Background in support of Home Builders and Remodelers of Massachusetts proposed amendment to Title 5:

Regulatory reform and permit streamlining is a key focus of the new Baker Administration. The Home Builders and Remodelers of Massachusetts are proposing a new septic system regulation under Title 5 (310 CMR 15.000) to the Massachusetts Department of Environmental Protection (MA DEP) to address a vital need for expanding much needed housing production in unsewered areas

For over three decades, development in the eastern Massachusetts consumed a vast amount of land due to many factors, including large-lot zoning and excessive but not necessarily protective, local Board of Health regulations used as land use tools. As a result, what remains for development are those marginal parcels which leave significant challenges for most of the remaining developable real estate. Future residential development will have to be built on these remnants. And while the federal and state governments pumped hundreds of millions of dollars into sewer projects throughout this region over the past thirty years, such funding has dried up, leaving not only little in the way of financial resources and remaining land to develop in these sewered areas, but also leaving no federal or state funds to assist in the development of unsewered areas in Massachusetts.

It is not hard to realize that much of the future growth of eastern Massachusetts will be concentrated in non-sewered areas. However, although perhaps unintentionally, a major regulatory obstacle presently inhibits clustered and dense residential development in these unsewerred areas. This obstacle is the limit of 10,000 gallons of daily design flow per project for a conventional Title 5 septic system. Currently once that arbitrary 10,000-gallon threshold is exceeded Massachusetts Title 5 regulations no longer apply, and the State Groundwater Discharge Permit Regulations kick in, requiring a sewage treatment plant be permitted at significant expense.

The permitting, design, and capital cost differential factor between a conventional Title 5 septic system and a private sewage treatment plant is staggering, on the order of 8 to 20 times greater, and the operational factor is over 100 times greater. As a result, since the upper threshold limit for a development under Title 5 equates to only 90 bedrooms, or 30 units at 3 bedrooms per unit (45 units at 2 BR/unit), it is not economically feasible to develop above this limit. This is so because exceeding this density requires the transition to the State Groundwater Discharge Permit Program administered by MassDEP, resulting in up-front expenditure of well over a $1 million for a treatment plant and almost $100,000 per year in maintenance costs – a cost which a 30-35 unit residential project cannot absorb.

Stated more succinctly, the problem with Title 5 is that projects over 30 units in non-sewered areas are economically infeasible until the unit density increases to approximately 120-180 units or more (depending on the market), and this density requirement is required solely to justify the cost for the sewer without regard to zoning, traffic, school impact, aesthetics, architecture, crowding, etc.

The HBRAM Wetlands and Waterways Subcommittee recently presented this potential regulatory change to both the Secretary of Energy and Environmental Affairs, Matthew Beaton and the Commissioner of the MA DEP, Martin Suuberg.

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Our proposal is to add a new section(s) within the existing Title 5 regulations (perhaps 310 CMR15.294) entitled “Large Reporting Facilities” for systems ranging between 7,500 to 30,000 gallons per day (note that the proposed 7500 GPD on is a reduction from the present limit of 10,000 GPD intending to capture “larger” septic systems into this program). Any Title 5 system falling within the definition of Large Reporting Facilities would be required to utilize Innovative and Alternative Technologies for treatment and disposal of the sewer effluent and to incorporate the Nitrogen Sensitive Zone requirements for land area control. Further, and most importantly, this proposed regulation would require the imposition of new and less costly MassDEP standardized conditions including: i) effluent limits, ii) monitoring and reporting controls, iii) restrictions, and iv) financial assurance mechanisms. These types of conditions are already in place as part of the MassDEP groundwater discharge permit program but can be modified for use with the new regulatory change for site specific permitting with site monitoring performed by the local Board of Health. From a State Regulatory perspective, this proposal provides many of the environmental, financial, and recording benefits with little additional costs above and beyond the typical Title 5 system. For the development community and municipalities, this proposed change would remove a key financial barrier for the development of medium to high density developments in un-sewered areas providing more dense projects using less land area with more opportunities for creative and sustainable developments.

Ultimately, this one regulatory change could leave a positive and lasting impression on the future of developing residential projects in un-sewered areas of Massachusetts by maintaining environmental protections but allowing for the more efficient development of larger residential projects in order to meet the housing production needs of the Commonwealth.

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