



July 30, 2015

Mr. Tim Wilkerson
Regulatory Ombudsman
Executive Office of Housing and Economic Development
One Ashburton Place, Room 2101
Boston, MA 02108

Re: NAIOP Recommendations for Regulatory Reform Initiative (Executive Order 562)

Dear Mr. Wilkerson,

We enjoyed meeting with you last week to discuss issues of interest to the commercial real estate industry. As a follow-up to our discussion, we would like to suggest regulatory reforms for consideration by the Administration as it implements Executive Order 562.

The following ideas represent regulatory changes affecting numerous agencies. We believe these changes would accomplish the Governor's goals as outlined in the Executive Order. We look forward to discussing the following concepts with you at your convenience.

I) Consistency with Federal/State Standards

A) Reduce Energy Burdens By Following the IECC and Creating One Uniform Statewide Energy Code

The Stretch Energy Code was adopted in May 2009 in spite of strong opposition from the business community. Since then, it has caused enormous confusion among building inspectors and developers. The Stretch Energy Code undermines the uniformity of the State Building Code through the creation of a patchwork of local option building codes. The statewide building code was created in 1975 to avoid such a patchwork. Maintaining a Stretch Energy Code will both hinder economic development and create a financial barrier to home ownership for many Massachusetts families. NAIOP urges the elimination of the Stretch Energy Code. The latest version of the International Energy Conservation Code (IECC) should serve as the only energy code in Massachusetts. While the Green Communities Act does require Green Communities to minimize the life cycle costs of buildings by utilizing "energy efficiency, water conservation and other renewable or alternative energy technologies" (G.L. c. 25a, § 10 (c)), this can be achieved by adopting the latest version of the IECC instead of a Stretch Code. It is only DOER's policy, not the statute, which suggests the use of a Stretch Code to meet such a requirement.

B) MAAB vs. ADA – One Uniform Code Needed

One of the most costly and widespread set of inconsistent federal and state regulations are those affecting construction through the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (MAAB). These standards apply to virtually every public and private building and business across the Commonwealth. The MAAB has not provided sufficient justification for why the federal standard is not sufficient in

Massachusetts, nor has it performed a cost impact analysis for using the Massachusetts-specific code. Given the numerous inconsistencies, confusion and increased costs associated with the MAAB, NAIOP recommends that Massachusetts follow the national ADA model. If specific examples are needed, we are happy to provide them.

C) MassDEP's MCP Program – Ensure Consistency with Federal Standards

We urge MassDEP to review the MCP regulations to ensure consistency with federal standards. As an example, the provisions of these regulations dealing with substantial release migration go beyond federal requirements and should be eliminated. In addition, the 1,4-dioxane GW-1 standard under the latest amendments to the MCP should be reviewed as “more stringent” than the federal standard because there is no federal standard.

II.) Streamlining the Regulatory Process

A) Amend MassDEP Regulations under Title 5 regarding daily flow rates (310 CMR 15.203 and 15.416).

The design flows for Title V and sewer regulations should be updated to reflect current technology and plumbing codes. These have not been updated since 1978 and do not reflect the reality of today's technology. This will reduce the exorbitant cost of septic systems and the outrageous Infiltration and Inflow requirements on commercial and multi-family projects in the MWRA service area.

B) Amend MassDEP Regulations regarding Title 5 Septic Systems (310 CMR 15.00) to allow for increased design flow without triggering the need for a MA DEP Groundwater Discharge Permit (314 CMR 5.00).

Existing Title 5 Regulations limit wastewater design flow to no more than 10,000 gallons per day for new septic systems. If the wastewater design flow exceeds 10,000 gallons per day, a project can no longer be permitted under Title 5, and instead, must be permitted under the MA DEP groundwater discharge permit regulations and the construction of a package wastewater treatment plant (“WWTP”). The cost to design, permit and construct a WWTP is \$1 million - \$2.5 million, with annual operation and maintenance (O & M) costs typically running approximately \$80,000 per year. The existing regulations governing these private sewage treatment plants require those very expensive plants to be overbuilt by 50% to 65%. Plants are required to be designed for absolute, maximum, potential peak flow, even though such peak flow conditions occur rarely (often not more than a handful of days over several years). Plants are also typically required to have “equalization” or “holding” tanks to manage peak flows. Effectively, rare peak flow conditions are redundantly designed. Furthermore, DEP regulations and policies prohibit additional housing from tying into and using the wasted capacity in most cases, even when there is years of data in DEP files demonstrating the wasted capacity. Holding tanks alone should be sufficient to address rare “peak flow” conditions. NAIOP suggests that the Department consider raising the review threshold from 10,000 gallons per day and allowing additional housing to use the wasted capacity. A higher amount was in effect in a previous version of the regulations and allows for further streamlining of the regulations without sacrificing technical review by the Department for larger systems

C) Amend 248 CMR 10.06 & 10.10 - Uniform State Plumbing Code

NAIOP proposes two important changes to the Uniform State Plumbing Code. First, 248 CMR 10.06 should be amended to allow for the use of thermoplastic sewer pipes and drainline pipes in commercial structures, in addition to cast iron pipes. Second, 248 CMR 10.10 requires businesses to incur wasteful expenses to either install unnecessary plumbing fixtures (such as a bathtub or shower in a commercial building that will never be used) or to commence the costly process of applying for a variance from the Board of State Examiners of Plumbers and Gas Fitters. This regulation should be revised to eliminate the requirement or create a more cost effective and timely process for the issuance of variances.

D) Streamline Permitting for Coastal Projects

NAIOP suggests revising the Office of Coastal Zone Management (CZM) Designated Port Area (DPA) regulations to modify criteria for DPA boundaries and to eliminate the current prohibition on removing parcels that had or have active maritime use. NAIOP also supports a change to the Waterways regulations (310 CMR 9.00) to expand the Memorandum of Understanding approach in the regulations, which is allowed for Massport, to other agencies and municipalities. We also support significant changes to the Chapter 91 Facilities of Public Accommodation (FPA) requirements and urge MassDEP to issue the revised FPA regulations that have been drafted by a diverse stakeholder group over the past two years.

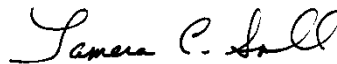
Finally, we would also like to follow-up on one of the points we raised during the meeting regarding the overall Regulatory Reform Review process. There is no question that there are some programs which are more complicated than others and, in those situations, it may be difficult to identify specific, problematic regulations. In those cases, an alternative might be to look at the whole program with a group of practitioners, along with regulators, to determine, first, where there are problems, and then back-into the regulations that are causing those difficulties. A potential place to start could be the Bureau of Waste Site Cleanup's 21E program (DEP) or transportation regulations affecting development at the Department of Conservation & Recreation (DCR) and MassDOT.

Thank you for the opportunity to provide comments on this important initiative. Please contact us if you have any questions or need any additional information.

Sincerely,
NAIOP MASSACHUSETTS



David I. Begelfer
Chief Executive Officer



Tamara C. Small
Senior Vice President, Government Affairs