

301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

301 CMR 11.00: MEPA REGULATIONS

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11.01: General Provisions

(1) Authority and Purpose.

(a) General. 301 CMR 11.00 is promulgated to create a uniform system for compliance with the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 ~~through 62L-et-seq.~~ (MEPA). The purpose of MEPA and 301 CMR 11.00 is to provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required, and to assist each Agency in using (in addition to applying any other applicable statutory and regulatory standards and requirements) all feasible means to avoid Damage to the Environment ~~and related public health impacts~~ or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment ~~and related public health impacts~~ to the maximum extent practicable. ~~Consistent with M.G.L. c. 30, § 62K, the MEPA review process shall consider Environmental Justice Principles to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations.~~

(b) MEPA Review. MEPA review is an informal administrative process that is intended to involve any interested Agency or Person as well as the Proponent and each Participating Agency. The Secretary conducts MEPA review in response to one or more review documents prepared and filed by a Proponent. The Secretary's decision that a review document is adequate or that there has been other due compliance with MEPA and 301 CMR 11.00 means that the Proponent has adequately described and analyzed the Project and its alternatives, and assessed its potential environmental impacts and mitigation measures. A Participating Agency retains authority to fulfill its statutory and regulatory obligations in permitting or reviewing a Project that is subject to MEPA review, which does not itself result

in any formal adjudicative decision approving or disapproving a Project. Consistent with M.G.L. c. 30, § 62K, the Secretary and all EEA agencies must consider Environmental Justice Principles in implementing MEPA review. Accordingly, MEPA review shall be conducted in a manner that provides sufficient disclosures to allow for a full consideration of Environmental Justice Principles in order to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations.

(c) MEPA and Agency Actions. MEPA review is intended to inform the Proponent and each Participating Agency, to maximize consistency between Agency Actions, and to facilitate coordination of all environmental and development review and permitting processes of the Commonwealth. It provides an opportunity in one or more review documents for the Proponent to identify required Agency Actions and describe and analyze how the Project complies with applicable regulatory standards and requirements. Each Participating Agency shall review the MEPA submittals and specify any aspects of the Project or issues regarding its Agency Action that require additional description or analysis (beyond that already provided in the review documents or any application for a Permit, Financial Assistance, or a Land Transfer) to enable it to take Agency Action on the Project or fulfill its obligations in accordance with M.G.L. c. 30, § 61 and M.G.L. c. 30, § 62K. The Secretary may specify in the certificate on a review document any appropriate consultation by and between the Proponent and each Participating Agency and may hold informational meetings prior to or during MEPA review to ensure appropriate consultation.

(d) MEPA and Environmental Planning. MEPA review is intended to facilitate environmental planning for Projects requiring Agency Action, including an Agency's programs, regulations, or policies. It enables the Proponent and each Participating Agency to consider the positive and negative, short-term and long-term potential environmental and public health impacts for all phases of a Project, and the cumulative impacts of the Project and any other Project or other work or activity in the immediate surroundings and region. It also enables an Agency to consider the cumulative impacts of Projects requiring individual Agency Actions taken in accordance with each of its programs, regulations and policies that may not otherwise be subject to adequate MEPA review or that may have similar environmental impacts such that a common assessment may be necessary or appropriate.

~~MEPA review provides opportunities for meaningful public involvement by impacted communities, including Environmental Justice Populations, in Agency decision-making, and promotes information-gathering and analysis to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations.~~ MEPA review can influence the planning and design of a program, regulations, policy, or other Project to enable an Agency to achieve these goals, provided that MEPA review is initiated sufficiently early and in any event prior to the Proponent finalizing or otherwise irreversibly committing to the program, regulations, policy, or other Project.

(2) Applicability.

(a) Jurisdiction.

1. MEPA establishes jurisdiction over: a Project undertaken by an Agency; those aspects of a Project within the subject matter of any required Permit; a Project involving Financial Assistance; and those aspects of a Project within the area of any Land Transfer. MEPA jurisdiction determines the Scope, if an EIR is required.

2. MEPA jurisdiction is broad when a Project is undertaken by an Agency or involves

Financial Assistance. Broad, or full scope, jurisdiction means that the Scope, if an EIR is required, shall extend to all aspects of a Project that are likely, directly or indirectly, to cause Damage to the Environment ~~and related public health impacts~~.

3. MEPA jurisdiction is limited when a Project is undertaken by a Person and requires one or more Permits or involves a Land Transfer, but does not involve Financial Assistance. Limited, or subject matter, jurisdiction means that the Scope, if an EIR is required, shall be limited to those aspects of the Project within the subject matter of any required Permit or within the area subject to a Land Transfer that are likely, directly or indirectly, to cause Damage to the Environment ~~and related public health impacts~~. Subject matter jurisdiction may be functionally equivalent to full scope jurisdiction in the case of a Project, for example, requiring a Chapter 91 License or involving a Land Transfer of the entire Project site. Subject matter jurisdiction may be limited to a particular structure, facility or activity and its direct and indirect environmental impacts in the case of a Project, for example, requiring a Sewer Extension/Connection Permit or involving a Land Transfer of a discrete portion of the Project site on which the access roadway is proposed.

(b) Review Thresholds.

1. 301 CMR 11.00 establishes review thresholds that identify categories of Projects or aspects thereof, of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required.

2. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (*i.e.*, the Project is undertaken by an Agency or involves Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer.

3. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document.

(c) Segmentation In determining whether a Project is subject to MEPA jurisdiction or meets or exceeds any review thresholds, and during MEPA review, the Proponent, any Participating Agency, and the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review. The Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether

various work or activities constitute one Project including, but not limited to, whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative. Examples of work or activities that constitute one Project include work or activities that:

1. meet or exceed one or more review thresholds on an area previously subject to a Land Transfer, provided that not more than five years have elapsed between the Land Transfer and the work or activities; and
2. construct more than one structure (such as more than one single family dwelling) and appurtenant structures, facilities, and other improvements on a site, unless a plan for the subdivision or other legal division creating or allowing separate lots or parcels was definitively approved or endorsed in accordance with applicable statutes and regulations prior to the effective date of 301 CMR 11.00.

(3) Relation to Other Authority.

(a) Information regarding Other Authority. The Secretary may require a Proponent to provide information regarding a Project's consistency or compliance with any applicable Federal, municipal, or regional statutes and regulations. MEPA and 301 CMR 11.00 do not give the Secretary authority to make any formal determination regarding such consistency or compliance.

(b) Applicability of Other Authority. MEPA and 301 CMR 11.00 do not alter the review or permitting authority of any Agency or any Federal, municipal, or regional governmental entity over, or otherwise alter the applicability of any statutes and regulations to, a Project.

(4) General Procedure.

(a) ENF. If a Project is subject to MEPA jurisdiction and either it meets or exceeds one or more review thresholds or the Secretary requires fail-safe review, the Proponent begins MEPA review by preparing and filing an ENF with the Secretary. The Secretary publishes the appropriate pages of the ENF in the next *Environmental Monitor*. A 30-Day review period follows, during the first 20 Days of which Agencies, Persons, the MEPA Office (which ordinarily conducts a site visit and public consultation session), and the Secretary review and/or comment on the ENF. At the close of the review period for an ENF, the Secretary decides whether to require an EIR. If the Secretary does not require an EIR, an Agency may take Agency Action on the Project (*see* 301 CMR 11.05 and 11.06).

(b) EIR. If the Secretary requires an EIR, the Proponent prepares and files it with the Secretary. The Secretary shall ordinarily require a draft and final EIR, but may allow a single or rollover EIR. The Secretary publishes notice of the availability of the EIR in the next *Environmental Monitor*. A 37-day review period follows, during the first 30 Days of which Agencies, Persons, the MEPA Office, and the Secretary review and/or comment on the EIR. At the close of the review period, the Secretary decides whether the EIR is adequate, and must consider Environmental Justice Principles in making this determination. An Agency may take Agency Action on the Project, provided that 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* (*see* 301 CMR 11.07 and 11.08).

(c) Section 61 Findings. An Agency that takes Agency Action on a Project for which the Secretary required an EIR:

1. issues Section 61 Findings that specify, based on the EIR, all feasible means to be used to avoid Damage to the Environment ~~and related public health impacts~~, or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment ~~and related public health impacts~~ to the maximum extent practicable;
2. if applicable, includes in its Section 61 Findings any and all actions to be taken to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations;
32. makes its Section 61 Findings part of the Permit or other document allowing or approving the Agency Action; and
43. files a copy of its Section 61 Findings with the MEPA Office (*see* 301 CMR 11.12(5)).

(5) Administration.

(a) Authority of Assistant Secretary. The staff of the Secretary that carries out day-to-day administration of MEPA and 301 CMR 11.00 is organized as the MEPA Office, under the direction of the Assistant Secretary of Energy and Environmental Affairs, who is also known as the MEPA Director. The Secretary may delegate to the Assistant Secretary any of the Secretary's authority in accordance with MEPA and 301 CMR 11.00 that the Secretary deems appropriate. Any certificate, determination, or other document executed by the Assistant Secretary in accordance with the delegation shall be deemed the valid and duly authorized certificate, determination, or other document of the Secretary.

(b) Responsibilities of MEPA Office. The MEPA Office is responsible for: responding to inquiries from Proponents and other Agencies and Persons; reviewing documents filed in accordance with MEPA and 301 CMR 11.00; conducting site visits and public consultation sessions; ensuring adequate prior public notice of site visits, public consultation sessions, and comment periods, and meaningful opportunities for public review of review documents; coordinating with any Agency that expects to take Agency Action on a Project; preparing drafts of certificates, determinations, and other documents for the Secretary; and maintaining publicly accessible files that contain the complete administrative record on which the Secretary's decisions in certificates, determinations, and other documents are based.

(6) Advisory Opinion.

(a) Request for Advisory Opinion. In case of doubt as to the meaning or applicability of any provision or requirement in MEPA or 301 CMR 11.00 (including whether an entity is an Agency, whether a decision or action is Agency Action, whether a Project is subject to MEPA jurisdiction, or whether a Project meets or exceeds one or more review thresholds) an Agency or Person may request an advisory opinion of the Secretary in accordance with M.G.L. c. 30, § 8, and 301 CMR 11.00.

(b) Decision on Advisory Opinion. The Secretary shall respond within 20 Days of receiving a request for an advisory opinion either with a request for further information or with the advisory opinion, unless the Secretary publishes notice of the request in accordance with 301 CMR 11.01(6)(c). If the Secretary requests further information, the Secretary shall provide the advisory opinion 20 Days of receiving the requested information.

(c) Public Comment on a Request for an Advisory Opinion. In the case of a request for an advisory opinion concerning Routine Maintenance or a Replacement Project, the Secretary

shall, and in all other cases, the Secretary may: publish notice of the request in the next *Environmental Monitor* and receive into the record, within 20 Days following publication of the notice of the request (unless extended by the Secretary with the consent of the Proponent), written comments from any Agency or Person concerning the request. The Secretary shall provide the advisory opinion within 20 Days after the close of the comment period.

11.02: Definitions

(1) Undefined Terms. As used in 301 CMR 11.00, any term not defined in accordance with 301 CMR 11.02(2) shall have the meaning given to the term by any statutes, regulations, executive orders or policy directives governing the subject matter of the term. Examples include a term pertaining to:

(a) wetlands, which is defined by the Wetlands Protection Act, M.G.L. c. 131 § 40, and its implementing regulations, 310 CMR 10.00: *Wetlands Protection*, and 33 USC 1341 and 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth* regarding Water Quality Certification, as well as other statutes, regulations, executive orders, or policy directives that govern wetlands issues; and

(b) roadways or traffic, which is defined by the Massachusetts Department of Transportation Highway Division at 720 CMR 13.00: *Approval of Access to State Highways*.

(2) Defined Terms. As used in 301 CMR 11.00, the following terms shall have the following meanings:

Agency.

(a) Any agency, department, board, commission, or authority of the Commonwealth.

(b) Agency shall not be considered to include a Federal, municipal, or regional agency, department, board, commission or authority, unless it is:

1. a municipal redevelopment agency created or acting in accordance with M.G.L. c. 121A or c. 121B; or

2. any other authority of any political subdivision of the Commonwealth that is created or acting specifically as an authority in accordance with applicable statutes.

Agency Action.

(a) In the case of a Project undertaken by an Agency, any formal and final authorization, appropriation, execution of a contract or other decision by the Agency to proceed to Commencement of a Project.

(b) In the case of a Project undertaken by a Person, any formal and final action taken by an Agency in accordance with applicable statutes and regulations that grants a Permit, provides Financial Assistance, or closes a Land Transfer.

(c) Agency Action is not final if the Permit, contract or other relevant document approving or allowing the Agency Action contains terms such as a condition or restriction that provides that such Agency Action shall be deemed not to have taken place, unless and until the Secretary has determined that:

1. no EIR is required; or

2. a single or final EIR is adequate and 60 Days have elapsed following publication of notice of the availability of the single or final EIR in the *Environmental Monitor* in accordance with 301 CMR 11.15(2), provided that the Agency shall reconsider and confirm or modify the Agency Action and any conditions thereof following completion of MEPA review.

(d) Agency Action is final even if subject to subsequent judicial or administrative appeal.

Archaeological Site. Any location of a significant event, prehistoric or historic occupation or activity, or building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value, regardless of the value of any existing building or structure.

Capacity.

(a) Design capacity, *i.e.*, the maximum capacity for which a facility or system is designed and at which a facility or system can operate, regardless of statutory, regulatory, contractual or other conditions or restrictions.

(b) Daily Capacity shall be considered maximum Capacity on any given Day of operation and not an annual average.

Carbon Dioxide (CO₂) Equivalent. The amount of carbon dioxide by weight that would produce the same amount of global warming impact as a given weight of another greenhouse gas, based on the best available science, including information from the Intergovernmental Panel on Climate Change.

Commonwealth. The Commonwealth of Massachusetts.

Commencement of Construction.

(a) Initiation of on-site physical or construction work or activity.

(b) Research, design, or other work or activity necessary to evaluate a Project for purposes of MEPA and 301 CMR 11.00 and other environmental statutes or regulations shall not be considered Commencement of Construction.

Commencement of a Project.

(a) The earliest of:

1. initiation of the operational phase of the Project;
2. Commencement of Construction; or
3. initiation of any preparatory phase of the Project, including any action or expenditure of funds on the financing, marketing, or development of the Project.

(b) Research, design, or other work or activity necessary to evaluate a Project for purposes of MEPA and 301 CMR 11.00 and other environmental statutes or regulations shall not be considered Commencement of a Project.

Damage to the Environment. Any destruction, damage or impairment (not including insignificant ~~destruction~~, damage or impairment), actual or probable, to any of the natural resources of the Commonwealth including, but not limited to, air pollution, GHG emissions, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, reduction of groundwater levels, impairment of water quality,

increases in flooding or storm water flows, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites.

Day.

(a) Calendar day.

(b) If the deadline for the Secretary to issue a certificate, determination, or other document, or for an Agency to take Agency Action, or for any Agency or Person to file comments, notices, or review documents in accordance with MEPA and 301 CMR 11.00 falls on a Saturday, Sunday or legal holiday, the deadline shall be considered to fall on the next business day.

Designated Geographic Area.

(a) With respect to a Project, the area within one mile of the Project; or, for a Project that meets or exceeds MEPA review thresholds at 301 CMR 11.03(8)(a)-(b) or that generates 150 or more New adt of diesel vehicle traffic over a duration of 1 year or more, excluding public transit trips, the area within five miles of the Project.

(b) With respect to an Environmental Justice Population, the area within one mile of the Environmental Justice Population; or, for a Project that meets or exceeds MEPA review thresholds at 301 CMR 11.03(8)(a)-(b) or that generates 150 or more New adt of diesel vehicle traffic over a duration of 1 year or more, excluding public transit trips, the area within five miles of the Environmental Justice Population.

Environmental Benefits. Access to clean natural resources, including air, water resources, open space, constructed playgrounds and other outdoor recreational facilities and venues, clean renewable energy sources, environmental enforcement, training and funding disbursed or administered by the executive office of energy and environmental affairs.

Environmental Burden. Any destruction, damage or impairment (not including insignificant destruction, damage or impairment) of any of the natural resources of the Commonwealth, resulting from intentional or reasonably foreseeable causes including, but not limited to, climate change, air pollution, water pollution, improper sewage disposal, dumping of solid wastes and other noxious substances, excessive noise, activities that limit access to natural resources and constructed outdoor recreational facilities and venues, inadequate remediation of pollution, reduction of ground water levels, impairment of water quality, increased flooding or storm water flows, and damage to inland waterways and waterbodies, wetlands, marine shores and waters, forests, open spaces, and playgrounds from private industrial, commercial or government operations or other activity that contaminates or alters the quality of the environment and poses a risk to public health.

Environmental Justice Population. ~~As defined in M.G.L. c. 30, § 62, including any Neighborhood designated or not designated by the Secretary under said section, unless amended upon the recommendation of the environmental justice council created under M.G.L. c. 30, § 62L.~~

(a) A Neighborhood that meets one or more of the following criteria:

1. the annual median household income is not more than 65% of the statewide annual median household income;
 2. minorities comprise 40% or more of the population;
 3. 25% or more of households lack English language proficiency;
 4. minorities comprise 25% or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income;
- or
- (b) a geographic portion of a Neighborhood designated by the Secretary as an Environmental Justice Population pursuant to M.G.L. c. 30, § 62; provided, however, that a Neighborhood or a geographic portion of a Neighborhood that the Secretary has determined shall not be designated an Environmental Justice Population pursuant to M.G.L. c. 30, § 62 shall not be considered an Environmental Justice Population under 301 CMR 11.00.

Environmental Justice Principles. Principles that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes:

- (a) the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies; and
- (b) the equitable distribution of energy and environmental benefits and environmental burdens.

Expansion. Any material increase in Capacity, demand on infrastructure, or physical dimensions of a Project or frequency of activity associated with the Project.

Financial Assistance.

- (a) Any direct or indirect financial aid to any Person provided by any Agency including, but not limited to, mortgage assistance, special taxing arrangements, grants, issuance of bonds, loans, loan guarantees, debt or equity assistance, and the allocation of Commonwealth or Federal funds.
- (b) Financial Assistance shall not be considered to include:
 1. the grant of aid for medical services or personal support, such as welfare or unemployment funds, to an individual or third party on behalf of an individual;
 2. pass-through of Federal funds or issuance of bonds solely on behalf of a local economic development or financing agency, without allocation by an Agency; or
 3. routine staff assistance.

Greenhouse Gas (GHG). Includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Historic Structure or District. Any historic property, landmark, building, structure, or district that is significant to the history or prehistory of the Commonwealth, its counties, or municipalities.

Land Transfer.

(a) The execution and delivery by an Agency of any deed, lease, license or other document that transfers real property or an interest in real property.

(b) For purposes of review thresholds, Land Transfer shall not be considered to include the execution and delivery of a deed, lease or license to continue a preexisting lawful use on a Project site, or amendments or extensions thereof.

MEPA Office. The Secretary's staff that carries out day-to-day administration of MEPA and 301 CMR 11.00.

Neighborhood. A census block group as defined by the United States Census Bureau, excluding people who live in college dormitories and people who are under formally authorized, supervised care or custody, including federal, state or county prisons.

New. Any work or activity that is not:

(a) existing;

(b) being carried out currently as part of, used by, or generated by a previous, actual or permitted use of the Project site; or

(c) being carried out within three years since the later of discontinuance of the previous use or issuance of the relevant Permit.

Participating Agency. Any Agency to which the Proponent has made or will make an application for a Permit, Financial Assistance, or a Land Transfer.

Permit.

(a) Any permit, license, certificate, variance, approval, or other entitlement for use, granted by an Agency for or by reason of a Project.

(b) Permit shall be considered to include an entitlement for use granted by an Agency in accordance with delegated authority in accordance with Federal environmental statutes or regulations (including certification of compliance with the statutes and regulations).

(c) Permit shall not be considered to include a general entitlement to a Person to carry on a trade or profession, or to operate mechanical equipment which does not depend upon the location of such trade or operation.

(d) For purposes of review thresholds, Permit shall not be considered to include:

1. a consent order or agreement to the extent it addresses noncompliance with applicable statutes and regulations and does not allow or approve a New Project or an Expansion of a Project;

2. a general or programmatic permit, license, certificate, variance or approval applying to a category of Projects rather than to each individual Project;

3. a permit, license, certificate, variance or approval by rule or by self-certification of compliance; and

4. a permit, license, certificate, variance, or approval to continue a preexisting lawful use on a Project site, or amendments or extensions thereof.

Person. Any individual, corporation, partnership, trust, association, or other business or nonprofit organization, or any Federal, municipal, or regional governmental, intergovernmental or other entity that is not an Agency.

Project. Any work or activity that is undertaken by:

- (a) an Agency; or
- (b) a Person and requires a Permit or involves Financial Assistance or a Land Transfer.

Proponent. Any Agency or Person, including a designee or successor in interest, that undertakes, or has a significant role in undertaking, a Project.

Replacement Project. Any Project to repair, replace, or reconstruct a previous use of or Project on a Project site that does not:

- (a) increase potential environmental impacts or need additional or changed environmental Permits; or
- (b) result in any substantial (10% or more) Expansion of the use or Project, provided that the previous use or Project has not been discontinued for more than three years and that the Expansion does not meet or exceed any review thresholds.

Routine Maintenance. Any maintenance work or activity carried out on a regular or periodic basis in a manner that has no potential for Damage to the Environment or for which performance standards have been developed that avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable.

Scope. The written certificate issued by the Secretary in accordance with 301 CMR 11.06(7) that specifies the form, content, level of detail, and alternatives required for an EIR.
Secretary. The Secretary of Energy and Environmental Affairs.

Section 61 Findings. The determinations and findings that an Agency shall make in accordance with M.G.L. c. 30, § 61, and 301 CMR 11.12(5) prior to or when taking Agency Action on a Project for which the Secretary required an EIR.

Stationary Source. Any individual stationary piece of equipment from which any air pollutant or greenhouse gas is emitted to the ambient air, or any other stationary emission point.

(3) Abbreviations and Acronyms. As used in 301 CMR 11.00, the following abbreviations and acronyms shall have the following meanings:

adt Average Daily Trips.

ACEC Area of Critical Environmental Concern.

CAC Citizens Advisory Committee.

CO₂ Carbon dioxide.

cy Cubic yards.

ENF Environmental Notification Form.

EIR Environmental Impact Report.

GHG Greenhouse Gas.

gpd Gallons per day.

HAP Hazardous Air Pollutant.

kv Kilovolts.

MEPA The Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 ~~through 62L-*et*~~

~~seq-~~

MW Megawatts.

No_x Oxides of Nitrogen.

PM₁₀ Particulate matter less than or equal to 10 microns in diameter.

PM 2.5 Particulate matter less than or equal to 2.5 microns in diameter.

sf Square feet.

SO₂ Sulfur Dioxide.

tpd Tons per day.

tpy Tons per year.

VOC Volatile Organic Compound.

11.03: Review Thresholds

The review thresholds identify categories of Projects or aspects thereof of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (*i.e.*, the Project is undertaken by an Agency or involves Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document. The review thresholds are the following:

(1) Land.

(a) ENF and Mandatory EIR.

1. Direct alteration of 50 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.

2. Creation of ten or more acres of impervious area.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.

2. Creation of five or more acres of impervious area.

3. Conversion of land held for natural resources purposes in accordance with the Amendments to the Constitution of the Commonwealth Article 97 to any purpose not in

accordance with Article 97.

4. Conversion of land in active agricultural use to nonagricultural use, provided the land includes soils classified as prime, state-important or unique by the United States Department of Agriculture, unless the Project is accessory to active agricultural use or consists solely of one single family dwelling.

5. Release of an interest in land held for conservation, preservation or agricultural or watershed preservation purposes.

6. Approval in accordance with M.G.L. c. 121A of a New urban redevelopment project or a fundamental change in an approved urban redevelopment project, provided that the Project consists of 100 or more dwelling units or 50,000 or more sq. ft. of nonresidential space.

7. Approval in accordance with M.G.L. c. 121B of a New urban renewal plan or a major modification of an existing urban renewal plan.

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11.05: ENF Preparation and Filing

(1) Filing and Circulation Requirements. If a Project requires MEPA review in accordance with 301 CMR 11.01(2), the Proponent shall complete an ENF and file it with the Secretary. Prior to or when filing the ENF with the Secretary, the Proponent shall circulate copies of the ENF in accordance with 301 CMR 11.16(2) and publish a Public Notice of Environmental Review in accordance with 301 CMR 11.15(1). The Proponent's failure to circulate the ENF or publish the Public Notice properly shall allow the Secretary to require an extension or repetition of the ENF review. The Secretary may reject an incomplete ENF, in which case the Secretary shall notify the Proponent, who shall file and circulate a new ENF and publish a new Public Notice.

(2) Timely Filing. In all cases, the Proponent shall file the ENF sufficiently prior to Commencement of the Project and any required Agency Action to allow timely compliance with MEPA and 301 CMR 11.00 including analysis of alternatives, consideration of cumulative environmental impacts, and providing meaningful opportunities for public review. In the case of a Project undertaken by an Agency, the Proponent shall ordinarily file the ENF not less than one year prior to the expected Commencement of the Project, and in any event prior to the Agency's finalizing the design or making an irreversible commitment of financial resources to the Project. In the case of a Project that is undertaken by a Person and requires one or more Permits or involves Financial Assistance but does not involve a Land Transfer, the Proponent shall file the ENF at any time prior to but no later than ten Days after filing the first application for a Permit or Financial Assistance. In the case of a Project that is undertaken by a Person and involves a Land Transfer, the Proponent shall file the ENF prior to closing the Land Transfer unless the Land Transfer is not final Agency Action in accordance with 301 CMR 11.02(2). The Proponent may consult with the Secretary for specific advice as to when to file the ENF.

(3) Consultation. Prior to filing the ENF, the Proponent may consult with the Secretary and any Participating Agency to determine any review thresholds the Project may meet or exceed and any Agency Action it may require, and to avoid unnecessary MEPA review if the Project may not be eligible for the required Agency Action.

(4) Environmental Justice Populations.

(a) If a Project requires MEPA review in accordance with 301 CMR 11.01(2) and one or more Environmental Justice Populations are located within the Designated Geographic Area around the Project, the Proponent shall undertake measures to provide public involvement opportunities for such Environmental Justice Populations.

(b) A Proponent shall provide advance notification of a Project, in a form determined by the MEPA Office, to the MEPA Office and organizations and individuals based on recommendations by the EEA Environmental Justice Director, for any Project that is required to file an EIR in accordance with 301 CMR 11.06(7)(b), and either meets or exceeds mandatory EIR thresholds or intends to request that the Secretary allow a Single EIR in accordance with 301 CMR 11.06(8) or a rollover EIR in accordance with 301 CMR 11.06(13). Such advance notification shall be provided no later than 45 Days, and no earlier than 90 Days, prior to filing the ENF.

(c) The Proponent's failure to provide advance notification as required herein shall allow the Secretary to require an extension or repetition of the ENF review. The Secretary may also reject an ENF as incomplete if the Proponent has failed to provide advance notification as required, or has undertaken no measures to provide public involvement opportunities for Environmental Justice Populations prior to filing the ENF.

(d) Any project consisting of one single family home shall be exempt from the requirements of this 301 CMR 11.05(4).

(54)(a) Description of the Project and Potential Impacts. The ENF shall include a concise but accurate description of the Project and its alternatives, identify any review thresholds the Project may meet or exceed and any Agency Action it may require, present the Proponent's initial assessment of potential environmental impacts, propose mitigation measures, indicate whether the Project is reasonably likely to negatively affect any Environmental Justice Population located in whole or in part within the Project's Designated Geographic Area and what measures were taken prior to the filing of the ENF to provide meaningful opportunities for public involvement by such Environmental Justice Populations, and may include a proposed Scope. The ENF shall also identify all languages spoken by five percent or more of residents who identify as not speaking English very well in any census tract that is located in whole or in part within the Designated Geographic Area around the Project. The ENF shall indicate whether the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent shall not limit description of the Project or assessment of its potential environmental and public health impacts on account of any jurisdictional or other limitation that may apply to the Scope, if an EIR is required. The ENF shall separately assess potential environmental and public health impacts and proposed mitigation. The ENF shall identify the sources on which the assessments are based.

(b) If the Project is located in landlocked tidelands as defined in 310 CMR 9.02, the ENF shall include an explanation of the Project's impact on the public's right to access, use, and enjoy tidelands that are protected by chapter 91 and shall identify measures to avoid, minimize, or mitigate any adverse impact on those rights. If the Project is located in landlocked tidelands and an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, the ENF shall also include an explanation of the Project's impact on groundwater levels and identify and

commit to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The ENF shall also describe the Project's compliance with any municipal regulations designed to protect groundwater levels. The Proponent may combine the information provided under 301 CMR 11.05(4)(b) with the information provided under 301 CMR 13.03.

(c) For Projects in tidelands other than landlocked tidelands, follow 310 CMR 13.00.

~~(d) For Projects located within five miles of one or more Environmental Justice Populations, the Proponent shall provide, as an attachment to the ENF under 301 CMR 11.05(6), a printout of a map showing Environmental Justice Populations within a one-mile and five-mile radius of the Project site. The ENF shall also provide a narrative describing whether the Project is reasonably likely to negatively affect Environmental Justice Populations within one mile of the Project site, and within five miles if the Project impacts air quality; provided, that the Project shall be determined to impact air quality if it meets or exceeds MEPA review thresholds under 301 CMR 11.03(8)(a) and (b) or generates 150 or more New adt of diesel vehicle traffic over a duration of one year or more. If the Project is determined to be reasonably likely to have negative effects within a one-mile or five-mile radius of the Project site, the Proponent must provide meaningful opportunities for public involvement by Environmental Justice Populations within such geographical areas. In complying with this 301 CMR 11.05(4)(d), the Proponent shall consult the MEPA Protocol for Public Involvement for Environmental Justice Populations, as it may be amended from time to time, and may consult with the Secretary for specific advice as to the form and content of the ENF or measures to be taken to promote public involvement by Environmental Justice Populations.~~

~~(de)~~ The information provided in the ENF shall be designed to facilitate consultation, and elicit comments identifying any relevant and significant issues, and identify any additional measures to be used to provide opportunities for public involvement by Environmental Justice Populations located in whole or in part within the Designated Geographic Area around the Project. The Proponent's submission of a proposed Scope with the ENF shall not mean that the Proponent believes an EIR is required or that the Secretary will require an EIR. The Proponent's assessment of potential environmental and public health impacts or proposed Scope shall not limit the Secretary's discretion in determining the Scope.

~~(65)~~ The ENF. The Secretary shall prescribe the form and content of the ENF, which shall be available from the MEPA Office. The Proponent shall complete the ENF in accordance with 301 CMR 11.00 and any instructions provided on or with the ENF, and shall use an original or full-sized photocopy or other version of the ENF expressly approved by the Secretary. The Secretary may from time to time modify the ENF or instructions, provided that the Secretary shall first publish the modified form or instructions in the *Environmental Monitor* and shall at the same time specify the effective date of the modified ENF or instructions.

~~(76)~~ Required ENF Attachments. The Proponent shall attach to the ENF an original United States Geologic Survey Map or other location map expressly approved by the Secretary that includes and indicates the Project site, a site plan at an appropriate scale and level of detail, a map depicting all Environmental Justice Populations within five miles of the Project site, and

a list of all Agencies and Persons to whom the Proponent circulated the ENF in accordance with 301 CMR 11.16(2).

(87) Expanded ENF. In addition to filing a completed ENF and the required attachments, the Proponent may file more extensive and detailed information describing and analyzing the Project and its alternatives, and assessing its potential environmental and public health impacts and mitigation measures. ~~The expanded ENF may also contain the content required in 301 CMR 11.07(6)(n).~~ The Proponent may provide this additional information whenever it is available. The Proponent shall provide this additional information when the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent may refer to 301 CMR 11.07(6) for guidance and may consult with the Secretary for specific advice as to the form and content of this additional information. The Secretary shall duly consider this additional information in the ENF, although it shall not limit the Secretary's discretion to determine the Scope. A Proponent who files an expanded ENF requesting a single EIR or Special Review Procedure shall be deemed to consent to an extension of the ENF review period in accordance with 301 CMR 11.06(1) and of the ENF public comment period in accordance with 301 CMR 11.06(3).

(9) Dual Expanded ENF and Proposed EIR. For any Project required to file an EIR in accordance with 301 CMR 11.06(7)(b), the Proponent may file a dual Expanded ENF and Proposed EIR which contains, in addition to a completed ENF and the required attachments, a Proposed EIR following the form and content of 301 CMR 11.07(6) that describes and analyzes the Project and its alternatives, assesses its potential environmental and public health impacts and mitigation measures, and contains the analysis required in 301 CMR 11.07(6)(n). For a Project seeking to qualify in its entirety as an Ecological Restoration Project under the Wetlands Protection Act and implementing regulations at 310 CMR 10.00, the Proponent may provide the analysis in 301 CMR 11.07(6)(n) in a checklist format as determined by the Secretary. The Proponent may file a dual Expanded ENF and Proposed EIR when requesting that the Secretary allow a rollover EIR in accordance with 301 CMR 11.06(13). A Proponent who files a dual Expanded ENF and Proposed EIR requesting a rollover EIR shall be deemed to consent to an extension of the ENF review period in accordance with 301 CMR 11.06(1) and of the ENF public comment period in accordance with 301 CMR 11.06(3).

(108) Voluntarily Filed ENF. The Proponent may voluntarily file an ENF and, with the Secretary's consent, undergo MEPA review for a Project that does not meet or exceed any review thresholds. Once the Secretary publishes the ENF in the *Environmental Monitor* in accordance with 301 CMR 11.15(2), the Proponent may withdraw the ENF only with the Secretary's consent.

(119) Enforcement Actions. If an Agency's ability to undertake an action enforcing its statutory or regulatory obligations is impeded by the failure of a Proponent to file an ENF, the Agency may, with the consent of the Secretary and after 30 Days prior written notice to the Proponent, file an ENF on behalf of the Proponent.

11.06: ENF Review and Decision

(1) Publication and Review Period. Upon receiving and accepting the ENF, the Secretary shall publish the appropriate pages of the ENF in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the ENF review period. The ENF review period lasts for 30 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. The review period for an expanded ENF requesting a single EIR, rollover EIR, or Special Review Procedure lasts for 37 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent.

(2) Consultation and Investigation. After receiving and accepting an ENF, the Secretary shall review the ENF and may review relevant information from any other source to determine whether to require an EIR, and, if so, what to require in the Scope. The Secretary shall ordinarily schedule with the Proponent a site visit and public consultation session to review the Project and discuss its alternatives, its potential environmental impacts and mitigation measures. The Proponent shall be required to provide accompanied public access to the Project site during the site visit and public consultation session, unless such access is infeasible for public safety reasons or protection of proprietary information. Any Agency or Person may inquire of the MEPA Office as to the date, time, and location of the consultation session. The Proponent shall consult with the MEPA Office about additional measures to be taken during the site visit and public consultation session to provide meaningful opportunities for public involvement by Environmental Justice Populations.

(3) Public Comment Period, Extensions, Late Comments. After receiving and accepting an ENF, the Secretary shall receive into the record written comments from any Agency or Person, concerning the Project, its alternatives, its potential environmental and public health impacts, mitigation measures, and whether to require an EIR and, if so, what to require in the Scope. Comments shall be filed with the Secretary within 20 Days following publication of the ENF in the *Environmental Monitor*, unless the public comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. If the Proponent has filed an expanded ENF requesting a single EIR, rollover EIR, or a Special Review Procedure in accordance with 301 CMR 11.05(7), comments shall be filed within 30 Days following publication of the ENF in the *Environmental Monitor*, unless the comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. An extension shall not ordinarily exceed 30 Days. The Secretary may accept a late comment, provided it is received prior to the Secretary's decision on the ENF.

(4) Agency Review An Agency shall review an ENF circulated to it by the Proponent. If it appears that the Project requires Agency Action by the Agency or may significantly affect any interest of the Agency or any statutes or regulations administered by the Agency, the Agency shall:

(a) participate in the consultation session scheduled by the Secretary in accordance with 301 CMR 11.06(2) and file comments with the Secretary in accordance with 301 CMR 11.06(3); and

(b) specify in its comments: any Agency Action required to be taken by the Agency for the Project; any aspect of the Project or issue requiring additional description or analysis in an

EIR; and any opportunity to maximize consistency and facilitate coordination between the Agency Action and MEPA review or any other Agency Actions.

A Participating Agency's failure to specify an aspect of the Project or issue requiring additional description or analysis in an EIR shall have the effect of a determination that the information presented in the ENF, together with information already provided in any application for a Permit, Financial Assistance or a Land Transfer, sufficiently defines the nature and general elements (but not necessarily the technical details) of the Agency Action on the Project, such that the Participating Agency recommends that the Secretary require no further MEPA review or that the Scope not include any requirements relating to the aspect or issue.

(5) Secretary's Request for Copy of Application or Other Information. Upon request of the Secretary during the review period for an ENF, the Proponent shall file with the Secretary a copy of any application for a Permit, Financial Assistance, or a Land Transfer and any other information relevant to the Secretary's review of the Project, its alternatives, its potential environmental impacts and mitigation measures. Upon request of the Secretary, the Proponent shall make available a copy of any application for a Permit, Financial Assistance, or Land Transfer when the application is filed with a Participating Agency subsequent to the Secretary's decision on the ENF.

(6) Effect of Proponent's Failure to Cooperate. The Secretary and any Participating Agency may consider the Proponent's failure to participate in the ENF consultation session to be withdrawal of the ENF. The Proponent's failure to provide requested information may result in the Secretary requiring the Proponent to consider in an EIR the aspect of the Project or the issue about which information was requested, provided that the aspect or issue is within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b).

(7) Decision on ENF and Scope.

(a) After the close of the public comment period and on or prior to the last Day of the ENF review period, the Secretary shall issue a written certificate stating whether or not an EIR is required and, if so, what to require in the Scope in accordance with 301 CMR 11.06(9). The Secretary's failure to issue a timely certificate shall have the effect of a determination that no EIR is required, unless the Project meets or exceeds one or more mandatory EIR review thresholds or an EIR is required in accordance with 301 CMR 11.06(7)(b), in which case such failure shall have the effect of a determination that an EIR is required, and that it shall address all aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment ~~and related public health impacts~~, provided that such aspects are within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b). The Secretary's decision on the ENF shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

(b) The Secretary shall require an EIR for any Project that is located within a Designated Geographic Area around an Environmental Justice Population. ~~one mile of an Environmental Justice Population, or within five miles of an Environmental Justice Population for any Project that will impact air quality; provided, that the Project shall be determined to impact air quality if it meets or exceeds MEPA review thresholds under 301 CMR 11.03(8)(a) and (b) or generates 150 or more New adt of diesel vehicle traffic over a duration of one year or more. For such Projects, the EIR shall contain all the content in 301 CMR 11.07(6)(n), in addition to any other elements specified by the Secretary in the~~

~~Scope. The Secretary's failure to issue a timely certificate on the ENF shall have the effect of a determination that an EIR is required, and that it shall address, in addition to the content in 301 CMR 11.07(6)(n), all aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment and related public health impacts, provided that such aspects are within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b).~~

(8) Decision Allowing Single EIR. When issuing a Scope in accordance with 301 CMR 11.06(7), the Secretary shall ordinarily require a draft and final EIR, but may allow a single EIR, provided that the Secretary finds that the expanded ENF requesting a single EIR in accordance with 301 CMR 11.05(7):

(a) describes and analyzes all aspects of the Project and all feasible alternatives, regardless of any jurisdictional or other limitation that may apply to the Scope;

(b) provides a detailed baseline in relation to which potential environmental and public health impacts and mitigation measures can be assessed; ~~and~~

(c) demonstrates that the planning and design of the Project use all feasible means to avoid potential environmental impacts; ~~and-~~

(d) for any Project for which an EIR is required in accordance with 301 CMR 11.06(7)(b), describes and analyzes all aspects of the Project that may affect Environmental Justice Populations located in whole or in part within the Designated Geographic Area around the Project; describes measures taken to provide meaningful opportunities for public involvement by Environmental Justice Populations prior to filing the expanded ENF, including any changes made to the Project to address concerns raised by or on behalf of Environmental Justice Populations; and provides a detailed baseline in relation to any existing unfair or inequitable Environmental Burden and related public health consequences impacting Environmental Justice Populations in accordance with 301 CMR 11.07(6)(n)1.

(9) Limits on Scope.

(a) Potential Environmental Impacts. The Secretary shall limit the Scope to those aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment ~~and related public health impacts.~~

(b) Subject Matter Jurisdiction. In the case of a Project undertaken by a Person that requires one or more Permits or involves a Land Transfer, but does not involve Financial Assistance, the Scope shall be limited to the direct and indirect potential environmental and public health impacts from those aspects of the Project that are within the subject matter of any required Permit or within the area subject to a Land Transfer, regardless of whether or not those aspects met or exceeded any review thresholds.

(c) Elements of Scope The Secretary shall determine the form, content, level of detail, and alternatives required for the EIR and may establish guidelines as to page length and time necessary for preparation. The Secretary may direct the Proponent to consult with any Participating Agency and describe in the EIR any opportunity to maximize consistency and facilitate coordination between any Agency Action and MEPA review or any other Agency Action.

(10) Environmental Mediation. The Proponent, an Agency, or a Person may conclude that environmental mediation, either alone or in addition to the preparation of an EIR, may be helpful

in settling unresolved issues. The Secretary may assist parties in identifying the need for and sources of such services. This assistance shall not alter any of the review periods, deadlines, or other provisions or requirements of MEPA or 301 CMR 11.00, except with the consent of the Proponent.

(11) Suspended, Abandoned, or Changed Project. If a Proponent does not proceed with a Project or changes a Project after filing an ENF, the Proponent shall file a Notice of Project Change in accordance with 301 CMR 11.10.

(12) Notification to Department of Environmental Protection for Projects Located in Landlocked Tidelands. If the Project is located in landlocked tidelands as defined in 310 CMR 9.02: *Definitions*, then within 30 days after a certificate is issued determining that an ENF is adequate and no EIR is required or within 30 days after the Secretary issues a decision waiving the requirement to file an EIR, the Proponent shall file with the Department of Environmental Protection a completed form notifying the Department of Environmental Protection that work will be conducted within landlocked tidelands. The Proponent shall attach the certificate to the form. The Proponent shall comply with all obligations set forth in the certificate and the Department of Environmental Protection shall enforce such conditions consistent with M.G.L. c. 30, § 62I.

(13) Rollover EIR. For any Project that is required to file an EIR in accordance with 301 CMR 11.06(7)(b), and has submitted a dual Expanded ENF and Proposed EIR in accordance with 301 CMR 11.05(9), the Secretary may allow a rollover EIR, provided that the Secretary finds that the dual Expanded ENF and Proposed EIR:

(a) presents a complete and definitive description and analysis of the Project and its alternatives, and an assessment of its potential environmental and public health impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, §§ 61 and 62K and 301 CMR 11.12(5);

(b) demonstrates that the Project will not materially exacerbate any existing unfair or inequitable Environmental Burden and related public health consequences impacting an Environmental Justice Population, and will not result in a disproportionate adverse effect or increased climate change effects on an Environmental Justice Population;

(c) describes measures taken to provide meaningful opportunities for public involvement by Environmental Justice Populations prior to filing the dual ENF and Proposed EIR, including any changes made to the Project to address concerns raised by or on behalf of Environmental Justice Populations;

(d) shows that comments received on the dual ENF and Proposed EIR do not raise substantial issues not previously considered by the Proponent; and

(e) shows that no substantive issues remain to be resolved.

A rollover EIR shall mean that the Secretary may:

(a) publish notice in the next Environmental Monitor that the Proposed EIR shall be reviewed as a final EIR; or

(b) require the Proponent to file responses to comments on the Proposed EIR together with Proposed Section 61 Findings, and direct that the responses and findings shall be filed, circulated, and reviewed as a final EIR in a subsequent Environmental Monitor.

11.07: EIR Preparation and Filing

(1) Filing and Circulation Requirements. If the Secretary requires an EIR in accordance with 301 CMR 11.06(7), the Proponent shall prepare the EIR and file it with the Secretary. Prior to or when filing the EIR with the Secretary, the Proponent shall circulate copies of the EIR in accordance with 301 CMR 11.16(3) and the Scope. The Proponent's failure to circulate the EIR properly shall allow the Secretary to require an extension or repetition of the EIR review.

(2) Timely Filing. The Proponent shall file the EIR as soon after the Secretary issues the Scope as is reasonably possible given the status of Project planning and design, the type and size of the Project, and the Scope. The Proponent may consult with the Secretary for specific advice as to when to file the EIR.

(3) Draft EIR. If the Secretary requires an EIR in accordance with 301 CMR 11.06(7), the Proponent shall first prepare a draft EIR, unless otherwise indicated in the Scope. The draft EIR shall present in accordance with 301 CMR 11.07(6) and the Scope a reasonably complete and stand-alone description and analysis of the Project and its alternatives, and an assessment of its potential environmental and public health impacts and mitigation measures. The Proponent shall ordinarily use the review and comments by any Person or Agency on the draft EIR as an additional opportunity to improve the planning and design of the Project.

(4) Final EIR. If the Secretary determines that the draft EIR is adequate in accordance with 301 CMR 11.08(8)(b), the Proponent shall prepare a final EIR, unless otherwise indicated in the Scope. The Secretary may limit the Scope of the final EIR to aspects of the Project or issues that require further description or analysis and a response to comments, instead of requiring a standalone document that meets all of the form and content requirements for an EIR in accordance with 301 CMR 11.07(6), provided that the draft and final EIRs shall present a complete and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental and public health impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, §§ 61 and 62K, and 301 CMR 11.12(5).

(5) Single EIR. If the Secretary allows a single EIR in accordance with 301 CMR 11.06(8), the Proponent shall prepare a single EIR. The single EIR shall build on the information in the expanded ENF and shall present in accordance with 301 CMR 11.07(6) and the Scope a complete, stand-alone and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental and public health impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, §§ 61 and 62K, and 301 CMR 11.12(5).

(6) Form and Content of EIR. Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the depth and level of description and analysis in the EIR shall reflect the status of Project planning and design, the type and size of the Project, the requirements of any Agency Action, the availability of reasonable alternatives and methods to avoid or minimize potential environmental and public health impacts, and the opportunity to assess environmental and public health impacts and to identify appropriate mitigation measures.

The EIR shall ordinarily contain the following sections (unless the Secretary indicates in the Scope or as a part of a Special Review Procedure that specific issues shall be described or analyzed in additional sections in the EIR or that any of these sections shall not be included in the EIR):

(a) Title Page. The name and location of the Project, the EEA File Number, the type of EIR, the name of the Proponent, the name of the preparer, and the date of filing;

(b) Table of Contents. The title and page number of all sections, maps, plans, tables, figures, and appendices of the EIR; ~~and~~

(c) Secretary's Certificates. A copy of each Secretary's certificate for the Project, including on the ENF, a draft EIR, or a Notice of Project Change, and any other determination or document issued by the Secretary for the Project.

(d) Summary. A brief description in clear, nontechnical language, including:

1. the name and location of the Project, and the EEA File Number;
2. a brief Project description listing in particular any changes made to the Project since the review of the previous review document;
3. a list of any Permit, Financial Assistance, or Land Transfer, and any required Federal environmental, or land-use permit, license, certificate, variance, or approval with a summary of the current status of each application;
4. a summary of alternatives to the Project;
5. a summary of potential environmental and public health impacts of the Project;
6. a summary of measures ~~being utilized~~ to avoid or minimize any ~~anticipated~~ identified environmental and public health damage; and
7. a list of mitigation measures for the Project.

(e) Project Description. A detailed description and analysis of the nature and location of the Project including:

1. the type, size, and proposed use of the Project;
2. the objectives and anticipated benefits of the Project;
3. a description of the physical characteristics of the Project and its surroundings, illustrated with a location map and site plan at an appropriate scale and level of detail; and
4. a timetable, approximate cost, and the methods and timing of construction of the Project.

(f) Alternatives to the Project. A description and analysis of alternatives to the Project including:

1. all feasible alternatives, including but not limited to those indicated in the Scope;
2. the alternative of not undertaking the Project (*i.e.*, the no-build alternative) for the purpose of establishing a future baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed;
3. an analysis of the feasible alternatives in light of the objectives of the Proponent and the mission of any Participating Agency, including relevant statutes, regulations, executive orders and other policy directives, and any applicable Federal, municipal, or regional plan formally adopted by an Agency or any Federal, municipal, or regional governmental entity;
4. an analysis of the principal differences among the feasible alternatives under consideration, particularly regarding potential environmental impacts; and

5. a brief discussion of any alternatives no longer under consideration including the reasons for no longer considering these alternatives.

(g) Existing Environment. A description and analysis of the physical, biological, chemical, economic, and social conditions of the Project site, its immediate surroundings, and the region (in sufficient detail to provide a baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental and public health impacts and mitigation measures can be assessed) including:

1. topography, geology, and soils;
2. surface and groundwater hydrology and quality;
3. air quality, GHG emissions and noise;
4. plant and animal species and habitat;
5. traffic, transit, and pedestrian and bicycle transportation;
6. scenic qualities, open space and recreational resources;
7. Historic Structures or Districts, and Archaeological Sites;
8. the built environment and human use of the Project site, its immediate surroundings and the region, including existing infrastructure (*i.e.*, water supply, wastewater treatment and/or disposal, transportation, waste management, *etc.*), zoning districts and other relevant land-use designations or plans (*i.e.*, local or regional capital improvement plans or infrastructure investments, economic development, growth planning and open space plans, *etc.*), business districts, industrial parks, housing stock, and vacancy rates; and
9. rare or unique features (including environmental and social conditions) of the Project site and its immediate surroundings such that any increase in environmental impacts, however small or gradual, may result in an unusual or disproportionate effect on environmental resources or quality or public health.

10. publicly available data on the public health conditions in the immediate vicinity of the Project site ~~and the surrounding region~~.

11. if the Project is located in landlocked tidelands as defined in 310 CMR

9.02: *Definitions*, an explanation of the Project's impact on the public's right to access, use, and enjoy tidelands that are protected by chapter 91 and measures to avoid, minimize, or mitigate any adverse impact on those rights. If the Project is located in landlocked tidelands and an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, an explanation of the Project's impact on groundwater levels and identification and commitment to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The EIR shall also describe the Project's compliance with any municipal regulations designed to protect groundwater levels. The Proponent may combine the information provided under 301 CMR 11.07(6)(g)10. with the information provided under 301 CMR 13.03: *Procedures*.

12. For Projects in tidelands other than landlocked tidelands, follow 310 CMR 13.00:

Adopting Inland Wetland Orders.

(h) Assessment of Impacts. A detailed description and assessment of the negative and positive potential environmental and public health impacts of the Project and its alternatives. The EIR shall assess (in quantitative terms, to the maximum extent practicable) the direct and indirect potential environmental and public health impacts from all aspects of the Project that are within the Scope, and shall contain studies to evaluate said impacts. The assessment shall include both short-term and long-term impacts for all phases of the Project (*e.g.*, acquisition, development, alteration, and operation), any adverse short-term and long-term environmental

and public health consequences that cannot be avoided should the project be undertaken, and cumulative impacts of the Project, any other Projects, and other work or activity in the immediate surroundings and region.

(i) Statutory and Regulatory Standards and Requirements. A list of any Permit, Financial Assistance, or Land Transfer that is or may be required, and a brief description and analysis of the applicable statutory and regulatory standards and requirements thereof and the measures to be taken to ensure due compliance therewith.

(j) Mitigation Measures. A description and assessment of physical, biological and chemical measures and management techniques designed to limit negative environmental and public health impacts or to cause positive environmental and public health impacts during development and operation of a Project. The EIR shall specify in detail: the measures to be taken by the Proponent or any other Agency or Person to avoid, minimize, and mitigate potential environmental and public health impacts; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that shall ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts. The EIR shall also discuss alternatives to the proposed mitigation measures considered by the Proponent or suggested in comments by any Agency or Person, noting the relative benefits and costs of these alternative mitigation measures.

(k) Proposed Section 61 Findings. Proposed findings in accordance with M.G.L. c. 30, § 61 and consistent with M.G.L. c. 30, § 62K for each Agency for each Agency Action to be taken on the Project. These Proposed Section 61 Findings shall specify in detail: all feasible measures to be taken by the Proponent or any other Agency or Person to avoid Damage to the Environment ~~and related public health impacts~~ or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment ~~and related public health impacts~~ to the maximum extent practicable; any and all actions to be taken to reduce the potential for unfair or inequitable effects upon an Environmental Justice Population in accordance with 301 CMR 11.07(6)(n); an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that will ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts.

(l) Response to Comments. A response to the certificate of the Secretary on the previous review document and each comment received on the previous review document, provided that the subject matter of the comment is within the Scope. Unless the Secretary has indicated otherwise in the certificate on the previous review document, the EIR shall contain a copy of each comment either in this section of the EIR 301-CMR-11.07 or in a separate appendix, provided that this section clearly explains the location of each comment and the response to each comment.

(m) Appendices. A presentation of detailed technical data (*e.g.*, traffic analyses, hydrologic calculations, modeling data), to the extent necessary to keep the main text of the EIR clear and readable. The main text of the EIR shall refer to and summarize any information contained in any appendix. Unless the Secretary has indicated otherwise in the Scope or as a part of a Special Review Procedure, the Proponent shall circulate appendices with the main text of the EIR in accordance with 301 CMR 11.16(3).

The Proponent may vary the outline of ordinary EIR sections (*e.g.*, by combining 301 CMR 11.07(6)(g) through (l) to address one aspect of the Project or issue at a time),

provided that the EIR addresses the substance of each section. The EIR shall ordinarily be printed on both sides of each page, be paginated, clearly reference maps, plans, tables and figures, and contain an index and a circulation list.

(n) For any Projects required to file an EIR under 301 CMR 11.06(7)(b), the EIR shall contain the following elements, in addition to any other elements specified in the Scope:

1. statements about the results of an assessment of any existing unfair or inequitable Environmental Burden and related public health consequences impacting the Environmental Justice Population from any prior or current private, industrial, commercial, state, or municipal operation or project that has caused or continues to cause Damage to the Environment;
2. if the assessment conducted under 301 CMR 11.07(6)(n)1. indicates that an Environmental Justice Population is subject to an existing unfair or inequitable Environmental Burden or related health consequence:

- (i) a description of the environmental and public health impact from the Project that would likely result in a disproportionate adverse effect on such population; and

- (ii) any potential impact or consequence from the Project that would increase or reduce the effects of climate change on the Environmental Justice Population. In conducting the assessment in this 301 CMR 11.07(6)(n)2., the Proponent shall consider ~~the nature and severity of any existing Environmental Burden borne by the Environmental Justice Population, and~~ the extent to which the environmental and public health impact of the Project may exacerbate any such existing unfair or inequitable Environmental Burden and related public health consequence identified under 301 CMR 11.07(6)(n)1. The Proponent shall also consider the comparative impact of the Project on Environmental Justice Populations versus non-Environmental Justice Populations and any benefits conferred by the Project to reduce the potential for unfair or inequitable effects on the Environmental Justice Population in a way that creates a disproportionate adverse effect, or increases the effects of climate change, on the Environmental Justice Population;

3. description of alternatives and measures to avoid, or, if unavoidable, to minimize and mitigate ~~to the greatest extent practicable,~~ potential environmental and public health impacts so as to address any identified disproportionate adverse effects, or an increase in the effects of climate change, on Environmental Justice Populations;

4. Proposed Section 61 Findings that include any and all actions to be taken to to the extent related to measures to avoid, minimize and mitigate address any identified disproportionate adverse effects, or an increase in the effects of climate change, on Environmental Justice Populations, so as to reduce the potential for unfair or inequitable effects on such Environmental Justice Populations; and

5. Response to Comments to the extent related to an assessment of disproportionate adverse effects, or an increase in the effects of climate change, on Environmental Justice Populations.

The Secretary shall set forth in guidance recommended methodologies and resources, including publicly available mapping tools, to conduct the assessments described in 301 CMR 11.07(6)(n)1. and 2., and may identify specific issues for analysis in the Scope. ~~for the EIR. The subject matter limitations on the Scope of an EIR and Section 61 Findings described in 301 CMR 11.06(9)(b) and 301 CMR 11.12(5)(c) shall not apply to the content required in this 301 CMR 11.07(6)(n), to the extent related to an assessment of, or measures to avoid, minimize and mitigate, disproportionate adverse effects, or an increase in the effects of climate change, on Environmental Justice~~

~~Populations. For any Project required to file an EIR solely due to the application of 301 CMR 11.06(7)(b), the Secretary may limit the Scope of the EIR exclusively to the elements specified in this 301 CMR 11.07(6)(n), in addition to such background elements in 301 CMR 11.07(6)(a) through (e) as the Secretary deems appropriate.~~

11.08: EIR Review and Decision

(1) Publication and Review Period. Upon receiving the EIR, the Secretary shall publish notice of the availability of the EIR in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the EIR review period. The EIR review period lasts for 37 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements, with the consent of the Proponent for a draft EIR or as part of a Special Review Procedure.

(2) Investigation. After receiving the EIR, the Secretary shall review the EIR and may review any relevant information from any other source to determine whether the EIR is adequate.

(3) Informal and Informational Public Consultation. An Agency undertaking a Project may hold public hearings, informal workshops, or public meetings at appropriate times prior to and during preparation of an EIR. The Agency shall provide at least seven Days notice of any hearing, workshop, or meeting to allow any other Agency or Person to prepare adequately and to make informed comments at the hearing, workshop, or meeting. The Secretary may hold an informational meeting prior to or during review of the EIR, and may, in the Scope, require the Proponent to hold an informational meeting.

(4) Public Comment Period, Extensions, Late Comments. After receiving the EIR, the Secretary shall receive into the record written comments from any Agency or Person, concerning the Project, its alternatives, its potential environmental impacts, mitigation measures and the adequacy of the EIR, provided that the subject matter of the comment is within the Scope. Comments on the EIR shall be filed with the Secretary within 30 Days of the publication of the notice of the availability of the EIR in the *Environmental Monitor*, unless the public comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements, with the consent of the Proponent for a draft EIR or as a part of a Special Review Procedure. An extension shall not ordinarily exceed 30 Days. The Secretary may accept a late comment, provided that it is received prior to the Secretary's decision on the EIR.

(5) Withdrawal and Refiling of Single or Final EIR. With the consent of the Secretary, the Proponent may withdraw a single or final EIR prior to the Secretary's decision on the single or final EIR to provide further opportunity for public review. After such withdrawal, the Proponent may refile the single or final EIR, with or without changes, additions, or deletions, which shall be clearly identified in the refiled single or final EIR. The Secretary shall publish notice of the availability of the refiled single or final EIR in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2). A refiled single or final EIR restarts the EIR review period in accordance with 301 CMR 11.08(1) and the public comment period in accordance with 301 CMR 11.08(4) and the legal challenge periods in accordance with 301 CMR 11.14.

(6) Comments Outside Scope. The Secretary may accept a comment not within the Scope

provided that the Secretary finds that it is material and that it was not reasonably possible with due diligence to have made it during review of the previous review document or that the comment raises critically important issues regarding the potential environmental impacts of the Project.

(7) Agency Review. An Agency shall review an EIR circulated to it by the Proponent. If it appears that the Project requires Agency Action by the Agency or may significantly affect any interest of the Agency or any statutes or regulations administered by the Agency, the Agency shall:

- (a) file comments with the Secretary in accordance with 301 CMR 11.08(4); and
- (b) specify in its comments: any Agency Action required to be taken by the Agency for the Project; any aspect of the Project or issue requiring additional description or analysis; and any opportunity to maximize consistency and facilitate coordination between the Agency Action and MEPA review or any other Agency Actions.

A Participating Agency's failure to specify an aspect of the Project or issue requiring additional description or analysis shall have the effect of a determination that the information presented in the EIR and any previous review document, together with information already provided in any application for a Permit, Financial Assistance or a Land Transfer, sufficiently defines the nature and general elements (but not necessarily the technical details) of the Agency Action on the Project, such that the Participating Agency can fulfill its obligations in accordance with M.G.L. c. 30, §§ 61 and 62K, and 301 CMR 11.12(5).

- (c) the Project is severable, such that phase one does not require the implementation of any other future phase of the Project or restrict the means by which potential environmental impacts from any other phase of the Project may be avoided, minimized or mitigated; and
- (d) the Agency Action on phase one will contain terms such as a condition or restriction in a Permit, contract or other relevant document approving or allowing the Agency Action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to Commencement of any other phase of the Project.

(8) Secretary's Determination on EIR.

(a) General. Within seven Days after the close of the public comment period in accordance with 301 CMR 11.08(4), the Secretary shall issue a written certificate stating whether or not the EIR adequately and properly complies with MEPA and 301 CMR 11.00. The Secretary shall attach to the certificate a copy of each comment timely received. The Secretary's failure to issue a timely certificate shall have the effect of a determination that the EIR is adequate and does so comply. The Secretary's decision on the EIR shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

(b) Draft EIR. Upon review of a draft EIR, the Secretary shall:

1. determine that the draft EIR is adequate, even if certain aspects of the Project or issues require additional description or analysis in a final EIR, provided that the Secretary finds that the draft EIR is generally responsive to the requirements of 301 CMR 11.07 and the Scope;
2. determine that no substantive issues remain to be addressed and:
 - a. publish notice in the next Environmental Monitor that the draft EIR shall be reviewed as a final EIR; or

b. require the Proponent to file responses to comments on the draft EIR and Proposed Section 61 Findings, including any and all actions to reduce the potential for unfair or inequitable effects on an Environmental Justice Population, and ~~public notice in the next Environmental Monitor~~ direct that the responses and findings shall be filed, circulated, and reviewed as a final EIR in a subsequent Environmental Monitor;

...

(5) Request for Waiver. A Proponent shall request a waiver in writing and shall address with particularity any findings that the Secretary is required to make in accordance with 301 CMR 11.11(1) through (4). The Proponent who requests a waiver shall be deemed to consent to an extension of the review period in accordance with 301 CMR 11.05(7). The Secretary shall publish notice of this request in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2).

(6) Secretary's Decision on Waiver. If the Secretary decides that a waiver request has merit, the Secretary shall prepare a record of decision that describes the Project, the nature and extent of MEPA jurisdiction, and the potential environmental impacts from the Project and mitigation measures, and sets forth the reasons for the waiver, including any findings required in accordance

with 301 CMR 11.11(1) through (4). The Secretary shall issue a draft record of decision for each waiver or partial waiver of an EIR review threshold and publish the draft record of decision in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 Days, unless extended by the Secretary with the consent of the Proponent. An extension shall not ordinarily exceed 14 Days. During the public comment period, the Secretary shall receive written comments into the record from any Agency or Person concerning the draft record of decision. The Secretary shall issue a final record of decision or a Scope within seven Days after the close of the public comment period. The Secretary shall publish notice of each decision on a waiver request in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2).

11.12: Agency Responsibilities and Section 61 Findings

(1) Review of Agency Programs. An Agency shall periodically review and evaluate its own programs, regulations, and policies and determine the potential environmental impacts of its implementation of its programs, regulations, and policies, and ensure that it and each applicant for a Permit, Financial Assistance, or a Land Transfer undertake due compliance with MEPA and 301 CMR 11.00. ~~Consistent with M.G.L. c. 30, § 62K, each Participating Agency shall consider Environmental Justice Principles in its review of MEPA submittals for Projects located near Environmental Justice Populations required to undergo MEPA review. In the case of an Agency undertaking a Project that is subject to review under MEPA and 301 CMR 11.00, such Agency shall consider Environmental Justice Principles in its assessment of the Project's environmental and public health impacts, in accordance with the requirements of 301 CMR 11.00.~~

(2) Determination by an Agency.

(a) Prior to Agency Action. An Agency shall determine whether MEPA and 301 CMR 11.00 require MEPA review whenever it expects to take Agency Action on a Project. MEPA

review is required only if the Project is subject to MEPA jurisdiction and either it meets or exceeds one or more review thresholds or the Secretary requires fail-safe review.

(b) Proponent's Demonstration. A Participating Agency may require the Proponent to demonstrate that a Project does not meet or exceed any review thresholds or that there has been due compliance with MEPA and 301 CMR 11.00, prior to granting a Permit, providing Financial Assistance, or closing a Land Transfer.

(c) Agency's Finding. If an Agency determines that MEPA review is not required, the Agency shall, if requested by the Secretary or an applicant for a Permit, Financial Assistance, or a Land Transfer, or the Agency may, on its own initiative, make a finding regarding the determination that specifies any provisions or requirements of MEPA or 301 CMR 11.00 on which the determination is based, and shall furnish a copy of the finding to the Secretary or applicant upon request. An Agency's making a finding and furnishing a copy to the Secretary shall not mean that the Secretary has issued an advisory opinion in accordance with 301 CMR 11.01(6). The Agency's finding shall not limit the Secretary's discretion in issuing an advisory opinion.

(3) Prerequisites to Agency Action. If an Agency may take Agency Action on a Project, it shall:

(a) determine in a timely manner whether the Project requires MEPA review in accordance with 301 CMR 11.01(2);

(b) review any review documents for the Project and participate in MEPA review in accordance with 301 CMR 11.06(4) and 11.08(7);

(c) take Agency Action only in accordance with 301 CMR 11.12(4); and

(d) in the case of a Project for which the Secretary required an EIR, prepare Section 61 Findings prior to or when taking Agency Action in accordance with 301 CMR 11.12(5).

(4) Timing of Agency Action.

(a) Earliest Time for Agency Action. Unless otherwise required by other applicable statutes or regulations, an Agency may not take Agency Action on a Project that is subject to MEPA jurisdiction and meets or exceeds any review thresholds, unless and until the Secretary has determined that an EIR is not required or the Secretary has determined that the single, rollover 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*.

(b) Latest Time for Agency Action. Unless otherwise required by other applicable statutes or regulations, a Participating Agency shall take Agency Action by 90 Days from the latest of:

1. the publication of the notice in the *Environmental Monitor* of the Secretary's determination that an EIR is not required;
2. the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor*; or
3. the filing of a complete application for a Permit or Financial Assistance.

(5) Section 61 Findings. In accordance with M.G.L. c. 30, § 61, any Agency that takes Agency Action on a Project for which the Secretary required an EIR shall determine whether the Project is likely, directly or indirectly, to cause any Damage to the Environment and related public health impacts and make a finding describing the Damage to the Environment and confirming

that all feasible measures have been taken to avoid or minimize the Damage to the Environment ~~and related public health impacts~~.

(a) Contents of Section 61 Findings. In all cases, the Agency shall base its Section 61 Findings on the EIR, including all studies, analyses and assessments contained therein regarding environmental and public health impacts and effects on Environmental Justice Populations, and shall specify in detail: all feasible measures to be taken by the Proponent or any other Agency or Person to avoid Damage to the Environment ~~and related public health impacts~~ or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment ~~and related public health impacts~~ to the maximum extent practicable; if applicable, any and all actions to reduce the potential for unfair or inequitable effects upon an Environmental Justice Population; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that will ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts. In accordance with M.G.L. c. 30, § 61, the reasonably foreseeable climate change impacts of a project, including its additional GHG emissions, and effects, such as predicted sea level rise, are within the subject matter of any required Permit, Land Transfer or Financial Assistance.

(b) Section 61 Findings and Agency Action. Provided that mitigation measures are specified as conditions to or restrictions on the Agency Action, the Agency shall:

1. make its Section 61 Findings part of the Permit, contract or other document allowing or approving the Agency Action, which may include additional conditions to or restrictions on the Project in accordance with other applicable statutes and regulations; or
2. refer in its Section 61 Findings to applicable sections of the relevant Permit, contract or other document approving or allowing the Agency Action.

(c) Subject Matter Jurisdiction Limitations on Section 61 Findings. In the case of a Project undertaken by a Person that requires one or more Permits or a Land Transfer but does not involve Financial Assistance, any Participating Agency shall limit its Section 61 Findings, or any mitigation measures specified as conditions to or restrictions on the Agency Action, to those aspects of the Project that are within the subject matter of any required Permit or within the area subject to a Land Transfer.

(d) Proposed Section 61 Findings. Proposed Section 61 Findings prepared by a Proponent in accordance with 301 CMR 11.07(6)(k) are intended to assist a Participating Agency in fulfilling its obligations in accordance with M.G.L. c. 30, §§ 61 ~~and 62K~~. The Proponent's preparation of Proposed Section 61 Findings shall not mean that a Participating Agency has made its own Section 61 Findings. Except in accordance with 301 CMR 11.06(4) and 11.08(7), the Proponent's Proposed Section 61 Findings shall not limit an Agency's discretion in making its own Section 61 Findings.

(e) Filing and Distribution of Section 61 Findings. The Proponent and a Participating Agency shall each file a copy of the Section 61 Findings with the Secretary, who shall publish notice of the availability of the Section 61 Findings in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), and shall each circulate copies of the Section 61 Findings to any Agency or Person upon request.

(6) Agency Action Taken Without MEPA Compliance. If an Agency takes Agency Action without due compliance with MEPA and 301 CMR 11.00, the Secretary may thereafter require

MEPA review, and may require the Agency to reconsider the Agency Action and any conditions thereof following completion of MEPA review.

11.13: Emergency Action

(1) Commencement of Project for Emergency Action and Initial ENF. In the rare case when Commencement of a Project is essential to avoid or eliminate an imminent threat to environmental resources or quality or public health or safety, the Proponent may undertake Commencement of the Project without prior due compliance with MEPA and 301 CMR 11.00 provided that the Proponent shall make all reasonable efforts to obtain the prior written approval of the Secretary. The Proponent shall limit any emergency action taken without prior due compliance with MEPA and 301 CMR 11.00 to the minimum action necessary to avoid or eliminate the imminent threat. The Proponent shall file an initial ENF describing the Project in as much detail as is then known within ten Days of Commencement of the Project. The initial ENF shall describe all measures taken to avoid or minimize potential environmental impacts from the emergency action, describe any additional measures to be taken to mitigate potential environmental impacts from the emergency action, and list any Agency to which the Proponent provided prior notification of, or from which the Proponent received prior approval for, the emergency action. Within the earlier of 60 Days of Commencement of the Project or when the threat is no longer imminent, the Proponent shall undertake full due compliance with MEPA and 301 CMR 11.00 by filing an amended or substitute ENF or any other review document that the Secretary may require after reviewing the initial ENF.

(2) EIR after Emergency Action. An EIR for a Project on which the Proponent undertook emergency action shall describe specific alternatives to the emergency action, the necessary duration of the emergency action, and the appropriateness or necessity of undertaking similar action in similar future circumstances.

(3) Programs or Projects Not Considered Emergency Action. Any program, regulations, policy, or other Project implemented or undertaken to deal with future emergencies, or periodic recurrence of an emergency condition, shall not be considered an emergency action.

11.14: Legal Challenges

(1) Notice of Intent to Commence Action. An Agency or Person alleging that the Secretary improperly decided that a Project requires an EIR shall provide notice of intent to commence an action or proceeding within 60 Days of the publication of notice of the Secretary's decision in the *Environmental Monitor* in accordance with 301 CMR 11.15(2). An Agency or Person alleging that the Secretary improperly decided that a single or final EIR complies with MEPA and 301 CMR 11.00 shall provide notice of intent to commence an action or proceeding within 60 Days of 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). This notice shall be provided on the form available from the MEPA Office to the Secretary, the Proponent, and the Attorney General. This notice shall include the EEA file number and shall identify with particularity the reasons why the decision is believed to be improper, and the point during MEPA review at which the matter complained of was raised. These notice procedures shall substitute for the notice and waiting period required in accordance with M.G.L. c. 214, § 7A.

...

(2) *Environmental Monitor*.

(a) Contents. The Secretary shall publish the appropriate pages of the ENF in the next *Environmental Monitor* after the filing of an ENF. The Secretary shall publish in the *Environmental Monitor* a draft record of decision on a waiver request in accordance with 301 CMR 11.11(6). The Secretary shall publish notice of the following filings and decisions in the next *Environmental Monitor*: a request for an advisory opinion in accordance with 301 CMR 11.01(6)(b); a fail-safe decision; a decision whether an EIR is required; the availability of an EIR; a decision on an EIR; matters regarding a Special Review Procedure in accordance with 301 CMR 11.09(2); the filing of a Notice of Project Change in accordance with 301 CMR 11.10(8); a decision regarding a Notice of Project Change; a decision on a waiver request; and the filing of Section 61 Findings. The Secretary may publish in the *Environmental Monitor* notice of: extensions of review periods and deadlines; hearings, workshops, and meetings; and such other matters as the Secretary deems appropriate.

(b) Publication Dates. The Secretary shall publish the *Environmental Monitor* twice each month. The Secretary shall publish notice of filings received by the MEPA Office by 5:00 P.M. on the 15th Day of each month in the *Environmental Monitor* issued seven to ten Days thereafter and notice of filings received by the MEPA Office by 5:00 P.M. on the last Day of each month in the *Environmental Monitor* issued seven to ten Days thereafter. The review periods for ENFs, EIRs, Notices of Project Change, Special Review Procedure review documents, and draft records of decision shall begin on the date of publication of the next *Environmental Monitor*.

(c) Subscriptions and Distribution. The Secretary shall send the *Environmental Monitor* to any Agency or Person who requests a subscription in writing and renews the subscription in writing each January. The Secretary shall also send the *Environmental Monitor* for public posting to all City and Town Halls and public libraries in the Commonwealth.

11.16: Filing and Circulation

(1) Filing with the Secretary. All written communications and review documents required or permitted to be filed with the Secretary in accordance with MEPA and 301 CMR 11.00 shall be addressed as follows:

Secretary of Energy and Environmental Affairs

Attention: MEPA Office

[Analyst Name], EEA No. _____

100 Cambridge Street — 9th floor

Boston, Massachusetts 02114

(2) Circulation of ENF. The Proponent shall circulate the ENF as follows:

(a) To the MEPA Office. Two copies to the Secretary, Attention: MEPA Office, or one copy if ~~filed or~~ circulated electronically under 301 CMR 11.16(5) ~~and (6)~~.

(b) To Agency and Other Reviewers. One copy to each of the following (or their successors or assigns):

1. Department of Environmental Protection (DEP) - Boston office (attention: MEPA Coordinator); the appropriate regional office (attention: MEPA Coordinator); each

program from which a Permit will be sought;

2. Massachusetts Department of Transportation (MassDOT) - Public/Private Development Unit; and the appropriate district office;
3. Massachusetts Historical Commission;
4. The appropriate regional planning agency (RPA);
5. In each municipality affected by the Project - the city council/board of selectmen; the planning board/department; the conservation commission; the department/board of health; and the public library;
6. Massachusetts Coastal Zone Management (MCZM) office and the Division of Marine Fisheries, if the Project is in a Coastal Zone community;
7. Department of Agricultural Resources, if the Project site has been in agricultural use within the last 15 years;
8. Natural Heritage and Endangered Species Program, if the Project site is within or contains designated significant or estimated habitat, or priority sites of endangered or threatened species or species of special concern in accordance with M.G.L. c. 131A the Massachusetts Endangered Species Act;
9. Department of Conservation and Recreation (DCR) if the Project affects DCR roadways, watersheds or other properties, or if the Project is within or will affect an ACEC;
10. EEA Environmental Justice Director or designee, if the Project is located within five miles of an Environmental Justice Population;
11. Department of Public Health (DPH), if the Project is located within five miles of an Environmental Justice Population or implicates public health impacts;
12. Division of Energy Resources if the Project is subject to the Greenhouse Gas Emissions Policy and Protocol, and the Energy Facilities Siting Board (EFSB), if the Project is subject to review by EFSB;
13. Massachusetts Water Resources Authority (MWRA), if the Project is in a municipality served by the MWRA;
14. Massachusetts Bay Transportation Authority (MBTA), if the Project affects MBTA facilities or properties and
15. Any other Agency from which an Agency Action may be required for the Project.

(c) Requested Copies. The Proponent shall promptly send a copy of the ENF, free of charge, to any Agency or Person requesting it during the review period for the ENF. The Proponent may send an electronic copy (*e.g.*, CD-Rom or website address), provided that the electronic copy is accompanied by information on how to obtain a paper copy. The Proponent shall maintain a list of each Person or Agency requesting a copy, the date of each request, and the date each copy was sent out. The Secretary may extend the review period for the ENF as a result of undue delay by the Proponent in providing copies.

~~(d) Environmental Justice. For any Project is located within five miles of an Environmental Justice Population, the Proponent shall comply with the circulation requirements of the MEPA Protocol for Public Involvement for Environmental Justice Populations, as it may be amended from time to time.~~

(3) Circulation of EIR. The Proponent shall circulate the EIR as follows:

- (a) To the MEPA Office. Two copies to the Secretary, Attention: MEPA Office, or one copy if filed or circulated electronically under 301 CMR 11.16(5) and (6);

(b) To Previous Commenters and Others. One copy, free of charge, to each Person or Agency who previously commented on the ENF, each Agency from which the Project will seek Permits, Land Transfers or Financial Assistance, and to any other Agency or Person identified by the Secretary in the Scope or thereafter.

(c) Requested Copies. The Proponent shall promptly send a copy of the EIR to any Agency or Person requesting it during the public comment period, free of charge, except that the Proponent may, with the consent of the Secretary, charge the cost of reproduction for these additional copies. The Proponent may send an electronic copy (CD-Rom or website address) provided that the electronic copy is accompanied by information on how to obtain a paper copy. The Proponent shall maintain a list of each Agency or Person requesting a copy, the date of each request, and the date each copy was sent out. The Secretary may extend the public comment period for the EIR as a result of undue delay by the Proponent in providing copies.

(4) List of Addresses. The MEPA Office shall maintain a list of current addresses for each Agency, as well as lists of municipalities by coastal zone, watershed, and DEP, MassDOT, RPA, MWRA, and MBTA region or district, and shall make the information available to a Proponent upon request.

(5) Electronic Circulation. The Proponent may circulate electronic copies (CD-Rom or website address) of an ENF or an EIR to any Person or Agency in accordance with 301 CMR 11.16(2) and (3), and to the Secretary or any Participating Agency with the consent of each that may take Agency Action on the Project with the consent of the Secretary or said Agency. Circulation of an electronic copy must be accompanied by information on how to obtain a paper copy in accordance with 301 CMR 11.16(2)(c) and 11.16(3)(c). The Proponent may circulate electronic copies (CD-Rom or website address) of technical appendices to any Person or Agency in accordance with 301 CMR 11.16(2) and (3).

(6) Electronic Filing. The Secretary may require the electronic filing of any review document with the MEPA Office, provided that the Secretary shall first publish any associated forms or instructions in the Environmental Monitor and shall at the same time specify the effective date of such electronic filing.

11.17: Transition Rules

301 CMR 11.00 (effective ~~December 2410, 2021~~) applies to any new Project for which an ENF ~~o~~Or expanded ENF is filed on or after January 1, 2022~~December 16, 2021~~ for publication in the Environmental Monitor in accordance with 301 CMR 11.15(2)(b).

REGULATORY AUTHORITY

301 CMR 11.00: M.G.L. c. 30, § 61 *et seq.*

(PAGES 109 THROUGH 122 ARE RESERVED FOR FUTURE USE.)