



Commonwealth of Massachusetts

*Executive Office of Energy and
Environmental Affairs*

**Massachusetts Environmental Policy Act
2022 Regulatory Revisions**



KEY THEMES FOR REGULATORY REVIEW (2021-22)

- **Alignment with policy and planning efforts**
 - *Climate resiliency (interim protocol launched 10/1/21)*
 - *Environmental justice (regulations promulgated 12/24/21)*
 - Greenhouse gas (GHG) mitigation
- **Updates to thresholds and process**
 - Clarify definitions
 - Update thresholds
 - Clarify review procedures



ACTIVITIES CONDUCTED TO DATE

2021 regulatory revisions

- Implement statutory mandate in St. 2021, c. 8 (climate legislation)
- Two environmental justice (EJ) protocols issued, eff. Jan. 1, 2022

MEPA advisory committee meetings*

- Sept to Dec 2021: Discussed EJ-related regulatory changes
- Jan to Apr 2022: Discussed “Phase 2” regulatory review effort
- Apr to June 2022: Topical presentations on EJ projects, ecological restoration, climate resiliency, GHG emissions policy

Summer 2022 activities

- Informal stakeholder meetings
- Planning for remainder of 2022

**Materials posted at <https://www.mass.gov/info-details/mepa-advisory-committee>*



2022 REGULATORY REVISIONS

Overall Theme: Targeted regulatory package to address key areas that would improve the administration of the MEPA program in the short term. Longer term items will be left for further consideration.

Review Thresholds*

1. “De minimis” exception to review threshold requiring review for projects subject to article 97 of the amendments to the Massachusetts constitution
2. Eliminate ½ mile sewer main extension as trigger for MEPA review
3. Limit 4-foot road widening threshold to exclude widening to add bicycle or pedestrian accommodations (Complete Streets projects)
4. Add ½ acre minimum to Area of Critical Environmental Concern (ACEC) threshold for any work in ACEC

Key takeaway: Create exemptions for minor projects for which MEPA review does not materially advance goals of MEPA.

***Project data now available on Environmental Monitor [search page](#).**



2022 REGULATORY REVISIONS

5. Ecological Restoration

Streamline review for projects that seek to benefit the environment by restoring ecological functions, specifically:

- Publish notice of project in Environmental Monitor
- Secretary retains discretion to require ENF filing
- Environmental justice outreach required

Key takeaway: Implement original intent of “Restoration Order of Conditions” permitting pathway in wetlands regulations, which was to exempt projects from MEPA where prescriptive requirements are met.



2022 REGULATORY REVISIONS

Other Procedural Change

6. Add language to make clear that the Scope of an EIR should facilitate issuance of “Section 61” findings; also conforms with statutory language
7. Amend definitions of “Replacement Project” and “Routine Maintenance” to allow for more flexibility in applying these existing exemptions
8. Clarify the projects that qualify for new “rollover EIR” process
9. Improve project change review procedures by replacing “insignificance finding” process with advisory rulings

Key takeaway: Technical changes to conform with statutory language and to add flexibility in applying procedures.

****Also considering revision to the word “involves” as relating to Financial Assistance, as described in the “Note to Reviewer” section of Background Document.***



DEFERRED ITEMS

Regulatory Revisions

- More extensive revisions to review thresholds (raise/lower, eliminate outdated, create new)
- “Programmatic reviews” of agency policies
- Revisions to distinguish redevelopment from more impactful projects
- Revisions to complement MassDEP cumulative impact analysis (CIA) effort for air permitting
- Other EJ/air quality topics (air thresholds, fail safe, urban heat island)
- Climate resiliency / habitat management projects

MEPA Policies

- Update to 2010 GHG Emissions Policy & Protocol
- Further refinement of 2021 Interim Protocol on Climate Resiliency
- Further refinement of 2021 EJ protocols



APPENDIX: MEPA Advisory Committee Priorities (12/17/21)

- **Clarify State Agency Actions**
- **Thresholds related to climate resiliency and equity. Particular concerns include tree canopy and imperviousness.**
 - Tree removal is relevant for solar projects in particular
 - However, give careful consideration to restoration projects where tree removal may be needed for rare species habitat restoration.
 - Tree removal related to carbon sequestration potential
 - Land threshold currently exempts projects subject to cutting plan. Land management for wildlife is important category of projects.
 - Heat island effect/cooling effect/air and water quality impacts
- **Section 61 findings – tracking/reporting**
- **Climate resiliency projects**
- **Require NPC for change in project type**



APPENDIX: MEPA Advisory Committee Priorities (12/17/21)

- **Energy thresholds (25/100MW) too high**
- **Streamlining all resiliency projects (not just coastal), including environmental remediation projects**
- **Allow third party NPC, including for failure to adhere to mitigation commitments**
- **GEIR requirement for large-scale activities like railroad line herbicide application, power line herbicide, and pesticide use.**
 - Now called “programmatic EIRs.” Most useful if there is 1 lead agency; could streamline reviews once a particular practice is reviewed.
 - Is it useful to have GEIRs terminate after a set time?
- **EJ related thresholds? Focus on transportation and energy categories. CLF to pull together examples of past projects that did not meet thresholds for MEPA review.**
- **Look at solid and hazardous waste thresholds**



APPENDIX: MEPA Advisory Committee Priorities (12/17/21)

- **Air thresholds too high**
- **Noise threshold?**
- **Public health threshold?**
- **Tribal heritage definition?**
- **Revise fail safe review standards**
- **Improve cumulative impacts review**
- **Streamlining options for beneficial road projects (bike/pedestrian accommodations)?**
- **Look at presumption of “impact” for ecological restoration projects**
- **Consider habitat management activities**
- **Enforceability of Sec 61 findings – any way to track Sec 61 obligations through a database?**