



Commonwealth of Massachusetts

*Executive Office of Energy and
Environmental Affairs*

Massachusetts Environmental Policy Act
December 2021



KEY THEMES FOR REGULATORY REVIEW

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



MEPA OVERVIEW - Jurisdiction

- **Basic rule**

- MEPA review needed if there is Agency Action and thresholds are exceeded

- **MEPA statute**

- Agency must certify that “all feasible measures” will be taken to avoid or minimize environmental impacts (Section 61 findings)
- Global Warming Solutions Act (2008) requires consideration of climate change
- **NEW: S.9 climate legislation (2021) requires enhanced analysis of EJ impacts**

- **MEPA regulations**

- Defines Agency Action
 - State agency undertaking project OR
 - State funding, land transfer, permits and other approvals
- Defines threshold impacts requiring review
 - ENF thresholds require filing of environmental notification form
 - EIR thresholds require mandatory draft and final env impact reports



MEPA OVERVIEW – Key Existing Thresholds

- **Land**
 - Land “alteration” (25-50 acres); impervious area (5-10 acres), art. 97 disposition
- **Traffic**
 - Tied to DOT/DCR access permit thresholds (2,000-3,000 average daily trips (adt); 300-1,000 new parking spaces; 1,000 adt plus 150 new parking)
- **Wetlands**
 - EIR: 1 acre salt marsh/BVW; 10 acres of “other wetlands”; any wetlands variance
 - ENF: 1-5K sf salt marsh/BVW; ½ acre of “other wetlands”
- **Rare Species**
 - >2 acres priority habitat disturbance resulting in “take” of mapped species
- **Water/wastewater**
 - New/expanded withdrawals or discharges; interbasin transfers; WsPA variances
- **Others**
 - Energy (>25MW generation), solid waste, air emissions, historic resources, ACEC



Key Regulatory Revisions Posted in Feb. 2021

- **Thresholds**

- ✓ Add flexibility to ACEC threshold
- ✓ Increase rare species threshold (5 acres for species of special concern)
- ✓ Lower electric transmission EIR threshold (230 kv to 115 kv)

- **Definitions**

- ✓ Add “Alteration” definition to distinguish redevelopment projects
- ✓ Clarify “Replacement Project” and “Routine Maintenance”

- **Procedures**

- ✓ Streamline notice of project change procedure
- ✓ Allow for joint reviews and mitigation by multiple proponents
- ✓ Add distribution requirement to Massport for projects near airports



Comments Received on Regulatory Revisions

• Thresholds

- ✓ Concern about increasing rare species threshold
- ✓ Concern about flexibility for ACEC threshold
- ✓ Concern about reducing EIR threshold for electric transmission to 115 kv
- ✓ Suggest revisions to thresholds for land, transportation, wetlands, water, wastewater and energy
- ✓ Suggest new thresholds (e.g., coldwater fisheries, flood plain development, transit service reduction, tree removal, 50+ parking spaces, aquaculture)

Definitions and Procedures

- ✓ Request streamlined reviews for coastal resiliency projects
- ✓ “Agency Action” definition requires clarification
- ✓ Procedures for utility maintenance projects should be clarified



Feedback from Environmental Business Council

- ✓ Clarify how MEPA will implement climate legislation (St. 2021, c. 8)
- ✓ Form working groups to inform regulatory review process
- ✓ Recommend continuation of virtual site visits and e-filing procedures
- ✓ Question whether FEIR deadlines can be extended (statutory)
- ✓ Revise ENF form (especially formatting)
- ✓ Clarify requirements for alternatives analysis
- ✓ Clarify “routine maintenance” / “replacement project” definitions
- ✓ Clarify whether battery storage qualifies as “electric generation”
- ✓ Accept adjusted over unadjusted “adt” for trip generation
- ✓ Narrow scope of ACEC threshold, especially for test/design work
- ✓ Concern about interpretation of “physically and conceptually related” language, especially in relation to certain MassDOT permits



Potential GHG Policy Revisions Posted in Feb. 2021

- **Key proposals**

- Standardize methodology for estimating greenhouse gas (GHG) emissions from new buildings and mitigation measures
- Potential new “GHG threshold” tied to carbon footprint (tons per year)
- Carbon sequestration calculation for large land/forest clearing

- **Comments received**

- Recommend creation of technical advisory committee to revise 2010 MEPA GHG Policy

- **Next Steps**

- Coordinate MEPA updates with development of “specialized” stretch code by DOER. Public comment opportunity anticipated in early 2022.



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**



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**



MEPA Advisory Committee - Process Suggestions

- **Compile statistics of thresholds triggered in past projects**
- **Review data on how often projects trigger more than 1 agency action.**