment in the resources to be conserved by state and local governments as trustees for the benefit of all people. The PA Supreme Court recognized in an historic preservation case that regulation for the public welfare could include esthetic values under Article I, Section 27. However, “esthetic” may be more subjective than health and safety issues or standards, so it is especially important to make sure that scenic and esthetic resources are specifically described through an inventory and planning process and are not arbitrarily

ests by enabling landowners to share in the appreciation of property without changing the use of their property from rural to urban or suburban. A TDR program is usually used in connection with farmland preservation; however, such programs may also be used for protection of rural forest or recreation lands or to allow more dense development for affordable housing within suburban or urban areas.

TDR programs are explored in more depth in Chapter 7.7.

B. Supplementary Implementation Agreements

The appendix to Chapter 6 includes examples of agreements that may be stand alone agreements important to implementing the plan:

1. Tax and revenue sharing
2. Transfer of development rights with proposed ordinance
3. Specific plan for nonresidential development

Appendices to this Chapter:

- Sample Implementation Agreement, Appendix 6A-1
- The Indian Valley Intergovernmental Cooperative Implementation Agreement, Appendix 6A-2
- Consistency Review Process by Stuart Meck of APA, Appendix 6A-3
- APA Provisions for Amending Urban Growth Boundaries, Appendix 6A-4
- Property Rights Discussion, Appendix 6A-5
- Tips from Guiding Growth, Appendix 6A-6