

301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

301 CMR 11.00: MEPA REGULATIONS

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11.01: General Provisions

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(2) Applicability.

(a) Jurisdiction.

1. MEPA establishes jurisdiction over: a Project undertaken by an Agency; those aspects of a Project within the subject matter of any required Permit; a Project that seeks the provision of Financial Assistance; and those aspects of a Project within the area of any Land Transfer. MEPA jurisdiction determines the Scope, if an EIR is required. The Scope shall enable Agencies to fulfill their obligations under 301 CMR 11.12(5).

2. MEPA jurisdiction is broad when a Project is undertaken by an Agency or seeks the provision of Financial Assistance. Broad, or full scope, jurisdiction means that the Scope, if an EIR is required, shall extend to all aspects of a Project that are likely, directly or indirectly, to cause Damage to the Environment.

3. MEPA jurisdiction is limited when a Project is undertaken by a Person and requires one or more Permits or involves a Land Transfer, but does not seek the provision of Financial Assistance. Limited, or subject matter, jurisdiction means that the Scope, if an EIR is required, shall be limited to those aspects of the Project within the subject matter of any required Permit or within the area subject to a Land Transfer that are likely, directly or indirectly, to cause Damage to the Environment. Subject matter jurisdiction may be functionally equivalent to full scope

jurisdiction in the case of a Project, for example, requiring a Chapter 91 License or involving a Land Transfer of the entire Project site. Subject matter jurisdiction may be limited to a particular structure, facility or activity and its direct and indirect environmental impacts in the case of a Project, for example, requiring a Sewer Extension/Connection Permit or involving a Land Transfer of a discrete portion of the Project site on which the access roadway is proposed.

(b) Review Thresholds.

1. 301 CMR 11.00 establishes review thresholds that 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. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required.

2. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (i.e., the Project is undertaken by an Agency or seeks the provision of Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer.

3. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document.

4. Any Project seeking to qualify in its entirety as an Ecological Restoration Project, but not including an Ecological Restoration Limited Project under 310 CMR 10.24(8) and 10.53(4), shall not be required to undergo MEPA review, provided the requirements of this 301 CMR 11.01(2)(b)4. are met. At least 60 days prior to filing a Notice of Intent for a Restoration Order of Conditions, the Proponent shall submit a Notice of Project with the MEPA Office for publication in the Environmental Monitor. Said Notice of Project shall include, in a format prescribed by the Secretary, a scope of work for the proposed restoration activities, an estimate of the nature and extent of wetlands alteration, and a statement that the Project will meet the eligibility criteria for a Restoration Order of Conditions under 310 CMR 10.13 for an Ecological Restoration Project, but not including an Ecological Restoration Limited Project under 310 CMR 10.24(8) and 10.53(4), together with identification of the project type and a list of the documentation that will be provided to the issuing authority. Any Project that is located within a Designated Geographic Area around one or more Environmental Justice Populations shall also comply with 301 CMR 11.05(4), and shall include in the Notice of Project a description of measures taken to enhance public involvement opportunities by the identified Environmental Justice Populations, and a description of any Environmental Burdens or Environmental Benefits that may result for the Environmental Justice Populations by reason of the Project. Advance notification shall be provided in accordance with 301 CMR 11.05(4)(b) no later than 45 Days,

and no earlier than 90 Days, prior to submitting the Notice of Project to the MEPA Office for publication. Comments on the Notice of Project shall be received for 20 Days following publication of the notice, and unless the Secretary issues a determination within 10 Days after the close of the comment period indicating that the Project requires an ENF filing, any Agency Action required for the Project may be taken if required to obtain a Restoration Order of Conditions, provided that the Agency Action shall be deemed to be conditioned on the ultimate issuance of the Restoration Order of Conditions. If the Restoration Order of Conditions for an Ecological Restoration Project is denied, a Project that requires Agency Action and meets or exceeds one or more MEPA review thresholds must thereafter undergo MEPA review, and any conditional Agency Action taken in accordance with this 301 CMR 11.01(2)(b)4. shall not become effective until MEPA review is completed. Consistent with 301 CMR 11.12(6), the Agency may reconsider the Agency Action and any conditions thereof following the completion of MEPA review.

5. Notwithstanding 301 CMR 11.01(2)(b)1., the following categories of projects are not presumed likely to cause Damage to the Environment, provided the Project does not meet or exceed a mandatory EIR threshold and an ENF is filed in accordance with 301 CMR 11.01(2):

- (i) Any Project that proposes to construct housing, either exclusively or as part of a mixed use project that includes no more than 33 percent gross floor area of incidental or supportive commercial uses, and will result in no more than 30 acres of direct land alteration; and
- (ii) Any Project that seeks to qualify as an Ecological Restoration Limited Project under 310 CMR 10.24(8) and 10.53(4) and does not qualify as an Ecological Restoration Project eligible for the procedures in 301 CMR 11.01(2)(b)4.

(c) Segmentation In determining whether a Project is subject to MEPA jurisdiction or meets or exceeds any review thresholds, and during MEPA review, the Proponent, any Participating Agency, and the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review. The Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether various work or activities constitute one Project including, but not limited to, whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative. Examples of work or activities that constitute one Project include work or activities that: 1. meet or exceed one or more review thresholds on an area previously subject to a Land Transfer, provided that not more than five years have elapsed between the Land Transfer and the work or activities; and 2. construct more than one structure (such as more than one single family dwelling) and appurtenant structures, facilities, and other improvements on a site, unless a plan for the subdivision or other legal division creating or allowing separate lots or parcels was definitively approved or endorsed in accordance with applicable statutes and regulations prior to the effective date of 301 CMR 11.00.

(3) Relation to Other Authority.

(a) Information regarding Other Authority. The Secretary may require a Proponent to provide information regarding a Project's consistency or compliance with any applicable Federal, municipal, or regional statutes and regulations. MEPA and 301 CMR 11.00 do not give the Secretary authority to make any formal determination regarding such consistency or compliance.

(b) Applicability of Other Authority. MEPA and 301 CMR 11.00 do not alter the review or permitting authority of any Agency or any Federal, municipal, or regional governmental entity over, or otherwise alter the applicability of any statutes and regulations to, a Project.

(4) General Procedure.

(a) ENF. If a Project is subject to MEPA jurisdiction and either it meets or exceeds one or more review thresholds or the Secretary requires fail-safe review, the Proponent begins MEPA review by preparing and filing an ENF with the Secretary. The Secretary publishes the appropriate pages of the ENF in the next Environmental Monitor. A 30-Day review period follows, during the first 20 Days of which Agencies, Persons, the MEPA Office (which ordinarily conducts a site visit and public consultation session), and the Secretary review and/or comment on the ENF. At the close of the review period for an ENF, the Secretary decides whether to require an EIR. If the Secretary does not require an EIR, an Agency may take Agency Action on the Project (see 301 CMR 11.05 and 11.06).

(b) EIR. If the Secretary requires an EIR, the Proponent prepares and files it with the Secretary. The Secretary shall ordinarily require a draft and final EIR, but may allow a single or rollover EIR. The Secretary publishes notice of the availability of the EIR in the next Environmental Monitor. A 37-Day review period follows, during the first 30 Days of which Agencies, Persons, the MEPA Office, and the Secretary review and/or comment on the EIR. At the close of the review period, the Secretary decides whether the EIR is adequate, and must consider Environmental Justice Principles in making this determination. An Agency may take Agency Action on the Project, provided that the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the Environmental Monitor (see 301 CMR 11.07 and 11.08).

(c) Section 61 Findings. An Agency that takes Agency Action on a Project for which the Secretary required an EIR:

1. issues Section 61 Findings that specify, based on the EIR, all feasible means to be used to avoid Damage to the Environment, or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable;
2. if applicable, includes in its Section 61 Findings any and all actions to be taken to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations;
3. makes its Section 61 Findings part of the Permit or other document allowing or approving the Agency Action; and
4. files a copy of its Section 61 Findings with the MEPA Office (see 301 CMR11.12(5)).

(5) Administration.

(a) Authority of Assistant Secretary. The staff of the Secretary that carries out day-to-day administration of MEPA and 301 CMR 11.00 is organized as the MEPA Office, under the direction of the Assistant Secretary of Energy and Environmental Affairs, who is also known as the MEPA Director. The Secretary may delegate to the Assistant Secretary any of the Secretary's authority in accordance with MEPA and 301 CMR 11.00 that the Secretary deems appropriate. Any certificate, determination, or other document executed by the Assistant Secretary in

accordance with the delegation shall be deemed the valid and duly authorized certificate, determination, or other document of the Secretary.

(b) Responsibilities of MEPA Office. The MEPA Office is responsible for: responding to inquiries from Proponents and other Agencies and Persons; reviewing documents filed in accordance with MEPA and 301 CMR 11.00; conducting site visits and public consultation sessions; ensuring adequate prior public notice of site visits, public consultation sessions, and comment periods, and meaningful opportunities for public review of review documents; coordinating with any Agency that expects to take Agency Action on a Project; preparing drafts of certificates, determinations, and other documents for the Secretary; and maintaining publicly accessible files that contain the complete administrative record on which the Secretary's decisions in certificates, determinations, and other documents are based.

(6) Advisory Opinion.

(a) Request for Advisory Opinion. In case of doubt as to the meaning or applicability of any provision or requirement in MEPA or 301 CMR 11.00 (including whether an entity is an Agency, whether a decision or action is Agency Action, whether a Project is subject to MEPA jurisdiction, or whether a Project meets or exceeds one or more review thresholds) an Agency or Person may request an advisory opinion of the Secretary in accordance with M.G.L. c. 30A, § 8, and 301 CMR 11.00.

(b) Decision on Advisory Opinion. The Secretary shall respond within 20 Days of receiving a request for an advisory opinion either with a request for further information or with the advisory opinion, unless the Secretary publishes notice of the request in accordance with 301 CMR 11.01(6)(c). If the Secretary requests further information, the Secretary shall provide the advisory opinion 20 Days of receiving the requested information.

(c) Public Comment on a Request for an Advisory Opinion. In the case of a request for an advisory opinion concerning Routine Maintenance or a Replacement Project, the Secretary shall, and in all other cases, the Secretary may: publish notice of the request in the next Environmental Monitor and receive into the record, within 20 Days following publication of the notice of the request (unless extended by the Secretary with the consent of the Proponent), written comments from any Agency or Person concerning the request. The Secretary shall provide the advisory opinion within 20 Days after the close of the comment period.

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11.05: ENF Preparation and Filing

(1) Filing and Circulation Requirements. If a Project requires MEPA review in accordance with 301 CMR 11.01(2), the Proponent shall complete an ENF and file it with the Secretary. Prior to or when filing the ENF with the Secretary, the Proponent shall circulate copies of the ENF in accordance with 301 CMR 11.16(2) and publish a Public Notice of Environmental Review in accordance with 301 CMR 11.15(1). The Proponent's failure to circulate the ENF or publish the Public Notice properly shall allow the Secretary to require an extension or repetition of the ENF review. The Secretary may reject an incomplete ENF, in which case the Secretary shall notify the Proponent, who shall file and circulate a new ENF and publish a new Public Notice.

(2) Timely Filing. In all cases, the Proponent shall file the ENF sufficiently prior to Commencement of the Project and any required Agency Action to allow timely compliance with MEPA and 301 CMR 11.00 including analysis of alternatives, consideration of cumulative environmental impacts, and providing meaningful opportunities for public review. In the case of a Project undertaken by an Agency, the Proponent shall ordinarily file the ENF not less than one year prior to the expected Commencement of the Project, and in any event prior to the Agency's finalizing the design or making an irreversible commitment of financial resources to the Project. In the case of a Project that is undertaken by a Person and requires one or more Permits or seeks the provision of Financial Assistance but does not involve a Land Transfer, the Proponent shall file the ENF at any time prior to but no later than ten Days after filing the first application for a Permit or Financial Assistance. In the case of a Project that is undertaken by a Person and involves a Land Transfer, the Proponent shall file the ENF prior to closing the Land Transfer unless the Land Transfer is not final Agency Action in accordance with 301 CMR 11.02(2). The Proponent may consult with the Secretary for specific advice as to when to file the ENF.

(3) Consultation. Prior to filing the ENF, the Proponent may consult with the Secretary and any Participating Agency to determine any review thresholds the Project may meet or exceed and any Agency Action it may require, and to avoid unnecessary MEPA review if the Project may not be eligible for the required Agency Action.

(4) Environmental Justice Populations.

(a) If a Project requires MEPA review in accordance with 301 CMR 11.01(2) and one or more Environmental Justice Populations are located within the Designated Geographic Area around the Project, the Proponent shall undertake measures to provide public involvement opportunities for such Environmental Justice Populations.

(b) A Proponent shall provide advance notification of a Project, in a form determined by the MEPA Office, to the MEPA Office and organizations and individuals based on recommendations by the EEA Environmental Justice Director, for any Project that is required to file an EIR in accordance with 301 CMR 11.06(7)(b), and either meets or exceeds mandatory EIR thresholds or intends to request that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8) or a rollover EIR in accordance with 301 CMR 11.06(13). Advance notification is also required for any Project subject to 301 CMR 11.06(7)(c). Such advance notification shall be provided no later than 45 Days, and no earlier than 90 Days, prior to filing the ENF.

(c) The Proponent's failure to provide advance notification as required 301 CMR 11.05(4) shall allow the Secretary to require an extension or repetition of the ENF review. The Secretary may also reject an ENF as incomplete if the Proponent has failed to provide advance notification as required, or has undertaken no measures to provide public involvement opportunities for Environmental Justice Populations prior to filing the ENF.

(d) Any project consisting of one single family home shall be exempt from the requirements of this 301 CMR 11.05(4).

(5)(a) Description of the Project and Potential Impacts. The ENF shall include a concise but accurate description of the Project and its alternatives, identify any review thresholds the Project may meet or exceed and any Agency Action it may require, present the Proponent's

initial assessment of potential environmental impacts, propose mitigation measures, indicate whether the Project is reasonably likely to negatively affect any Environmental Justice Population located in whole or in part within the Project's Designated Geographic Area and what measures were taken prior to the filing of the ENF to provide meaningful opportunities for public involvement by such Environmental Justice Populations, and may include a proposed Scope. The ENF shall also identify all languages spoken by 5% or more of residents who identify as not speaking English very well in any census tract that is located in whole or in part within the Designated Geographic Area around the Project. The ENF shall indicate whether the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent shall not limit description of the Project or assessment of its potential environmental and public health impacts on account of any jurisdictional or other limitation that may apply to the Scope, if an EIR is required. The ENF shall separately assess potential environmental and public health impacts and proposed mitigation. The ENF shall identify the sources on which the assessments are based.

(b) If the Project is located in landlocked tidelands as defined in 310 CMR 9.02, the ENF shall include an explanation of the Project's impact on the public's right to access, use, and enjoy tidelands that are protected by chapter 91 and shall identify measures to avoid, minimize, or mitigate any adverse impact on those rights. If the Project is located in landlocked tidelands and an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, the ENF shall also include an explanation of the Project's impact on groundwater levels and identify and commit to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The ENF shall also describe the Project's compliance with any municipal regulations designed to protect groundwater levels. The Proponent may combine the information provided under 301 CMR 11.05(4)(b) with the information provided under 301 CMR 13.03.

(c) For Projects in tidelands other than landlocked tidelands, follow 301 CMR 13.00: Public Benefit Determination.

(d) The information provided in the ENF shall be designed to facilitate consultation, elicit comments identifying any relevant and significant issues, and identify any additional measures to be used to provide opportunities for public involvement by Environmental Justice Populations located in whole or in part within the Designated Geographic Area around the Project. The Proponent's submission of a proposed Scope with the ENF shall not mean that the Proponent believes an EIR is required or that the Secretary will require an EIR. The Proponent's assessment of potential environmental and public health impacts or proposed Scope shall not limit the Secretary's discretion in determining the Scope.

(6) The ENF. The Secretary shall prescribe the form and content of the ENF, which shall be available from the MEPA Office. The Proponent shall complete the ENF in accordance with 301 CMR 11.00 and any instructions provided on or with the ENF, and shall use an original or full-sized photocopy or other version of the ENF expressly approved by the Secretary. The Secretary may from time-to-time modify the ENF or instructions, provided that the Secretary shall first publish the modified form or instructions in the Environmental Monitor and shall at the same time specify the effective date of the modified ENF or instructions.

(7) Required ENF Attachments. The Proponent shall attach to the ENF an original United States Geologic Survey Map or other location map expressly approved by the Secretary that includes and indicates the Project site, a site plan at an appropriate scale and level of detail, a map depicting all Environmental Justice Populations within five miles of the Project site, and a list of all Agencies and Persons to whom the Proponent circulated the ENF in accordance with 301 CMR 11.16(2).

(8) Expanded ENF. In addition to filing a completed ENF and the required attachments, the Proponent may file more extensive and detailed information describing and analyzing the Project and its alternatives, and assessing its potential environmental and public health impacts and mitigation measures. The Proponent may provide this additional information whenever it is available. The Proponent shall provide this additional information when the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent may refer to 301 CMR 11.07(6) for guidance and may consult with the Secretary for specific advice as to the form and content of this additional information. The Secretary shall duly consider this additional information in the ENF, although it shall not limit the Secretary's discretion to determine the Scope. A Proponent who files an expanded ENF requesting a single EIR or Special Review Procedure shall be deemed to consent to an extension of the ENF review period in accordance with 301 CMR 11.06(1) and of the ENF public comment period in accordance with 301 CMR 11.06(3).

(9) Dual Expanded ENF and Proposed EIR. For any Project that does not meet or exceed mandatory EIR thresholds but is required to file an EIR in accordance with 301 CMR 11.06(7)(b), the Proponent may file a dual Expanded ENF and Proposed EIR which contains, in addition to a completed ENF and the required attachments, a Proposed EIR following the form and content of 301 CMR 11.07(6) that describes and analyzes the Project and its alternatives, assesses its potential environmental and public health impacts and mitigation measures, and contains the analysis required in 301 CMR 11.07(6)(n). A Project seeking to qualify in its entirety as an Ecological Restoration Project or Ecological Restoration Limited Project may file a dual Expanded ENF and Proposed EIR under this 301 CMR 11.05(9) and may provide the analysis in 301 CMR 11.07(6)(n) in a checklist format as determined by the Secretary. The Proponent may file a dual Expanded ENF and Proposed EIR when requesting that the Secretary allow a rollover EIR in accordance with 301 CMR 11.06(13). A Proponent who files a dual Expanded ENF and Proposed EIR requesting a rollover EIR shall be deemed to consent to an extension of the ENF review period in accordance with 301 CMR 11.06(1) and of the ENF public comment period in accordance with 301 CMR 11.06(3).

(10) Voluntarily Filed ENF. The Proponent may voluntarily file an ENF and, with the Secretary's consent, undergo MEPA review for a Project that does not meet or exceed any review thresholds. Once the Secretary publishes the ENF in the Environmental Monitor in accordance with 301 CMR 11.15(2), the Proponent may withdraw the ENF only with the Secretary's consent.

(11) Enforcement Actions. If an Agency's ability to undertake an action enforcing its statutory

or regulatory obligations is impeded by the failure of a Proponent to file an ENF, the Agency may, with the consent of the Secretary and after 30 Days prior written notice to the Proponent, file an ENF on behalf of the Proponent.

11.06: ENF Review and Decision

(1) **Publication and Review Period.** Upon receiving and accepting the ENF, the Secretary shall publish the appropriate pages of the ENF in the next Environmental Monitor in accordance with 301 CMR 11.15(2), which begins the ENF review period. The ENF review period lasts for 30 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. The review period for an expanded ENF requesting a single EIR, rollover EIR, or Special Review Procedure lasts for 37 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent.

(2) **Consultation and Investigation.** After receiving and accepting an ENF, the Secretary shall review the ENF and may review relevant information from any other source to determine whether to require an EIR, and, if so, what to require in the Scope. The Secretary shall ordinarily schedule with the Proponent a site visit and public consultation session to review the Project and discuss its alternatives, its potential environmental impacts and mitigation measures. The Proponent shall be required to provide accompanied public access to the Project site during the site visit and public consultation session, unless such access is infeasible for public safety reasons or protection of proprietary information. Any Agency or Person may inquire of the MEPA Office as to the date, time, and location of the consultation session. The Proponent shall consult with the MEPA Office about additional measures to be taken during the site visit and public consultation session to provide meaningful opportunities for public involvement by Environmental Justice Populations.

(3) **Public Comment Period, Extensions, Late Comments.** After receiving and accepting an ENF, the Secretary shall receive into the record written comments from any Agency or Person, concerning the Project, its alternatives, its potential environmental and public health impacts, mitigation measures, and whether to require an EIR and, if so, what to require in the Scope. Comments shall be filed with the Secretary within 20 Days following publication of the ENF in the Environmental Monitor, unless the public comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. If the Proponent has filed an expanded ENF requesting a single EIR, rollover EIR, or a Special Review Procedure in accordance with 301 CMR 11.05(8), comments shall be filed within 30 Days following publication of the ENF in the Environmental Monitor, unless the comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. An extension shall not ordinarily exceed 30 Days. The Secretary may accept a late comment, provided it is received prior to the Secretary's decision on the ENF.

(4) **Agency Review** An Agency shall review an ENF circulated to it by the Proponent. If it appears that the Project requires Agency Action by the Agency or may significantly affect any interest of the Agency or any statutes or regulations administered by the Agency, the Agency shall:

(a) participate in the consultation session scheduled by the Secretary in accordance with 301 CMR 11.06(2) and file comments with the Secretary in accordance with 301 CMR 11.06(3); and

(b) specify in its comments: any Agency Action required to be taken by the Agency for the Project; any aspect of the Project or issue requiring additional description or analysis in an EIR; and any opportunity to maximize consistency and facilitate coordination between the Agency Action and MEPA review or any other Agency Actions.

A Participating Agency's failure to specify an aspect of the Project or issue requiring additional description or analysis in an EIR shall have the effect of a determination that the information presented in the ENF, together with information already provided in any application for a Permit, Financial Assistance or a Land Transfer, sufficiently defines the nature and general elements (but not necessarily the technical details) of the Agency Action on the Project, such that the Participating Agency recommends that the Secretary require no further MEPA review or that the Scope not include any requirements relating to the aspect or issue.

(5) Secretary's Request for Copy of Application or Other Information. Upon request of the Secretary during the review period for an ENF, the Proponent shall file with the Secretary a copy of any application for a Permit, Financial Assistance, or a Land Transfer and any other information relevant to the Secretary's review of the Project, its alternatives, its potential environmental impacts and mitigation measures. Upon request of the Secretary, the Proponent shall make available a copy of any application for a Permit, Financial Assistance, or Land Transfer when the application is filed with a Participating Agency subsequent to the Secretary's decision on the ENF.

(6) Effect of Proponent's Failure to Cooperate. The Secretary and any Participating Agency may consider the Proponent's failure to participate in the ENF consultation session to be withdrawal of the ENF. The Proponent's failure to provide requested information may result in the Secretary requiring the Proponent to consider in an EIR the aspect of the Project or the issue about which information was requested, provided that the aspect or issue is within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b).

(7) Decision on ENF and Scope.

(a) After the close of the public comment period and on or prior to the last Day of the ENF review period, the Secretary shall issue a written certificate stating whether or not an EIR is required and, if so, what to require in the Scope in accordance with 301 CMR 11.06(9). The Secretary's failure to issue a timely certificate shall have the effect of a determination that no EIR is required, unless the Project meets or exceeds one or more mandatory EIR review thresholds or an EIR is required in accordance with 301 CMR 11.06(7)(b), in which case such failure shall have the effect of a determination that an EIR is required, and that it shall address all aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment, provided that such aspects are within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b). The Secretary's decision on the ENF shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

(b) Except as provided in 301 CMR 11.06(7)(c), the Secretary shall require an EIR for any Project that is located within a Designated Geographic Area around an Environmental Justice Population.

(c) For the project categories in 301 CMR 11.01(2)(b)5., the Secretary, after review of the ENF, shall issue a written certificate in accordance with 301 CMR 11.06(7)(a). The Secretary may require supplemental information to be provided in the ENF to support a determination that no EIR is required, and shall require a description of measures taken to enhance public involvement opportunities by Environmental Justice Populations within a Designated Geographic Area around the Project and a description of any Environmental Burdens or Environmental Benefits that may result for the Environmental Justice Populations by reason of the Project.

(8) Decision Allowing Single EIR. When issuing a Scope in accordance with 301 CMR 11.06(7), the Secretary shall ordinarily require a draft and final EIR, but may allow a single EIR, provided that the Secretary finds that the expanded ENF requesting a single EIR in accordance with 301 CMR 11.05(8):

(a) describes and analyzes all aspects of the Project and all feasible alternatives, regardless of any jurisdictional or other limitation that may apply to the Scope;

(b) provides a detailed baseline in relation to which potential environmental and public health impacts and mitigation measures can be assessed;

(c) demonstrates that the planning and design of the Project use all feasible means to avoid potential environmental impacts; and

(d) for any Project for which an EIR is required in accordance with 301 CMR 11.06(7)(b), describes and analyzes all aspects of the Project that may affect Environmental Justice Populations located in whole or in part within the Designated Geographic Area around the Project; describes measures taken to provide meaningful opportunities for public involvement by Environmental Justice Populations prior to filing the expanded ENF, including any changes made to the Project to address concerns raised by or on behalf of Environmental Justice Populations; and provides a detailed baseline in relation to any existing unfair or inequitable Environmental Burden and related public health consequences impacting Environmental Justice Populations in accordance with 301 CMR 11.07(6)(n)1.

(9) Limits on Scope.

(a) Potential Environmental Impacts. The Secretary shall limit the Scope to those aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment. The Scope shall enable Agencies to fulfill their obligations under 301 CMR 11.12(5).

(b) Subject Matter Jurisdiction. In the case of a Project undertaken by a Person that requires one or more Permits or involves a Land Transfer, but does not seek the provision of Financial Assistance, the Scope shall be limited to the direct and indirect potential environmental and public health impacts from those aspects of the Project that are within the subject matter of any required Permit or within the area subject to a Land Transfer, regardless of whether or not those aspects met or exceeded any review thresholds.

(c) Elements of Scope. The Secretary shall determine the form, content, level of detail, and alternatives required for the EIR and may establish guidelines as to page length and time necessary for preparation. The Secretary may direct the Proponent to consult with any Participating Agency and describe in the EIR any opportunity to maximize consistency and facilitate coordination between any Agency Action and MEPA review or any other Agency

Action.

(10) Environmental Mediation. The Proponent, an Agency, or a Person may conclude that environmental mediation, either alone or in addition to the preparation of an EIR, may be helpful in settling unresolved issues. The Secretary may assist parties in identifying the need for and sources of such services. This assistance shall not alter any of the review periods, deadlines, or other provisions or requirements of MEPA or 301 CMR 11.00, except with the consent of the Proponent.

(11) Suspended, Abandoned, or Changed Project. If a Proponent does not proceed with a Project or changes a Project after filing an ENF, the Proponent shall file a Notice of Project Change in accordance with 301 CMR 11.10.

(12) Notification to Department of Environmental Protection for Projects Located in Landlocked Tidelands. If the Project is located in landlocked tidelands as defined in 310 CMR 9.02: Definitions, then within 30 days after a certificate is issued determining that an ENF is adequate and no EIR is required or within 30 days after the Secretary issues a decision waiving the requirement to file an EIR, the Proponent shall file with the Department of Environmental Protection a completed form notifying the Department of Environmental Protection that work will be conducted within landlocked tidelands. The Proponent shall attach the certificate to the form. The Proponent shall comply with all obligations set forth in the certificate and the Department of Environmental Protection shall enforce such conditions consistent with M.G.L. c. 30, § 62I.

(13) Rollover EIR. For any Project that is required to file an EIR in accordance with 301 CMR 11.06(7)(b), and has submitted a dual Expanded ENF and Proposed EIR in accordance with 301 CMR 11.05(9), the Secretary may allow a rollover EIR, provided that the Secretary finds that the dual Expanded ENF and Proposed EIR:

- (a) presents a complete and definitive description and analysis of the Project and its alternatives, and an assessment of its potential environmental and public health impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, §§ 61 and 62K and 301 CMR 11.12(5);
- (b) demonstrates that the Project will not materially exacerbate any existing unfair or inequitable Environmental Burden and related public health consequences impacting an Environmental Justice Population, and will not result in a disproportionate adverse effect or increased climate change effects on an Environmental Justice Population;
- (c) describes measures taken to provide meaningful opportunities for public involvement by Environmental Justice Populations prior to filing the dual ENF and Proposed EIR, including any changes made to the Project to address concerns raised by or on behalf of Environmental Justice Populations;
- (d) shows that comments received on the dual ENF and Proposed EIR do not raise substantial issues not previously considered by the Proponent; and
- (e) shows that no substantive issues remain to be resolved.

(14) A rollover EIR shall mean that the Secretary may:

- (a) publish notice in the next Environmental Monitor that the Proposed EIR shall be

reviewed as a final EIR; or

(b) require the Proponent to file responses to comments on the Proposed EIR together with Proposed Section 61 Findings, and direct that the responses and findings shall be filed, circulated, and reviewed as a final EIR in a subsequent Environmental Monitor.

...

11.17: Transition Rules

(1) Project Without Previous ENF. 301 CMR 11.00 shall apply to any Project for which no ENF was filed prior to [new effective date], unless all Agency Actions for the Project were taken by each Participating Agency:

(a) prior to [new effective date]; or

(b) within 60 Days after [new effective date], provided that the Proponent and each Participating Agency certify in writing to the Secretary that the Proponent filed a complete application and that the Participating Agency completed its review of the application for each required Permit or Financial Assistance prior to [new effective date].

(2) Project With Previous ENF. 301 CMR 11.00 shall apply to any Project for which an ENF was filed prior to [new effective date].

REGULATORY AUTHORITY

301 CMR 11.00: M.G.L. c. 30, §§ 61 through 62L