



TOWN of HAMILTON

Town Manager

Town Offices at Patton Homestead, 650 Asbury Street
P.O. Box 429, Hamilton, MA 01982

Secretary Edward Augustus
Executive Office of Housing and Livable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114

Delivered Electronically

February 20, 2025

Dear Secretary Augustus,

On behalf of the Town of Hamilton Select and Planning Boards, I appreciate this opportunity to provide comments regarding the draft Emergency Regulation 760 CMR 72 'Multi-family zoning requirement for MBTA communities,' which implements M.G.L. Chapter 40A, § 3A, known colloquially as the MBTA Communities Law. The officers and elected representatives of the Town of Hamilton recognize that the Commonwealth is confronting profound challenges in housing supply and affordability that price too many out of the housing market, contribute to social instability, and impedes economic development across our state. Even as a small and largely rural community, Hamilton is committed to doing its part to be part of the solution to these challenges. However, Hamilton does face real limitations in servicing new development, as well as geographic constraints that limit the community's ability to accommodate significant new residential development. This letter summarizes Hamilton's recent housing efforts, details significant infrastructure limitations and geographic constraints to development activity in Hamilton, and proposes sensible amendments to the Draft Regulations to better adapt them to real world conditions and to advance the Commonwealth's goals of providing more housing opportunities.

Hamilton is actively working to provide additional housing in the community. The Town is proud of its efforts working with partner organizations, like Harborlight Community Partners and Habitat for Humanity, to expand housing opportunities, particularly affordable housing opportunities, through stream-lined land use reviews and close coordination throughout the permitting and construction processes. Hamilton's Planning Board is committed to advancing form-based code in its Town Center area, focusing much less on traditional land use restrictions and density limitations and more on compatibility with pedestrian-oriented and -scaled design and form. The Board is also advancing a proposed zoning bylaw amendment for consideration at the April 2025 Town Meeting that will expand opportunities for accessory dwelling units, in excess of what is required under the Affordable Homes Act of 2024. These proposed regulations will provide opportunities for second and larger accessory dwelling units on a residential property through a Special Permit process. These efforts are helping to provide more diverse housing opportunities and to make Hamilton a more inclusive community.



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While Hamilton remains committed to advancing our housing efforts, the Town believes the Draft MBTA Communities Regulations do not account for real world conditions, particularly in smaller, more rural communities like Hamilton, and fail to recognize that “a Multi-family district that is ‘reasonable’ in one city or town may not be reasonable in another city or town.” *See* §72.03(2)(c).

The Town’s concerns related to the Draft Regulations are largely centered around the following subject areas:

- The current definition of “Excluded Land” under the §72.02 of the Regulations that prohibits the creation of an MBTA community-compliant district on privately owned land used for educational purposes
- The location of the Hamilton/Wenham Commuter Rail station in Wenham which significantly circumscribes Hamilton’s ability to meet the zoning metrics set forth in the proposed Regulations (i.e., 731 Multi-family dwelling units/49 acres).
- Hamilton’s distinctive geographical and infrastructure circumstances which restrict development

As Hamilton is committed to be part of the solution in resolving housing shortages, the Town is proposing sensible amendments to the draft Regulations (*see* Attachment A) to address its concerns and those of other similarly situated rural or semi-rural communities, while simultaneously providing the EOHLC with flexibility, currently absent from the draft Regulations, to enable it to work cooperatively and successfully with small towns to meet shared housing goals.

- **Prohibition on zoning private educational uses for MBTA Communities-compliant districts:** The draft Regulations currently list land utilized for private schools, colleges, or universities as “Excluded Land” on which “it is not possible or practical to construct Multi-family housing.” Hamilton is home to Gordon-Conwell Theological Seminary which occupies a sizable 103-acre campus approximately two miles from Hamilton’s Downtown and less than five miles from the Yankee Division Highway (State Route 128). The campus includes six apartment/dormitory buildings containing a total of 209 student apartments. Many of those units are vacant today due to years of declining enrollment at the Seminary. Because of those conditions, representatives from the Seminary are engaged with the Town about potential redevelopment of its campus. Discussions have focused on the renovation and conversion of the 209 units to serve the residential needs of the broader community. The Town is excited about the revitalization of these structures to serve Multi-family residential needs, including the Town’s need for affordable housing. The Seminary’s proposed sale of the units represents a viable prospect to vastly expand the number of Multi-family residential rental units in Hamilton, in full alignment with the overall goals and objectives of the MBTA Communities Law. The draft Regulations should be amended to eliminate the blanket prohibition of such educational land for inclusion in a Multi-family district, particularly where potential sale



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or other redevelopment activities can be documented. Accordingly, the Town would respectfully request that the draft Regulations be amended to permit the zoning of private educational uses to meet the Multi-family zoning requirements, when well-documented and active discussions are underway between a municipality and an educational institution to provide additional Multi-family housing.

- **Location of the Hamilton/Wenham Commuter Rail Station within the Town of Wenham:** Hamilton faces a unique geographic constraint to implementation of the Regulations, as the Hamilton/Wenham Commuter Rail Station is located almost entirely within the Town of Wenham. The entirety of the station's platforms and parking lot are located wholly within Wenham. However, under the Regulations, Hamilton is treated as though the station is located wholly within our boundary. This geography creates a hardship for Hamilton because less than 50 percent of the ½ mile area radius extending from the station falls within Hamilton's boundaries. Since Hamilton does not have any jurisdiction over most of the land within the radius, it is not practical to require the Town to zone as though it has full jurisdiction.

The Town respectfully requests amendments to the Regulations to account for these unique constraint by reducing the unit count requirement by a proportional amount of the land outside the town's jurisdiction. The Town is not aware of another occurrence in the MBTA Commuter Rail network where a station, located almost entirely within a neighboring municipality, is treated as though it is located in another under the Regulations.



The above map clearly shows the Hamilton/Wenham MBTA station is located within on the Wenham side of the town boundary line (shown as the black dotted line).



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- **Infrastructure and Geographic Limitations:** Hamilton is a small town with a population of approximately 7,500, limited infrastructure, and a de minimis non-residential tax base. The following circumstances pose real barriers to development:
 1. Hamilton's public water supply is in potential jeopardy during periods of severe drought, and the Town faces one of its greatest tests in providing an adequate and PFAS-free water supply to residents under current conditions even before accounting for drought conditions. Hamilton draws its drinking water from groundwater resources, including the distressed Ipswich River aquifer. Groundwater resources are hydrologically connected with the Ipswich and Miles Rivers and their tributaries. Because the drinking water aquifer lacks hydro-geologic barriers and most of the Town's soils are highly permeable, the drinking water supply is vulnerable to contamination. While Hamilton is a signatory to, and active participant in, the North Shore Water Resilience Task Force, comprehensive solutions to the region's water supply have not been finalized. Potential solutions are years away and are prohibitively expensive to implement.
 2. The Town is not located on, and lacks ready access to, major highways or arterial roadways. The Town's primary north-south road, State Route 1A, laid out in the year 1640 and known as Bay Road, functions largely as a country road. Although the MBTA commuter rail line also runs north-south, it transects Bay Road at a busy intersection in the commercial district near its border with Wenham, as well as on an important feeder road to Bay Road, Asbury Street. Key intersections along Bay Road near the Commuter Rail station already experience congestion, particularly when the commuter rail schedule and concomitant traffic stoppage coincides with pick up and drop off times at elementary schools on Bay Road and Asbury Street. More significantly, when those traffic stoppages and delays occur, access to the west side of the commuter rail tracks by public safety personnel is compromised, resulting in potentially life-threatening public safety issues that would be exacerbated by significant population growth.
 3. Hamilton includes many geographic and topographic barriers to development within its borders. Approximately 40 percent of the Town is comprised of wetlands, and areas of boulders, clay, and bedrock are prominent across the community. Together, wetlands and steep slopes make up approximately 50 percent of the Town's land area.¹ In addition, Conservation Restrictions on many parcels permanently limit areas for potential development.

¹ MassGIS Data: MassDEP Wetlands (2005), updated December 2017; MassGIS Data: Elevation Contours (1:5000), June 2003



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4. The Town lacks a municipal sewer system, or access to one, relying instead on small, on-site systems, several of which routinely fail over the course of a year owing to age or other issues.

The Town's suggested amendments to the draft Regulations (*see* Attachment A) provide an opportunity for expanding housing opportunities, while simultaneously protecting valuable environmental and irreplaceable cultural resources.

I believe this letter has documented Hamilton's unique circumstances and challenges in meeting the letter of the existing draft Regulations. While Hamilton is engaged and committed to expanding housing choice, the Town also highly prioritizes the protection of its sensitive lands, the preservation of its irreplaceable small-town character and historic resources, and the ability of the municipality to provide high quality drinking water and other public services for current and future generations. We believe these values are consistent with those espoused by the Commonwealth, including the state's emphasis in promoting historic, cultural, and natural destinations through its 'Made Possible' tourism campaign² and its long-running commitments in natural resource protection.³

I am optimistic that this letter will prove persuasive in advancing amendments to the draft Regulations to help communities like Hamilton more effectively meet both the letter and spirit of the MBTA Communities Law. Should you have any questions about any of the content of this letter, please do not hesitate to contact me at jdomelowicz@hamiltonma.gov or (978) 626-5202.

Respectfully,

Joseph Domelowicz, Town Manager

² 'Healey-Driscoll Administration Launches New Made Possible Tourism Campaign to Promote State History and Culture, Attract New Travelers,' Mass. Executive Office of Economic Development press release, June 17, 2024

³ 'Massachusetts named most environmentally-friendly state in nation by Forbes,' Mass. Executive Office of Energy & Environmental Affairs press release, May 13, 2024



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ATTACHMENT A: PROPOSED AMENDMENT TO 760 CMR 72.00: MULTI-FAMILY ZONING REQUIREMENT FOR MBTA COMMUNITIES

The Town of Hamilton proposes the following amendments to the Draft MBTA Communities Regulations. Proposed new text is shown in **bold**:

72.02: Definitions (annotated)

“Excluded land” means land areas on which it is not possible or practical to construct Multifamily housing. For purposes of 760 CMR 72.00, Excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

- (1) All Publicly-owned land, except for Lots or portions of Lots determined to be Developable public land.
- (2) All rivers, streams, lakes, ponds and other surface waterbodies.
- (3) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
- (4) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
- (5) All Public rights-of-way and Private rights-of-way.
- (6) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
- (7) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university, **provided however that such land is not proposed to be transferred to a private developer, non-profit organization, or municipality for the purposes of developing housing or other forms of private development, in which case such land shall not be classified as Excluded land.**

72.05: Determining "Reasonable Size" (annotated)

- (1) In making determinations of "reasonable size," EOHLC will take into consideration both the land area of the Multi-family zoning district, and the Multi-family zoning district's Multi-family unit capacity.



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(f) In applying the provisions of section 72.05(1)(a)(1) and (b)(1), and in recognition that existing geographic and topographical conditions, together with other factors unique to each MBTA community, measurably reduce Developable land for Multi-family development, the EOHLC, shall be afforded discretion to reduce the minimum unit capacity under §72.05(b)(1)(c) applicable to a MBTA community by between no less than 25% but no more than 50% if it determines that two or more of the following conditions are present and require a modification of Multi-family unit capacity in order to better adapt to the existing conditions of the MBTA community affected by G.L. c. 40A, §3A:

- 1. A Rapid Transit Community or Commuter Rail Community has within its borders no more than 300 acres of Developable station area associated with one or more Subway stations and Massachusetts Bay Transportation Authority Silver Line bus rapid transit stations, or Commuter rail stations.**
- 2. A MBTA Community has (i) a combined commercial and industrial tax base of less than 5% of its property valuation as measured in the most recent tax year, *or* (ii) property tax exempt parcels make up more than 50% of its total land area, *or* (iii) property tax exempt parcels make up more than 50% of its total property valuation as measured in the most recent tax year.**
- 3. A MBTA Community in which land classified as Developable land makes up less than 40% of the its total land area.**
- 4. A MBTA Community in which (i) 5% or less of the total properties within it are served by wastewater treatment plants certified by the Massachusetts Board of Wastewater Treatment Plants, *or* (ii) 5% or less of total properties are served by public drinking water systems certified by the Massachusetts Board of Certification of Drinking Water Supply Facilities.**