



Patrick Woodcock, Commissioner
Department of Energy Resources
100 Cambridge Street
Suite 1020
Boston, MA 02114

March 15, 2022

Re: Straw Proposal for Stretch Code Update and New Specialized Stretch Code

Introduction

On behalf of the Home Builders and Remodelers Association of Massachusetts (HBRAMA), I am submitting these initial comments to the Department of Energy Resources (DOER) relative to its Straw Proposal for Stretch Code Update and New Specialized Stretch Code released on February 8, 2022.

The Home Builders and Remodelers Association of Massachusetts is a statewide trade association affiliated with both local homebuilder and remodeler associations and the National Association of Home Builders. The more than 1,400 member companies of the HBRAMA are involved in all aspects of the development, construction and sale of new single- and two-family homes, townhomes, condominiums and apartments across a broad spectrum of incomes. The HBRAMA believes it is possible to advance housing opportunities for all the citizens of the Commonwealth while also addressing the urgent need to reduce greenhouse gas emissions from the building sector. Housing affordability and climate action need not be mutually exclusive.

The HBRAMA recognizes that Chapter 8 of the Acts of 2021, *An Act creating a next-generation roadmap for Massachusetts climate policy*, mandates that the department develop a “Municipal Opt-in Specialized Stretch Energy Code.” Nevertheless, we are concerned that the proposed code will adversely affect housing production and affordability. While the resulting operational costs and total cost of ownership for homes built under the proposed code project favorably, it is the potential for significant up-front costs that, if not substantially mitigated, will provide a further barrier to homeownership.

Cost analysis and research

The Home Builders and Remodelers Association of Massachusetts, with support from the National Association of Home Builders, have teamed up with MIT’s Center for Real Estate and the Wentworth Institute of Technology to conduct groundbreaking research and make actionable policy recommendations to simultaneously advance both climate policy and housing affordability.

The research will first provide an unbiased assessment of the costs associated with the transition of residential construction to a “net zero” model to reduce carbon emissions. Next, researchers will model

the impact of these costs on both housing affordability and housing production. Finally, the report will present options for local, state, and federal policy initiatives and reforms that could advance the transition without adversely impacting housing affordability and intensifying the housing shortage. We will make this research available to the DOER, as we believe this critical, independent research from these leading academic institutions will prove useful to the DOER as it refines the proposed Stretch Codes, as well as in the development of future Massachusetts Energy Codes.

Items of concern

MassSave Incentives

We are pleased that the MassSave Incentives for 1-4 unit residences have been greatly increased. However, we have concerns regarding several aspects of the program. They are:

1. The cost to achieve the required metrics for either Tier 1 or Tier 2 are likely to exceed the financial incentive and therefor will not actually incentivize as many projects as we all hope. This is particularly true of the Tier 1 incentive which comes with a required HERS score of 35 or lower and ACH/50 of 1 or lower.
2. As a utility-funded program, MassSave Incentives are not available to projects within any of the 49 municipalities that have Municipal Light Plants (MLPs).
3. The MassSave Incentives are only authorized through 2024. While the new energy code requirements will continue indefinitely, correspondingly so should the incentives. Any diminution or non-continuance of the incentive program will further disincentivize new housing production. Entitlements/Permits often take 2-3 years. With MassSave incentives potentially expiring in 2024 the development community cannot bank on the incentives in new development underwriting. This will definitely have a cooling effect on new project generation.

It is critical to the residential building industry to know whether the MassSave Incentives will continue beyond 2024 and if they will remain robust. HBRAMA also recommends that the metrics inherent in both the Tier 1 and Tier 2 be re-examined to be more attainable.

Solar Requirement

The requirement of rooftop solar on residential low rise buildings utilizing fossil fuels will unnecessarily add costs that render the project unfeasible as a majority of the homes built in Massachusetts fall into the “low rise” category and many of these projects are in areas with existing access to natural gas. According to RESNET data there are many homes built in the last several years that have achieved HERS ratings between 40-45 while utilizing either natural gas or propane and without employing rooftop solar or any other on-site power generation. That being the case, we believe that the builder and homeowner should have the option of meeting the code either with or without the use of solar.

Another concern regarding the solar requirement is that it may affect many currently active residential developments and developments that are somewhere along the approval process that already have or have planned natural gas lines into the development at great expense. If the solar requirement is imposed on such projects, which already have their lots defined and structures are sited as approved by the municipality, adjustments may need to be made to accommodate the solar requirement due to

orientation issues. Already permitted/current projects have building orientation dictated by zoning regulations (setbacks, etc.) proximity to wetlands, stormwater/drainage requirements, and numerous other variables that are considered first resulting in very tight “lot fit” for subdivisions. Adding another variable in solar orientation will often trigger counter-productive scenarios.

Orientation issues for current on-going developments and those who have already spent months if not years in the approval process, would trigger a reconfiguration of the subdivision which would require the developer to go back through at least a portion of the approval process with the municipality and possibly several state agencies (e.g., DEP, MEPA, etc.). Amending existing permits also opens permits up to new appeals and potential litigation. This would cost significant time and money and could result in a reduction of lots and/or housing units. Even a best-case scenario would result in significant and unplanned expenses which would be passed on to the eventual homebuyer. It’s entirely possible that developers may walk away from partially built projects before they go down that perilous path.

Among the projects most vulnerable to this scenario are of the type that provides among the most affordable housing units currently being built in Massachusetts; Open Space Residential Design (OSRD) Subdivisions and 40B developments. These projects utilize greater density using smaller lots, generating more units per acre. Smaller lots require homes with smaller footprints that are typically taller than they are wide, leaving less roof space available for solar.

A majority of single-family developments are Open Space Residential Design (OSRD) that minimizes the disruption of natural forests by designing clusters of houses on very small lots. According to the states model OSRD guidelines one of the primary purposes to use OSRD design is “[t]o encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources.” Simply put, an OSRD design generally leaves half the track of land or more as untouched, whereas a conventional design utilizes the entire parcel.

Forcing orientation for solar will diminish the use of OSRD designs and encourage developers to use conventional project designs. Ironically in the quest for mandatory solar panels it will backburner OSRD designs and further destruction of the best carbon eaters we have – trees. This is also true of many ANR lots, in-fill lots, and the increasing number of teardowns that often occur in older communities on smaller lots.

Further, active or approved projects that include natural gas require an agreement between the gas utility and the builder/developer that specifies a certain number of gas connections to housing units within a certain time frame. If the number of gas connections falls short of the specified amount or schedule, there are potentially very large financial consequences to the builder developer. By the same agreement with the gas utility, any development that needs to go back through the approval process for an already approved subdivision could also run afoul of the gas utility agreement due to reduced housing units and/or violating the specified schedule of gas connections. Additionally, if a builder opts to build all electric homes, as incentivized, and save the expense of rooftop solar, they will likely be paying the gas utility an amount that negates some or that entire savings.

It is evident that we are headed towards full electrification, but it seems unfair and unnecessary to burden residential developments that are already under way or soon-to-be underway with a solar requirement simply because they already have natural gas in the mix and could, if they choose, meet the requirements of the code without the use of rooftop solar. While this is likely a temporary issue it seems to be one that is easily avoided. HBRAMA strongly recommends allowing exceptions to this requirement for units that are already permitted.

Additional suggestions

Given the concerns set forth above, the HBRAMA recommends the DOER consider establishing an advisory committee of interested and qualified stakeholders, including representatives of our association, NAIOP Massachusetts, and the non-profit housing development community, to facilitate a dialogue with the department prior to it finalizing these codes.

Finally, the HBRAMA urges the DOER to establish a 1-year concurrency period under which critical housing projects already underway or for which permits or approvals have been applied for but not yet granted, may be built under the base Energy Code or the Stretch Energy Code, if applicable. This concurrency period is necessary to ensure that the economics or financing of a housing project is not put at risk due to the adoption of the new Opt-in Specialized Stretch Energy Code by a municipality for which the project was not designed or financed.

Conclusion

The HBRAMA appreciates the DOER's effort to put forward a thoughtful code proposal and is grateful for this opportunity to comment on it. Again, the HBRAMA supports the climate goals of the Commonwealth and enhancing the energy efficiency of our build environment. But we remain committed to housing opportunity and affordability and are hopeful that the proposed code can be refined to advance both housing and climate.

Thank you for the opportunity to provide these comments and we look forward to working with you going forward.

Respectfully,

A handwritten signature in black ink, appearing to read "Emerson Clauss III". The signature is fluid and cursive, with a stylized "E" and "C".

Emerson Clauss III
HBRAMA President

C: Kathleen Theoharides, Secretary, Executive Office of Energy and Environmental Affairs
Michael Kennealy, Secretary, Executive Office of Housing and Economic Development