

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING APPEALS COMMITTEE**

SURFSIDE CROSSING, LLC,

Appellant

v.

NO. 2019-07

NANTUCKET ZONING BOARD OF APPEALS, et al.

Appellees

**MOTION TO PRESERVE JURISDICTION OF THE EXECUTIVE OFFICE OF
ENERGY AND ENVIRONMENTAL AFFAIRS BY CONTINUING TRIAL UNTIL
SEPTEMBER 30, 2025**

Intervener Residents move for a continuance of the trial in this matter currently scheduled for September 24, 2025 until September 30, 2025. Intervenor Residents respectfully state that this Motion should be allowed for the following reasons.

1. A written petition by ten persons regarding the proposed development has been filed pursuant to 301 CMR 11.04. A true copy of the petition together with a map of the Environmental Justice area are attached to this Motion.
2. The Intervenor Residents have requested the Executive Office of Energy and Environmental Affairs (“EEA”) to exercise its Fail-Safe authority under 301 CMR 11.04, based on the significant potential environmental, health, and equity impacts this development poses especially to the Environmental Justice population that surrounds it.
3. This project is located in “Mid-Island,” which sits at the very center of a mapped EJ community and is the most heavily populated year-round area on Nantucket.

4. Under Massachusetts Chapter 40B, the Zoning Board of Appeals (ZBA) holds exclusive authority to review the project, acting in the capacity of all relevant municipal boards. This includes the Board of Health, the Water and Sewer Commissioners, the Planning Board, the Select Board (Nantucket's executive branch), and public safety departments such as Fire and Police.
5. The ZBA hearing in no way mentioned Environmental Justice ("EJ") community or could be viewed as EJ outreach by the developers. The fact that the version of the project appealed to the HAC was never brought before the ZBA is significant, and it is precisely this oversight that triggered multiple appeals to the Superior Court.
6. As outlined in the Superior Court's decision, the judge concluded that the project reviewed by the HAC was an entirely new proposal. As such, the Court ordered that it be remanded back to the ZBA for a de novo review. In Massachusetts, a de novo review refers to a complete re-evaluation of the case as if it had never been heard before, without deference to prior findings. This underscores the necessity for all aspects of the project to be considered anew.
7. In light of this, the current proposal must undergo a full MEPA review. The nature and scope of the project as a newly introduced development/project warrants a comprehensive environmental assessment.
8. By ignoring the EJ Law, both the developers and the HAC are violating the State law put in place to help protect the EJ communities of the Commonwealth. Governor Healey has been very clear about her commitment to protecting EJ communities: "Governor Healey has

proclaimed that EJ is at the heart of her climate efforts and that this EJ Strategy is a “significant step in identifying concrete ways to increase public participation and ensure the voices of marginalized communities are at the table”

9. Furthermore, the project’s receipt of funding from MassHousing, a state agency (which is one of the primary thresholds for such review) independently triggers the requirement for a full MEPA review, including the preparation of an EIR and an EJC review, neither which has happened.

10. 301 CMR 11.04(1) states:

“Upon written petition by one or more Agencies or ten or more Persons, or at the initiative of the Secretary, the Secretary may require a Proponent to file an ENF or undergo other MEPA review for a proposed program, regulations, policy, or other Project that does not meet or exceed any review thresholds unless all Agency Actions for the Project have been taken, ...”

11. 301 CMR 11.04(1) also states:

“Following such notice, a Participating Agency shall not take Agency Action on the Project unless and until the Secretary has issued a decision that the Project does not require the filing of an ENF or, if the Secretary requires an ENF, the Secretary has determined that an EIR is not required or the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor* in accordance with 301 CMR 11.15(2).”

12. 301 CMR 11.04(3) states:

“The Secretary shall issue a written decision stating whether the Proponent shall file an ENF or undergo other MEPA review within 20 Days of the latest of receiving a petition for fail-safe review, notifying the Proponent of the petition or initiative, or receiving any requested further information.”

13. Within a one-mile radius of the proposed development are five other affordable housing projects, all concentrated in the same area. This creates an overwhelming and disproportionate burden on one section of the island—an area home to working families, low-income households, and residents who often lack the time and resources to advocate for themselves.

14. The *Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs* dated June 24, 2021 states:

“It is the policy of the Executive Office of Energy and Environmental Affairs that environmental justice principles shall be an integral consideration, to the extent applicable and allowable by law, in making any policy, making any determination or other action related to a project review, in undertaking any project pursuant to M.G.L. c. 30 sections 61 through 62J, inclusive, and related regulations that are likely to affect environmental justice populations, and in the implementation of all EEA programs, ...”

Intervener Residents respectfully request that this Motion be allowed for the reasons stated above.

15. The trial in this matter should be stayed until September 30, 2025 in order to allow the 20 days required by 301 CMR 11.04(3) for the Secretary to issue a written decision regarding the written petition.

Dated: September 23, 2025

Respectfully submitted,

Christopher Meredith, et al
Intervener Residents
By their attorney,

/s/ Paul R. DeRensis

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CERTIFICATE OF SERVICE

I, Paul R. DeRensis, hereby certify that a true copy of the foregoing *Intervener Residents' Motion to Preserve Jurisdiction of the Executive Office of Energy and Environmental Affairs By Continuing Trial Until September 30, 2025* was served upon the following attorneys of record for the parties by **Electronic Mail** on September 23, 2025:

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