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March 3, 2023

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge St., Suite 900
Boston, MA 02114

Re: *Comments on the Massachusetts Executive Office of Energy and Environmental Affairs' Draft Environmental Justice Strategy*

The Office of the Attorney General (“AGO”) submits these comments in response to the Massachusetts Executive Office of Energy and Environmental Affairs’ (“EEA”) October 2022 Draft Environmental Justice (“EJ”) Strategy (“Draft EJ Strategy”). These comments focus on EEA’s general EJ strategies, as well as the strategies of its agencies including the Department of Public Utilities (“DPU”) and the Energy Facilities Siting Board (“EFSB”). The AGO supports the continued efforts of EEA and its agencies to solicit input from EJ populations and to promote EJ principles in its work. The AGO appreciates the opportunity to collaborate with EEA and its agencies on the critical work of addressing environmental injustices in underserved communities across the Commonwealth and ensuring that underserved communities enjoy the benefits—and not experience all of the burdens—of the ongoing transition to the clean energy economy.

These comments are intended to help strengthen the Draft EJ Strategy to promote EJ principles in tangible and measurable ways. In Section I, the AGO offers general recommendations as to the EEA’s Draft EJ Strategy. In Section II, the AGO offers recommendations specific to the Draft DPU and EFSB’s EJ Strategies. To promote accountability and to demonstrate progress, the AGO also urges EEA to develop and publish a list of the recommendations and comments that it receives on the Draft EEA Strategy, along with information about which recommendations are incorporated and which recommendations are not incorporated into the final EEA Strategy.

I. General Comments on the EEA’s Draft EJ Strategy

A. *EEA Should Establish Clear Directives and Minimum Requirements Related to Community Engagement, Public Participation, and Implementation of EJ Principles.*

As stated in the opening paragraph of the Draft EJ Strategy: “The intended audience of [the EJ Strategy] is EEA staff to use to assist EEA staff in engaging the public on matters

relevant to EEA functions and implementation of programs and policies under its purview.”¹ In addition, both Executive Order 552 and EEA’s EJ Policy require all EEA agencies to develop their own agency-specific strategies to proactively promote EJ.² The Draft EJ Strategy often suggests what may be included, but does not provide the specificity necessary to achieve these aims. For example, although the section on “Enhanced Public Involvement Requirements for Projects Located Near EJ Populations” in the Massachusetts Environmental Policy Act Office (“MEPA”) section lists several best practices for community engagement, it is unclear exactly what is required to meet the “enhanced public involvement” standard.³ In addition, the standard for “enhanced analysis of impacts and mitigation” is not clearly identified in the MEPA Office section.⁴

EEA should bolster these and similar general requirements with clear and specific requirements about when and how community engagement and public participation must occur for particular agency decisions. In particular, to ensure consistent and effective implementation of the EJ Strategy and transparency across EEA’s agencies, and to ensure that decision-makers and staff promote—and not just consider—EJ principles, the AGO recommends that EEA revise the Draft EJ Strategy to establish clear directives and minimum requirements related to community engagement, public participation, and implementation of EJ principles, including:

- the minimum number of outreach events or community meetings required;
- day and evening meeting requirements;
- translation and interpretation services and thresholds;
- in-person as well as remote options for meetings and hearings
 - Remote access to meetings and hearings must be accessible by phone (a computer and/or internet connection should not be required for remote participation); nor should a computer or internet connection be required to access translation services);⁵
- multiple ways to participate and provide input to agency decisions, including through written comments, as well as oral comments both in person and remotely (including by phone);
- establishment of a variety of methods for public notification of projects and proposals, beyond publication in newspapers and distribution via email (e.g., methods to publicize different types of proposals may include flyer distribution in common gathering areas, social media posts, TV/radio ads, educational sessions, as well as partnerships and/or

¹ Exec. Off. of Energy and Env’tl. Affairs, Draft Environmental Justice Strategy (“Draft EJ Strategy,”) (Oct. 2022) at 4, <https://www.mass.gov/doc/eea-environmental-justice-strategy-english/download>.

² See “Executive Order No. 552 Executive Order on Environmental Justice,” <https://www.mass.gov/doc/executive-order-552/download>.

³ Draft EJ Strategy at 41-42.

⁴ *Id.* at 43.

⁵ During EEA’s January 10, 2023, morning Listening Session and Opportunity for Public Comment on the Draft EJ Strategy, there was no dial-in option to access translation services; thus, a participant would have required a computer and internet connection to participate in a language other than English.

collaboration with municipal officials, community leaders, and EJ organizations doing EJ work); and

- processes for oversight and enforcement of each agencies' compliance with the Draft EJ Strategy through its community engagement and public participation efforts, as well as petitioners' community engagement and participation efforts (e.g., through oversight by EEA's Office of Environmental Justice).

EEA's EJ Policy also states that "environmental justice principles shall be an integral consideration" in the implementation of all EEA programs, "including but not limited to . . . the promulgation, implementation and enforcement of laws, regulations, and policies[.]"⁶ While mandating that agencies "consider" EJ principles is a constructive start, consideration of EJ principles will not necessarily result in decisions, programs, or funding allocations that promote EJ principles. In finalizing its EJ Strategy, EEA should clarify that EJ principles not only must be considered by decision-makers and staff, but also must be implemented by establishing minimum requirements related to community engagement and public participation, and by clearly setting out what agencies must do to affirmatively promote EJ principles in their work and decisions.

B. EEA's EJ Strategy Should Recognize that Not all Communities Are the Same.

EEA should amend the Draft EJ Strategy to recognize that not all EJ, disadvantaged, and underserved communities experience or have historically experienced the same burdens. For certain programs or allocations, it may be appropriate to provide different levels of support or different levels of outreach to the most disadvantaged communities. EEA should utilize existing mapping tools and information derived from active community engagement to ensure that the EEA Strategy incorporates processes and procedures that support the most disadvantaged communities. Communities should be tiered based on the level of environmental burdens or adverse health outcomes. For instance, EPA's EJ Screen identifies measurable "indices" of EJ burden, which incorporates specific environmental threats (e.g., ambient particulate matter levels, proximity to superfund and hazardous waste sites) in relation to the demographics of a community. EEA could also consider providing different levels of support or allocations for EJ populations that meet more than one of the EJ population criteria.

C. EEA Should Prioritize Supporting EJ Organizations' EJ Work in Outreach and Resource Allocations.

The AGO encourages EEA to consider both how to receive input from and how to direct resources to EJ organizations and community members doing EJ work. Participation and input from local, state, and quasi-governmental entities and non-profit organizations are not synonymous with participation and input from EJ organizations and community members themselves. Similarly, working "in" an EJ community is not the same as doing EJ work. Rather, EJ work requires the direct involvement of people who live in the impacted community and who are themselves disproportionately impacted. If people who are most impacted by a certain program or decision are not involved, environmental injustices are exacerbated, and, although

⁶ Exec. Off. of Energy and Env't Affairs, Environmental Justice Policy (June 24, 2021).

the community may receive some benefit, its most pressing needs are not likely to be integrated or prioritized.

With regards to resource allocations, resources are often best allocated to EJ organizations led by residents of impacted communities. This approach both capitalizes on the community connections between these advocates and community members and recognizes the advocacy work historically done by these organizational leaders (often without significant government resources). It also supports organizational capacity, bolstering EJ organizations in their continued work to advocate and address environmental injustices in their communities.

D. EEA Should Incorporate EJ Principles into Its Grants, Cooperative Agreements, Contracts, Sub-Contracts, and Other Funding Mechanisms.

EEA's EJ Strategy should incentivize agencies to incorporate equity in their funding mechanisms to enhance participation and increase the success rate of funding for EJ organizations. Most funding opportunities will be implemented through structured applications via Requests for Proposals and Requests for Applications, most times competitively. To best allocate resources to EJ organizations that are small, historically overlooked, and disadvantaged, EEA agencies should take proactive steps to incorporate equity in Request for Proposal and Request for Application development and scoring procedures.⁷ Some potential steps include measures to:

- Ensure that Request for Proposal and Request for Application solicitations minimize the need for previous experience managing grants and prioritize and provide higher value to an applicant's connection to the community and their history working with EJ, disadvantaged, and underserved communities.
- Require at least 2 two letters of support from EJ organizations for applicants who are not EJ organizations themselves to confirm notification and involvement of the EJ impacted community members and organizations.
 - Ensure confirmation of EJ organization involvement and support by contacting the EJ organizations and verifying their commitment to and role in the project.
- Require tangible and measurable EJ project benefits in communities where the projects will be implemented and require associated milestones with project benefits.
- Implement measures and a process to conduct oversight on all projects in EJ communities by auditing project progress to ensure the anticipated benefits of the project are achieved in the community.
- Institute accountability measures for funded entities and organizations that do not meet their EJ obligations and commitments or fail to perform as promised, particularly those

⁷ Some examples of these funding opportunities include the Department of Energy Resources' (DOER) Solar Massachusetts Renewable Target (SMART) Program, EEA's Municipal Vulnerability Preparedness Program, the Department of Environmental Protection's (DEP) State Brownfields Funding, and other financial opportunities associated with the allocation of funds from state and federal departments and agencies.

entities that receive significant amounts of funding or fail to meet their obligations on a reoccurring basis.⁸

E. *EEA Should Work to Ensure that the Staffing of Its Agencies Reflects the Communities They Serve and Should Conduct Robust Staff Training.*

The AGO appreciates that the Draft EJ Strategy acknowledges the value and importance of agency workforces as well as decision-makers “that reflect[] the racial, ethnic, and socioeconomic diversity of the residents of Massachusetts, including the key role that such a workforce plays in advancing equitable decisions[.]”⁹ EEA should implement hiring strategies designed both to attract and to retain employees from EJ and disadvantaged communities.

In order to build internal capacity and to ensure that agency staff and decision-makers have a working knowledge of EJ and racial justice concepts and issues, EEA should amend the Draft EJ Strategy to require regular training for staff as well as for all decision-makers, beyond the training currently contemplated.¹⁰ The final EJ Strategy should provide and require EJ and racial justice trainings that recognize the direct link between EJ and the federal Civil Rights Act of 1964 and highlight the role race plays throughout our society and work.¹¹ The AGO also recommends that all of the agency strategies include training on how to provide meaningful opportunities for public involvement and community engagement.¹²

F. *The EJ Strategy Should Include a Clear Process for Considering Communities that Do Not Meet EJ Criteria.*

EEA’s EJ Strategy should establish a transparent, consistent and measurable process for block groups and communities which do not meet the EJ criteria to “write-in” for EJ consideration, as required under Section 56 of Chapter 8 of the Acts of 2021, *An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy*. A “write-in” process will allow underserved communities in geographic areas that have been gentrified in some places and no longer meet the technical EJ requirements to nonetheless seek EJ designation. The EJ Strategy

⁸ Some accountability strategies could include requiring a Memorandum of Understanding (“MOU”) which allows a temporary or permanent freeze on funding, a reallocation of funding, a temporary restriction on eligibility for future funding projects, a permanent restriction for repeat violators, or requirements for specialized training to help provide education on how EJ principles should be interpreted and incorporated.

⁹ Draft EJ Strategy at 115; *see id.* at 128.

¹⁰ *See, e.g., id.* at 12, 115, 128.

¹¹ Research indicates that: “Although socio-economic status appeared to play an important role . . . [r]ace proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities.” Toxic Waste and Race in the United States, Commission for Racial Justice, United Church of Christ, 1987. These disparities still exist today. *See, e.g.,* EPA, *Regulatory Impact Analysis Safer Communities by Chemical Accident Prevention Proposed Rule*, 89-91 & nn. 85-86 (Apr. 19, 2022) (demonstrating “low income” and “minority” populations are 10% and 11% more likely than the general population to live in close proximity to facilities posing risks of fire, explosion, and exposure to hazardous chemicals); Christopher W. Tessum, *et al.*, PM_{2.5} polluters disproportionately and systemically affect people of color in the United States, *Sci. Pol’y* 7 (Apr. 28, 2021) (“Racial-ethnic minorities in the United States are exposed to disproportionately high levels of ambient fine particulate air pollution (PM_{2.5}), the largest environmental cause of human mortality.”).

¹² DEP’s Draft EJ Strategy states that such training will be required on a routine basis, at least annually but this is not included in all agency strategies. *See, e.g.,* Draft EJ Strategy at 82.

should describe the process by which communities will be measured to meet the geographic portion of a neighborhood designation by the Secretary as an EJ population. A well-defined process will create transparency, streamline approvals or denials, and create consistency for communities across the Commonwealth.

G. EEA Should Develop Metrics to Track and Demonstrate Change in Key Areas.

While the Draft EJ Strategy lists several metrics to measure progress,¹³ the AGO recommends a more robust set of metrics that also tracks: EJ initiatives that have been implemented (in addition to future planned EJ initiatives); input, concerns, and feedback from community members related to community engagement; public participation, language access, and implementation of EJ principles, as well as the agencies' response to such input and any oversight or enforcement measures; and how agency decisions are consistent with EJ principles, including how agency decisions reduced specific environmental burdens for EJ populations.

The AGO also recommends that the Draft EJ Strategy be amended to include a requirement that EEA, on an ongoing basis, track progress in key areas. Key metrics should include:

- **EJ Initiatives:** With regard to ongoing work promoting EJ principles, the AGO recommends that each agency track current EJ initiatives separately from future commitments or planned EJ initiatives in order to highlight meaningful change.
- **Staffing:** With the goal of increasing staff diversity, EEA should track and publicly report on the diversity of its staff in all of its agencies.
- **Training:** EEA should track and publicly report its EJ and racial justice trainings for staff and decision-makers, as well as training in stakeholder engagement.
- **Funding:** EEA should track and publicly report on its agencies' distribution of funds to EJ populations or in furtherance of EJ principles, similar to Justice40.

The AGO also recommends that the agency-specific strategies and metrics therein be updated periodically (e.g., every two years or with significant changes to laws or regulations) based on input from community members.¹⁴

II. AGO Comments on DPU and EFSB Strategies

As the Commonwealth's statutory ratepayer advocate, the AGO regularly practices before the DPU and has additional perspective through its participation in a "stakeholder working group" on public participation at the DPU and the EFSB. The stakeholder working group includes representatives from community organizations as well as persons with expertise in DPU and EFSB proceedings. The stakeholder working group has discussed barriers to

¹³ *Id.* at 114, 127.

¹⁴ Although the DPU and EFSB strategies reference periodic assessments, opportunities for community input are not explicitly included. *See id.* at 114, 127–28.

participation and is finalizing recommendations for how the DPU's and EFSB's proceedings can be accessible to a broader range of participants, and how the DPU and EFSB can provide meaningful opportunities for stakeholders to provide input. These working group recommendations may include recommendations similar to the ones that the AGO makes here, as well as others.

As noted above, agency-specific EJ strategies should provide agency staff and decision-makers with clear guidance and direction on how to support and facilitate meaningful community engagement and public participation. The AGO acknowledges that while the agencies may be hesitant to include detailed guidance in their Draft EJ Strategies that overlaps with issues that are the subject of its two active investigations concerning public participation,¹⁵ the current DPU and EFSB sections provide very little guidance to agency staff and decision-makers on how to enhance public participation opportunities for agency activities that potentially affect EJ populations.¹⁶ Yet, the EJ Strategy is intended to provide such guidance.¹⁷ The Draft DPU EJ Strategy states that the document is intended “to serve as both its EJ Strategy and Public Involvement and Community Engagement Plan”¹⁸ and the Draft EFSB EJ Strategy states that the “EFSB is developing its [Public Improvement Plan (“PIP”)] as part of”¹⁹ EFSB 21-01. To ensure that the EJ Strategy serves the intended use as a document to guide staff on how to engage the public, the AGO recommends that the Draft DPU and EFSB EJ Strategies be amended to offer more specific guidance to regulators and staff,²⁰ and to include clear directives and minimum requirements related to community engagement and public participation.

In addition, boilerplate, big picture, general, and aspirational language should be replaced with clear and specific minimum requirements, as discussed above in Section I.A. The Draft DPU EJ Strategy includes only aspirational language related to public access to hearings and proceedings, community outreach, and posting translated public hearing schedules. For example, the Draft DPU EJ Strategy includes statements that EEA will:

- “... strive to enhance public access to Department hearings and proceedings[;]”
- “[s]trive to enhance community outreach, to the extent consistent with applicable law, by publishing public notices on multiple platforms[;]” and
- “[s]trive to post the public hearing schedule on a translatable Department web page[.]”²¹

¹⁵ The DPU and the EFSB have each opened investigations into enhancing public participation in their agencies. *See* Inquiry by the Department of Public Utilities of its own Motion into Procedures for Enhancing Public Awareness of and Participation in its Proceedings, D.P.U. 21-50; Notice of Inquiry by the Energy Facilities Siting Board on its Own Motion into Procedures for Enhancing Public Awareness of and Participation in its Proceedings, EFSB 21-01. The AGO's comments on the DPU and EFSB draft EJ strategies are informed in part by its participation in these ongoing proceedings.

¹⁶ *See* Draft EJ Strategy at 112, 4.

¹⁷ *See, e.g., id.* at 4.

¹⁸ *Id.* at 112.

¹⁹ *Id.* at 126.

²⁰ In addition to guiding staff and regulators, more specificity about how the DPU and EFSB will enhance public participation will result in the public being informed about what to expect from the agencies.

²¹ *Id.* at 113

Instead of using language about intending or striving to take certain steps, the final DPU EJ Strategy should include minimum requirements describing how the DPU will enhance public access and community outreach and when and how the DPU will post translated hearing schedules on the DPU's web page.

Similarly, the Draft EFSB EJ Strategy references “enhanced public participation,” but nowhere explains or defines that standard.²² Accordingly, it is not clear what “enhanced public participation” actually means. In addition, the Draft EFSB EJ Strategy's discussion regarding a PIP states that “EEA agencies must create a PIP that establishes an inclusive, robust public participation program for key agency actions[,]”²³ but without minimum requirements or standards, it is unclear when a public participation program would be considered robust or what “robust public participation” looks like.²⁴ Moreover, both the Draft DPU and EFSB EJ Strategies discuss translation and interpretation,²⁵ but do not establish thresholds for when such services will be provided. Further, although the Commonwealth's language access policy requires each agency's language access plan (“LAP”) to be updated every two years,²⁶ the DPU's LAP is dated 2018 and the EFSB does not appear to have an existing LAP in place.²⁷

To prevent inconsistent implementation of the Draft EJ Strategy, to support transparency and accountability, to reduce case-by-case decision-making, and to provide direction to agency staff as they conduct community engagement and encourage public participation, the final DPU and EFSB EJ Strategies should include clear minimum requirements or standards, detailed above, related to meeting requirements; translation and interpretation; attendance and participation options; public notice; and oversight and enforcement.²⁸

Several of the AGO's recommendations in the AGO's comment letters filed in the ongoing public participation proceedings at the DPU (D.P.U. 21-50) and EFSB (EFSB 21-01) are also relevant to the DPU and EFSB EJ Strategies.²⁹

²² *Id.* at 125.

²³ *Id.* at 126.

²⁴ The AGO recognizes the EFSB's intent to develop its PIP as part of EFSB 21-01, Draft EJ Strategy at 126, and recommends that the EFSB ensure that the document makes clear what robust public participation would look like, as well as specific minimum requirements and standards.

²⁵ *Id.* at 126-127. The AGO acknowledges that the Draft EFSB EJ Strategy states that thresholds for presumptively providing translation and interpretation will be included in the Siting Board's LAP, and that the LAP is under development as part of EFSB 21-01

²⁶ See “Language Access Policy and Implementation Guidelines,” Office of Access and Opportunity, (Mar. 20, 2015), at 4, <https://www.mass.gov/doc/language-access-guidelines/download> (“After development and implementation of revised language access plans pursuant to these Guidelines, each Agency shall update its language access plan every two (2) years.”).

²⁷ See DPU 2018 Language Access Plan, <https://www.mass.gov/doc/2018-dpu-language-access-plan/download>.

²⁸ The Draft DPU and EFSB EJ Strategies include a paragraph related to enforcement of EEA's EJ Strategy. The AGO recommends that the agency-specific sections on community engagement and public participation include a description of how community members can voice concerns, ideally to someone or an office outside of the agency, such as EEA's Office of Environmental Justice, related to an agency's community engagement and public participation efforts.

²⁹ See the following AGO Comments to:

- the DPU on June 14, 2021
(<https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/13646528>);

- Non-technical Summaries: The DPU and EFSB as well as project proponents/petitioners should provide easy-to-read non-technical summaries of lengthy or technical agency or petitioner communications (including public notices, petitions and briefs, and agency decisions) that clearly identify impacts of proposals to communities.
- Response to Input Document: The DPU and EFSB as well as project proponents/petitioners should develop ways to respond to comments and input received from the public so that the public understands the impact that their input has on decisions and on proposals and so there is increased transparency about whether and why stakeholder input was or was not integrated into decisions and proposals.
- Educational Materials: The DPU and EFSB should provide educational materials (which may include videos, sample motions/filings, and handbooks) to make the content of proceedings, programs, and the work of the agencies, as well as applicable procedures, more accessible to non-attorneys and non-experts.³⁰
- Scheduled Oral Comments: When offering public comment opportunities in person or remotely, the DPU and EFSB should allow individuals to sign up to speak at specific times so that members of the public are not required to wait for hours to provide comments/input.
- Ongoing Informal Opportunities for Input: The DPU and EFSB should provide opportunities for the public to have a dialogue and otherwise interact with agency staff and decision makers that are not connected to a particular docket. The DPU and EFSB can provide these opportunities through listening sessions, advisory councils, working groups, and community outreach. The DPU and EFSB should, where possible, offer these opportunities at the same times and places as other events that are already being held (i.e., go where people are already gathering, rather than asking them to attend a new event).

As noted above, the Draft DPU and EFSB EJ Strategies do not provide detailed guidance, some of which the agencies plan to address in the public participation proceedings. The AGO recommends that the Draft DPU and EFSB EJ Strategies be timely updated and that stakeholders have the opportunity to comment and provide feedback on the revised strategies.

As discussed in the AGO's general comments in Section I.A & B above, in regard to the DPU's and EFSB's efforts to *promote* (rather than *consider*) EJ principles and to ensure meaningful involvement of all people and communities,³¹ the AGO also recommends that the Draft DPU and EFSB EJ Strategies be amended to acknowledge that efforts related to

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- the EFSB on September 10, 2021 (<https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/13945108>);
 - the DPU and EFSB on September 16, 2022 (<https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15504696>); and
 - the DPU on January 20, 2023 (<https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/16936499>).

³⁰ The DPU EJ Strategy references links related to information on energy bills, energy incentive programs, and arrearage management programs, but does not contemplate additional educational materials that would assist community members engage with or participate in proceedings. Draft EJ Strategy at 113–114.

³¹ See Draft EJ Strategy at 8, 112, 115, 120.

community engagement and public participation may require different approaches in different communities, and that not all EJ communities are the same. As stated in Section I.B, not all EJ, disadvantaged, and underrepresented communities experience or have historically experienced the same burdens. For certain projects and proceedings with localized impacts, it may be appropriate to provide different levels of support or different levels and types of outreach to the most disadvantaged or burdened communities.³² The DPU and EFSB should consider working with EEA's Office of Environmental Justice or with external community engagement specialists in order to conduct outreach to and address the unique needs and circumstances of each EJ community.

The AGO appreciates the efforts of the Secretariat and the agencies within EEA to develop an EJ Strategy that will proactively promote EJ across EEA's agencies. Thank you for this opportunity to comment.

Sincerely,

THE OFFICE OF ATTORNEY GENERAL
ANDREA JOY CAMPBELL'S ENERGY
AND ENVIRONMENT BUREAU

/s/ Marcus D. Holmes

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/s/ Jessica R. Freedman

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cc: Rishi Reddi, Director of Environmental Justice

³² The AGO acknowledges that the DPU has proposed a draft policy that would require different levels of publication and outreach for different types of proceedings. D.P.U. 21-50, *Interlocutory Order and Draft Policy on Enhancing Public Awareness and Participation*, at 7, available at <https://www.mass.gov/doc/21-50-interlocutory-order-and-draft-policy/download>.