



September 30, 2024

Tori Kim, Director
Massachusetts Environmental Policy Act Office
100 Cambridge Street, #900
Boston, MA 02114

RE: Comments Regarding Straw Proposals for the Interim Protocol on Climate Change Adaptation and Resiliency and the Greenhouse Gas Emissions Policy

Dear Director Kim,

NAIOP Massachusetts, The Commercial Real Estate Development Association, appreciates the opportunity to comment on the Straw Proposals to update the Interim Protocol on Climate Change Adaptation and Resiliency (Climate Change Proposal) and the Greenhouse Gas Emissions Policy (GHG Proposal).

As a member organization of the MEPA Advisory Committee and longtime stakeholder in updates to the MEPA regulations and all accompanying protocols and policies, NAIOP respectfully submits the below comments based on feedback from members who are committed to the success of this program.

I. Climate Change Proposal

NAIOP recognizes that the new proposed requirements formalize the submission of information that is largely already provided to the MEPA Office. However, NAIOP members who interact with the Climate Resilience Design Standard Tool (the Tool) have general and targeted feedback that NAIOP strongly encourages be incorporated before moving forward with the proposed changes.

- a. Slide six of the straw proposal deck states that the goal of the interim protocol was to gather data to test the accuracy of the Tool outputs and support future policy updates. NAIOP is concerned that the limited analysis provided in the slide was inadequate and does not believe that it meets the stated goal. NAIOP requests more information outlining whether or not the MEPA Office had a plan for analysis as part of initial study design and if so, to provide the full analysis for public review before moving forward with changes to the Climate Change Proposal.
- b. Currently, the Tool is designed to assess state agency capital improvement projects, and as a result, some of the prompts are not applicable to other types of projects. In addition to the prompts, the guidance is also written to inform Commonwealth-owned facilities and does not have consistent applicability to private projects. Examples of this include Question Seven and Question Ten of the Asset Criticality section.
- c. The Tool only provides data for the return period that it deems “most appropriate.” NAIOP strongly believes that it should instead provide data for all of the return periods – and indicate which of those periods it recommends for design.
- d. In some certificates, the MEPA Office has recommended that proponents use lower probability return events than the Tool recommends, stating that a facility is “more critical” than the Tool calculates. By requiring proponents to manipulate user inputs, the MEPA Office is attempting to

ensure that the output report reflects the opinion of the MEPA Office. **NAIOP strongly believes that the MEPA Office should not require project proponents to manipulate user inputs to ensure a pre-determined outcome.**

- e. Given the nature of a slide deck format, NAIOP has several slide-specific outstanding questions and comments related to the Climate Change Proposal. NAIOP would like to request that a response to these questions be made available to the public before the MEPA Office moves forward with a potential update.

- i. Slide 14

NAIOP recommends the adoption of a formal appeal pathway for the Tiered Analysis requirements in the ENF so that the requirements are not included in the DEIR scope if they are found to be not applicable. Otherwise, project proponents will have to ad-hoc explain why there is a mismatch of expectations.

NAIOP also urges the MEPA Office to update the tool to reflect actual topography given members have experienced situations where a project has been rated as High for Riverine Flooding, despite the site sitting well above base flood elevation.

- ii. Slide 15

Given that virtually every project will be exposed to heat, NAIOP recommends amendments to the proposed de minimis threshold to ensure that it can be used. NAIOP also recommends language clarifying that the analysis should be required when within MEPA jurisdiction.

- iii. Slide 16

NAIOP strongly recommends that “substantial improvement to stormwater management system” be defined. Additionally, assessing the resilience of a stormwater system is often well beyond the scope of an individual project utilizing a municipal stormwater system. NAIOP recommends clarifying when the resilience assessment is required.

- iv. Slide 17

NAIOP has heard from several members that the Tool does not always correctly identify existing impervious cover. It seems to identify anything that is not obviously vegetated as impervious, which is not necessarily the case. NAIOP believes that users need to be able to override this assumption when using the Tool, allowing tree cover and impervious surfaces to be based on project information, not the Tool output.

Additionally, NAIOP is concerned that to date the requirements for analysis of on-site and off-site flood impacts have been excessive. Proponents are required to assess conditions that are extremely unlikely to occur, such as a 2070 build condition where a project is built, but nothing around it changes (even when there are neighboring projects underway that have already been reviewed by MEPA).

The MEPA Office is also requiring commitments to mitigate de minimis impacts on flood velocity. NAIOP does not believe that additional flood impact studies should be required when projects implement district scale flood protection measures (especially those that have already been reviewed by MEPA).

Finally, NAIOP believes it is critical that state agencies recognize that the filling of previously developed land subject to coastal storm flowage for the purposes of protection from sea level rise flooding must be allowed *and is consistent with* the interests of the Wetlands Protection Act.

II. GHG Proposal

Overall, NAIOP is concerned with the lack of identified methodologies and mitigation options within the GHG Proposal. Carbon Accounting; Vehicle Miles Traveled and Vehicle Miles Traveled by household; Overall Grid Emissions; and the Social Cost of Carbon lack details, and do not offer potential methodologies for review. **NAIOP strongly recommends that before a formal draft of the updates is released for public comment, methodologies are reviewed by the MEPA Advisory Committee and the public is given an opportunity to comment on proposed methodologies.**

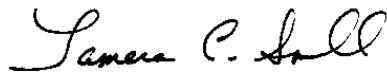
Additionally, NAIOP is unclear if all of the recommendations from the Department of Energy Resources can move forward as proposed given the recent announcement of updates to the stretch and municipal opt-in codes. Given that MEPA's role is project review, NAIOP hopes that future updates will not mandate energy performance or create burdensome processes that delay critically needed housing and economic development projects.

While NAIOP understands that there will be additional opportunities to comment on the Proposals before finalized, the straw proposals' lack of clarity and data has created concern within the development community. **NAIOP strongly recommends that the MEPA Office reconvene the Advisory Committee to review the Proposals and the Tool before advancing draft protocols.**

NAIOP is grateful for the opportunity to provide comment on behalf of our more than 1800 members involved with the development, ownership, management, and financing of office, lab, industrial, mixed use, multifamily, retail, and institutional space throughout the Commonwealth.

Please contact me if you have any questions.

Sincerely,



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