



October 20, 2021

Tori Kim, MEPA Director  
Massachusetts Environmental Policy Act (MEPA) Office  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: **Proposed Revisions to MEPA Regulations 301 CMR 11.00**

Dear Tori:

On behalf of Mass Audubon, I submit the following comments on the proposed updates to the MEPA regulations to implement new Environmental Justice (EJ) provisions of MEPA pursuant to Sections 55-60 of Chapter 8 of the Acts of 2021: *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy*. I also want to take this opportunity to thank you for including Mass Audubon in the advisory committee on MEPA regulatory updates.

Mass Audubon supports the strengthening of environmental review oversight, community engagement, and cumulative impact assessment for projects within or close to EJ communities. These provisions are a step toward addressing longstanding inequities in land use, environmental health, and access to nature.

**Negative Effects on Restoration Projects in EJ Communities:** We have a significant concern about an unintended consequence of the regulations as presently proposed, adding considerable cost and time delays to pro-active environmental restoration projects in or near EJ communities by mandating preparation of a full Environmental Impact Report (EIR) for all projects in those areas. In particular, we are concerned about adding cost and other impediments to restoration of wetlands, rivers, floodplains and shorelines in or near EJ communities.

**Proposed Solution:** We recommend that the definition of “Environmental Benefits” be modified to be parallel but opposite to the definition of Damage to the Environment. The Secretary could then review each ENF in relation to projects where there will not in fact be Damage to the Environment, but the project will provide Environmental Benefits, then issue a Certificate that determines that an EIR is not required.

An alternative approach would be to rely only on the language in the definition of Damage to the Environment, which states that insignificant damage is not included. A Certificate on an ENF can include findings that a specific project will have insignificant impacts and therefore does not need to file a full EIR. However, this approach is not sufficient, since there still needs to be a mechanism to overcome the presumption in the MEPA regulatory thresholds that projects exceeding a threshold are likely to cause Damage to the Environment.

**301 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.”*

Thus, by definition, any project in an EJ area subject to MEPA review will automatically be required to prepare a full EIR, since it is presumed to be likely to cause damage. The practical effect will be to make it **more expensive and time consuming** to do positive restoration projects like dam removals, culvert upgrades, wetlands restoration or even in some instances riparian tree planting or coastal shoreline restoration projects **in EJ communities than in non-EJ areas**.

Furthermore, if there is an increased reliance on the use of finding of insignificant impacts, this is likely to lead to a slippery slope – e.g. on Article 97 dispositions. Loss of even a small amount of parkland in certain settings, including EJ communities may be of great concern, but could potentially be proposed to avoid an EIR through a finding of insignificant impact. This is not a pattern of finding that should be encouraged for development projects. Restoration projects, on the other hand, result in substantial environmental benefits that do in fact more than offset any temporary and therefore truly insignificant impacts.

By structuring the regulations so that findings of both insignificant damage and substantial Environmental Benefits will be the criteria for issuing a Certificate determining that no EIR is required for environmental restoration and enhancement projects, adequate safeguards will be in place.

**Recommended Definition of Environmental Benefits:** The definition of Environmental Benefits should be modified to mirror the Damage to the Environment definition.

This is the proposed new regulatory definition:

*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.*

**This definition should not just be about access, capacity, or funding, but about actual improvement of the environment.** This revision to the definition should be made regardless of the connection with avoiding EIRs for positive restoration projects.

The definition should be constructed parallel but opposite to the definition of Damage to the Environment:

*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.*

The definition should, therefore read something like:


*Environmental Benefits: Restoration, protection, or enhancement of the natural resources of the Commonwealth including but not limited to, improved air or water quality, reduced noise, cleanup of historic dumping grounds, improved groundwater levels, reduction in flooding or storm water flows, restoration of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, restoration of seashores, dunes, marine resources, underwater archaeological resources, wetlands, the creation, expansion, or restoration of open spaces, natural areas, parks, or historic districts or sites, or measures to improve climate resilience and reduce climate impacts through natural climate solutions like replacing pavement and impervious surfaces and barren ground with trees and native vegetation.*

The currently proposed definition of Environmental Benefits includes clean renewable energy sources. Mass Audubon strongly supports the development of clean renewable energy sources, but it should also

be noted that any form of energy development results in environmental impacts. We are particularly concerned with the rapid rate of conversion of forests and farmlands to solar energy projects, and there will also be unavoidable impacts associated with the offshore wind industry. These impacts need to be reviewed, and impacts avoided, minimized and mitigated as much as feasible. We do not support a blanket inclusion of this category of development in a definition of Environmental Benefits, particularly if that definition will be utilized to avoid full MEPA review.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Heidi Ricci". The signature is fluid and cursive, with a large, stylized "E" and "R".

E. Heidi Ricci  
Director of Policy and Advocacy