



# Commonwealth of Massachusetts

*Executive Office of Energy and  
Environmental Affairs*

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**Massachusetts Environmental Policy Act  
January 14 & 28, 2022: MEPA Definitions**



# “Alteration”

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## MEPA (301 CMR 11.00)

11.02: “any term not defined in accordance with 301 CMR 11.02(2) shall have the meaning given to the term by any statutes, regulations, executive orders or policy directives **governing the subject matter of the term.**”

**Q: Should “alter” be defined [e.g., for land threshold]?**

## Wetlands (310 CMR 10.00)

“Alter means to **change the condition** of any Area Subject to Protection under M.G.L. c. 131, § 40. Examples of alterations include. . .”

## MESA (321 CMR 10.00)

“Alter means to **change the physical or biological condition** of a designated Significant Habitat in any way that detrimentally affects the capacity of the Significant Habitat to support a [rare species] population . . .”



# “Agency Action” - Permits

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## Permit.

(a) Any permit, license, certificate, variance, approval, **or other entitlement for use**, granted by an Agency for or by reason of a Project. . . .

**Cf.** M.G.L. c. 30, s. 62: “a permit determination, order **or other action**, including the issuance of a lease, license, permit, certificate, variance, approval or other entitlement for use, granted . . . . by an agency for a project . . . .”

## **Q: What is meant by “entitlement for use”?**

- DOT non-vehicular access permit (e.g., development over I-90)
- DOT M.G.L. c. 40, s 54A “consent” to build on former railroad ROW
- MBTA “Zone of Influence” license
- MWRA “8(m)” permit to construct near MWRA infrastructure
- MWRA dewatering permit



# “Relatedness” of Permits

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## 11.01(2)(a). Jurisdiction

“3. . . . 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.”

## 11.01(2)(b). Review Thresholds

“2. . . . The subject matter of a review threshold is within MEPA jurisdiction . . . 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 land and ACEC thresholds shall be “considered to be related” to all Permits]

## Questions:

- How should “conceptually or physically related” be construed?
- Should climate change effects be “considered” related?



# “Agency Action” – Financial Assistance

## Financial Assistance

(a) Any direct or indirect financial aid to any Person provided by any Agency . . .

## Project

Any work or activity that is undertaken by: . . . (b) a Person and requires a Permit or involves Financial Assistance or a Land Transfer.

Cf. M.G.L. c. 30, s. 62: “work, project, or activity . . . , if undertaken by a person, which seeks the provision of financial assistance by an agency, or requires the issuance of a permit by an agency . . . “

## Questions:

- How should “indirect” financial aid be construed?



# Repair, Replacement and Maintenance

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**Replacement Project**. Any Project to repair, replace, or reconstruct a previous use of or Project on a Project site that does not:

(a) increase potential environmental impacts **or need additional or changed environmental Permits**; or (b) result in any substantial (10% or more) Expansion of the use or Project, . . .

**Routine Maintenance**. Any maintenance work or activity carried out on a regular or periodic basis in a manner that has **no potential for Damage to the Environment** or for which performance standards have been developed that avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable.

## Questions:

- How should MEPA address repair, replacement and maintenance projects?



# Wetlands and Watersheds – Potential Changes

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**11.02. Undefined terms:** “any term not defined in accordance with 301 CMR 11.02(2) shall have the meaning given to the term by any statutes, regulations, executive orders or policy directives governing the subject matter of the term. Examples include: . . . ”

**Wetlands [potential change to “wetland resource areas”]**, which is defined by the Wetlands Protection Act, M.G.L. c. 131 § 40, and its implementing regulations, 310 CMR 10.00: Wetlands Protection, and 33 USC 1341 and 314 CMR 9.00: 401 Water Quality Certification . . .

**[Potential NEW] Watersheds**, which is defined by the Watershed Protection Act, M.G.L. c. 92A½, and its implementing regulations, 313 CMR 11.00.



# MEPA advisory committee feedback

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## “Alter”

- Land threshold originally intended to be proxy for size of project, not to distinguish “alteration” from “disturbance”
- Any need to distinguish new v. redevelopment?

## “Agency Action” / “Permit”

- “Entitlement for use” intended to mean permanent entitlement tied to location, as opposed to “land use” approval
- What about major programmatic decisions that may have environmental consequences? E.g., 40R / housing choice DHCD approvals
- Should consider more use of “Programmatic EIR/ SRP” process; past examples include DOT snow/ice, pesticides, sewage facilities
- Alternatively, consider “regulations” or other threshold, which would make the review mandatory
- NEPA process limited to major actions that involve construction





# MEPA advisory committee feedback

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## “Relatedness” of permits to impacts

- Should make case by case determinations through advisory ruling process
- What about climate change impacts? Language was added to Sec 61 itself
- Should resiliency to climate change “effects” be distinguished from impacts caused by the project itself?

## “Financial assistance”

- Should financial incentive programs be reviewed as programmatic EIRs?
- Appeal routes from MEPA certificate could be broader than c. 30A

## • “Replacement Project” / “Routine Maintenance”

- This is an ongoing issue for utilities (electric/water)

## • Other definitions

- Add “resiliency demonstration project”? (in Stone Living Lab comment)
- Defining “watershed” only for WsPA purposes could be confusing