

TOWN OF WELLESLEY



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EXECUTIVE DIRECTOR OF GENERAL GOVERNMENT SERVICES

January 9, 2026

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

Dear Secretary Augustus:

The Town of Wellesley (the “Town”) appreciates the opportunity to submit the following questions to the Division of Capital Asset Management and Maintenance (“DCAMM”) and Executive Office of Housing and Livable Communities (“HLC”). The Town, on behalf of its residents, wishes to engage in a constructive dialogue with DCAMM and HLC about the Commonwealth’s plans to invoke the Affordable Home Act, Chapter 150 of the Acts of 2024 (the “AHA”) to designate the property located at 40 Oakland Street, Wellesley, MA (the “Property”), under the custody of Massachusetts Bay Community College (“Mass Bay”), as “surplus real property” to be sold for “housing purposes” (the “Project”).

While it supports the underlying purpose of the AHA to promote housing and housing affordability, the Town and its citizen constituents have serious concerns about the Project at the Property and many questions on the meaning, effect, application, implementation, and enforcement of the AHA in relation to the Project. The Town, therefore, sees this letter as the opportunity for stakeholders to clarify, refine and, ultimately, reach a mutual understanding of the AHA, the Project, and how the Project might be an appropriate use of the property within the Wellesley community.

The following questions are fundamental to the Town's understanding of the AHA, the Project, and the Town's ability to meaningfully engage the community. Because the timeline established by DCAMM and HLC is tight, this letter and the questions herein are not an exhaustive recitation of the Town's questions, nor are they intended to convey any particular opinion or position of the Town regarding the AHA, the Project, or the Property. Additional questions may be forthcoming, as HLC and the Town agreed. Indeed, there remain so many open questions and lack of clarity and detail that it is effectively impossible for the Town to assess properly and formulate a constructive opinion or position about the Project at the Property. Thus, the Town explicitly reserves all rights with respect to the AHA, the Project, the Property, and otherwise.

The following is the Town's initial complement of questions intended to promote productive discussion and greater clarity:

Foundational Questions about DCAMM, HLC, and Mass Bay's Process:

The Town has a series of questions about how DCAMM, HLC and Mass Bay have approached the question of identifying the Property as "surplus real property" under the statute, and the rough details of the Project to be situated upon the five-acre parking lot portion of the Property. Answers to the following questions would help the Town understand how and/or why DCAMM, HLC and Mass Bay appear to have reached certain decisions about the Project at the Property:

1. The AHA defines "surplus real property" as real property that has been determined to be surplus to "current and foreseeable needs" of the Commonwealth or a state/public agency. How has Mass Bay used the Property since it was acquired? Specifically, how has Mass Bay classified and used the ±40-acre woodland area of the Property, and how has it represented the Property in brochures, marketing and other materials provided to potential students and the public?
2. It is the Town's understanding that Mass Bay is presently using the Property, and indeed has indicated a future need for parking on the Property, particularly the five-acre parking lot portion. Why would DCAMM, HLC and Mass Bay determine that this portion of the Property constitutes "surplus real property" under the statute?
3. The remaining ±40 acres of the Property are comprised of woodlands, adjacent to Centennial Reservation, which have been used by the general public – residents of the Town and surrounding communities – for recreational purposes for many decades, if not over a century. Are DCAMM, HLC and Mass Bay aware of this extremely longstanding public use?
4. What investigation has HLC and/or DCAMM conducted as to whether some or all of the Property might be Article 97 land and thus protected by the Declaration of Rights? Has the Department of Conservation & Recreation and/or other relevant stakeholders within the Commonwealth been specifically asked this question?
5. In light of the foregoing, what is the legal basis for potentially determining that the Property constitutes "surplus real property" under the statute?

6. Is the Commissioner's determination of "surplus real property" reviewable by anyone or any court? If not, what is the legal basis for this interpretation of reviewability/non-reviewability?
7. How did DCAMM/HLC and Mass Bay arrive upon the particular size and dimensions of the parcel proposed as "surplus real property" on the westerly side of Oakland Street?
8. 180 dwelling units on the existing five-acre parking lot portion thereof reflects a density level magnitudes greater (*i.e.*, 36 units per acre) than allowed by Section 122 of the AHA (*i.e.*, 4 units per acre). Moreover, that density will present far greater development challenges for the developer and the Town's permit-granting authorities, as well as other, potentially extensive, negative costs to the Wellesley community that those boards would be duty-bound to consider. Would DCAMM/HLC consider a Project at the Property of fewer than 180 dwelling units?
9. Why are DCAMM/HLC and Mass Bay only considering Mass Bay's land on the westerly side of Oakland Street as "surplus real property" under Section 121 of the AHA, and not any of Mass Bay's land on the opposite side of Oakland Street?
10. Would Mass Bay be willing to sell the Property, or the \pm 40-acre woodland area of the Property, to the Town?

Questions about the Order of Operations for the Project under the AHA:

Next, the Town has questions and concerns about the sequence and order of logistical and regulatory actions regarding the Project at the Property under the AHA, based on its recent experiences with the MBTA Communities Act, G.L. c. 40A, § 3A and general experience with administrative law and practice.

11. What is the anticipated timeline for release of the regulations implementing the AHA?
12. What is the legal basis for any RFP process moving ahead before regulations implementing the AHA have been promulgated?
13. The Town has had to make multiple changes to its Zoning Bylaws recently, first in connection with the adoption of amendments to the Zoning Act regarding accessory dwelling units, and then again to conform to later-promulgated regulations implementing the same provisions. There were similar issues with the Town's MBTA Communities zoning district, requiring Wellesley to take action at three separate Town Meetings. What steps is DCAMM taking to ensure that any process implemented before the adoption of regulations will not be inconsistent with the regulations it is considering?
14. What is the position of DCAMM and HLC relative to the applicability of the state Administrative Procedures Act (G.L. c. 30A) to such regulations? If inapplicable, what is the legal basis for such an interpretation?
15. How does the AHA, as reflected by DCAMM's and HLC's current nascent proposals for the Project, not conflict with the Governor's Biodiversity Conservation Goals for the Commonwealth?

Questions about the Role of the Town in Relation to and Regulating the Project at the Property:

In the text of the AHA and from the preliminary dialogue among DCAMM/HLC, Mass Bay, the Town and the public, the Town has a role to play in regulating and reviewing the Project at the Property. As a practical matter, the Town would be supplying services directly to the residents of the Project and the Project would impact the services being provided to all of the citizens of the Town. However, from the Town's perspective, there has been no clarity on the details of the Town's role. Answers to the following questions would be extremely helpful in beginning to clarify the Town's role:

Questions on Zoning Authority:

Section 122 of the AHA reads as an iteration of the Dover Amendment (G.L. c. 40A, § 3), categorizing municipal zoning authority such that cities and towns must allow "residential use of real property conveyed by the commissioner pursuant to section 121 for housing purposes as of right[.]" while it expressly reserves municipal authority to regulate such projects according to dimensions and density, subject to a mandatory 4-unit per acre allowance. Apart from this provision, the AHA is silent relative to density of projects and uses under the AHA.

16. In light of the Town's existing Educational zoning applicable to the approximately 45-acre Mass Bay parcel, which does not permit residential use other than dormitories or faculty/staff housing, what dimensional and bulk regulations would the Commonwealth apply or require proposers to assume in responding to a DCAMM Request for Proposals (RFP) issued pursuant to the AHA?
17. Can a town adopt zoning to regulate uses and projects commenced pursuant to, and consonant with, the standards contained in, the AHA? If not, what is the legal basis for such an interpretation?
18. Can a town regulate the bulk and height of structures, yard sizes, lot area, setbacks, open space and building coverage requirements of uses and projects commenced pursuant to the AHA?
19. What is the standard under which administrative site plan review can be denied for AHA projects? Can such site plan review ever end in denial? If not, what is the legal basis for such an interpretation in relation to the AHA's allowance for the use of this municipal regulatory device or tool?
20. Can a municipality prohibit density above the 4-unit per acre baseline?
21. What is the legal basis for aggregating the number of units on a parcel under Section 122's density of 4 units per acre in an area that is less than the entire parcel?
22. How do physically/practicably unbuildable sections of land determined to be surplus (wetland areas, extreme slope, ledge, etc.) factor into calculating the total number of units that can be developed on a parcel, or in a particular aggregated area of a "surplus real property" parcel?
23. If it is HLC/DCAMM's position that unbuildable land, such as wetlands or land with extreme slope, ledge, etc., can be counted for purposes of calculating the total number of units that must be allowed as of right, what is the legal basis for that interpretation of the statute? For instance, HLC's regulations prohibit wetlands, water supply protection districts, and conservation areas from being included in local MBTA Communities zoning

districts under G.L. c. 40A, § 3A. What would be the basis for counting such areas with respect to the density floor contained in Section 122 of the AHA, or for aggregated subset area(s) of a “surplus real property” parcel?

Questions on other Land-Use Regulatory Authority:

The Town has received conflicting messages as to whether HLC/DCAMM understand that state and local laws and regulations (that are not zoning laws/regulations), which impact the use of land such as the Wetlands Protection Act, apply to land sold pursuant to the AHA.

24. Do the Wetlands Protection Act and local regulations promulgated thereunder remain applicable to land sold under the AHA? What about board of health regulations? The Building Code? If not, what is the statutory basis for that interpretation?

Practical Question Predicated on Residual Municipal Regulatory Authority:

25. Assuming that the AHA reserves some measure of local zoning and land use regulatory authority over end uses and projects, shouldn't any RFP be tailored to maximize the chance of, if not conditioned to mandate, compliance with lawful local standards?
26. Given the applicability of local dimensional standards discussed above, and assuming the AHA does not fully preempt local zoning and land use controls, is it DCAMM's expectation that an RFP be crafted in a manner that aligns proposed development with applicable local requirements, rather than inviting proposals that would require substantial zoning relief or override to proceed?

Questions about End Uses of the Project and Re-Use Restrictions:

The Town has questions and concerns about whether the end uses reflected by, and re-use restrictions contemplated for, the Project as presently proposed comport with the statute. Answers to the following questions would help to elucidate these issues:

Questions about End Uses:

Section 121(a) of AHA defines “housing purposes,” Section 121(b) empowers the commissioner to convey “surplus real property” only for “housing purposes,” and Section 121(d)(4) requires that “[a]ll surplus real property . . . be conveyed with a restriction for housing purposes[.]” Continued use by a state agency does not facially or textually meet the definition of “housing purposes” under the statute.

27. How does the proposal to use a portion of the Property for Mass Bay parking align with the statutory requirement that surplus land disposed of under the AHA be used solely for housing purposes?
28. What future uses of the Property does Mass Bay intend?
29. As part of the Project, DCAMM/HLC have proposed a concomitant benefit to be conferred on the Town, its residents and those members of the public who routinely use the ±40-acre woodland area of the Property, by suggesting this area would be protected in perpetuity via a conservation restriction. Would such a restriction violate the requirement that designated “surplus real property” be used for “housing purposes”?

Questions about Re-Use Restrictions:

Section 121(a) of the AHA expressly defines “affordable housing purposes” (consonant with the inclusionary housing provisions of the Town’s Zoning Bylaw) and includes “affordable housing purposes” explicitly within the definition of “housing purposes.”

30. What is the scope of “reuse restrictions” that may be imposed by DCAMM/HLC on a parcel disposed of under the AHA?
31. Are the foregoing textual references themselves sufficient legal basis for re-use restrictions to include an “affordable housing purposes” component as defined under the statute?
32. What types of reuse restrictions does DCAMM anticipate imposing on parcels sold under the AHA?
33. Can DCAMM, as tentatively proposed, impose a conservation restriction upon the surplus real property to be conveyed to a developer under the statute? Does the statute authorize this type of restrictive covenant to be imposed?

Questions about Traffic Mitigation:

As residents, the Select Board, Senator Creem, Representative Peisch, and Town staff have repeatedly advised DCAMM/HLC, the Town has profound concerns about traffic on the relevant stretch of Oakland Road leading to the intersection with State Highway Route 9. Answers to the following questions would be a good start in addressing these concerns:

34. Have or would DCAMM/HLC and Mass Bay condition acceptance of any bid for the Project on requiring that access to the relocated campus parking come directly from State Highway Route 9 rather than from Oakland Street (which already struggles to handle the existing traffic level)?
35. The Town anticipates that the Project will have significant traffic impacts, including on Route 9. How can MassDOT be required to engage with the Town on planning and mitigation (including potential expansion of the right of way from Mass Bay Campus land) sooner rather than later?
36. What will DCAMM/HLC do to ensure that the developer will work with the Town on traffic planning and mitigation in connection with the Project? Can DCAMM condition the acceptance of any offer made pursuant to an RFP upon the developer conducting a traffic study and committing to adequate mitigation under generally accepted traffic engineering principles?
37. Can DCAMM/HLC require a future developer of the Property to enter into a binding development agreement with the Town? If so, will DCAMM/HLC impose such a requirement upon the Project in any RFP?

The Town appreciates DCAMM’s and HLC’s commitment to considering and responding to these questions, looks forward to reviewing the Commonwealth’s complete and substantive responses in due course, and plans to follow up with further questions to continue a constructive dialogue with the Commonwealth. The Town’s and the Commonwealth’s interests, both intended to further the public interest, are intended to and should be aligned. It would be counterproductive and self-defeating if efforts to encourage these goals, reflected in the questions set forth in this

letter, received insufficient consideration or were not answered in full. The Town thanks DCAMM and HLC in advance and in anticipation of their thoughtful answers to its questions and stands ready to provide any further clarity requested to assist in providing such responses.

Sincerely,

Corey B. Testa
Assistant Executive Director
Town of Wellesley

Cc: Marjorie R. Freiman, Chair, Wellesley Select Board
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