



March 30, 2021

Kathleen Theoharides, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Via Email: MEPA-regs@mass.gov

Re: MEPA Regulatory Review General Comments

Dear Secretary Theoharides:

The Berkshire Regional Planning Commission (BRPC) hereby submits general comments with regard to the MEPA Office regulatory review effort to update its regulations at 301 CMR 11.00 and associated policies and guidance. BRPC is concerned with regard to the overall lack of detail, method of disseminating information and schedule for providing comment. While BRPC is submitting general comments in compliance with the March 31, 2021 deadline, there was little to no guidance with regard to the proposed changes for which comments are due. According to the Environmental Monitor, ongoing updates of the MEPA regulatory review effort will be posted at <http://mass.gov/service-details/information-about-upcoming-regulatory-updates>. However, little information is provided on the website; in fact, the February 2021 MEPA Regulatory Review Presentation is no longer available through the website. While general public input is being sought in Spring 2021, it is unclear when additional information will be made available to the public and whether timely opportunities will be provided in order to provide meaningful comments.

The following comments are submitted with regard to the MEPA Regulations - Key Areas for Public Input as described within the MEPA Regulatory Review Presentation dated February 2021. The Key Areas for Public Input are broken up into three categories: 1) Updates to MEPA Thresholds; 2) Clarification of MEPA Definitions; and 3) Clarification of MEPA Procedures, and our comments follow the same format.

Updates to MEPA Thresholds

The presentation indicates an intent to add flexibility to the Area of Critical Environmental Concern (ACEC) threshold. It is unclear how such flexibility would be implemented. BRPC is in agreement that every project within an ACEC that requires a state action does not necessarily warrant MEPA review. However, if the proposed change were to leave it up to MEPA's discretion through a pre-filing process BRPC requests that, at a minimum, notification of a proposed project within an ACEC should be published or disseminated.

Additional clarification is needed with regard to the proposed increase of the rare species threshold from 2 acres to 5 acres for species of special concern. As currently written, an ENF or Other MEPA Review is required if a project includes greater than two acres of disturbance of designated priority habitat that results in a take of a state-listed endangered or threatened species or species of special concern. It is unclear whether the proposed change would only apply to species of special concern and whether the threshold would remain 2 acres for state-listed endangered or threatened species. In addition, a change from 2 acres to 5 acres may be a significant difference. Alternatives to consider include percent change or ratio to contiguous acres.

Clarification of MEPA Definitions

BRPC has no general comments with regard to the proposed clarification of MEPA definitions at this time.

Clarification of MEPA Procedures

There is not enough information provided with regard to streamlining the notice of project change procedure. BRPC suggests that the Notice of Project Change procedure be linked to the original threshold reached and/or whether a new threshold has been reached that was not previously reviewed. BRPC is, in general, supportive of streamlining the procedure, but has concerns regarding segmentation. Streamlining the Notice of Project procedure would be appropriate when changes are necessitated by additional design of the project as a whole but should not be utilized as a way to avoid the longstanding practice of preventing segmentation of projects.

The following comments are offered on the Draft MEPA Interim Protocol on Climate Change Adaptation and Resiliency and the Draft MEPA Interim Protocol for Environmental Justice Outreach.

Draft MEPA Interim Protocol on Climate Change Adaptation and Resiliency

BRPC is overall supportive of the protocol but has concerns regarding availability and ease of use of required climate projection tools. Any climate projection tools required should be available, ready to use, and user-friendly.

Draft MEPA Interim Protocol for Environmental Justice Outreach

While BRPC supports the protocol overall, the exemption for remediation projects is not appropriate as some remediation projects are quite large with significant impacts to the community and neighborhoods surrounding them.

BRPC suggests that all new Environmental Notification Form (ENF) projects located within EJ neighborhoods, including remediation projects, must consult with the MEPA Office prior to filing to determine EJ outreach strategy. In addition to consultation with the MEPA Office, proponents should consider the following actions (as applicable):

- notify local NAACP chapters or other EJ representative groups;
- provide translation services and materials in multiple languages;
- go door-to-door with flyers in multiple languages;
- send mailings to residents in impacted neighborhoods; and
- use social media with posts that can be easily shared and reshared

The BRPC Environmental Review Committee endorsed these comments at their meeting on March 22, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas Matuszko". The signature is stylized and cursive.

Thomas Matuszko, AICP
Executive Director