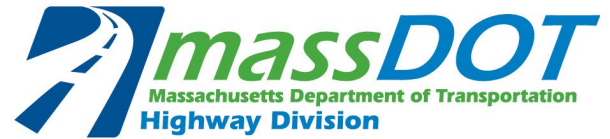




Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Secretary & CEO
Jonathan L. Gulliver, Highway Administrator



November 16, 2022

Massachusetts Environmental Policy Act Office
100 Cambridge Street, 10th floor
Boston, MA 02114

Attn: Tori Kim, Assistant Secretary and MEPA Director

RE: Proposed MEPA Regulatory Updates

Dear Assistant Secretary Kim,

We are pleased to submit comments regarding proposed MEPA regulatory updates released in September 2022. We support the proposed revisions to the MEPA regulations, including streamlining provisions and adjustments to MEPA review thresholds, to focus on those projects with greater potential to harm the environment.

We have the following comments on the proposed revisions:

301 CMR 11.03(1)(b)3 and (b)5 (Land) - guidance on *de minimis*

We support the creation of a *de minimis* exception for Article 97 of the amendments to the Massachusetts Constitution ("Article 97"), or otherwise involving releases of interests in land held for "conservation, preservation, or agricultural or watershed preservation purposes." The *de minimis* exception would be consistent with federal provisions of Section 4(f) of the U.S. Department of Transportation Act of 1966, which provides for consideration of parks, recreation areas, and wildlife and waterfowl refuges during transportation project development.

Guidance from the U.S. Department of Transportation (DOT) regarding Section 4(f) includes the following conditions, which may be useful to include in the MEPA regulations to clarify those situations when *de minimis* will apply:

A determination of *de minimis* impact on parks, recreation areas, and wildlife and waterfowl refuges may be made when all three of the following criteria are satisfied:

1. The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);
2. The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource; and
3. The Official with Jurisdiction (OWJ) over a Section 4(f) resource is informed of U.S. DOT's intent to make the *de minimis* impact determination based on written concurrence from the OWJ that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f).

We would be pleased to provide the MEPA Office with additional federal guidance about Section 4(f) policy and practices.

Sincerely,

A handwritten signature in black ink that reads "Jessica Kenny". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Jessica Kenny, Director
Environmental Section