AGRICULTURE, FORESTRY and MINING

in ACTS 67 and 68 amending the Pennsylvania Municipalities Planning Code
(adopted June 22, 2000)

After two years of deliberation, House Bill 14 and Senate Bill 300 amending the Pennsylvania Municipalities Planning Code (MPC) were signed into law by Governor Ridge on June 22 and became Act 67 and 68, respectively. The new laws went into effect on August 21, 2000.

The Pennsylvania Municipalities Planning Code authorizes local and county governments to establish planning commissions, prepare and adopt comprehensive plans, and enact land use regulations such as zoning and subdivision ordinances to guide the development of municipalities and counties. Planning and land use regulations are widely used in the Commonwealth.

The new provisions related to agriculture, forestry and mining are discussed in this bulletin. They are arranged in the order found in the MPC, beginning with Section 105 of Article I (General Provisions) to Article XI (Intergovernmental Cooperative Planning). Comments are provided to help explain the new provisions and their implications.

The amendments are extensive, significant and often complex. Some inconsistencies may be found between provisions since the two bills were enacted independently and not reconciled for consistency before passage. Varied interpretations can be given to provisions, both as to their substance and to how the provisions are to be used. Unfortunately, definitive answers cannot always be given. Ultimately, the courts will decide the real meaning and application of provisions.

***NOTE**: This is an analysis of the planning implications of these acts and provisions; it is not a legal analysis. Contact other professionals for additional perspectives and interpretations.*

1. Purpose of the Act

Section 105 of the Municipalities Planning Code outlines the Legislature's statement of purpose for planning in the Commonwealth. It defines planning in Pennsylvania terms. Included are modifications related to agriculture, forestry and mining.

Section 105, Purpose of Act The Pennsylvania Municipalities Planning Code is amended to include, among others:

It is the intent, purpose and scope of this act...

- To promote the preservation of this Commonwealth's natural and historic resources and prime agricultural land;
- To encourage the preservation of prime agricultural land and natural and historic resources through easements, transfer of development rights and rezoning;
- To ensure that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator's need to change or expand their operations in the future in order to remain viable;

Comments: The last item is an important policy statement. Broadly speaking, it supports a farmer's right to change the agricultural operation for any purpose in order to remain "viable," as opposed to other municipal interests that might be contrary. One potential effect is that the goal statement neutralizes opposition to "industrialized farms" and concentrated animal operations (CAO). The impact of the provision favors farmers.

This provision, and others related to it, appears to make agriculture a privileged category of land use, different from other land uses which could be regulated if they change or expand. To some extent, it places agriculture outside the usual scope of municipal zoning regulations, and tends to separate agriculture from the total land use pattern of a community.

Section 105 changes continue, as follows:

- And wherever the provisions of this Act promote, encourage, require or authorize governing bodies to protect, preserve or conserve open land, consisting of natural resources, forests and woodlands, any actions taken to protect, preserve or conserve such land shall not be for the purposes of precluding access for forestry.

Comments: This purpose statement shows the Legislature's interest in the utilization of forest resources. It distinguishes between natural resources and economic resources and, even though a forest may be seen as being both a natural and economic resource, it is the economic value of the forest which apparently is more highly valued.

If minerals are included as natural resources, then minerals would also be viewed as being both a natural and economic resource, with the economic value of these resources being given higher priority by emphasizing their utilization. Natural resource preservation activities must not take away the opportunity for landowners to have access to forest lands and to utilize them for economic gain.

2. Definitions

Section 107 of the Municipalities Planning Code contains definitions used in the Code. There are several important definitions added by the two Acts affecting agriculture, forestry, mining, and natural resources in general. In the MPC the definitions are in alphabetical order, but in this bulletin the definitions are grouped by subject.

Section 107 is amended to include.

Agricultural Operation"- "an enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged (sic)by farmers or are consistent with technological development within the agricultural industry."

Comments: This is the complementary definition to the purpose statement in Section 105. Without saying it directly, apparently all changes in farming practices and procedures are included under the term "agricultural operation." Issues that may be raised are: how is "actively engaged" to be measured?, and, how is "commercial production" determnined?

"Prime Agricultural Land"- "land used for agricultural purposes that contains soils of the first, second or third class as defined by the United States Department of Agriculture Natural Resources and Conservation Services County Soil Survey."

Comments: This is self-explanatory. It should be noted that there is no universally accepted definition of "prime agricultural land." In fact, in Governor Ridge's Executive Order 1997-6 (Agricultural Land Preservation Policy), prime

agricultural land includes classes I, II, III, IV and unique farmland. The Agricultural Security Law (Act 43) includes land in capability classes I through IV (but excepts IV-e).

("Forestry" was previously defined in the MPC and no additions or changes were made in the new Acts. The definition of forestry is:
"the management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any land development.)

"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."

Comments: This is the complementary definition to the Section105 purpose statement "to promote the preservation of this Commonwealth's natural and historic resources and prime agricultural land."

"Preservation or Protection"- "when used in connection with natural and historic resources, shall include means to conserve and safeguard these resources from wasteful or destructive use, but shall not be interpreted to authorize the unreasonable restriction of forestry, mining or other lawful uses of natural resources."

Comments: This is a restatement of the Purpose of the Act (Section 105) in which, on one hand, natural resource protection is supported but, on the other hand, utilization of natural resources for economic gain is not seen as inconsistent with a preservation goal. The term "unreasonable restriction" is undefinable and requires case-by-case analysis, and probably litigation, to determine precisely what is "unreasonable" in a given instance.

Several new definitions were added that describe different types of "planning areas," and how natural resources are to be planned within one of them, the "rural resource area."

"Rural Resource Area" - "an area described in a municipal or multimunicipal plan within which rural resource uses including, but not limited to, ***agriculture***, ***timbering, mining***, ***quarrying and other extractive industries, forest*** and game lands and recreation and tourism are encouraged and enhanced, development that is compatible with or supportive of such uses is permitted, and public infrastructure services are not provided except in villages." *(italics added)*

NOTE: the terms "multimunicipal plan,""public infrastructure area," "public infrastructure services,"and "village" are defined in the Act, but these definitions are not included here.

Comments: The new Act outlines three types of planning areas within a municipal or multimunicipal plan: 1) designated growth area, 2) future growth area, and 3) rural resource area. If you think of these three areas as being concentric circles, a designated growth area would be at the center, surrounded by the future growth area and, most distant from the core, the rural resource area. The latter would be beyond expected growth and would not be served by public infrastructure (except in "villages").

The "public infrastructure" wording is interesting. It says, in part, that these are areas "outside of which public infrastructure will not be required to be *publicly financed.*" This suggests infrastructure could be privately financed to support development. It also indicates that public agencies (presumably municipalities and municipal authorities) would not have to extend infrastructure services in a rural resource area. This is further explained in new Section 1103.
"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."

Comments: This is a broad, general category of land uses related to development impacts. No

specific land uses are identified in this definition, but Section 301 of Act 68 refers to such things as large shopping centers, major industrial parks, ***mines and related activities***, office parks, storage facilities, large residential developments, regional entertainment and recreational complexes, hospitals, airports and port facilities as being included.

3. Comprehensive Plans

Article III of the MPC describes the components to be included when a county or municipality prepares a comprehensive plan. The new Acts add several new components, and distinguishes between municipal and county comprehensive plans. This Article also refers to *plan consistency*, and specifies the procedures to be followed in adopting comprehensive plans.

Section 301, Preparation of Comprehensive Plan. This section describes the components of a comprehensive plan. Three different governmental levels of plan-making are noted: municipal, multimunicipal and county, with the latter two being a new concept in the MPC. Added to the components are the following new ones:

To **subsection (A)** of **Section 301** is added:

> **(6)** A plan for the protection of natural and historic resources to the extent not preempted by federal or state law. This clause includes, but is not limited to, wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, flood plains, unique natural areas and historic sites. The plan shall be consistent with and ***may not exceed*** those requirements imposed under the following *(italics added)*:
>
> *(I) Act of June 22, 1937 (P.L. 1987, No. 394), known as "The Clean Streams Law";*
>
> *(II) Act of May 31, 1945 (P.L. 1198, No. 418), known as the "Surface Mining Conservation and Reclamation Act";*
>
> *(III) Act of April 27, 1966 (1st Sp. Sess., P.L. 31, No. 1) known as "The Bituminous Mine Subsidence and Land Conservation Act";*
>
> *(IV) Act of September 24, 1968 (P.L. 1040, No. 318), known as the "Coal Refuse Disposal Control Act";*
>
> *(V) Act of December 19, 1984 (P.L. 1140, No. 223), known as the "Oil and Gas Act";*
>
> *(VI) Act of December 19, 1984 (P.L. 1093, No. 219), known as the "Nonlocal Surface Mining Conservation and Reclamation Act";*
>
> *(VII) Act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Security Area Law";*
>
> *(VIII) Act of June 10, 1982 (P.L. 454, No. 133), entitled "An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances"; and*
>
> *(IX) Act of May 20, 1993 (P.L. 12, No. 6), known as the "Nutrient Management Act," regardless of whether any agricultural operation within the area to be affected by the plan is a concentrated animal operation as defined under the Act.*

Comments: There are two parts to this new plan element. First is the acknowledgment that natural and historic resources should be a comprehensive plan component. This is a further expansion and continuing refinement of plan components from the original 1968 Municipalities Planning Code. Second, the Legislature has determined that certain state statutes related to natural resources are intended to preempt local action that might set standards higher than those found in the nine specified acts in subpart (6).

All of the nine statutes should be examined in detail to understand their full impact as limitations

to planning and regulatory action. Following are comments about a few of these acts.

The Agricultural Security Area Law isn't too significant since the ASA law is not land use legislation. (Theoretically, a plan for agricultural land use could be inconsistent with the "description" of an ASA, but such an inconsistency would have little actual consequence. The "description" is not necessarily a map; it is a listing of all of the parcels in the ASA.)

The second act referred to in (VIII) is more usually called the "Right to Farm Law." Again, there isn't much tie-in to the MPC. Much of it deals with nuisance law, not planning law. However, an earlier amendment to the act impacted the zoning of roadside stands by farmers producing at least 50% of the products offered in direct farm sales.

The third law mentioned is the most significant. Even if a farm operation is not a confined animal operation (CAO), zoning standards may not exceed the Nutrient Management Act. Under the Nutrient Management Act, a management plan is required if there are more than two animal equivalent units (AEU) per acre. Prior to Act 68, a municipality could set a higher standard than the Nutrient Management Act when regulating agricultural activities with less than 2 AEU/acre. With the new law, this option is removed.

These changes can be interpreted in several ways, depending on one's perspective. One interpretation is that a statewide threshold for planning for natural resources has been set. The Legislature, by specifying the nine laws has clearly decided that "one size fits all," that is, there is no reason to have variable standards for agriculture, forestry or mining in the Commonwealth. Another interpretation is that the impact on municipalities and nearby landowners is a significant reduction in local opportunities to develop and promote standards they believe would make specific land uses involving natural resources compatible within their community.

Section 301 continues with specific reference to *county* comprehensive plans.

> (7) 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.
> >
> > (II) Identify current and proposed land uses which have a regional impact and significance, such as large shopping centers, major industrial parks, ***mines and related activities***, office parks, storage facilities, large residential developments, regional entertainment and recreational complexes, hospitals, airports and port facilities. *(italics added)*
> >
> > (III) Identify a plan for the preservation and enhancement of prime agricultural land and encourage the compatibility of land use regulation with existing agricultural operations.

Comments: The new Acts make a significant change to the previous MPC by distinguishing between municipal and county comprehensive plans; previously, no difference was made. With Act 68, there are four additional components to be specifically included in a county comprehensive plan.

Subsection (I) calls for a natural resource component in a county comprehensive plan.

Subsection (II) places mines in the general category of uses which have a *significant regional impact*, suggesting that both current and future mining activities should be included in such a plan element. It further indicates an appreciation that

quarrying and mineral extraction is more than a localized land use, but has broader regional impacts.

Subsection (III) calls for an agriculture component in county comprehensive plans.

The fourth specific county comprehensive plan element is a plan for historic preservation.

Subsection (B) of Section 301 is changed to *mandate* that a plan for reliable water supply must be included in a comprehensive plan; previously such a plan was optional.

> (B) The comprehensive plan shall include a plan for the reliable supply of water, considering current and future water resources availability, uses and limitations, including provisions adequate to protect water supply sources. Any such plan shall be generally consistent with the state water plan and any applicable water resources plan adopted by a river basin commission.
>
> It shall also contain a statement recognizing that:
>
> (1) Lawful activities such as extraction of minerals may impact water supply sources and such activities are governed by statutes regulating mineral extraction that specify replacement and restoration of water supplies affected by such activities.
>
> (2) commercial agricultural production may impact water supply sources.

Comments: Making a plan for water supply a required -rather than optional- comprehensive plan element is sensible, since water should be a major consideration in community planning. Requiring such a plan, however, may add significantly to the cost of preparing a comprehensive plan.

The required statement provisions seems superfluous, but apparently is included as a reminder to those preparing plans that their latitude to deal with changes in water supplies affected by agricultural production and mining is limited to currently enacted statutory requirements. It seems to restrict municipalities from arguing against a proposal related to agriculture or mining on the basis of its impact on water resources. It also limits opponents' arguments because the local government has, with the required written statement, acknowledged--in advance--the potential impacts to water supplies of agriculture and mining.

4. Zoning

Article VI of the MPC authorizes municipalities and counties to regulate the use, location and density of activities within the jurisdiction. To accomplish this, zoning districts are mapped which show where different land uses may occur and the standards that must be met for each type of land use.

Section 603. Ordinance Provisions.
Several specified state laws are identified which now preempt and supercede local zoning provisions, among them several related to agriculture. Zoning may regulate and restrict as before, but the local standards regulating activities related to commercial agricultural production are superceded. *(italics added)*

Subsection (b):
Zoning ordinances

> *except to the extent that those regulations of mineral extraction by local ordinances and enactments have heretofore been superceded and preempted by the Act of May 31, 1945 (P.L. 1198, No. 418), known as the "Surface Mining Conservation and Reclamation Act,"*
> *The Act of December 19, 1984 (P.L. 1093, No. 219), known as the "Noncoal Surface Mining and Reclamation Act,"*

and the
Act of December 19, 1984 (P.L. 1140, No. 223), known as the "Oil and Gas Act,"
and to the extent that the subsidence impacts of coal extraction are regulated by the Act of April 27, 1966 (1st Sp. Sess., P.L. 31, No. 1), known as the "Bituminous Mine Subsidence and Land Conservation Act...
And that regulation of activities related to commercial agricultural production would exceed the requirements imposed under the Act of May 20, 1993 (P.L. 12, No. 6), known as the "Nutrient Management Act," regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation as defined by the "Nutrient Management Act,"
the act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Area Security Law,"
or the act of June 10, 1982 (P.L. 454, No. 133), entitled "an Act protecting agricultural operations from nuisance suits and ordinances under certain circumstances,"... or that regulation of other activities are preempted by other federal or state laws"

may permit, prohibit, regulate, restrict and determine: (a list of aspects of zoning regulations numbered (1) through (5), e.g., use of land, use of structures, density, etc. concludes this subsection).

Two word additions are made to subpart **(5)** of section **(b)**, and are shown as underlined:

> (5) protection and preservation of natural and historic resources and prime agricultural land and activities.

Comments: The list of superceding laws was seen previously in the discussion of Comprehensive Plans. The significance of the Section 603 provisions is that they affect the regulation of private property (as distinguished from comprehensive plans). In other words, this is where the policy intent of the Legislature is given teeth. These provisions set the limits on local zoning ordinances.

Section 603 (c). The following subsection is added, specifying that zoning ordinances may contain:

> (7) provisions to promote and preserve prime agricultural land, environmentally sensitive areas and areas of historic significance.

Comments. There is nothing that appears significant in this subsection. Earlier, in Section 603, it says these things may be regulated; in this subsection it simply says there can be provisions for regulating these features. "Prime agricultural land" is noted, but the purpose for this distinction is unclear. It may have been included to suggest that the Legislature expects that lesser-quality (non-prime) agricultural land is not expected to be excluded from possible development.

"Environmentally sensitive areas" are not defined, but could possibly also include forests and areas containing minerals. Subpart "G" of this subsection is a related provision.

Section 603 (c) amends existing subpart **(F),** and adds new subparts **(G)** and **(H)**:

Prior to the amendments, subpart **(F)** stipulated that " zoning ordinances may not unreasonably restrict forestry activities." Added to this by Act 68 is:

> To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this commonwealth, forestry activities, including, but not limited to timber harvesting, shall be a permitted use by right in all zoning districts in every municipality."

Comments: This provision is significant in two ways. First, it apparently places the *economic value* of forests above other values. Second, the Legislature mandates that forestry shall only be a "use by right," which means it is a use the zoning administrator is authorized to approve or deny. The *"right"* to use the land for forestry is created by the ordinance. (The granting or denial of a permit by the zoning officer is appealable to the local zoning hearing board.)

By specifying that forestry must be a "permitted use," municipalities are prevented from making forestry activities "discretionary uses," that is, those types of uses with special standards and requiring a public hearing on the proposed use. (Special Exceptions and Conditional Uses are examples of "discretionary uses.")

With subpart (F), the Legislature significantly alters its traditional relationship to local land use regulation by intruding itself into local zoning in a profound way by dictating how a specific use will be treated in a zoning ordinance.

Municipalities wishing to exert some influence over forestry activities within their borders will have to modify their ordinances with technically sound provisions with respect to this activity.

Subsection (G) has two subparts:

> (G)(1) Zoning ordinances shall protect prime agricultural land and may promote the establishment of agricultural security areas.

Comments: The use of the mandatory "shall" raises a question of how it will be implemented. Prime agricultural land is in classes I, II and III. Protecting these soils may come into conflict with expansion of agricultural enterprises, as well as landowner desires to convert farmland to other uses. (If a municipality decided ***not*** to protect its prime agricultural land–and local farmers don't want them to, either-- could a municipality be forced to zone to protect prime farmland? Who would have the authority to force this action to be taken?)

The "may" clause regarding agricultural security areas is minor; it possibly suggests that agricultural zoning districts should include lands enrolled in agricultural security areas. However, the MPC and the Agricultural Area Security Law (ASA) are two very different statutes dealing with different things. The ASA Law, for example, does not have land use control authority.

> (G) (2) Zoning ordinances shall provide for the protection of natural and historic features and resources.

Comments: The Legislature also uses the mandatory "shall" in this provision. If forests and mining are considered natural resources, this new section may be interpreted as inconsistent with subsection (F). Another interpretation is that there is no conflict when the definition of "preservation or protection" (Section 107) is applied.

Subsection (H) is significant.

> (H) zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present, unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the Act of May 20, 1993 (P.L. 12, No. 6), known as the "Nutrient Management Act," the Act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Area Security Law," or the Act of June 10, 1982 (P.L. 454, No. 133), entitled "an Act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

Comments. Subsection (H) appears to mean that once a farm is established, it is forever protected

as a farm regardless of any change in the scale, practices or intensity of the operation. This benefits farmers by relieving them of uncertainty regarding possible expansions or changes in the farming operation. On the other hand, it may increase neighbors' uncertainty about the nature and extent of neighboring farm activities.

If a farm is nonconforming in a zoning district, this provision would expand the owner's "normal" nonconforming protection, which merely guarantees that the farm which existed at the time the ordinance went into effect is protected. This, too, is beneficial to farmers.

One way to read this provision is to consider that it basically exempts agriculture from all local zoning controls. Or, it could be read simply as that zoning cannot place limits on the change or expansion of an existing farming operation. (Zoning might be able to determine the location of new farms, and thus exert limited control.) There is an "escape clause," in that sometimes an expansion or a new operation could be found to have a "direct adverse effect on public health and safety." (For example, if there was sound, accepted, scientific evidence that a specific farm animal odor caused a medical condition.) From a zoning standpoint, who bears the burden to demonstrate this? A municipality, in its zoning ordinance, may not be able to establish standards in advance of what might be adverse because of the limits placed on it by the new acts. This may leave municipalities and nearby landowners in a difficult position from which to challenge an agricultural use.

Another way to read this section is to consider that because the MPC specifically grants municipalities authority to zone for agricultural uses, (Sections 603 [5]; 604 [B] [5]), subsection (7) the Legislature does not intend to totally exempt farming from all zoning restrictions. Interpreted this way, zoning ordinances could regulate the location of new farms, set dimensional requirements, etc. Once established, though, municipalities are prevented from placing any limits on the change or expansion of a farming operation. Had the Legislature decided to totally exempt agriculture and farming from local zoning control, it could have stated that its intention in the amending acts, but it chose not to.

Section 603 (c) adds **subsection (I),** which provides that:

> (I) Zoning ordinances shall provide for the reasonable development of minerals in each municipality.

Comments: A common understanding in Pennsylvania zoning is that every municipality is expected to provide space for all legitimate uses within its borders. This new provision makes it clear that mining is a use that *must* be allowed in all municipalities.

The question of what is "reasonable development" is also general and subject to interpretation. The precise meaning of this term must be determined on a case-by-case basis, possibly by determination of a court. (Its meaning might also be determined through the use of the mediation option provided in the MPC.)

Another question is whether municipalities which adopt a joint planning ordinance for the purpose, in part, of distributing land uses on the basis of a joint comprehensive plan are bound to provide for mining in each municipality. This issue is raised in new subsection 916.1 (h) of Act 67 dealing with challenges to the validity of a zoning ordinance in a municipality participating in a multimunicipal comprehensive plan. In those instances, consideration is to be given to the entire geographic area and not just to the municipality whose ordinance is being challenged. (See also 6. Appeals to Court, for related provisions.)

The Legislature's intent, however, seems clear. It expects that mineral resources will be developed, and not prevented by zoning regulations. Preparing zoning regulations which permit mining with some restrictions, while not thwarting the activity, will challenge municipal officials.

5. Traditional Neighborhood Development (new Article 7-A)

A new Article is added to the MPC, titled "traditional neighborhood development." The term is defined in the amendment, but it is a form of development variously referred to in the planning and development literature as "The New Urbanism" or "neo-traditional development." The following section in this Article refers specifically refers to trees.

706-A, (D) (2)

> The location and physical characteristics of the site of the proposed traditional neighborhood development, providing for the retaining and enhancing, where practicable, of natural features such as wetlands, ponds, lakes, waterways, trees of high quality, significant tree stands and other significant features. These significant natural features should be at least partially fronted by public tracts whenever possible.

Comments: Traditional Neighborhood Development treats natural resources (including trees) in a way considerably different from other parts of the MPC. Trees and tree stands are seen as amenities in this form of development, even to the extent that the Legislature suggests they be publicly accessible. If this type of development is adopted by municipalities, it will be necessary for them to be able to precisely identify what are *trees of high quality* and *significant tree stands*.

6. Appeals to Court (Article 10-A)

Article 10-A deals with appeals to court. These provisions come into play when a contested land use decision is not resolved within the municipality to the satisfaction of one or more of the parties to the issue. The case is moved out of the municipality and into the court system .to be further contested. This article establishes the procedures to be followed in such appeals.

Section1006-A: Judicial Relief

This subpart is added:

> **(b.1)** Notwithstanding any provisions of this section to the contrary, each municipality shall provide for reasonable coal mining activities in its zoning ordinance.

Comments: In **Section 603, subpart I**, mineral development was singled out as a use that must be provided for in each municipality. This section, related to judicial relief, restates the Legislature's intent specifically with regard to *coal mining*. Apparently, a court may not allow, as judicial relief, the exclusion of coal mining. This subpart, like the one in Section 301, inserts the word "reasonable" to the coal mining activity. This wording may provide a court with a way to modify the strict interpretation of this provision.

The context for this provision [b.1], is important. It is well established in Pennsylvania that every municipality is responsible for providing space for every legal land use within its borders. Where there is an adopted "multimunicipal" comprehensive plan and zoning ordinance, the courts were previously given the latitude of reviewing a challenged land use ordinance using the entire multimunicipal region as a basis for determining whether the full range of land uses were present somewhere in the region, but not necessarily in every participating municipality.

This new provision (1006-A, [b.1]) permits the courts to use this same region-wide context for land uses, if there is an adopted multimunicipal comprehensive plan but not an adopted multimunicipal zoning ordinance. (However, all of the participating municipalities must have their own zoning ordinance which is generally consistent with the multimunicipal comprehensive plan.)

The significance of [b.1] is that, in the latter situation, coal mining activities cannot be shifted to the regional view. Each municipality still must provide for coal mining within its borders.

This is a situation that may not arise often, but it

is nevertheless interesting that coal mining is singled out in this section.

7. Multimunicipal Comprehensive Plans (new Article XI)

New Article 11 deals with multimunicipal and county plans; it does not affect individual municipal plans.

Section 1103: County or Multimunicipal Comprehensive Plans

The comprehensive plan may:

(3) Designate rural resource areas, if applicable, where:

(I) rural resource uses are planned for.

(II) development at densities that are compatible with rural resource uses are or may be permitted.

(III) infrastructure extensions or improvements are not intended to be publicly financed by municipalities except in villages, unless the participating or affected municipalities agree that such service should be provided to an area for health or safety reasons or to accomplish one or more of the purposes set forth in section 1101.

(4) Plan for the conservation and enhancement of the natural, scenic, historic and aesthetic resources within the area of the plan.

Comments: Included as “rural resource uses” are agriculture, timbering, mining, quarrying and other extractive industries, among other specified activities

This is not necessarily a total prohibition on public financing to extend infrastructure in rural resource areas; it is more a statement of intent. Obviously, the settlements referred to as villages are excluded from the limitation. More importantly, the wording appears to make it possible for public infrastructure financing for some project or development which is considered *worthwhile* by the participating municipalities. Also, the purposes found in Section 1101 are sufficiently broad to provide a rationale for expansions.

The plan called for in (4) is somew hat similar to that found in Section 301 (6) related to comprehensive plan elements.

Conclusions and Implications

These new acts amending the PA Municipalities Planning Code deal with natural resources in a significant way. It appears that the economic value of the Commonwealth's forests, farmlands and mineral resources are to be realized with far less limitation coming from municipal and county planning and land use regulation. All municipalities must permit forest and mining activities within their borders. Mineral extraction is a protected activity, as is the harvesting of timber. Farms may not be restricted from expanding or changing practices.

The mandating by the Legislature of specific land use activities which *must* be permitted in a municipality is unprecedented. It goes beyond the accepted concept that all legitimate and legal uses should be able to be located within a municipal jurisdiction.* In the new Acts, the Legislature goes a step further when it specifies that forestry and mining must be allowed as uses in a municipality. This significantly alters the relationship of the state and its municipalities in the area of land use control. Perhaps even more significant is the Legislature, in the case of forestry, specifying that this activity may only be regulated as a *permitted use by right*.

While the Legislature indicates an interest in protecting and preserving the Commonwealth's valuable natural resources, it also calls for the utilization of them. There appears to be some inherent conflict in these two positions. Nevertheless, the way the new provisions are structured, the balance seems to be toward the *utilization* of natural resources, and away from municipal intervention in *preserving* them. A distinct "property rights" philosophy is expressed in these provisions.

** The previous MPC, in Section 604 (4) says that zoning ordinances should be designed "(T)o provide for residential housing of various dwelling types encompassing all basic forms of housing." Here, the statement is permissive, not mandatory, although the expectation is that a zoning ordinance will be found defective if it fails to provide all basic forms of housing within the municipality.*

Prepared by: Stanford M. Lembeck, Ph.D., AICP, Professor of Rural Sociology and Community Planning Specialist, Penn State Cooperative Extension, Armsby Building, University Park, PA.
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