November 7, 2025

VIA EMAIL tori.kim@mass.gov

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Assistant Secretary and MEPA Director
Massachusetts Environmental Policy Act Office
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114

RE: Comments on Proposed MEPA Regulatory Amendments and Regulatory Review

Dear Director Kim:

The Homebuilders and Remodelers Association of Massachusetts, Inc. (HBRAMA) is grateful for having the opportunity to comment on the proposed amendments to the MEPA Regulations designed to streamline MEPA review of qualifying housing projects which align with actions to boost housing production as described in both the Commonwealth's Comprehensive Housing Plan for 2025-29, and recommended by the Unlocking Housing Production Commission's (UHPC) report, "Building for Tomorrow." The HBRAMA represents over 1,500 members involved in the planning, permitting, financing, remodeling and developing of multifamily and single-family residential housing throughout the Commonwealth of Massachusetts. Our members range from large multi-state developers to smaller builders and developers responsible for the construction of residential and mixed-use projects frequently involving MEPA review, so these changes occurring to MEPA are important to, and timely for, our members.

Consistent with the priorities of the Healey-Driscoll Administration to expedite housing production of all types, the Association believes that exempting certain housing projects from conducting an EIR where the EIR is solely required based on the project's proximity to an EJ community would not only advance these important housing priorities, but would also advance the principles of Environmental Justice by providing housing opportunities in areas where it is needed most. This had been a concern of the HBRAMA in the last set of regulatory revisions but we remain concerned that the proposed amendments are missing the mark as to purpose.

Specifically, the UHPC recommendation on MEPA was simply to "… 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 conducts an ENF while ensuring the same amount of outreach to EJ communities…"[1] Accordingly, the intention of this recommendation was to simply relieve housing projects from elevating a simple ENF to an automatic EIR imposed by the EJ requirements and protocols. Instead, many of the exemptions have significant qualifiers that add to the burden by dictating policy outcomes as a substitute for State Agency and municipal judgement, review processes and standards. Consistent with the foregoing, we feel the regulatory revisions as drafted would be helpful to an extremely limited number of housing or mixed-use projects while adding the burden of third party evaluation tools and other policy objectives unrelated to the criteria used to exempt the projects in this

[1] See "Building for Tomorrow – Recommendations for Addressing Massachusetts' Housing Crisis" (February 2025), p. 59.

limited circumstance. We feel, however, there is an opportunity to simplify and/or clarify some of the draft provisions to further streamline the process without impacting the housing and EJ goals and objectives.

Our comments are as follows:

11.01(2) b.3. – Exemption for one single family dwelling involving MassDEP Wetlands SOC.
The MEPA Office has recognized an overburdensome impediment when the only State Permit involves the issuance of a MassDEP Superseding Order of Conditions. The Background Document also cites to a review of 15 single family home projects where 9 projects required review solely due the need for SOC resulting from an appeal of a local Order of Conditions to the MassDEP. If the Commonwealth seeks to advance housing production at all levels, then it is unclear why this exemption is limited to one single family dwelling. Instead, we recommend eliminating the density requirement under this provision in its entirety. Alternatively, if unwilling to remove this exemption, we recommend a modification to this exemption to apply to other housing developments such as single-family dwellings on four or fewer lots, and multifamily housing development and redevelopment projects with four or fewer units, which would be generally consistent with the MassDEP Stormwater Policy exemption. Alternatively, the exemption could be specifically tied to this exemption under the MassDEP Stormwater Management Standards.[2] In this manner, housing production is advanced but is not tied to density.

301 CMR 11.01(2)(c)1. a. – Mixed Use and Percentage of Residential Gross Floor Area.
Three points for consideration under this threshold.

1. Percentage of GFA Devoted to Residential Use. Where in more urban areas, there may be a need to have a greater percentage of GFA for commercial uses, we recommend that the percentage of residential use simply be in excess of 50% as it is unclear why 67% was chosen and seems arbitrary. If a commercial use is partnered with a majority residential use, then why not expand the percentage to be in excess of 50% residential.
2. Supportive uses. While we understand a desire to limit commercial use to supportive uses, and that the Unlocking Housing Production Commission Report uses supportive commercial uses as an example, the drafters may be taking the UHPC Report too literally and the limitation of commercial uses to supportive uses seems overlay constraining. And it is unclear why the commercial uses need to be classified as supportive when the developer could have a much more productive and complimentary use (i.e., a grocery store, an educational use) which is driven by the market rather than imposing an arbitrary subset of commercial uses. Perhaps the term "supportive uses" should be replaced with "non-residential uses" to expand the range of complimentary uses driven by the market at any one particular time.
3. Gross Floor Area Definition. The definition of gross floor area appears to be constrained and inconsistent with many local bylaw or ordinance definitions which expand the list of exempted gross square footage to non-habitable and other areas customarily excluded to promote greater flexibility. To this end, we suggest modifications as follows: "For the purposes of this 301 CMR 11.01(2)(c)1. a., gross floor area shall not include parking, utility space, shafts and other mechanical areas, and other ancillary spaces not intended for exclusive occupancy by the user or tenant;"

[2] See Massachusetts Stormwater Handbook and Stormwater Standards, Vol. 1., Overview of Massachusetts Stormwater Standards, Chapter 1: Stormwater Management Standards, @ pp.2-3. See https://www.mass.gov/guides/massachusetts-stormwater-handbook-and-stormwater-standards#-stormwater-handbook-volume-1-

301 CMR 11.01(2)(c)1.b. – Residential Density. HBRAMA feels strongly that the residential density threshold be stricken. MEPA was enacted as a screening tool designed to ensure State agency decision-making considers potential damage to the environment. Against this statutory and regulatory framework as an environmental screening tool, we feel the residential density standard is being inappropriately applied as a de facto zoning tool. Adding a zoning mechanism to this standard not only usurps the statutory framework of programs under Chapter 40R, MBTA Communities and other land use tools, but it also leaves out other residential density tools with different statutory and/or programmatic density levels, such as under M.G.L. c. 40Y and draft regulations at 760 CMR 69.00, thereby in effect disincentivizing housing under other State, as well as local, housing programs. Further, this exemption does not account for residential projects under Chapter 40B, the most effective housing tool available today. Moreover, this density limitation appears to be contrary to the Commonwealth's new housing plan, A Home for Everyone: Massachusetts' Comprehensive Housing Plan 2025-2029 (2025).[3] In effect, the proposed regulations create a disincentive to produce housing at all density levels. While we understand the rationale for moving for greater housing density, we urge the MEPA Office to eliminate this density requirement altogether because it represents a barrier to, and is contrary to the very objectives of, the UHPC which is promote housing at all levels.

301 CMR 11.01(2)(c)1.c. – Previously Undeveloped Land. Several comments on this exemption.

1. Designated Priority Habitat. The exemption suggests that the land under this threshold cannot include "…any designated priority habitat, as defined in 321 CMR 10.02;…" The issue is that there is no definition of "designated priority habitat" under 321 CMR 10.02, and there may be confusion with the process for designating "significant habitat" established under 321 CMR 10.00, which to our knowledge, has never happened. If the intention was to include "…any mapped priority habitat, as shown on the most up to date Priority & Estimated habitats edition of the Natural Heritage Atlas," that may still be too broad of a term because there are previously developed areas combined with undeveloped land within mapped PriHab area where the Natural Heritage and Endangered Species Program (NHESP) allows residential development and where there is not a "take." It would appear that this exemption would be more restrictive than what would otherwise evolve through the NHESP regulatory review process and we see no need to overly restrict that NHESP process or to include this terminology as a part of an exemption.
2. Tree Removal. We recommend that any exemption including an exemption which imposes a tree removal plan be stricken. The exemption allows for the alteration of up to 10 acres of previously undeveloped land "if 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." While we understand some of the merits of the desire to impose tree planting requirements, we do not feel the MEPA Office maintains any jurisdiction to require a tree planting program other than, potentially, in the circumstance under the transportation threshold of 11.03(6)(b)(2) (i.e., 2. Construction, widening or maintenance of a roadway or its right-of-way that will: …b. cut five or more living public shade trees of 14 or more inches in diameter at breast height;…") Moreover, while well-intentioned, the use of additional tools from external sources as a land use tool to satisfy compliance whereby "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

[3] See A Home for Everyone: Massachusetts' Comprehensive Housing Plan 2025-2029 (2025). "In order to meet existing needs and anticipated growth in demand, Massachusetts needs to add 222,000 year-round homes to the available housing stock over the next decade. This includes homes of all types, from mid-rise apartments to accessory dwelling units, triple-deckers, senior housing, single family homes, and everything in between." A Home For Everyone, Achieve a State of Housing Abundance -- How to Build More Housing, Faster," at p.1. See https://www.mass.gov/info-details/achieve-a-state-of-housing-abundance

data source that the Secretary may adopt through guidance;…" makes this process even more costly, confusing, overcomplicated and burdensome to make such a demonstration. Instead, we recommend striking the requirement for a tree planting program tied to this standard, and instead, leave these types of tree planting and related mitigation matters, which are provided in every municipal zoning bylaw or ordinance, up to the local municipality which customarily handles landscaping and tree planting as a part of a traditional, local site plan review and/or special permit process in order to avoid overcomplicating an already very complicated process. As an overall concern, HBRAMA's position is that these regulatory proposals should not be used as a land use or quasi-site plan review tool which is more aptly left to the local municipality which is more well-equipped to handle tree removal and replacement through the local site plan and other local reviewing boards.

301 CMR 11.01(2)(c)1.d. – Certain Floodplain Areas. Several comments related to this standard:

1. The proposed language refers broadly to "the Project site" in many sections of this provision requiring the entire site to be outside the regulated floodplain areas identified, but the purpose of floodplain regulation is primarily to prevent the construction of "buildings and structures" within these specific floodplain areas, and making such distinction is consistent with the effort to promote housing located with these buildings and related structures. To extend these provisions broadly to the entire "project site" unnecessarily broadens the scope in the circumstance where only a portion of the Project site where no improvements are proposed may be implicated, and thus needlessly hinders residential development which could otherwise be in the position of falling within this exemption. For these same reasons, it is unclear why there is a need to introduce a new definition for "redevelopment."
2. The proposed exemption also ties the Project to compliance with performance standards of "…the American Society of Civil Engineers Guidance on Structural Safety in Flood Areas (ASCE 24-24)." However, each municipality where floodplain is located has adopted a floodplain bylaw or ordinance in order to comply with FEMA Flood Insurance requirements. Accordingly, we feel that a simpler approach would be to require the Proponent to comply with the municipal floodplain bylaw or ordinance, which customarily requires compliance with the Massachusetts State Building Code (780 CMR) addressing floodplain and coastal high hazard areas, the State Wetlands Protection Regulations (310 CMR 10.00), Inland Wetlands Restriction requirements (310 CMR 13.00), and Minimum Requirements for the Subsurface Disposal of Sanitary Sewage (310 CMR 15.00). We feel that linking compliance to more traditional methods found in local floodplain ordinances and bylaws creates a common-sense approach to this provision. For these same reasons, it is unclear why the Secretary will be charged with developing "guidance methodology for delineating highest hazard areas" which overcomplicates and brings more uncertainty to the review of this exemption where existing methodologies under State law and local municipal ordinances and bylaws already exist. Instead, a simple provision stating that "floodplain development must comply with state building code, wetlands, septic system regulations, and local floodplain bylaws or ordinances" would appear to eliminate these otherwise overly complicated and detailed provisions.

301 CMR 11.01(2)(c)1.e. – Compliance with Stretch Energy Code. There remain municipalities which have not adopted the Stretch Code, and it would be unfair to penalize a Proponent of a housing project located in such a municipality. For this reason, we feel this exemption should be stricken and leave it up the municipalities as to what action they desire to take with regard to the Stretch Energy Code, the Municipal Opt-in Specialized Energy Code or otherwise.

301 CMR 11.01(2)(c)1. f. – Interbasin Transfer. It is not clear why the draft regulations tie an Interbasin Transfer with the prohibition on "…new or expanded gas mains;…" Some of our multifamily residential development members are facing situations where the electricity provider is informing the multifamily

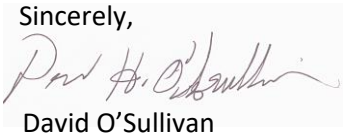
project developer that there is inadequate electrical capacity to serve a residential project, and that there is no estimated or reliable timeframe given by the provider to confirm available electrical capacity. Members are also seeing circumstances where their multifamily residential clients are requesting local permit modifications to allow for at least some natural gas use due to the escalating costs of electricity within the Commonwealth which are making the costs to build and operate housing more expensive and without an alternative energy source. For this reason, there is a need to preserve the right to natural gas use in such circumstances, and we recommend that the phrase "…, and does not require new or expanded gas mains…" be stricken from this provision.

Other Matters/EJ Notice Process. In addition to the above, the HBRAMA feels there are other measures which could be taken to streamline the MEPA process while at the same time advancing both housing production and EJ goals, some of which were articulated in our written comments to you in 2022. More specifically, in 2022, we questioned the utility of the advance notice provisions to be filed in EJ Communities where the delay in housing production hurts the very population needing the housing the most. While we agree the EJ notification process has merit, several of our members have informed us that not only does the advance EJ notice requirement extend what is already the longest State environmental review process by an extra 45 to 90 days, but when consultation is offered, rarely do those affected appear at such sessions. For these reasons, we recommend that qualifying projects meeting all of the criteria noted above not be subject to the advance EJ notice provisions but continue to require additional circulation to EJ groups. Moreover, as an overall consideration, perhaps the EJ notice provisions should be consolidated and be a part of the regular ENF process to eliminate the 45-to-90-day process extension.

Once again, on behalf of HBRAMA, we appreciate the opportunity to provide these comments to you and your Office. And we would welcome the opportunity to further participate in the regulatory and policymaking process as it evolves.

Thank you.

Sincerely,



David O'Sullivan
President, HBRAMA

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
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