



Via Electronic Mail: tori.kim@mass.gov

June 15, 2021

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

RE: Comments on MEPA Regulations and Regulatory Review

Dear Director Kim:

The Homebuilders and Remodelers Association of Massachusetts, Inc. (HBRAMA) is grateful for the invitation to both Ben Fierro and John Smolak to participate in last week's discussion that served to update the real estate community on the status of important policy and regulatory changes being implemented through your office. As you may know, the HBRAMA represents over 1,500 member companies involved in the planning, permitting, financing, remodeling and developing of both 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 our members.

First and foremost, the HBRAMA supports the MEPA Interim Protocol for Environmental Justice Outreach as a supplement to the requirements of the 2017 Environmental Justice (EJ) Policy. We suggest, however, that there be further clarification, with examples, of the expectations of a project proponent for the provision of the types of translation and interpretation services for notices, documents and community meetings and what might be considered "a significant portion of the population" of a given EJ population such that we can more effectively reach out to affected populations.

Secondly, as to the draft Interim Protocol on Climate Change Adaptation and Resiliency, the view of the HBRAMA is that while we understand the intent of the protocol, we believe in many respects, the Climate Change Adaptation and Resiliency Addendum suffers from ambiguity, and therefore, would benefit from the input of a stakeholder group which can provide input which we feel would lead to greater predictability in the modeling such that the regulated community can be assured that the expense and effort of a proposed project being evaluated through this protocol would result in an environmental benefit. Further, while the Global Warming Solutions Act amendments to MEPA do require agencies to "consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise.." when "...considering and issuing permits, licenses and other administrative approvals and decisions...", this does not mean that these factors come into play under all MEPA thresholds. Therefore, we urge the MEPA office to consider which specific thresholds to which the new protocol would apply.

Third, it is also of significant concern that while the MEPA review process has traditionally been an environmental screening tool, we are very concerned with the possibility that the MEPA regulatory process is turning into a State-level site plan review process which imposes design standards which are typically the purview of municipalities in a traditional Home Rule State such as Massachusetts. We see this as a negative trend that not only adds to the regulatory burden of a proponent, but also takes away from the local discretion traditionally provided to municipalities. We are also very concerned about the possibility of adding to the length of the process when we understand that the MEPA Office may require a 45-day pre-filing notification provision which adds to an already lengthy review process which can currently take a year to complete when considering a full EIR review process. The lengthening of the process has a huge anticompetitive impact when comparing the entitlement review processes with bordering states that have a much faster entitlement process already in place just across the border.

Fourth, while the MEPA office focus appears to be focusing on the two protocols above, we believe the MEPA office should also revisit other recurring issues that appear to arise since the last major regulatory revision of the regulations, including, but not limited to, clarifications related to "financial assistance," particularly as it related to housing programs or to separate municipally-sponsored funding projects which may or may not be related to a particular project for purposes of segmentation; "State Permits" given that some permits issued by the Commonwealth as a matter of practice or policy do not rise to the level of a "Permit" but others may do so; and other clarifications which may benefit from further discussions among stakeholders.

Lastly, and based upon the review processes that have occurred with MEPA in the past, we have found the most effect method of regulatory review has occurred when a stakeholder group has been pulled into the process at the very beginning, and has had a meaningful opportunity to comment and review not only on any regulatory proposal, but also on any policy proposal. Our view is that a schedule which intends to promulgate regulations first, and deal with policy change later, can result in unintended consequences and results in policy which does not have the benefit of the experience of a full stakeholder group. For these reasons, we strongly urge the MEPA office to develop regulatory and policy changes concurrently, such that all parties can be assured of the regulatory and policy outcome will result in the intended results.

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

Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read "Emerson Clauss III". The signature is fluid and cursive, with the last name "Clauss" being more prominent.

Emerson Clauss III
President

C: Ashley Stolba, Undersecretary of Community Development, EOHED
John T. Smolak, Smolak & Vaughan, LLP
Benjamin Fierro III, Lynch & Fierro LLP