

**Glossary of Terms – Chapter 40B****A. Definitions**

As used in these Guidelines for G.L. c.40B Comprehensive Permit Projects and the Subsidized Housing Inventory, the following terms have the meaning set forth below unless otherwise stated.

Act – means M.G.L. c.40B, §§ 20 through 23.

Applicant – means a public agency, a non-profit organization, or a Limited Dividend Organization that proposes a Project for which it has submitted or intends to submit an application for a Comprehensive Permit to a Board.

Board – means a local Board of Appeals established by M.G.L. c. 40A, § 12, and acting in its capacity to issue a Comprehensive Permit under the powers granted by M.G.L. c.40B, §§ 20 through 23.

Buildable Acre – means, for the purpose of design review by the Subsidizing Agency, the area of one or more legal parcels intended to be developed together, excluding any wetlands resource areas described in 310 CMR 10.02(1)(a) and (b).

*(July 30, 2008 change inserted the definition of Buildable Acre.)*

Chief Executive Officer – means the mayor in a city and the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Committee – means the Housing Appeals Committee, also referred to as “HAC.”

Comprehensive Permit – means a permit for the development of Low or Moderate Income Housing issued by a Board or the Committee pursuant to the M.G.L. c. 40B §§ 20 through 23 and 760 CMR 56.00.

Consistent with Local Needs – means either that (a) one or more of the grounds set forth in 760 CMR 56.03(1) have been met, or (b) Local Requirements and Regulations imposed on a Project are reasonable in view of the regional need for Low and Moderate Income Housing, considered with the number of Low Income Persons in the affected municipality and with Local Concerns, and if such Local Requirements and Regulations are applied as equally as possible to both subsidized and unsubsidized housing.

Continuing Care Retirement Community – means a community that furnishes board and lodging together with nursing services, medical services or other health related services, regardless of whether or not the lodging and services are provided at the same location, to individuals, other than those related by consanguinity or affinity to the person furnishing such care, pursuant to a contract effective for the life of the individual or for a period in excess of one year, and that has filed disclosure information with the Massachusetts Executive Office of Elder Affairs pursuant to M.G.L. c. 93 § 76(e).

*(July 30, 2008 change: Inserted definition of Continuing Care Retirement Community.)*

Department – means the Massachusetts Department of Housing and Community Development and its successors, as established and currently existing pursuant to M.G.L. ch. 23B and c. 6A.

Developer – means the Applicant or any successor that owns or controls a Project.

Group Home – A residence licensed by or operated by the Department of Mental Health or the Department of Mental Retardation for adult individuals who are capable, both mentally and physically, to take action to preserve one's own life as defined by the Massachusetts State Building Code, and that, pursuant to the Massachusetts State Building Code, is treated as a single-family residential building for building code purposes.

Housing Need – means the regional need for Low and Moderate Income Housing considered with the number of Low Income Persons in the municipality affected.

Housing Production Plan (HPP) – means an affordable housing plan adopted by a municipality and approved by the Department, defining certain annual increases in its number of SHI Eligible Housing units as described in 760 CMR §56.03(4).

HUD – means the U.S. Department of Housing and Urban Development.

Income Eligible Household – means a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by these Guidelines.

Limited Dividend Organization – means any entity which proposes to sponsor a Project under M.G.L. c.40B, §§ 20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the Project.

Local Board – means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards.

Local Concern – means the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces. See 760 CMR 56.07(3)(c – g).

Local Initiative Project – means a Project for which the project eligibility application is submitted by the Chief Executive Officer of the municipality under 760 CMR 56.04(2), in accordance with these Guidelines ("LIP").

Local Requirements and Regulations – mean all local legislative, regulatory, or other actions which are more restrictive than state requirements, if any, including local zoning and wetlands ordinances or by-laws, subdivision and board of health rules, and other local ordinances, by-laws, codes, and regulations, in each case which are in effect on the date of the Project's application to the Board.

Low Income Persons – means all persons who, according to the latest available United States Census, reside in households whose net income does not exceed the maximum income limits for admission to public housing, as established by the Department. The Department's calculation shall be presumed conclusive on the Committee unless a party introduces authoritative data to the contrary. Data shall be

authoritative only if it is based upon a statistically valid, random sample or survey of household income conducted in the relevant area since the latest available U.S. Census.

Low or Moderate Income Housing – means any units of housing for which a Subsidizing Agency provides a Subsidy under any program to assist the construction or substantial rehabilitation of low or moderate income housing, as defined in the applicable federal or state statute or regulation, whether built or operated by any public agency or non-profit or Limited Dividend Organization. If the applicable statute or regulation of the Subsidizing Agency does not define low or moderate income housing, then it shall be defined as units of housing whose occupancy is restricted to an Income Eligible Household.

Open Spaces – means land areas, including parks, parkland, and other areas which contain no major structures and are reserved for outdoor recreational, conservation, scenic, or other similar use by the general public through public acquisition, easements, long-term lease, trusteeship, or other title restrictions which run with the land.

Party – means party as defined in M.G.L. c. 30A, § 1.

Project – means a development involving the construction or substantial rehabilitation of units of Low or Moderate Income Housing that is the subject of an application to a Board for a Comprehensive Permit or for an appeal before the Committee, or meets the requirements of the LIP program as established by these Guidelines.

Project Eligibility – means a determination by a Subsidizing Agency that a Project satisfies the jurisdictional requirements of 760 CMR 56.04(1).

Public Housing – means housing owned, operated, or managed by a local housing authority, or leased under the auspices of a local housing authority pursuant to c.121B.

Reasonable Return -- means, with respect to building or operating a Project, profits and distributions actually realized by the Developer that are not less than the limitations set forth in Part IV.C. A condition imposed by the Board to decrease the number of units in a Project by 5% or more shall create a rebuttable presumption that the Developer will not be able to achieve a reasonable return. While rebuttable, this presumption shifts both the burden of producing evidence and the ultimate burden of persuasion from the Developer to the Board on both the "reasonable return" and "uneconomic" issues.

*(July 30, 2008 change: Inserted definition of Reasonable Return.)*

Statutory Minima – means the standards set forth in M.G.L. c.40B, §§ 20 through 23 and at 760 CMR 56.03(3).

Subsidized Housing Inventory (SHI) – means the list compiled by the Department containing the count of Low or Moderate Income Housing units by city or town.

Subsidy – means assistance provided by a Subsidizing Agency to assist the construction or substantial rehabilitation of Low or Moderate Income Housing, including direct financial assistance; indirect financial assistance through insurance, guarantees, tax relief, or other means; and non-financial assistance, including in-kind assistance, technical assistance, and other supportive services. A leased housing, tenant-based rental assistance, or housing allowance program shall not be considered a Subsidy for the purposes of 760 CMR 56.00.

Subsidizing Agency – means any agency of state or federal government that provides a Subsidy for the construction or substantial rehabilitation of Low or Moderate Income Housing. If the Subsidizing Agency

is not an agency of state government, the Department may appoint a state agency to administer some or all of the responsibilities of the Subsidizing Agency with respect to 760 CMR 56.00; in that case, all applicable references in these Guidelines to the Subsidizing Agency shall be deemed to refer to the appointed project administrator.

Uneconomic – means any condition imposed by a Board in its approval of a Comprehensive Permit, brought about by a single factor or a combination of factors, to the extent that it makes it impossible (a) for a public agency or a nonprofit organization to proceed in building or operating a Project without financial loss, or (b) for a Limited Dividend Organization to proceed and still realize a reasonable return in building or operating such Project within the limitations set by the Subsidizing Agency on the size or character of the Project, or on the amount or nature of the Subsidy or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the Applicant. See 760 CMR 56.05(8)(d).

Use Restriction – means a deed restriction or other legally binding instrument in a form consistent with these Guidelines and, in the case of a Project subject to a Comprehensive Permit, in a form also approved by the Subsidizing Agency, which meets the requirements of these Guidelines.

**B. Effective Date**

For the most part, these Guidelines are a compilation of currently effective guidelines, generally applicable housing program requirements and policy document presently in effect. With respect to provisions of these Guidelines that are new or that expand the applicability of pre-existing guidance, the effective date, unless otherwise specifically stated herein or in the Regulations at 760 CMR 56.00, is February 22, 2008.

**C. Waiver**

Any provision of these guidelines may be waived by the Undersecretary of the Department for good cause, provided that any such waiver shall be consistent with the Act or the Regulations at 760 CMR 56.00.