



November 10, 2025

Tori Kim
Assistant Secretary and MEPA Director
Massachusetts Environmental Policy Act (MEPA) Office
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments Regarding September 2025 Proposed Amendments to 301 CMR 11.00

Dear Director Kim,

NAIOP Massachusetts, The Commercial Real Estate Development Association, appreciates the opportunity to comment on the 2025 Proposed Amendments to 301 CMR 11.00 (the draft regulations) that the Massachusetts Environmental Policy Act (MEPA) Office released in September 2025 to expedite certain types of housing projects through MEPA review while ensuring that Environmental Justice (EJ) communities remain engaged in the review process.

As a member organization of the MEPA Advisory Committee and longtime stakeholder in updates to the MEPA regulations and all accompanying protocols and policies, as well as a member of the Governor's Unlocking Housing Production Commission (UHPC), NAIOP was pleased to learn that the Healey-Driscoll Administration is advancing one of the recommendations contained in the UHPC's February 2025 report. Specifically, the report recommends, "The Commonwealth should exempt housing projects from conducting an EIR if the EIR is solely required based on the project's proximity to an EJ community; instead require that the project conduct an ENF while ensuring the same amount of outreach to EJ communities as required under the existing EIR process."

This recommendation identifies what housing developers have repeatedly shared. The existing EIR requirement, and the significant time and cost associated with it, is hindering housing production throughout the Commonwealth while providing little benefit to EJ populations. In fact, it is preventing housing from being built in EJ communities that have a desperate need for more housing because developers are not able to accommodate the additional regulatory costs for projects that, but for the current EJ requirements, would not require a full EIR, resulting in not only delayed housing units, but housing units that will never be built due to the complexity of the permitting process.

NAIOP is deeply appreciative of the Healey-Driscoll Administration's commitment to advancing the UHPC recommendation and reducing unnecessary burdens on the production of housing. However, as currently drafted, NAIOP is deeply concerned about certain aspects of the draft regulations. First, the draft amendments are unnecessarily restrictive on the types of projects that may benefit from the regulatory changes. Second, the draft regulations limit the application of the procedural path for housing projects by introducing specific new substantive standards, standards that are unrelated to the current MEPA thresholds and thus would expand MEPA's

review to areas that it does not currently address. The proposed approach also introduces data sources that may be unreliable or change over time and thus adds unpredictability to project reviews. **NAIOP urges the Healey-Driscoll Administration to adopt the following changes to the draft regulations so that the goal of the UHPC’s recommendation can be achieved.**

1. Mixed-Use - No mixed-use with more than 33% gross square feet of supportive commercial use (301 CMR 11.01 (2)(c)(1)(a))

As a member of the UHPC, NAIOP understands the need to define “primarily housing” projects to ensure that this regulatory change has the intended effect. However, the proposed threshold is too low.

Most of Boston, Brookline, Cambridge, and Somerville (and other communities such as Everett, Chelsea, Revere, Malden, Brockton, Fall River, etc.) are EJ-designated. In all of these municipalities, zoning for many sites *requires* ground floor non-housing uses. Within projects that are primarily residential, commercial and other non-residential uses provide important services to residents of the project and community and promote economic development within EJ geographies, with limited environmental impacts. The new expedited regulatory path for housing projects should support the creation of more commercial opportunities – bank branches, grocery stores, childcare centers, restaurants, cafes, and so on – particularly for smaller businesses and independent entrepreneurs. For these reasons, NAIOP strongly suggests that language be adopted changing the threshold to 55% residential uses and to ensure that the regulations are not dissuading the creation of commercial, cultural, educational or community and/or civic uses that may be required by communities for a project to be approved locally.

Additionally, the term “supportive commercial uses” is ambiguous and would require interpretations from the MEPA Office based more on zoning-type considerations than on environmental impacts, which would introduce interpretive uncertainty to these new regulatory provisions. NAIOP suggests a more expansive list of non-residential uses that often complement residential projects, in place of “supportive”.

NAIOP is grateful to the Healey-Driscoll Administration for recognizing that parking, utility/mechanical space, and other ancillary spaces not intended for exclusive occupancy by the user or tenant should not be included in the calculation of square footage in determining compliance with this requirement.

For these reasons, NAIOP’s proposed language for 301 CMR 11.01(2)(c)(1)(a) can be found in red, below.

*Devotes **55% 67%** or more of the gross floor area of the Project to residential **uses and uses accessory thereto, with the remainder devoted to supportive-commercial, cultural, educational, community and/or civic uses.** For the purposes of this 301 CMR 11.01(2)(c)1.a., gross floor area shall not include parking, utility/mechanical space, or other non-occupiable space ~~and other ancillary spaces not intended for exclusive occupancy by the user or tenant;~~*

2. Density Requirements (301 CMR 11.01(2)(c)(1)(b))

NAIOP strongly recommends that the density requirements be struck from the final regulations. NAIOP is concerned that requiring minimum density will give communities a new mechanism to institute zoning that would prevent otherwise compliant housing projects from being able to move forward altogether.

While NAIOP understands that the density requirements align with the MBTA Communities requirements, this regulatory change should benefit housing projects statewide, and minimum density mandates at that level may not be workable in communities across the Commonwealth. Additionally, because MEPA is an environmental review framework, not a land use or zoning tool, NAIOP is concerned that including density requirements will expand MEPA's scope beyond its statutory authority.

For these reasons, NAIOP strongly recommends that the Healey-Driscoll Administration removes the density requirements from the final draft.

3. 5-acre and 10-acre Thresholds (301 CMR 11.01(2)(c)(1)(c))

Standard MEPA review thresholds already specify land alteration thresholds in which a project could alter up to 50 acres of land and create up to 10 acres of impervious area without requiring an EIR. NAIOP is concerned that the proposed standard to qualify for the expedited review process – up to five acres of previously undeveloped land or up to 10 acres with a tree plan together with other qualifying factors—would unduly restrict available housing sites from being able to utilize the benefits of 301 CMR 11.01(2)(c) particularly because developers have to find sites that are zoned to allow multifamily use, some of which may be previously undeveloped land. The intent of these changes is to incentivize the creation of housing statewide.

Additionally, NAIOP does not understand why the exemption threshold is lower than the ENF threshold with respect to undeveloped land. For example, a project that alters six acres of previously undeveloped land but does not create five or more acres of impervious land would not even trigger an ENF under the current regulations, but would disqualify a project from the exemption in the regulatory amendment. Respectfully, NAIOP hopes that the Healey-Driscoll Administration will remove this criterion. If this criterion is not removed, NAIOP strongly recommends that the threshold be increased to allow alteration as reflected by NAIOP's suggested amendments in the redline below.

NAIOP is also concerned with the introduction of the U.S. Forest Service's National Forest Carbon Monitoring System as a basis for determining eligibility for this exemption. Limiting the application of these provisions to certain areas delineated in the Carbon Monitoring System introduces specific new substantive standards, standards that are unrelated to the current MEPA thresholds and thus would expand MEPA's review to areas that it doesn't currently address. Furthermore, the proposed approach also introduces a data source that may be unreliable or change over time, and thus adds unpredictability to project reviews. It is not clear how accurate the information is within this data layer and whether/if it presents a reliable tool for evaluating ecosystem carbon

stocks. NAIOP notes, importantly, that the data layer appears to be unavailable at this time due to the federal government shutdown. At a minimum, if the language remains, the exemption should be revised to clarify that “no portion of the Project results in a direct alteration to such areas”; as opposed to trying to tie the exemption to the “Project site.”

Similarly, NAIOP urges that the exclusion of sites within Priority Habitat be removed. There are numerous examples of projects that are proposed within, or partly within, Priority Habitat but that are also within areas that are previously developed. In many cases, NHESP reviews these projects and agrees that there is “no take” and that the project does not need to undergo any formal MESA review. It is illogical that such projects would be automatically excluded from this exemption under MEPA while the agency responsible for administering the MESA statute takes no issue with the project.

Finally, NAIOP strongly recommends that the reference to promulgating data sources through guidance be struck in its entirety given the Supreme Judicial Court’s ruling earlier this year in *Attorney General v. Town of Milton* that states guidance, when treated as a requirement, **must go through the regulatory process**.

For these reasons, NAIOP’s preferred proposed language for 301 CMR 11.01(2)(c)(1)(c) can be found in red, below.

alters no more than up to 25 5 acres of previously undeveloped land. ~~or alters no more than up to 25 10 acres of previously undeveloped land and the Project proposes a tree retention and replanting plan that demonstrates measures to minimize tree removal and replace removed trees to the maximum extent practicable. To satisfy this 301 CMR 11.01(2)(c)1.e., no portion of the Project site shall include any land where projected total ecosystem carbon stocks for the Project site are in the top quintile statewide, as defined by the United States Forest Service’s National Forest Carbon Monitoring System, Total Ecosystem Carbon in 2070 data layer, or a comparable data source that the Secretary may adopt through guidance; any designated priority habitat, as defined in 321 CMR 10.02; or any land with soils classified as prime farmland by the United States Department of Agriculture which is currently in active agricultural use or was in active agricultural use within the past five years.~~ Redevelopment of previously developed land, or redevelopment of land within or appurtenant to an office or industrial park or large institutional property, shall not be defined as alteration of previously undeveloped land for purposes of this 301 CMR 11.01(2)(c)1.c.

4. Project Site is located outside of highest hazard areas and outside the Special Flood Hazard Area (301 CMR 11.01(2)(c)(1)(d))

There are many good development sites that are affected by the 100-year floodplain where communities want to attract housing development. If it is a housing project and does not otherwise trigger an EIR, it is unclear why “EJ-plus-FEMA-zone-VE” would prevent the project from moving through the expedited pathway. Other bodies and regulatory processes – building codes, funding agencies, etc. – are responsible for making sure that buildings are designed in an environmentally responsible way.

It is not within the statutory jurisdiction of the MEPA Office to single out these properties. Additionally, NAIOP is very concerned with the incorporation of standards established by third-party non-governmental organizations such as the American Society of Civil Engineers.

NAIOP would also like to reiterate comments above that the allowance of discretionary guidance in the implementation of this threshold should be struck in its entirety given the Supreme Judicial Court’s ruling earlier this year in *Attorney General v. Town of Milton* that state guidance, when treated as a requirement, **must go through the regulatory process.**

While NAIOP appreciates the Healey-Driscoll Administration’s recognition that redevelopment may still qualify for the expedited pathway, to ensure that MEPA’s jurisdiction is not expanded beyond its environmental impact review purview, NAIOP recommends striking 301 CMR 11.01(2)(c)(1)(d) in its entirety.

5. Coordination of MassDOT/MBTA For Projects, (301 CMR 11.01(2)(c)(1)(g))

NAIOP is concerned that the language around traffic thresholds requires coordination with MassDOT/MBTA for all projects seeking the EIR exemption. Many projects do not require MassDOT vehicular access permits, and the MBTA only serves communities in approximately 50% of the state. It is unclear why projects would be required to coordinate with state agencies even if the project does not come under an agency’s jurisdiction. To ensure that communities statewide will benefit from this expedited housing pathway, **NAIOP urges the Healey-Driscoll Administration to remove the requirement for coordination with MassDOT and the MBTA from the traffic thresholds.**

Additionally, terms such as “Transit-oriented development district” and “mixed-use district” were introduced to the MEPA process in this draft. Unfortunately, definitions for these terms vary between local zoning bylaws and throughout the Massachusetts General Laws. The introduction of these terms also appears to favor mixed-use districts over residential districts. NAIOP believes that introducing these phrases could cause confusion and conflicts and that all types of housing should be equally qualified for the exemption. **NAIOP also urges the Healey-Driscoll Administration to clarify the source of these definitions.**

6. Review Thresholds in 301 CMR 11.03 Reference (301 CMR 11.01(2)(c)(4))

To ensure clarity, NAIOP respectfully offers the below edit to read as seen below in red:

Any Project that meets or exceeds any review threshold in 301 CMR 11.03(12), provided that the Project does not independently propose any work, project or activity that exceeds any other review threshold in 301 CMR 11.03(1) through (11).

7. Additional Comments Based on the October 23 Meeting of the MEPA Advisory Committee

NAIOP is grateful to the MEPA Office and Healey-Driscoll Administration for convening the MEPA Advisory Committee on October 23. In response to that discussion, NAIOP offers the following comments.

a. Mitigation

MEPA is a review process for studying and mitigating potential environmental impacts, not a tool for additional mitigation that does not address potential environmental impacts – especially outside the subject matter of specific Agency Actions. This additional mitigation, not required to mitigate environmental impacts, also increases the cost of construction and negatively impacts housing creation.

It is important to note that the UHPC engaged EJ organizations in the discussions surrounding the final recommendation. The feedback received at that time from these organizations highlighted the importance of the outreach protocols, which NAIOP supports. However, the EIR filing was not considered necessary to benefit these communities.

NAIOP is grateful for the Healey-Driscoll Administration's recognition that priority housing projects must move forward and hopes that the Administration and MEPA Office will review how organizations may be using the EIR requirements in a way that ultimately harms EJ communities and the Commonwealth by slowing housing creation for projects that undergo MEPA review.

b. Additional Requirements

NAIOP is also concerned that many organizations on the Advisory Committee appeared to be proposing that MEPA integrate pending or just finalized regulatory requirements from other agencies into this process.

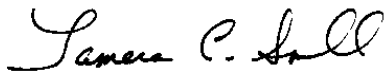
NAIOP strongly opposes this strategy. The purpose of MEPA review is to facilitate a forum where State Agencies can evaluate potential damage to the environment as a result of their actions on projects, not to layer in additional requirements that may or may not apply to a project and may or may not even be in regulatory effect at the time of filing. Other permit review processes have their own standards. The proposed MEPA regulations do not override those standards, and there is no need to separately codify other regulatory requirements. **NAIOP strongly urges the Healey-Driscoll Administration to reject attempts to add requirements to this list.**

NAIOP urges MEPA to quickly advance the draft regulations with the amendments that NAIOP has provided herein. When finalized, this regulatory pathway will positively affect housing projects and residents. Housing production in and near environmental justice communities is linked to significant social benefits such as improving health outcomes, boosting economic stability and reducing exposure to pollution from contaminants such as lead. Further, many of these indicators have a direct positive impact on enhanced economic mobility. The Commonwealth cannot afford to stall action.

NAIOP is grateful for the opportunity to provide comments on this critical proposal and looks forward to continuing our work with the MEPA Office, the Executive Office of Energy and Environmental Affairs, and the Executive Office of Housing and Livable Communities to advance a regulatory framework that allows desperately needed housing production to move forward.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Tamara C. Small". The signature is fluid and cursive, with the first name "Tamara" being more prominent than the last name "Small".

Tamara C. Small
Chief Executive Officer
NAIOP Massachusetts, The Commercial Real Estate Development Association

CC:

Edward Augustus, Secretary, Executive Office of Housing and Livable Communities
Rebecca Tepper, Secretary, Executive Office of Energy and Environmental Affairs
Juan Gallego, Deputy Chief of Staff, Lt. Governor Kim Driscoll
Amanda Dew, Policy and Cabinet Affairs Liaison, Office of Governor Maura Healey