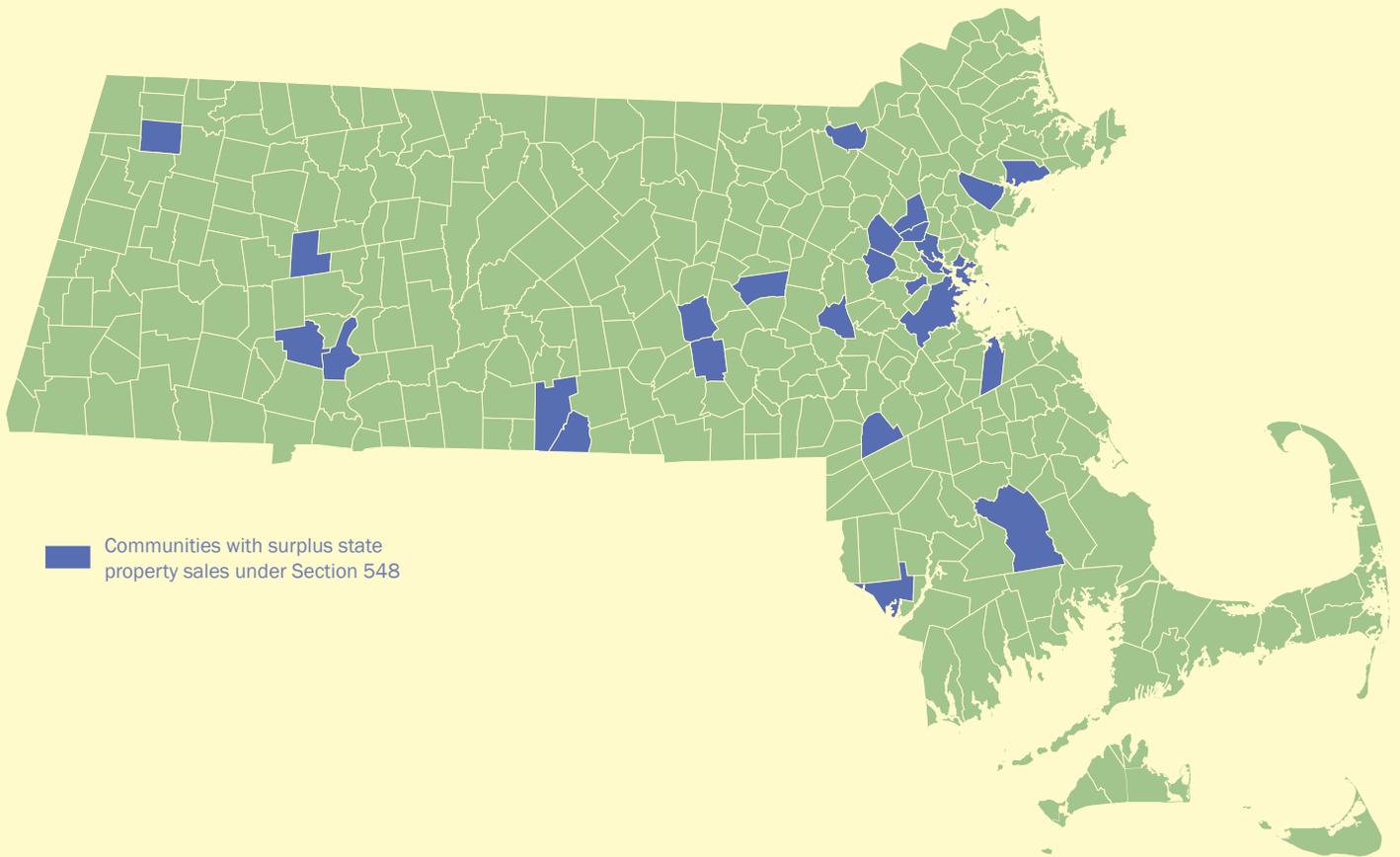


Positive Disposition

Crafting a Balanced Policy for the Sale
of Surplus State Property



Metropolitan Area Planning Council
Spring 2005

Acknowledgements

MAPC Executive Director

Marc Draisen

MAPC Officers, 2004-2005

Richard Dimino, *President*

Gordon Feltman, *Vice President*

Jeanne E. Richardson, *Secretary*

Grace S. Shepard, *Treasurer*

Principal Researchers & Authors

Benjamin J. Meshoulam, Assistant Project Director

Sean Caron, Legal Intern

MAPC Contributors

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External Contributors

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Table of Contents

I. Executive Summary.....	i
II. Background	1
III. Chapter 7 and Section 548	11
IV. Recommendations	17

I. Executive Summary

The Commonwealth's surplus land disposition policy matters. Excluding protected parklands, the Commonwealth of Massachusetts owns well over half a million acres of land in our biggest cities and smallest towns. In the past two years, approximately 30 communities have been affected by surplus state land sales within their jurisdiction, and serious controversies have erupted over the sale of several of these parcels.

The disposition of surplus state property has the potential to provide tremendous benefits to both municipalities and the state. For communities, disposition provides a chance to address critical needs around housing, economic development, and open space and environmental protection through the thoughtful use of long underutilized and neglected parcels. In addition, sales to the private sector convert the land into a taxable asset for the municipality. For the Commonwealth, disposition allows for the transfer of parcels that have lain fallow for years, often decades. Surplus property dispositions can generate significant revenue for critical state programs and services, and promote priority goals, such as economic development.

Citizens of the Commonwealth deserve a surplus property disposition policy that balances the need to maximize the return on state-owned capital assets and the desire to expedite sales, with the need to create partnerships with affected municipalities. A surplus property disposition process should also serve larger public purposes such as creating housing, protecting the natural environment, and promoting economic development. Any surplus property disposition policy must be mindful of the Commonwealth's commitment to smart growth principles.

Historically, surplus state land disposition was time-consuming, resource intensive, and frequently led to valuable state property losing value through disuse and lack of maintenance. Unused state properties could sit for years or even decades without official action, and every parcel of state land required a vote of the legislature before it could be sold. Because of the cumbersome procedures involved, finding a way to expedite the sale of surplus state lands has been a priority of executive administrations for nearly two decades.

In large part to address the current fiscal crisis and generate revenue, the legislature adopted an expedited surplus real property disposition process in the FY2004 budget, known as Section 548. This new law authorized the Division of Capital Asset Management (DCAM) to sell state land without a vote of the legislature and with little formal process. Section 548 also took away the municipality's first option to purchase the property, which communities had enjoyed under the previous law, Chapter 7, sections 40F and 40F 1/2.

On one level, Section 548 has been a success. In fiscal years 2001 through 2003, DCAM sold approximately \$5 million worth of property under Chapter 7. Under Section 548, which went into effect in July of 2003, the state will generate at least \$30 million in surplus state property sales. The outcomes of these sales have at times been positive. For example, the City of Beverly is now generating additional property tax revenue from the sale of a public works facility.

On the other hand, there has also been a backlash against Section 548. Communities often feel excluded from the disposition process because there are few formal procedures that DCAM must follow to create partnerships with municipalities, and most of the leverage in discussions resides with DCAM, which can auction the land at any time.

Despite the Administration's stated commitment to smart growth, little planning takes place to ensure that proposed development on these parcels encourages smart growth, rather than continued sprawl and environmental degradation. Environmentalists are rightly concerned that protection of the natural environment – whether that involves open space, wildlife corridors, or respect for bio-map core habitat areas – is not adequately addressed through the current expedited process.

Goals

Section 548 expires on June 30, 2005, and Massachusetts will return to the previous law, Chapter 7, unless common ground is reached. A sound policy will balance the desire to expedite surplus land sales with the creation of partnerships with municipalities. It will craft a process that will promote smart growth strategies to build much-needed housing, protect the natural environment, and spur economic development.

The Metropolitan Area Planning Council (MAPC) has spent the past three months researching surplus land disposition policies to find a commonsense solution to balance those competing goals. MAPC has worked closely with municipal, environmental, housing, regional planning, and smart growth advocates to develop the recommendations in this report, and consulted extensively with key stakeholders in the legislature and the Administration.

The recommendations in this report are informed by three important themes that were voiced almost universally among key advocates and stakeholders:

- **Empower Local Communities:** Cities and towns deserve to be partners in changes that occur within their borders. Consequently, this document recommends meaningful and substantive reforms around notification and public participation, financial incentives to host communities, and granting a right of first refusal to municipal governments, including the ability to assign that right of first refusal to appropriate land trusts and community development corporations.
- **Serve Public Purposes While Generating Resources for the Commonwealth:** The Commonwealth should be focused on proactively identifying and finding uses for surplus properties, since these underutilized properties can play a significant role in building needed housing, permanently protecting natural habitats, and promoting economic development. Surplus property sales also generate significant proceeds for important programs like the Smart Growth Zoning (40R) Trust Fund and other critical state needs, and development of surplus parcels can result in significant property tax benefits for municipalities. These recommendations call for a continued expedited process to sell lands, but with municipal partnerships and better planning about how these parcels should be used.

- **Promote Smart Growth:** When the expedited process was established, there was little or no consideration given to the best uses for these parcels consistent with smart growth principles. On major parcels, MAPC advocates that a professional “smart growth evaluation” be completed by the Regional Planning Agency with jurisdiction where the parcel is located. This smart growth evaluation can then inform the decisions made about whether to sell the parcel and what restrictions should be placed on development.

Key Findings and Recommendations

Findings

- There is no consistent, statutorily defined process within the Administration to coordinate the review of parcels by key state agencies before DCAM determines which properties should be deemed surplus to state needs.
- Under Section 548, there is inadequate notification to stakeholders, including state and municipal officials, when parcels have been identified as surplus to state needs.
- There is no formal consideration of smart growth principles when DCAM decides to sell surplus state lands.
- Under Section 548, there is little public participation, including mandatory hearings in the affected municipality, and insufficient opportunity for comments from stakeholders.
- Municipalities and other stakeholders rightly complain about a seemingly arbitrary surplus and reuse of property decision making process that lacks transparency.
- Communities lost the option to purchase state property for a public use under Section 548, and there is inadequate opportunity for a municipality to take direct control of a surplus parcel.
- The sale of surplus state lands is providing resources for important state programs, including the Smart Growth Zoning (40R) Trust Fund.
- Municipalities have not been given financial incentives to partner with DCAM on land sales, and there is no current mechanism for DCAM and the Administration to encourage and reward municipal cooperation.
- DCAM can do a better job in reporting on the sale of surplus state lands, including notice about which parcels are under internal review for possible declaration of surplus status.

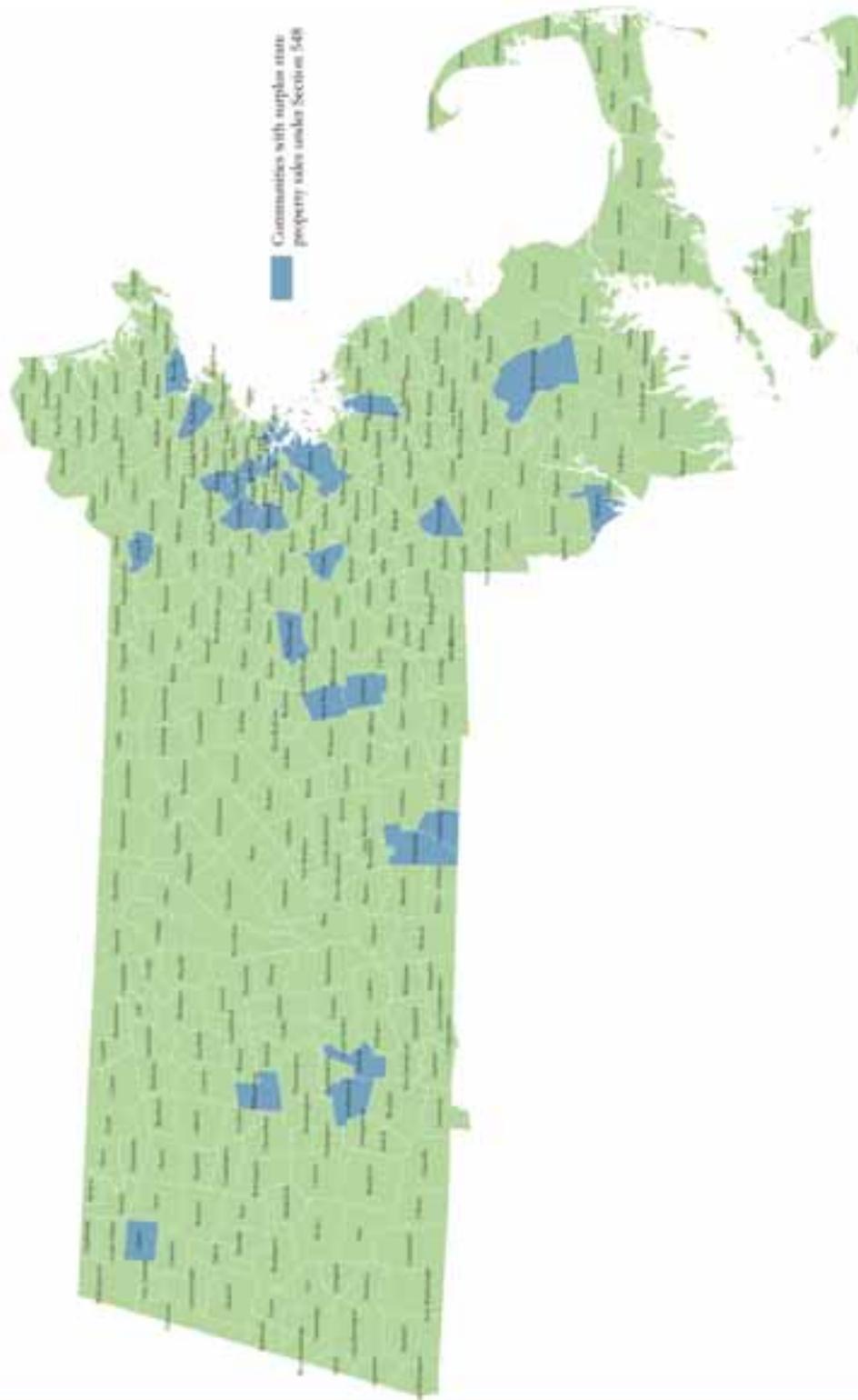
Key Recommendations

- **Coordination among state agencies.** To encourage internal coordination among Administration agencies, the legislature should formalize the creation of a Surplus Land Coordination Committee to review each potentially surplus property.
- **Notification of stakeholders.** A new surplus state land disposition policy should include clear notification requirements to major affected stakeholders, so

they have an opportunity to participate in the process around important reuse issues.

- **Professional land use evaluation.** On larger parcels, those over two acres in size or \$1 million in value, regional planning agencies should be authorized to do a “smart growth reuse evaluation” so that decision makers and stakeholders have a more complete understanding of the property, its potential, and any environmental or planning issues related to its sale and use.
- **Disposition by a balanced Board.** On larger parcels, those over two acres in size or \$1 million in value, a Surplus Property Disposition Board – whose members would reflect the interests of various state agencies and municipal and regional communities – should be empowered to make the final, formal decisions about (1) whether to sell the property, (2) any conditions to place on the sale or use of the parcel, and (3) how the property should be sold.
- **Balanced reuse committee for major parcels.** On the largest parcels, those over 25 acres in size, the Commonwealth should create an Advisory Reuse Committee that will allow state, municipal and regional officials to spend up to one year working together to develop an appropriate sale and use plan for the site.
- **Right of first refusal for municipalities.** Massachusetts should establish a right of first refusal for a municipality to purchase a property within its jurisdiction at a significant discount of 80% of its appraised value. There should be a prompt closing date under which to exercise the right of first refusal, but with sufficient time to allow for Town Meeting action.
- **Assignability of right of first refusal.** The right should be assignable to a non-profit entity such as a conservation land trust or community development corporation.
- **Revenue for important state priorities like smart growth.** Revenue generated from the sale of state surplus lands should be used for important state priorities, including the Smart Growth Zoning (40R) Trust Fund.
- **Municipalities share in sale proceeds.** Host municipalities should receive 10% of the net proceeds of land sales, and the administration should be empowered to increase the percentage of the sale proceeds given to host communities (up to a total of 25%) to reward them for taking proactive steps to promote smart growth development on the site.
- **Annual report.** DCAM should update its annual report to include an overview of state land holdings, summarize recent dispositions, and indicate which parcels may be declared surplus and made available for disposition by the state in the near future

Surplus State Property Sales



II. Background

History

With more than 12,000 parcels,¹ the Commonwealth owns approximately one-tenth of the land-area in Massachusetts.²

From Pittsfield to Provincetown, the Commonwealth is the custodian of open space, and of buildings and facilities, including: armories, state hospitals, and office buildings; abandoned rights of way; transportation and public works facilities; and countless other properties, ranging in size from six square feet to thousands of acres.³

Disposition of properties that are surplus to state needs can potentially impact every region and municipality in Massachusetts. (See maps “State Owned Parcel Locations” and “State Owned Parcel Locations in MAPC Region”). Many state owned properties have gone unused for years and even decades, while the Commonwealth continues to pay for maintenance and security. Selling a property that is truly surplus can allow for its proper use, help the state lower operating expenses, and generate revenue.

Article 97 and Other Excluded Parcels

Ninety percent of state owned lands are state parks or recreation and reservation areas⁴ – most of which are exempt from the findings of this report, because of their Article 97 status under the Massachusetts Constitution. Article 97 declares that people have the right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources. Land that has been conserved and declared Article 97 land cannot have its use changed or be disposed of without a two-thirds vote of the legislature. Chapter 7, Section 548, and this report’s proposals do not apply to properties that are under a legislatively established reuse plan, are controlled by independent Commonwealth authorities, or are protected under Article 97.

The idea of expeditiously selling surplus state property to deal with challenging state budgets is not a new one. In 1991, the Weld administration advocated for a plan to generate as much as \$530 million through the sale of surplus state land and buildings. Never implemented, the Weld plan would have attempted to generate this amount in as little as 16 months.⁵

¹ Division of Capital Asset Management, *Report on Real Property Owned and Leased by the Commonwealth of Massachusetts*, September 2004.

² Brian C. Mooney, “Weld Seeks to Change Rules to Sell Assets,” BOSTON GLOBE, February 25, 1991, B1.

³ Division of Capital Asset Management, *Report on Real Property Owned and Leased by the Commonwealth of Massachusetts*, September 2004.

⁴ Brian C. Mooney, “Weld Seeks to Change Rules to Sell Assets,” BOSTON GLOBE, February 25, 1991, B1.

⁵ Ibid.

Traditionally, the disposition of state surplus property in Massachusetts was governed by MGL Chapter 7, Sections 40F & 40F1/2 (Chapter 7). During the FY 2004 budget process, the Commonwealth was faced with a budget deficit of more than \$3 billion. In 2003, Governor Romney proposed an expedited process that could generate up to \$180 million to help address this gap.⁶ A version of this expedited sale process, known as Section 548⁷, was ultimately adopted in the FY 2004 budget.

Section 548

Section 548 set up a process that shortens the time it takes to dispose of surplus state property. Section 548 contained two major changes from Chapter 7:

1. It eliminated the need for the Division of Capital Asset Management (DCAM) to seek legislative authorization to dispose of each individual parcel; and
2. It removed communities' option to purchase the property for a direct public use before it is sold through a competitive bidding process.

The removal of the requirement for legislative authorization for sale of each and every parcel shortened the process, and left little opportunity for public participation and municipal involvement in the disposition process.

Additionally, the option for municipalities to purchase property for a direct public use under Chapter 7 allowed communities to take control of the parcel and be the direct custodians of its use and development. In practice, removing the first option to purchase took away the ability of municipalities to obtain direct custody of the parcel, even if they have the financial wherewithal to purchase the parcel at fair market value. Under Section 548, the community's only opportunity to purchase the parcel is through a competitive bidding process, usually an auction, forcing the community to bid against private interests with greater financial flexibility. Additionally, removing the municipal option to purchase reduces the likelihood that the municipality will consider itself a partner in the disposition process. Instead, they are more likely to seek special legislation, or to subvert reuse plans through zoning and permitting decisions.

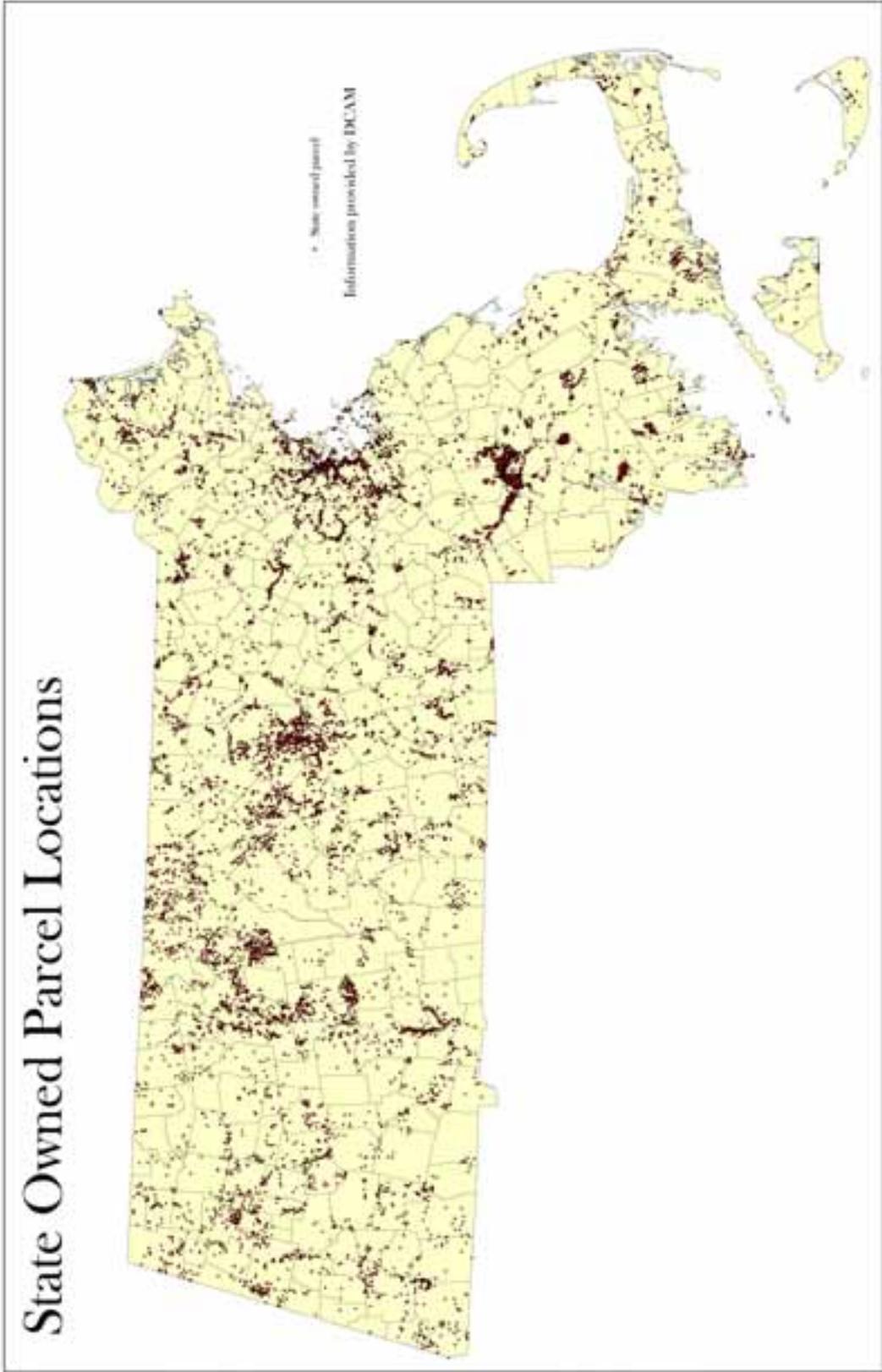
With the removal of the municipal first option to purchase and the need for DCAM to receive legislative authorization, communities are left with a significantly diminished role in the disposition process. However, it is important to note that although surplus state properties have been disposed of to the objections of some communities, the parcels are still subject to local zoning.

Section 548 will expire on June 30, 2005. Unless the Commonwealth adopts a new law to expedite the sale of surplus lands, Chapter 7 will again govern the sale of surplus state land, and legislative authorization will be required for each and every parcel that leaves state ownership.

⁶ "Land of Opportunity: State Seeks to Develop Abandoned Mass. Properties, but Local Authorities Have Historically Held Sway," BOSTON GLOBE, April 22, 2003.

⁷ Acts of 2003, Ch. 26, Section 548.

State Owned Parcel Locations



Revenue Generated

One of the state's primary objectives in expediting the disposition of surplus state property was maximizing return on capital assets to generate revenue for state programs and services. In the three years leading up to Section 548, from 2001-2003, the state generated a mere \$5 million from the disposition of 55 surplus parcels. Under Section 548, the state has sold or is under agreement to sell more than \$30 million in properties. Section 548 clearly gives the state the ability to generate significantly more revenue than Chapter 7, and in substantially less time. These surplus property sales under Section 548 have taken place in communities across the state. (See map "Surplus State Property Sales").

DCAM PROPERTY SALES: CHAPTER 7 VS. SECTION 548				
(Ch. 7)	(Ch. 7)	(CH. 7)	(§ 548)	(§ 548)
FY2001	FY2002	FY2003	FY2004	FY2005*
Revenue: \$1,275,364	\$2,334,667	\$1,658,607	\$10,219,000	\$19,639,000
Information provided by DCAM as of March 1, 2005				
*Property sales closed or under agreement				

Time to Dispose

The expedited Section 548 process also greatly reduces the amount of time to dispose of a given parcel. Under Chapter 7, dispositions could take several years – or even decades.

Disposition time under Section 548 has shortened significantly, taking an average of four to six months. Accompanying this timeframe are legitimate concerns from municipalities about inadequate process, and the lack of public participation and proper consideration around appropriate uses of the parcel.

Boston State Hospital

The Boston State Hospital ceased hospital operations in 1979 and officially closed in 1981. Almost immediately, people began to look at the unused tract of land as an opportunity for development. By 1986, when a Citizens Advisory Committee was first convened to determine proper reuse options, the facilities had significantly deteriorated. Governor Dukakis declared in 1989 that “legislation to enable the redevelopment of the Boston State Hospital remains a top priority.”⁸ While community leaders, planners, legislators and executive administrations studied potential uses with the hopes of finding a development solution, the area became a dumping ground for waste and its buildings an unkempt eyesore. The 175-acre property was eventually split into four development pieces to facilitate disposition. In 1993, the legislature included \$400,000 in the budget for a master plan for reuse, but still had not given authorization to dispose of the property.⁹ Indecision, inefficiency and decay followed, with Boston State “the embodiment of dreams deferred.”¹⁰

Finally in 1996, Massachusetts Audubon established a nature center and sanctuary on 67 acres of the parcel. By 2003, Massachusetts Biological Laboratories, a UMass Medical School affiliate, began building a biotechnology lab on 20 acres. Co-op and single-family residences are under construction on an additional 18 acres, with some already completed.¹¹ The remaining parcel disposition is nearly finalized, twenty-five years after the hospital closed. Although some blame executive administrations and DCAM for failure to expeditiously dispose of surplus state property, and others point fingers at the legislature, the Boston State Hospital disposition outlasted five different administrations, and a dozen legislative sessions. It is clear that the cumbersome Chapter 7 process played a large part in the slow disposition of Boston State, and the delay was not wholly the fault of any single party.¹²

⁸ Brian C. Mooney, Renee Loth, & Peter Canellos, “Dukakis finds hospital plan attractive, but Flynn is skeptical,” BOSTON GLOBE, April 19, 1989, B21.

⁹ Editorial, “Hope at Boston State Hospital,” BOSTON GLOBE, July 30, 1993, A14.

¹⁰ Adrian Walker, “A site neglected for far too long,” BOSTON GLOBE, September 25, 1999, B1.

¹¹ “Unknown cleanup costs cast shadow over plans for old state hospital,” BOSTON GLOBE, October 21, 2003, F1.

¹² Sources: Brian C. Mooney, Renee Loth, & Peter Canellos, “Dukakis finds hospital plan attractive, but Flynn is skeptical,” BOSTON GLOBE, April 19, 1989, B21; Editorial, “Hope at Boston State Hospital,” BOSTON GLOBE, July 30, 1993, A14; Peter Preer, “Projects to reuse old state hospitals,” BOSTON GLOBE, June 5, 1994, South Weekly, 1; Adrian Walker, “Menino hits state plan for Hub site,” BOSTON GLOBE, July 4, 1995, B13; Adrian Walker, “A site neglected for far too long,” BOSTON GLOBE, September 25, 1999, B1; Davis Bushnell, “Plans finally advance for former state hospital site,” BOSTON GLOBE, February 1, 2001, G1; Editorial, “At Last, a Plan,” BOSTON GLOBE, December 15, 2001, A18; Anthony Flint, “Land of opportunity: state seeks to develop abandoned Mass. Properties, but local authorities have historically held sway,” BOSTON GLOBE, April 22, 2003, B1; Thomas C. Palmer Jr., “Unknown cleanup costs cast shadow over plans for old state hospital,” BOSTON GLOBE, October 21, 2003, F1; Editorial, “Big Step in Mattapan,” BOSTON GLOBE, January 16, 2004, A14.

Middlesex State Hospital Lot 1

In 1996, the Middlesex State Hospital Campus was divided into several lots to facilitate development, recreation and preservation. The controversial Middlesex State Hospital site known as Lot 1 consists of 54 acres straddling Waltham and Lexington. Currently undeveloped open space, the parcel serves as a link to the Western Greenway, a group of open space parcels that provide for recreational activities and wildlife habitat.

The Trapelo Road corridor near Lot 1 has been extensively developed in the past few years, resulting in serious traffic concerns in the surrounding communities of Belmont, Lexington and Waltham. The lack of public transportation has left cars as the only legitimate means of transportation. In addition, the loss of natural flood storage capacity has created flooding problems for surrounding businesses, residences and streets. Lot 1, if developed, might exacerbate flooding problems.¹³

In August 2004, DCAM auctioned the 7-acre Lot 6 of the Middlesex State Hospital complex in Lexington for \$5.6 million.¹⁴ The windfall made Lot 1 an attractive parcel to sell because like Lot 6, it is zoned for residential use. Consequently, DCAM made a push to sell Lot 1, with restrictions allowing approximately 36 single-family homes on half of the site, and permanently preserving the rest as open space.¹⁵ Seven acres of the open space DCAM intended to preserve are wetlands that are unsuitable for development.

The push to sell the land was met with resistance from the community, municipal elected officials, and its legislative delegation, led by Representatives Thomas Stanley and Jay Kaufman, and Senator Susan Fargo. Initially, some community members believed that Lot 1 was to be preserved entirely as open space. Municipal officials complained of a lack of notice and opportunity for input, and were afraid that an auction could put the communities in the unfeasible position of having to outbid developers. Others complained that a hearing mandated by Section 548 was useless because DCAM was not required to be responsive to concerns regarding details of the parcel's disposition, or potential ramifications of development. Furthermore, municipal leaders felt as if they had little control over the disposition of land within their borders because Section 548 places all of the decision making power with DCAM. A lack of planning, transparency and community involvement in the Section 548 process created strong opposition to a program that has been better received in other circumstances (see "Beverly Public Works Site" example on next page).

DCAM responded to fierce local opposition by contracting with a land use planner, and is considering forming a reuse committee for the parcel.¹⁶ Not compelled to do so under Section 548, these actions were taken in part because of political pressure. Although Lot 1 has not yet been sold, DCAM could have auctioned it off under Section 548, and nearly did. A process that assured community input and involvement, and mandated a study of ramifications of development while taking into account smart growth considerations, might have prevented the backlash against the concept of expedited dispositions.¹⁷

¹³ Maria Krajnak, "Flooding danger eyed in land sale," DAILY NEWS TRIBUNE, November 30, 2004.

¹⁴ Maria Krajnak, "Communities caught off guard by land sale law," MEDFIELD PRESS, February 17, 2005.

¹⁵ Ibid.

¹⁶ Representative Thomas Stanley, "Working to repeal," LEXINGTON MINUTEMAN, March 3, 2005.

¹⁷ See: Joshua Myerov, "Lexington/Waltham land: City begs out," DAILY NEWS TRIBUNE, August 4, 2004; Maria Krajnak, "Flooding danger eyed in land sale," DAILY NEWS TRIBUNE, November 30, 2004; Maria Krajnak, "Groups lays plan to stop auction," DAILY NEWS TRIBUNE, December 23, 2004;

At the same time, Section 548 has been successful in finding uses for properties that were unused or underutilized for years, returning them to municipal tax rolls. When the benefit to be achieved by the municipality is clear, the sale is generally well received by the local community. Communities with objections to Section 548 generally involves parcels that are complex, whose potential uses are less clear and more varied, and whose fiscal benefits are not readily evident.

Beverly Public Works Site

In Beverly, Section 548 was used to sell a half-acre parcel that was formerly a public works facility. Originally assessed at a value of \$450,000, the property was eventually sold at auction for nearly \$700,000. Currently, the property is expected to net the city at least \$14,000 in annual property tax revenues. This figure is expected to increase significantly if commercial development occurs. The resulting funds could be used for important city services and programs, or leveraged to secure financing for a larger municipal project.

The challenge around a lack of public participation needs to be addressed seriously to assure community input. A process that takes into account a community's concerns and smart growth considerations can help ensure more appropriate development. Comments from the community, the Regional Planning Agency, and important stakeholders assures that local development concerns as well as smart growth considerations are raised prior to decisions being made. Pursuing smart growth strategies has the potential to simultaneously benefit the state, the region, and the community. The Chelsea Armory provides an example where the introduction of a public comment period and a mandatory public hearing for all parcels could bring in valuable information about optimal development and uses for the community.

Jill Stein, "Citizen Action Needed to Prevent Rushed Auction of Priceless Open Space," LEXINGTON MINUTEMAN, January 6, 2005; Maria Krajnak, "Residents meet to oppose state's plan to auction off land," DAILY NEWS TRIBUNE, January 14, 2004; Maria Krajnak, "Communities caught off guard by land sale law," MEDFIELD PRESS, February 17, 2005; Representative Thomas Stanley, "Working to repeal," LEXINGTON MINUTEMAN, March 3, 2005; Susan Bushey, "State coming around on Section 548, land auction law," LEXINGTON MINUTEMAN, March 10, 2005, David Desjardins, "54-acre site is flashpoint for land sale policy fight," BOSTON GLOBE, March 13, 2005.

Chelsea Armory

The disposition of the Chelsea Armory offered an opportunity for sound residential development. However, a lack of community involvement tarnished the process. Chelsea officials felt that the process governing the parcel's disposition should have included meaningful community input.¹⁸ Instead, DCAM moved forward without soliciting input from the city or its residents, or from experts in land use and smart growth planning. DCAM failed to recognize that this residentially zoned parcel could be a prime housing opportunity. Furthermore, there was no public hearing required because the parcel was less than two acres in size. Chelsea, like so many other metropolitan Boston communities, is in tremendous need of affordable housing, and even a parcel smaller than 2 acres presents significant opportunities. Instead of restricting the property to housing development consistent with smart growth principles, DCAM included no restrictions when it auctioned the property. Although the new owners are currently considering developing the property for housing, the absence of restrictions attached to the sale did not compel them to necessarily develop housing on the site.

Experience from Other States

Surplus state property disposition has been a critical issue across the country, and policies governing it vary tremendously across states. Like Massachusetts, many states have used revenue from surplus property disposition to help close significant budget shortfalls. California alone could potentially generate up to \$4 billion from the sale of surplus lands.¹⁹

MAPC staff members reviewed the surplus state land laws and policies of a dozen states, and a number of interesting issues arose from that research.

Authority to Sell State Land

In general, authority to dispose of surplus state property is conferred to one of two parties – a state agency or agencies, or the legislature. In Maryland, for example, the authority lies with state agencies, and not the legislature. If a property is surplus to state needs, Maryland's Board of Public Works has authority to declare the property surplus and approve its disposition. The Maryland Department of General Services then determines the method of sale, establishes the parcel's value, and negotiates the sale. The Board of Public Works must give final approval for the sale to be completed.

In contrast, Michigan requires every state agency disposition decision to subsequently receive legislative authorization. Under this system, the Department of Management and Budget, Real Estate Division has the power to evaluate state property, declare property surplus, and study potential uses. The Real Estate

¹⁸ John Laidler, "Armory building to be put on block: armory auction set," BOSTON GLOBE, July 29, 2004, Globe North, 1.

¹⁹ Robert Salladay, "State Could Raise 4 Billion by Selling Property, Study Shows," LOS ANGELES TIMES, November 5, 2004.

Division checks properties against historic registers, conducts environmental assessments, and notifies other governmental authorities of the parcel's availability.

In California, the Department of General Services (DGS) gains legislative authorization to dispose of several properties through an annual bill filed in the legislature. Before it can get legislative authorization, DGS must first poll two conservancies and all state agencies to ensure they do not have a need for the surplus properties. Legislative authorization in California has also been slow. From 1994 to 2004, surplus property sales in the nation's most populous state exceeded \$20 million only twice.²⁰

Statutes and regulations in all 12 states surveyed provided greater clarity around disposition procedures and responsibilities than under Section 548.

Surplus Property Reporting

Seven of the twelve states surveyed require agencies to inventory their holdings and determine whether or not surplus land is available. The state agency in each state then publishes a report similar to DCAM's annual *Report on the Real Property Owned and Leased by the Commonwealth of Massachusetts*. Other states' property reports generally contain more comprehensive information, including possible future uses of unused property or property that has been surplus, and projections concerning parcels that may be declared surplus in the near future. States producing such reports include California, Connecticut, Delaware, Illinois, Maryland, New York, Pennsylvania, and South Carolina. The Illinois report includes plans for future use of currently unused real property among its report requirements. The California report requires information on surplus property sold in the past year, surplus lands pending disposition, and newly identified surplus parcels.

Informed Decisions: Land Disposition Committees

Committees are employed in many states to advise state agencies on how best to use or dispose of surplus property. Delaware, Idaho, Michigan, Oregon, and South Carolina are among those states that employ a committee structure as part of the formal surplus land disposition policy. In Idaho, the State Board of Land Commissioners serves as the committee with ultimate authority to decide on a surplus parcel's disposition.

Membership on surplus land committees varies widely. In many instances advisory committee membership is composed of gubernatorial appointees and elected officials. In Oregon, for example, the advisory committee consists of seven gubernatorial appointees, and must include two legislators, two executive branch state employees, one qualified land use planner, and one real estate management expert. Many states set baseline values for the property that triggers an advisory committee review, ensuring that major parcels are properly evaluated.

Advisory reuse committees and official review provide a critical layer of public process in other states. A properly constructed advisory committee provides a seat at the table for relevant state, regional, and municipal stakeholders who are charged with providing input into the disposition and reuse of parcels.

²⁰ Analysis of 2004-2005 Budget Bill, *California Legislative Analyst's Office*, February, 2004.

Municipal Option to Purchase

Some of the states surveyed give municipalities or other political subdivisions an option to purchase surplus property. California requires that the municipality where the parcel is located be given a right of first refusal at 100% of fair market value. Other states give the option to prior owners, but in general it is difficult to identify heirs and sort out other relevant details. Maine has tried to address the challenge of locating former owners by imposing limits on the amount of time a former owner whose property was taken by eminent domain can attempt to reclaim it. The right of first refusal provides municipalities with an opportunity to play a more active role in the disposition process, and to have a more direct impact on the future of the parcel.

III. Chapter 7 and Section 548

It is important to compare and contrast Section 548 and the previous Chapter 7 process of selling surplus state lands. DCAM's broad authority under Section 548 is set to expire June 30, 2005, when Chapter 7 will once again govern surplus land sales.

Determination of Surplus

Although Chapter 7 and Section 548 both require DCAM to poll the secretaries of various state departments to determine if they have a current or foreseeable use for the property, Chapter 7 had stronger notification requirements. Chapter 7, for example, required DCAM to poll executive heads of state agencies, as well as the cabinet secretaries. After polling state agencies, DCAM was required to poll all other public agencies – including cities and towns – to inquire if they had a direct public use for the property. If a municipality responded with a direct use, it could purchase the property at full and fair market value. If no government entity responded with a need for direct public use, the Commissioner could declare the parcel surplus, and seek legislative authority to dispose of the parcel.

This initial surplus determination process is less comprehensive under Section 548. Under Section 548, DCAM is not required to poll either executive heads of other state agencies or cities and towns. No statutorily defined timeline is specified for responses from cabinet secretaries, and in practice, state agencies have been left with inadequate time to assess their potential need for the parcel, and to formulate a response to the Commissioner's inquiry. Many state agencies, as well as cities and towns, have no opportunity to advise DCAM if they have a reasonable public use for the parcel.

Additionally, language in Section 548 authorized DCAM, in consultation with the Executive Office of Administration and Finance (A&F) to declare a property surplus even if an agency responded with a current or foreseeable need for the property. The declaration of a current or foreseeable need for the parcel by a state agency does not ensure its transfer to that agency. Under Section 548, this detail becomes all the more critical since as once a parcel is declared surplus – which can be done regardless of feedback received from state agencies – DCAM has sole authority over its disposition.

Legislative Authority

Section 548 radically changed the way surplus state real property is disposed of in the Commonwealth. Under Chapter 7, DCAM's primary function was the facilitation of the sale or lease of a given surplus property. However, the Commissioner was required to seek legislative authorization on a parcel-by-parcel basis in order to actually sell state land, whether that sale was to be through an auction or a negotiated disposition agreement with a specific party.

Section 548 changed this process dramatically. DCAM was granted exclusive authority to declare property surplus, and dispose of it once this declaration is made. No legislative authorization is required to dispose of a surplus parcel under the new law.

Disposition Process

Section 548 and Chapter 7 also diverge dramatically regarding the actual disposition process once a property is declared surplus.

The Chapter 7 process was significantly slower, and the few surplus properties that were sold prior to the passage of Section 548 took years or even decades to be finalized. Disposition of a parcel under Chapter 7 required that DCAM:

- Hold a public hearing for parcels over two acres in size.
- Have discretion to convene an advisory reuse committee, including the representatives to the General Court from the affected municipality.
- Provide notification to representatives to the General Court from the affected municipality, the municipality, the House and Senate Committees on Ways and Means, the Joint Committee on State Administration, and the municipality.
- Submit a request for legislative authorization, and subsequently receive authorization to dispose of it. The request had to include the parcel's specifications, and any recommended restrictions.

This process had to be followed for all parcels, regardless of whether they were to be disposed of through an auction or a negotiated sale.

Section 548 merely requires that DCAM:

- Provide written notice to each municipality where the parcel is located as to the parcel's surplus status.
- Identify restrictions and restriction enforcement language, and conduct a public hearing in the municipality if the parcel exceeds 2 acres, or at the discretion of the Commissioner if smaller.
- Appraise the property given the use restrictions.
- Dispose of the property through appropriate competitive processes, usually auctions.

The Section 548 disposition process therefore falls under the sole jurisdiction of DCAM – no public process is required beyond the community hearing for the larger parcels over two acres. As such, the average time between a property's declaration as surplus and its auction is four to six months. However, under Section 548 DCAM has the authority to dispose of a parcel in as little as 60 days. Of the 31 parcels sold thus far under Section 548, 29 were sold at auction, and 2 through negotiated sale.

Municipal Option to Purchase the Property for a Direct Public Use

Under Chapter 7, the municipality had an option to purchase the property for full and fair market value. However, with no assignable right of first refusal, municipalities did not have the flexibility to pursue innovative partnerships with organizations more capable of raising the funds necessary to purchase the parcel. Additionally, with no defined time period in which the municipality had to act on this right, a parcel could lay unused for years, and disposition similarly delayed.

In part to reduce untimely delays from municipalities that failed to follow through on their expressed interest to purchase the property, Section 548 eliminated this option entirely. The only way for municipalities to purchase the property through Section 548 is through the competitive bidding process set up by DCAM, pitting communities against private interests with significantly greater financial resources.²¹ The removal of the right to purchase under Section 548 contributed to a belief among municipal officials that they had lost an appropriate role in the disposition process.

Revenue Outcome

The revenue outcome under the two methods also differs. Revenue from properties disposed of under Chapter 7 was deposited in the General Fund, unless otherwise specified by the General Court.

Section 548 as amended by Chapter 188 of the Acts of 2004 places the first \$25 million of net revenue generated through property sales in the General Fund; the next \$25 million goes to the Smart Growth Zoning (40R) Trust Fund; and any proceeds in excess of that amount in the Commonwealth Stabilization Fund (or Rainy Day Fund).²² These distributions are not annual, but rather for all funds generated through Section 548.

Other Differences

Several other deficiencies present in both Chapter 7 and Section 548 need to be highlighted. First, there is a conspicuous and troubling lack of planning around anticipated land sales. Key stakeholders almost universally lament the lack of mandated planning and communication on the part of the state agencies around determining which parcels are surplus. A clear, predictable and coordinated process on the part of state agencies that anticipates possible future land sales would help alleviate concerns that stakeholders are unaware of unanticipated surplus properties. It would also present an opportunity for the state to secure a higher purchase price for the property, because prospective purchasers' bids would not be discounted due to an inadequate opportunity to evaluate local support for development densities and uses.

Finally, the development of surplus parcels can have tremendous impact on the municipality and the surrounding region. Despite a hearing process under both Chapter 7 and Section 548, little other information is gathered to understand the wider impacts of the development of a given parcel. Issues such as the impact of development on housing, traffic, water run-off, and infrastructure are not systematically analyzed. A system of review – one that takes growth considerations into account in determining what restrictions should be placed on parcels – would help drive development that is responsible and responsive to the needs of the municipality and its neighbors.

²¹ Of the 31 properties sold through Section 548, one was bought by a community via the designated competitive process.

²² At the time of this report, \$22,016,500 has been deposited in the General Fund. An additional \$8,631,500 in sales is under agreement, \$5,648,000 of which will go to the 40R fund.

Smart Growth and the Romney Administration

Governor Romney has supported Smart Growth principles by forming the Office of Commonwealth Development and supporting sustainable development principles. The ten keys to sustainable development and smart growth identified by the Administration are:

1. Redevelop first
2. Concentrate development
3. Be fair
4. Restore and enhance the environment
5. Conserve natural resources
6. Expand housing opportunities
7. Provide transportation choice
8. Increase job opportunities
9. Foster sustainable businesses
10. Plan regionally.²³

The legislature has indicated its support for smart growth by establishing the Commonwealth Development Coordinating Council and by creating the Smart Growth Zoning Program, MGL Chapter 40R. The policies of the Governor and the legislature should directly reflect the smart growth principles they support. Although Section 548 provides opportunities for housing and business development, expedited surplus property disposition should also be more forward thinking, and include regional considerations.

²³ See: http://www.mass.gov/ocd/docs/SDPrinciples_color.pdf

Surplus State Property Disposition Recommendations

	Chapter 7, §40F & §40F 1/2	FY 2004 Budget, \$548	Governor's Supplemental Budget Proposal²⁴	MAPC Recommendations
Authority to Sell	Legislature	DCAM	DCAM	DCAM, or Surplus Property Disposition Board w/minimum parcel size or value
Municipal Right to Purchase	First option to purchase at 100% of fair market value (FMV)	None	Right of first refusal at 90% of asking price, with 180 total days to complete purchase	Assignable right of first refusal at 80% of appraised value, with 240 total days to complete purchase
Input on Surplus Status and Conditions of Sale	Advisory committee on best reuse, public input	No official input	No official input	Formation of Surplus Land Coordination Committee. RPA reviews potential smart growth ramifications of sale. Advisory Reuse Committee formed for parcels greater than 25 acres. Increased public input
Hearings	Public hearings if parcel over 2 acres, Legislative hearings	Public hearings if parcel over 2 acres, or at DCAM's discretion if below threshold	Public hearings if parcel over 2 acres, or at DCAM's discretion if below threshold	Public hearings in municipality for all parcels
Notice of Surplus State Property Sale	Notice to representatives, senators, municipality, & committees on Ways and Means before final decision to sell is made. Public hearing notice in Central Register & local newspaper	Notice to municipality & legislature. "Reasonable" public hearing notice in Central Register	Notice to municipality & General Court. "Reasonable" public hearing notice in Central Register.	Notice to representatives, senator, & municipality once parcel is determined surplus. Public hearing notice 30 days before hearing in Central Register & once in local newspaper before final decision to sell is made
Revenue Outcome	General Fund unless Legislature explicitly stated otherwise in bill	General Fund, 40R Fund, & Rainy Day Fund	10% to municipality, remainder to 40R Fund, & Capital Projects & Maintenance Fund	10% minimum to municipality, possibly up to 25% by adopting additional smart growth actions. Remainder to 40R Fund, & Other Defined Funds
Time to Sell Property from Date Declared Surplus	Several Years	Approximately 4-8 months	Approximately 4-8 months	Approximately 11-12 months – up to 24 months if an Advisory Reuse Committee is convened

²⁴ The administration filed legislation to amend the Section 548 process as part of the Governor Romney's FY05 Supplemental Budget proposal. The changes were ultimately not adopted.

IV. Recommendations

Overview

These recommendations address the concerns around inadequate process and participation in Section 548, as well as those around delays and inefficiency in Chapter 7. They are informed by the three important principles outlined earlier:

- The legislature should empower local communities as partners in the land disposition process;
- Any land disposition process should balance the need to serve public purposes, such as economic development and creation of affordable housing, while generating revenue for the Commonwealth; and
- The Commonwealth should use the surplus land disposition program to promote smart growth development.

“Balance” is the guiding value of MAPC’s recommendations, because the need for state revenues should not force ill-advised, short term decisions that do not promote housing, economic development, and sound environmental policies. Consequently, these recommendations establish:

- Multiple opportunities for meaningful and substantive **public and municipal participation**.
- A structure for **thoughtful planning of the surplus parcel** that includes key local, regional, and state stakeholders in decisions.
- Three distinct **levels of review** that are triggered by minimum parcel sizes and/or values, because larger, more complex parcels deserve more intense review and consideration.

Public & Municipal Participation

These recommendations forward a robust level of public participation, including:

Comprehensive Notification Guidelines: Local, state, and regional stakeholders should receive adequate notification regarding the possible disposition of parcels.

Meaningful Comment Periods: Local, state, and regional stakeholders should have an opportunity to submit comments.

Smart Growth Reuse Evaluation: Larger parcels should be properly evaluated to assess their smart growth potential, and the potential impact of the parcel’s sale and use.

Public Hearings: A public hearing should be held in the relevant municipality for every parcel that has been deemed surplus property, before decisions are made about final sale or appropriate restrictions on the parcel.

Municipal Right of First Refusal: There should be a municipal right of first refusal to purchase the property at 80% of the appraised value, and this right should be assignable to certain non-profit entities, including conservation land trusts and community development corporations.

Financial Incentives: Municipalities that do not exercise their right of first refusal should receive at least 10% of the net proceeds from the sale of the parcel, and up to 25% if they take proactive steps to promote smart growth development.

Thoughtful Planning

MAPC advocates for the creation of three entities that ensure proper and meaningful stakeholder participation throughout the disposition process:

Surplus Land Coordination Committee – all parcels: An inter-agency advisory committee including the Executive Office of Environmental Affairs (EOEA), the Executive Office of Administration and Finance (A&F), Office of Commonwealth Development (OCD), the Department of Housing and Community Development (DCHD), and the Executive Office of Transportation (EOT) should help DCAM determine which properties are surplus to state needs and available for disposition.

Surplus Property Disposition Board – parcels larger than 2 acres and/or valued at more than \$1 million: For major parcels, the proposed Surplus Property Disposition Board would have authority to decide on whether to sell a parcel, what restrictions to include on the sale, and what method of sale to employ. The Surplus Property Disposition Board should be made up of individuals who bring a broad development and smart growth perspective to the discussion of specific parcels, so that thoughtful decisions can be made. Moreover, decisions made by the Board should be informed both by public comments and a thorough “smart growth evaluation” that would be completed by the appropriate regional planning agency.

Advisory Reuse Committee – parcels greater than 25 acres: On the largest parcels, more extensive review and planning are appropriate. On these parcels, we propose the creation of Advisory Reuse Committees that would give a group of local, regional, and state stakeholders the opportunity to plan for the reuse of particular parcels over the course of a year. Final decisions would still be made by the Surplus Property Disposition Board, but the Advisory Reuse Committee would help to inform those decisions by an intensive planning process that includes all the key stakeholders.

Levels of Review

MAPC’s recommendations would result in three distinct levels of review, which would be triggered by minimum acreages or valuations. Different triggers would activate these levels of review:

1. Parcels smaller than 2 acres and less than \$1 million

- Mandatory notification
- Hearing in municipality
- Comment period
- Smart growth reuse evaluation (at discretion of DCAM)
- Decision to sell, restrictions, and method of sale: DCAM, or Surplus Property Disposition Board (at discretion of DCAM)
- Assignable right of first refusal

2. Parcels larger than 2 acres and/or more than \$1 million

- Mandatory notification
- Hearing in municipality
- Comment period
- Smart growth reuse evaluation
- Decision to sell, restrictions, and method of sale: Surplus Property Disposition Board
- Assignable right of first refusal

3. Parcels larger than 25 acres (irrespective of value)

- Mandatory notification
- Hearing in municipality
- Comment period
- Mandatory Advisory Reuse Committee (up to one year)
- Decision to sell, restrictions, & method of sale: Surplus Property Disposition Board.
- Assignable right of first refusal

Detailed Recommendations

The following recommendations afford municipalities an important role throughout the disposition process, allow the Commonwealth to generate resources and serve public purposes, and help promote smart growth.

I. Determining Whether Property is Surplus

Determining whether property is surplus to state needs should be a three step process: 1) interagency meeting to discuss the need for the parcel; 2) polling of all state agencies to determine if any have a need; and 3) DCAM determination that parcel is either needed or is surplus.

In order to facilitate coordination within the Administration, a Surplus Land Coordination Committee acting as a network of agencies should meet to discuss which properties are surplus to state needs. The committee should include the Executive Office of Administration and Finance (A&F), the Division of Capital Asset Management (DCAM), the Office of Commonwealth Development (OCD), the Executive Office of Environmental Affairs (EOEA), the Executive Office of Transportation (EOT), and the Department of Housing and Community Development (DHCD). The Surplus Land Coordination Committee should engage in a dialogue about which properties are not necessary for any current or foreseeable Commonwealth needs. Properties should be listed on the Surplus Land Coordination Committee agenda for discussion before they may be determined surplus.

After the Surplus Land Coordination Committee has targeted parcels they believe are not needed by the Commonwealth, DCAM should provide notice and inquiry to all Commonwealth secretaries – and to agencies and departments whose missions might involve the need for land, buildings or other facilities – asking whether the agency has a defined current or foreseeable need for the parcel, with a date certain by which to respond, at least 30 days from when the letter is received. Failure to respond should not stop the process from moving forward.

If an agency responds and states that it has a need for the property, the Surplus Land Coordination Committee should consider whether the request is reasonable

from a programmatic and financial perspective. Depending upon these deliberations, the agency should be able to use the property at no cost. If more than one agency responds with a need, DCAM should determine which of the agencies receives the property. If no agency responds with a current or foreseeable need for the property, DCAM should be able to determine it to be surplus.

II. Deciding on Method of Sale, Selling Price, and Restrictions on Use

DCAM or the Surplus Property Disposition Board (Section IID, below) should have authority to decide on the disposition of surplus state property, with significant input from several entities regarding how the parcel should be sold, what the selling price should be, and what restrictions if any should be placed upon its use. The Board would be empowered to make this decision for all parcels over two acres in size or \$1 million in value, while DCAM would be empowered to make this decision for parcels of smaller size or value.

A. Notification

Notification that the property is being considered for sale should be provided to:

- The Chair of the Commonwealth Development Coordinating Council (CDCC is the formal statutory designation for the Office of Commonwealth Development)
- Department of Housing and Community Development (DHCD)
- Executive Office of Transportation (EOT)
- Executive Office of Environmental Affairs (EOEA)
- Department of Conservation and Recreation (DCR)
- State and regional authorities operating where the parcel is located
- Regional Planning Agency(ies) (RPA) where the property is located
- The mayor of a city, or town manager/administrator and Chair of the Board of Selectmen of a town where the property is located, and the same individuals in all bordering towns and cities.
- Legislators for all notified municipalities.

Notification should include:

- A timeline for comment – agencies should have a total of 60 days from notification to submit comments. Failure to respond would not stop the process from moving forward.
- A clear explanation of the surplus land disposition process
- The date, time, and place for the public hearing (to be held between 15 and 30 days from the date of notification for all parcels)
- A statement that the municipality has a right of first refusal to purchase the property if it is ultimately put up for sale

B. Smart Growth Reuse Evaluation

In the event that a parcel declared surplus is greater than two acres in size or is valued at greater than \$1 million, DCAM will ask the RPA serving the area where the parcel is located to conduct a review, with input from the municipality where the parcel is located and neighboring communities,

regarding the local and regional implications of disposing of the parcel for a variety of prospective uses. Said review may include: the need for housing, jobs, and open space; current and prospective zoning of the site; the need for municipal capital facilities; impacts on traffic and transit; impacts on the environment and natural resources, and on agricultural lands; historical preservation issues; availability of infrastructure, including facilities for water supply, waste water, and storm water run-off; fiscal impacts of development on the municipality where the parcel is located; remediation of contamination; and other smart growth implications.

The Surplus Property Disposition Board established pursuant to this recommendation should take the findings and recommendations of the review into account in determining the disposition of the parcel. Reasonable costs incurred by the RPA should be considered part of sale expenses and paid for by DCAM, and reimbursed from net proceeds of all surplus property sales not to exceed \$10,000 per review. The RPA should have a total of 60 days to conduct the review; however failure to complete the review will not stop the process from moving forward.

In the event that a parcel declared surplus is greater than 25 acres in size, DCAM officials will form and serve as chair of an 8 member Advisory Reuse Committee. The Advisory Reuse Committee should be composed of three appointees designated by the chief executive officer of the municipality in which the parcel is located, and five additional appointments, one by each of the following entities:

- Division of Capital Asset Management
- Executive Office of Environmental Affairs
- Office of Commonwealth Development
- Executive Office of Economic Development
- the Regional Planning Agency where the parcel is located

The Advisory Reuse Committee should consider local and regional impacts of disposition and conduct a comprehensive review of the same issues that would have been considered by the RPA review mentioned in paragraph two of this section. As has been done in the past, the reuse committee will have the ability to contract with professional planners or consultants, or with the RPA, to conduct this review, provided that the cost of the review does not exceed \$100,000.

The Advisory Reuse Committee should have one year to provide the Surplus Property Disposition Board with a report of its findings. The Surplus Property Disposition Board established pursuant to this recommendation should take the findings and recommendations of the Advisory Reuse Committee into account in determining the disposition of the parcel. Reasonable costs incurred by the Advisory Reuse Committee should be considered part of sale expenses and paid for by DCAM, and later reimbursed from the net proceeds of all surplus property sales (not to exceed \$100,000 per review). Whether or not the Advisory Reuse Committee submits a timely report, the Surplus Property Disposition Board would have discretion to dispose of the property one year after DCAM has convened the Advisory Reuse Committee.

C. Hearings

DCAM should be required to convene a public hearing for each parcel it intends to sell, and the hearing should take place in the municipality where the parcel is located within 30 days after DCAM gives notification that it is considering a surplus property for sale. The purpose of the hearing should be to gain input on prospective uses for the site, issues that may need to be addressed through deed restrictions or in a negotiated sale, and whether or not the property should be sold. The testimony should be recorded to help inform any decision regarding sale of the parcel and any possible restrictions.

D. Final Decision Regarding Sale

For properties valued over \$1 million or over 2 acres in size, or at the discretion of the Commissioner for smaller or less valuable parcels, the Surplus Property Disposition Board should deliberate and vote on:

1. Whether to sell the surplus state property; and if so,
2. What restrictions to place on the sale or on the use of the land going forward; and
3. The method of sale, being either a public auction or a negotiated sale after issuance of a request for proposals.

The Surplus Property Disposition Board (the Board) should consist of five appointees, one by each of the following entities:

- Commissioner of DCAM
- Chair of the CDCC
- Executive Director of the RPA serving the municipality where the parcel is located
- Executive Office of Environmental Affairs
- Massachusetts Municipal Association

With the exception of the RPA appointee, who will vary depending on the location of the parcel, each appointee should serve a fixed term with the duration of three years. In addition, the mayor of a city or the chairman of the board of selectmen of a town where the parcel is located should sit on the Board *ex officio*, in order to participate in discussions on the property.

The Board should consider smart growth and municipal public purposes for the parcel when making its decisions, and should have authority to pursue appropriate strategies that address these purposes.

If the parcel is not of sufficient size or value to be under the authority of the Board, or if the commissioner does not exercise his or her discretion to convene the Board, the commissioner should have the authority to decide whether to dispose of the surplus property, what restrictions to place on its use, and what method of sale to employ. Municipalities can petition the Commissioner to convene the Board if the property does not meet the 2-acre

or \$1 million threshold. However, in no case will the commissioner or the Board be able sell property until there has been a duly noticed public hearing.

III. Appraisal

The property value should be evaluated by DCAM, and the initial evaluation should be used to determine whether the RPA should undertake a review of the property, and whether the Surplus Property Disposition Board should be convened. After the Surplus Property Disposition Board or the Commissioner decides upon the method of sale and placement of restrictions, there should be an independent appraisal using customary appraisal methods and reflecting any restrictions. The Commissioner should take the appraisal into account in setting a price for the parcel.

IV. Right of First Refusal

The municipality should have a right of first refusal to purchase the property at 80% of the appraised value, as determined with the restrictions of sale. The municipality should have 180 days to decide whether to purchase the parcel, with this period starting after restrictions on sale, appraisal, and asking price have been determined. In addition, if a town has set a date to hold a vote on a Proposition 2 1/2 debt exclusion to purchase the property, the date by which the town must exercise its right of first refusal should be extended until that vote is taken.

If the municipality has not signed an agreement to purchase the property within 180 days, or longer if a debt exclusion vote is scheduled, DCAM should have the authority to open the property for sale on the competitive market, by the method of sale determined. The municipality should have an additional 60 days to close on the property, but that time period may be extended at the Commissioner's discretion. If the municipality fails to close by the additional 60 day date, they should not be able to receive any proceeds from the sale of the property. A municipality can only receive proceeds of a subsequent sale if it discovers an environmental hazard in the intervening 60 day period. Towns and cities should also have the ability to negotiate with DCAM for a flexible payment structure to fulfill their purchase obligations.

A. Assignability

The municipality should be able to assign its right to purchase property to a limited subset of not-for-profit public benefit corporations, including conservation land trusts and community development corporations, for the same purchase price the local government could have paid. The non-profit should have the same amount of time to sign a purchase and sale agreement (including a deposit) and to close on the property, beginning when the municipality was notified of its right of first refusal, not when the municipality assigned its right of first refusal.

V. Revenue Outcome

A minimum of 10% of the net revenue generated from the sale of a parcel of surplus state land should go to the municipality. The Commissioner should have the discretion to award the municipality up to 25% of the sale proceeds in instances where the municipality takes actions consistent with the restrictions placed on the property, including rezoning for additional housing, rezoning for 40R where

applicable, providing parks and open space for the public use, or increasing economic development through rezoning or other incentives. DCAM should promulgate regulations that clearly outline a list of those actions that can be taken for the community to receive up to the additional 15% of net revenue.

The remainder of the net proceeds from all sales should be placed in the 40R fund up to a total of \$25 million, and 10% of net sale proceeds above the \$25 million should continue to be placed in the 40R fund.

The remainder of the funds should be placed in a defined fund as determined in the legislation, such as the Rainy Day Fund, the proposed Capital Projects and Maintenance Fund, or the General Fund.

VI. Legislative Authority

Nothing in these recommendations would prohibit the legislature from enacting legislation that disposes of, or protects particular parcels of surplus state property, or sets up a special process for the disposition of any individual parcel.

VII. Annual Report

DCAM should issue an annual report, which should include surplus state land sold during the past year, the price paid for each property sold, and the distribution of those funds to municipal or state accounts. The annual report will further update the list of state-owned properties, and will also list those properties that may be coming before the Surplus Land Coordination Committee.

Appendix: State Properties Sold Under Section 548

FISCAL YEAR 2004 & 2005 - SECTION 548 SALES AUCTIONS

Information provided by DCAM

Property	Address		Acreage	Estimated/ Appraised Value	FY2004 Sale Price	FY2005 Sale Closed	FY2005 Sale Under Agreement	City/Town Prop. Tax Income
Adams	89 Park Street – Armory		0.45	\$100,000		\$533,500		\$11,193
Beverly	110 & 116 Park Street		0.45	\$450,000		\$676,500		\$14,031
Chelsea	113 Spencer Avenue – Armory		1.08	\$600,000		\$852,500		\$7,911
East Boston	20 Addison & 600 Chelsea Streets		1.50	\$200,000		\$946,000		\$31,294
Foxborough	Camp Road		2.95	\$400,000	\$671,000			\$7,267
Grafton	Institute Road		46.00	\$2,000,000		\$1,980,000		\$21,404
Holyoke	163 Sargent Street – Armory		0.44	\$25,000	\$27,500			\$394
Holyoke*	Northampton Street		4.00	\$70,000			\$352,000	\$12,915
Lexington	61 Walnut Street		6.92	\$2,000,000			\$5,610,000	\$58,737
Lexington	Waltham Street & Piper Road		0.84	\$200,000		\$445,500		\$4,664
Marlborough	358 Lincoln Street – Armory		0.30	\$100,000	\$308,000			\$7,410
Medford	59 Amaranth Avenue		2.10	\$500,000	\$2,117,500			\$20,074
Middleborough	Plain Street		16.00	\$1,000,000	\$1,650,000			\$1,926
Natick	93 East Central Street – Armory		0.78	\$1,000,000			\$1,314,500	TBD
Shrewsbury	214 Lake Street - Glavin Regional Center		15.00	TBD		\$1,980,000		\$19,642
Somerville	191 Highland Avenue – Armory		0.92	\$600,000		\$2,612,500		\$24,155
Southampton	College Highway/Route 10		5.25	\$200,000		\$104,500		\$1,585
Southampton	College Highway/Route 10		1.20	\$160,000		\$110,000		\$1,669
Southbridge	153 Chestnut Street – Armory		2.90	\$500,000		\$737,000		\$8,682
Sturbridge	Route 15 West s/o Leadmine Road		6.41	\$250,000	\$214,500			\$4,007
Swansea	Route 103/Wilbur Avenue		0.82	\$150,000		\$159,500		\$3,439
Waltham	34 Sharon Street - Armory		0.66	\$800,000	\$990,000			\$9,118
Weymouth	25 Rockway Avenue - Armory - Lot A		2.01	\$600,000	\$935,000			\$11,865
Weymouth	25 Rockway Avenue - Armory - Lot B		0.72	See Above	\$176,000			\$2,233
Weymouth	25 Rockway Avenue - Armory - Lot C		1.33	See Above	\$462,000			\$5,863
Williamsburg	Depot Road		26.00	\$500,000			\$286,000	\$4,482
Winchester	150 Cross Street		0.66	\$250,000			\$869,000	TBD
Woburn	1 Hill Street - RMV		0.91	\$800,000	\$1,265,000			\$29,310
Woburn	286 Main Street - Armory		0.68	\$600,000	\$1,402,500			\$32,496

NEGOTIATED SALES

Property	Address		Acreage	Estimated/ Appraised Value	FY2004 Sale Price	FY2005 Sale Closed	FY2005 Sale Under Agreement	City/Town Prop. Tax Income
Boston	Disposition of City of Boston	2004	0.35	\$377,000	25	\$660,000		\$21,833
Peabody	Andover St./Route 114	2004	0.26	\$200,000			\$200,000	\$1,618