



Massachusetts Association of Conservation Commissions

protecting wetlands, open space and biological diversity through education and advocacy

October 20, 2021

Via Electronic Mail

MEPA-regs@mass.gov

MEPA Office

100 Cambridge Street, Suite 900

Boston, MA 02114

Attn: Torie Kim

RE: Comments on Proposed Massachusetts Environmental Policy Act (MEPA), 301 CMR 11.00

Dear Ms. Kim:

Thank you for the opportunity to provide comments on the proposed amendments to the Massachusetts Environmental Policy Act (MEPA) Regulations, 301 CMR 11.00). Massachusetts Association of Conservation Commissions (MACC) is the statewide non-profit organization that supports more than 2,000 conservation commissioners in their mission of preserving wetlands, open space, and environmental protection. Each of the 351 cities and towns in Massachusetts has a conservation commission responsible for administering the state Wetlands Protection Act, municipal wetland bylaws and ordinances, and managing municipally-owned conservation land. Our association protects Massachusetts' natural resources through our education and advocacy efforts, and we have been doing this work since 1961.

We commend the Commonwealth's leadership and commitment to incorporating equity and environmental justice provisions into these regulations. Striking the balance between increased process along with environmental benefits is difficult. We believe there are two areas of the regulations that will benefit from additional revisions and clarifications:

1. The term "Insignificant" should be clarified. While there is flexibility provided in the new definition of "**Environmental Burden**", there is also a lack of clarity concerning what is meant by "insignificant destruction, damage, or impairment". The definition reads: "**Environmental Burden**. Any destruction, damage, or impairment (*not including insignificant destruction, damage, or impairment*) of any of the natural resources of the Commonwealth." The definition also includes many environmental burdens related to climate change, air pollution, wetlands, forests, and open spaces (and many others). The definition seems comprehensive as to what is included but not what constitutes "insignificant destruction, damage or impairment". We are concerned that small open space areas, especially in Environmental

Justice (EJ) communities, might seem insignificant to those outside of the community, but that small, quarter acre of green space, might be of incredible importance to the EJ community residents. Open space land that is covered by Article 97 of the Constitution of the Commonwealth, is often not transferred in accordance with the “EOEA Article 97 Land Disposition Policy, dated February 19,1998”. This policy is often called the “no net loss policy” and even small areas of open space land that could be considered an “insignificant destruction” under the newly proposed MEPA regulations, should have some importance in the MEPA evaluation process. MACC recommends clarifying the definition or intent of “insignificant”, and there should be a requirement to find replacement land if open spaces are taken as part of the MEPA project. Perhaps this would be an opportune time to turn the No Net Loss Policy into regulations to add protection to open space areas.

2. These regulations could have unintended, negative impacts for environmental restoration projects that would significantly improve the environmental conditions in a project area. There will be implications of the proposed requirement of an Environmental Impact Report (EIR) for any project within one mile of an EJ population. While it would strengthen the assessment of development and redevelopment projects in EJ communities, and work to mitigate resulting adverse impacts, this requirement poses a major challenge for restoration and environmental enhancement projects in EJ communities that do not cause damage to the environment. Requiring *all* projects near EJ populations to prepare extensive EIRs is impractical as it would greatly elongate the process and increase the costs of positive, environmentally restorative projects for wetlands, rivers, and coastlines, such as dam removals, culvert replacements, and wetlands restoration. This requirement could pose unnecessary burdens on EJ communities and could end up deterring dam removal, wetland restoration and culver projects with significant benefits. A balance between the process and the benefits should be further evaluated.

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. This was well intentioned in the legislature, but 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.

EEA should consider modifying the definition of Environmental Benefits to include:

Environmental Benefits: Restoration, protection, or enhancement of the natural resources of the Commonwealth including...

Then, when an ENF is filed for an environmental restoration or enhancement project, there could be a finding that it meets the definition of Environmental Benefit and is not in fact likely to cause Damage to the Environment (overcoming the preliminary ENF threshold presumption that it might cause damage). This would form the basis for the Secretary to issue a decision on such ENFs in EJ areas, determining that no EIR is required and it would still be consistent with the new law.

Thank you for your consideration of these comments.

Sincerely,

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Executive Director
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