

Joint Comments of the Massachusetts Environmental Justice Table

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Via Electronic Mail

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Subject: Environmental Justice Table Comments on Massachusetts Environmental Policy Act (MEPA) Environmental Justice Protocol

Dear Secretary Theoharides and MEPA Director Tori Kim:

We write as the Massachusetts Environmental Justice Table¹ with comments regarding the revised draft [MEPA Environmental Justice Protocol draft released in June 2021](#). The following comments supplement and reinforce those submitted in March and April 2021 to inform the interim 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:

- 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

¹ The Massachusetts Environmental Justice Table formed in 2019 to support and influence environmental justice legislation and policy in the Commonwealth. We are a statewide coalition of community-based, environmental, Indigenous, and civil rights organizations led by grassroots, community of color-led organizations.

- 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 EJ 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 residents of EJ populations.

The EJ Table supports the Interim Protocol's requirement that the Proponent invite community-based organizations, local elected officials, and 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 take into account 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 MEPA, or explain why it will not do so.

Similarly, the EJ Table 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 and interpretation 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. MEPA 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 providers 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 and convey 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.

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 Proponents to periodically update the public about ongoing activities, a complaint mechanism can 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 potentially-affected populations 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.

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.

Joint Comments of the Massachusetts Environmental Justice Table

Thank you for your consideration of these comments. We look forward to working with EEA as it pursues implementation of environmental justice processes under MEPA. If you have any questions about this letter, please contact Sofia Owen (sofia@ace-ej.org), Maria Belen Power (mariabelenp@greenrootschelsea.org), or Staci Rubin (srubin@clf.org).

Signed,

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