



For a thriving New England

CLF Massachusetts 62 Summer Street
Boston MA 02110
P: 617.350.0990
F: 617.350.4030
www.clf.org

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Via Electronic Mail

Tori T. Kim
Assistant Secretary/MEPA Director
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114
MEPA-regs@mass.gov

Subject: Comments on Massachusetts Environmental Policy Act Environmental Justice Protocol and Adaptation Protocol

Dear Secretary Theoharides and MEPA Director Tori Kim:

On behalf of the Conservation Law Foundation (“CLF”) and its members,¹ we provide our comments regarding the Massachusetts Environmental Policy Act (“MEPA”) [Environmental Justice Protocol draft released in June 2021](#) and draft Adaptation Protocol. The following comments supplement and reinforce those submitted in March and April to inform the interim protocol.

ENVIRONMENTAL JUSTICE PROTOCOL

We are pleased to see the revision of the draft protocol that incorporates several of our comments and thank the MEPA Office for issuing a Public Involvement Protocol for EJ populations (“EJ Protocol”).

The EJ Protocol should be further strengthened to ensure residents of EJ neighborhoods have meaningful opportunities to comment on project design, and that Proponents are accountable for incorporating community feedback into project design. We offer the following recommendations to strengthen the EJ Protocol:

¹ CLF is a nonprofit, member-supported, regional environmental organization working to conserve natural resources, protect public health, and promote thriving communities for all in the New England region. CLF protects New England’s environment for the benefit of all people. We use the law, science and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy.

- Proponents shall consult with the MEPA office at least 60 days prior to filing to determine an appropriate EJ outreach strategy when EJ populations are potentially impacted;
- The MEPA Office should ensure that staff is available to support meaningful community engagement during the early engagement period and the site visit;
- The MEPA Office should require Proponents to respond to comments during the pre-filing period, alter the project proposal, or abandon the project prior to filing, based on feedback from EJ residents.
- The presumption of project impacts guidance should include more detail; and
- The MEPA Office should convene a meeting to further discuss the language access translation threshold.

I. We Support Public Involvement Requirements Prior to Filing with the MEPA Office and Provide Further Recommendations.

We are pleased to see the following components included in the draft protocol:

- The submission of a map identifying project location relative to environmental justice (EJ) populations (within a 1-mile and 5-mile radius);
- The requirement to describe whether the project is reasonably likely to affect EJ populations; and
- The requirement for filing a letter of intent prior to filing with the MEPA Office.

A. Proponents should conduct outreach and engagement at least 60 days prior to filing with MEPA when EJ populations are potentially impacted.

The MEPA Office's EJ Protocol specifies that for a project that affects one or more EJ populations, the Proponent must file a letter of intent 45 days prior to filing. To ensure that Proponents conduct engagement in a meaningful way, with support of the MEPA Office, the Proponent should be required to both submit a Letter of Intent and *consult with the MEPA Office* at least 60 days prior to filing. A 60-day advance notice period will allow time for a Proponent to work closely with the MEPA Office to develop a meaningful outreach strategy and then to conduct outreach prior to filing with the MEPA Office. One way to engage residents is by conducting outreach to local elected and appointed officials, community-based organizations, tribes and Indigenous representatives.

Engaging early with the local population allows them the opportunity to comment on the design of a project prior to filing an environmental review. In this regard, project proponents should be required to report to the MEPA Office and the EEA EJ staff for consultation at least 60 days prior. This should provide enough time to determine an appropriate EJ outreach strategy.

B. The MEPA Office Should Ensure its Staff is Available to Connect a Proponent with Potentially-Impacted Residents.

The EJ Protocol should require the MEPA Office to provide support both during the early engagement process and the MEPA review process. Prior to filing, Proponents should be required not only to file a Letter of Intent, but also to consult with the MEPA Office to develop a

community outreach strategy. The MEPA Office shall ensure that staff is available to support a Proponent during the early engagement period to make connections with potentially impacted EJ populations. Ideally, the MEPA Office and director of EJ at the Executive Office of Energy and Environmental Affairs will offer to facilitate discussions between a Proponent and potentially-impacted residents. For projects that involve site visits, the MEPA Office and Proponents should work together to ensure residents of potentially-impacted EJ populations know about the site visit and can participate in the site visit. Site visits are typically offered during a business day. The MEPA Office and Proponent should consider offering site visits at different times, including evenings and weekends, and recording a site visit that is publicly available.

C. The MEPA Office Should Require Proponents to Incorporate Feedback from EJ populations into the Filing.

To ensure that community engagement has a meaningful impact on project design, the EJ Protocol should require the Proponent to respond to comments during the pre-filing period, alter the project proposal, or abandon the project prior to filing, based on feedback from EJ residents.

CLF supports the Interim Protocol's requirement that the Proponent invite community-based organizations, local elected officials, the EEA director of EJ to a meeting to review the proposed project prior to filing ("information meeting"). However, the EJ Protocol should also ensure that the Proponent is accountable to respond to community feedback at this stage, including by abandoning plans to file with MEPA, altering plans to consider the comments, or explaining why it chose to continue with the plans. Following an information meeting, the Proponent should be required to adjust the project to address community concerns or abandon plans to file with the MEPA Office, or explain why it will not do so.

Similarly, CLF supports the EJ Protocol's requirements around community engagement during the site visit. However, the EJ Protocol should also require the MEPA Office staff to respond to community concerns raised at this stage. If site visit attendees raise concerns and/or recommended Project changes, the MEPA Office staff should ensure that they understand the information and address those concerns in the Secretary's Certificate. The MEPA Office should consider extending the comment periods beyond the standard 20 or 30 days when a project potentially impacts EJ populations.

Finally, to the extent that EJ neighborhood residents express concerns or ideas about a project, the MEPA Office should consider requiring project changes and mitigation opportunities. The Secretary's Certificate should include, when appropriate, specific mitigation requirements that are tailored to the potentially impacted EJ population's needs and requests. These mitigation measures should reflect community ideas.

II. The Presumption of Project Impacts Should Include More Details.

We support the EJ Protocol statement that absent compelling information to the contrary, any project impacts within one mile of EJ population will negatively affect such EJ populations. We recommend that the EJ Protocol state examples of the types of exposures or actions that constitute project impacts, including, but not limited to air emissions from construction or facility operation,

water releases and discharges during construction and facility operation, tree removal, land alternation, adding vehicle trips, altering access to public transportation, increasing the presence of police officers, and altering noise exposure. We also support the presumption that any project that will require an unusually large volume of project-related or construction-related diesel trucks or equipment may be regarded as affecting air quality up to 5-mile radius. Unusually large volume should be deemed to include adding more than 25 trips/day or construction equipment that will operate more than 100 hours throughout the lifetime of the project construction. Proponents should discuss how to avoid or mitigate these emissions.

We also support the presumption that the Secretary shall retain discretion to reject any documentation and associated ENF/EENF filing as incomplete based on non-compliance with EJ public involvement requirements and may require an extension or repetition of the MEPA review due to such non-compliance.

III. The MEPA Office Should Convene a Meeting with Data Experts to Clarify When Translation and Interpretation Services Will Be Required.

A goal of the EJ Protocol is to ensure that potentially-affected populations are able to meaningfully engage in the public-process for the project. Language access is a key component of ensuring meaningful engagement. The EJ Protocol indicates that if limited English proficiency is one of the criteria that triggers an EJ population designation within the one or five-mile radius, then written and oral translation and interpretation services should be provided in all languages spoken by a significant portion of the populations, or at least 5 percent of the census block. We question the dataset to be used, the decision to use data by census block, and a 5 percent trigger.

A. Some datasets contain large margins of error that may affect the reliability of information.

Data regarding limited English proficiency status could be based on decennial census data or American Community Survey (“ACS”) data. Though the 2020 census is complete, the results and data are not yet available. While the decennial census reflects a broader sample size, the ACS is updated more regularly and therefore will better capture demographic shifts. This may also be an aspect in which it is preferable to err on the side of inclusivity – while ACS data may be less statistically rigorous, they are more likely to capture a more current population. However, the decennial census is more statistically rigorous than ACS data and this should be considered as well. Relying on the 2010 census data would ensure lower margins of error compared to the more recent ACS data, though that data is likely outdated and not reflective of current language needs.

According to the most recent 5-year ACS estimates, there are 2,617,597 limited English speaking households in Massachusetts, with a margin of error +/- 4,909. Of these households, 152,845 are limited English speaking households, with a margin of error +/- 2,902. Or 5.8 percent of

households in Massachusetts are limited English speaking with a +/- 0.1 margin of error.² When analyzing the languages spoken, the margins of error are even greater.

Regarding margin of error concerns, an approach of aggregating census tracts will provide a larger sample size which will reduce error. Beyond this, we recommend erring on the side of inclusivity; it would be more detrimental to not provide translation services to people requiring them rather than to provide translated documents that benefit a smaller number of people than intended. We recommend a stakeholder meeting that includes people with GIS and statistical experience to work through these details.

B. Instead of using data based on census block, consider drawing a radius to determine the significant portion of the population that would trigger translated materials.

We recommend that proximity be determined by a radius rather than simply be based on the census tract that the project is in, since a project located on the edge of a census tract could have a significant impact on neighboring tracts which would not otherwise be captured. For each project, we recommend the following steps to determine whether translation services should be provided:

- Draw a radius of 1 or 5 miles around the MEPA project in question.
 - A minimum radius of 1 mile is generally accepted and supported by the literature, and a 5 mile radius could be used for projects with associated air emissions, which may have more of a geographic reach than other impacts. This aligns with the EEA Environmental Justice Policy 2017.
- Determine whether that radius intersects with any environmental justice populations per the EJ Viewer Tool.
 - If yes, determine whether English isolation is a characteristic of any of these block groups.
 - If yes, draw a 1- or 5-mile buffer using GIS around the site, and for all census tracts* that intersect that buffer, take the sum of the population and then calculate the percentage of the population that speaks each language and identifies as limited English proficiency. Provide translation services for any languages that are spoken by more than a certain percent of the population according to census data on language spoken at home by ability to speak English (table B16001).
 - Additionally, community outreach should be conducted to determine whether translation should be provided for other languages identified in the census reporting but below the X% threshold. It is possible that the census may be underreporting on these languages and therefore outreach is important to ensure that people speaking these languages are not overlooked in the public involvement process.

We recommend that the threshold to trigger language translation and interpretation should be to err on the side of inclusivity, which could only result in providing more translated information to the community rather than failing to accurately inform them. Other considerations include using

² The relevant [table ID is S1602](#).

publicly available data so that the approach of determining which languages require translation is replicable and aligns with the MA Environmental Justice definition and policy.

C. The MEPA Office should require simultaneous interpretation to allow for two-way communication, and translation and interpretation services should maintain quality.

The interpretation should be carried out as soon as the event starts, so that Portuguese speakers, for example, understand what someone is saying in English and the English speakers understand what someone is saying in Portuguese. In this light, it is essential to maintain the quality of translation and interpretation services. We recommend an elaboration of a list of translation service agencies which project proponents may use to meet their needs and ensure the accuracy of translations and interpretation for public involvement. Subpar services such as a translator lacking the skills or technical knowledge needed to accurately capture the information impede equity in public participation. We recommend identifying language services providers with the technical knowledge needed to accurately translate technical nuances which influence the public's understanding of proposed activities and therefore its ability to provide feedback.

Also, translation and interpretation requirements should include the need for headsets which can be used for some persons who are hard of hearing. In the same manner, an ASL interpreter should be available for any persons in the audience requiring sign language. Ensuring interpretation and translation quality implies the neutrality of service providers. This means that conflict of interest checks should be performed periodically before they are added as reference.

III. MEPA Should Review and Update the Review Thresholds.

We are pleased that the new MEPA protocol considers a review for the expansion of an electric generating facility with a capacity of 25 or more MW, and further recommend a lower threshold for new electric generating facilities, powered by fossil fuels, with a capacity of 35 or more MW.

For land use, we recommend the reporting of the removal of healthy mature trees due to a development, transportation, or other construction project. If trees are proposed to be removed, proponents should explain whether they plan to replace trees on site or otherwise mitigate the loss of tree canopy and the benefits it provides. In a similar way, project proponents should detail what trees and vegetation will be added to the site. Any local and/or state requirements that apply to the project related to tree removal (i.e., tree ordinance, bylaw, or regulations) should be cited by the proponent. The no-tree loss option should be highly recommended to project Proponents.

We reiterate the health risks associated with transportation (air and water pollution) in addition to increased congestion and inequities. We recommend reviewing the existing threshold to reduce public transit service by an average of ten percent, increasing transit fares at an average of two percent, changing highway lane designations that increase the number by average daily trips by the amount, suspension of bus, rail, rapid transit, commuter rail and ferry service more than ten percent if such suspensions will last longer than 30 days, and transportation of hazardous material by any mode of transportation.

We also suggest reviewing the threshold of 3,000 or more average daily trips on roadways providing access to a single location. That threshold should include both vehicle and transit trips per day to reflect the importance of transit trips to contribute to the Commonwealth's climate targets. Further, the first and last part of transit trips involve walking to bus stops and train stations and are, therefore, important in considering the adequacy of pedestrian infrastructure supporting the project. We do not think that 3,000 is the appropriate threshold of vehicle and transit trips below which would not have much impact. The threshold should be lower.

We suggest reviewing the threshold of 1,000 or more new parking spaces at a single location. The number of parking spaces is a proxy for many impacts and a lower threshold is necessary to account for the impacts to air, land use, water, public health, and climate.

IV. There Should Be Ongoing Engagement with the Community After Filing the Environmental Notification Form (“ENF”).

It is important to improve and develop the methods for addressing, tracking, and measuring progress toward achieving environmental justice.³ We, therefore, recommend the establishment of report mechanisms to keep track of public concerns and project activities. Reporting mechanisms involve the collection and circulation of core information about the project to keep stakeholders informed about its status.⁴ While these mechanisms will enable project Proponents to periodically update the public about ongoing activities, a complaint mechanism should be made available at the MEPA Office to enable EJ populations or community-based organizations to report any issues arising from project developments.

Project Proponents should follow-up with identified EJ populations after the operation of the project. This is the monitoring and evaluation of the impacts of the project for the management of, communication about, the environmental performance of the project.⁵ For example, public meetings or hearings can be used to update the population on ongoing activities, provide resources about potential impacts (risks that were not accounted for in initial public involvement processes), mitigation strategies, and open discussion for further input from the public. This process should include language translation and interpretation.

ADAPTATION PROTOCOL

CLF Supports the Adaptation Interim Protocol and Recommends that EEA Incorporate Technical Standards for Climate Resilient Design into the Environmental Review Process.

³ Environmental Justice in your Community, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA), <https://www.epa.gov/environmentaljustice/environmental-justice-your-community#region6>.

⁴ UKEssays. (November 2018). Monitoring And Reporting Mechanisms Information Technology Essay. Retrieved from <https://www.ukessays.com/essays/information-technology/monitoring-and-reporting-mechanisms-information-technology-essay.php?vref=1>.

⁵ Morrison-Saunders, A and J Arts (2004) (eds) *Assessing Impact: Handbook of EIA and SEA Follow-up*, Earthscan James & James, London.

CLF supports the MEPA Office efforts to better integrate climate resilience and adaptation planning into the environmental review process. As the Commonwealth has recognized, the threats and challenges posed by extreme weather and climate change are not only imminent, but already being experienced by Massachusetts residents. It is critical that the Commonwealth take steps now, to meet current and future climate risks.

We support the updated proposed information gathering process outlined by the Adaptation Interim Protocol. As EEA goes forward in introducing new tools to further integrate its existing risk assessment procedures into practice, we recommend incorporating project-specific design standards into the review process, in addition to the risk evaluation tool currently incorporated in the protocol. Specifically, we have the following notes about the addendum to the ENF in the Adaptation Interim Protocol (“Addendum”) regarding the RMA tool, and issues identified in our previous comments. Our comments on the new draft Addendum are included below:

A. Project-Specific Design Standards.

The Addendum largely relies on the Resilient Massachusetts Action Team (“RMA”) Climate Resilience Design Standards tool (“the RMA tool”) to gather information from project proponents. Proponents are required to submit the RMA tool’s output in the Addendum.⁶ By relying on the RMA tool, the new draft Addendum clarifies key points of the information that project proponents were required to report in the previous version of the Interim Protocol and Addendum. It also provides a uniform process from which proponents may determine and report project criticality, while the previous version of the Addendum asked proponents to provide a project criticality rating with minimal guidance.

However, the Addendum does not set forth consistent, technical standards for design based on project type. While the Addendum otherwise refers project proponents to “to consult general guidance and best practices as described in the RMA Climate Resilience Design Guidelines,”⁷ no other directive is provided to the project proponent beyond the risk evaluation output from the RMA Tool. The Addendum standardizes the climate risk evaluation process proponents must undergo as part of the environmental review process. While all proponents will evaluate risk uniformly, design and project components in response to identified risks will vary greatly, if proponents are only required to complete the evaluation process, and not follow-through with specific design standards. While the RMA tool includes methodologies to arrive at specific climatic design criteria, it does not include specific prescriptions for designing to these criteria, or project specific design standards; also, the Addendum does not require the use of these methodologies by project proponents. We encourage EEA to go further by incorporating specific climate resilient technical standards into the environmental review process.

B. Impervious Surface

Our previous comments addressed changes to impervious surface relative to the project. In the revised Addendum, project proponents provide information on changes to impervious surface via the RMA tool, which asks specifically about whether the project increases impervious

⁶ Adaptation Interim Protocol, p. 2

⁷ Adaptation Interim Protocol, p. 4

surface on-site. Proponents should also be asked to qualitatively describe impervious surface at adjacent sites and the history of increases in impervious for the area. This will allow the review process to address area-specific impacts beyond individual sites.

C. Municipal Level Forward-Looking Data.

Our previous comments addressed the base data for addressing flood risks. The RMA tool instructs project proponents to note the location of proposed projects relative to data presented in Massachusetts FEMA FIRMs and from the Massachusetts Coast Flood Risk Model (MC-FRM).⁸ Given that other municipalities may have high-quality forward looking data available, we encourage EEA to ask project proponents to note, to the best of their knowledge whether forward-looking, municipality-specific flood data is available and if they considered the flood risk to the proposed project relative to these data in addition to those presented in the RMA tool.

D. Adaptation Measures

The Adaptation Interim Protocol asks Proponents to describe whether “the project [has] taken measures to adapt to climate change for any of the climate parameters analyzed in the RMA Climate Resilience Design Standards Tool (sea level rise/storm surge, extreme precipitation (urban or riverine flooding), extreme heat.”⁹ **It does not ask Proponents to provide adaptation measures for all risks identified by the RMA tool, nor design specifics for these adaptation strategies.** EEA should revise this language such that Proponents are required to describe adaptation strategies (or reasons for why such strategies are not incorporated) relative to all identified risks. EEA should review adaptation strategies relative to all risks presented in the RMA Tool output.

Finally, Proponents should be required to provide a description of community engagement efforts undertaken in the decision-making process for any proposed adaptation measures.

⁸ Resilient Massachusetts Action Team (RMA). April 2021. Climate Resilience Design Standards and Guidance, Section 2. Accessed 28 July 2021 at https://resilientma.org/mvp/cms_content/guidelines/20210401Section2ProjectInputsandCRSO.pdf, p. 7

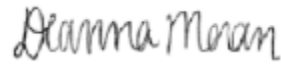
⁹ Adaptation Interim Protocol, p. 4.

Thank you for your consideration of these comments. We look forward to working with EEA as it pursues MEPA regulatory updates.

Sincerely,



Staci Rubin
Vice President, Environmental Justice



Deanna Moran
Director, Environmental Planning