



# Commonwealth of Massachusetts

*Executive Office of Energy and  
Environmental Affairs*

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**Massachusetts Environmental Policy Act  
Jan. 28 & Feb. 11, 2022: MEPA Thresholds  
(Land, Rare Species, ACEC,  
Historic Resources, Regulations)**



## Land (301 CMR 11.03(1))

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### Mandatory EIR

- 50+ acres of “direct alteration”; 10+ acres of impervious area

### ENF

- 25+ acres of “direct alteration”; 5+ acres of impervious area
- “Conversion” or “release” of conservation/art. 97 land
- “Conversion” of agricultural land
- M.G.L. c. 121A/121B urban redevelopment project or urban renewal plan or modifications thereto

### Questions

- Any need for revision?
- Should tree removal be addressed separately? If so, how?
- Are these impact levels appropriate for EJ neighborhoods?



# Rare Species (301 CMR 11.03(2))

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## Mandatory EIR

- None

## ENF

- Alteration of designated significant habitat (none designated to date)
- Over 2 acres of disturbance of designated priority habitat resulting in “take” of state-listed endangered or threatened species or species of special concern.

## Questions

- Any need for revision?
- Are these impact levels appropriate for EJ neighborhoods?



# Historic Resources (301 CMR 11.03(10))

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## Mandatory EIR

- None

## ENF

Unless “no adverse effect” determination is received or project is consistent with MOA with MHC:

- demolition of all or any exterior part of any Historic Structure listed in or located in any Historic District listed in the State Register or Inventory; or
- destruction of all or any part of any Archaeological Site listed in the State Register or Inventory

## Questions

- Any need for revision? What Permits are “related”?
- Are these impact levels appropriate for EJ neighborhoods?



# ACEC (301 CMR 11.03(11))

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## Mandatory EIR

- None

## ENF

- Any Project within a designated ACEC, unless the Project consists solely of one single family dwelling

## Questions

- Should ACEC threshold be narrowed? E.g., less than ½ acre of impact could seek advisory ruling to establish insignificant impact
- Is this impact level appropriate for EJ neighborhoods?



# Regulations (301 CMR 11.03(12))

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## Mandatory EIR

- None

## ENF

- Promulgation of New or revised regulations, of which a primary purpose is protecting against Damage to the Environment, that significantly reduce: (i) environmental standards; (ii) public participation opportunities; or (iii) public access to information

## Questions

- Any need for revision?
- Is this impact level appropriate for EJ neighborhoods?



# MEPA advisory committee feedback

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## Land

- Treat land alteration for ecological restoration projects differently?
- Habit management could be added to exemptions for “approved conservation farm plan or forest cutting plans or other similar generally accepted practices”
- Tree removal is a concern in urban areas (large mature trees)
- Impervious cover in urban areas is a concern, even if a redevelopment site, if 100% of site will be covered; redevelopment sites often have no existing stormwater management systems
- Impervious cover has been shown to contribute to impaired waterbodies and degradation of cold water fisheries; this is also a climate change concern
- Article 97 and agricultural conversion thresholds have no minimum acreage and pull in very small projects



# MEPA advisory committee feedback

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## Land

- Tree cover could be considered for 3 purposes: (i) carbon sequestration potential; (ii) EJ impacts (urban areas); and (iii) public shade trees along roadways. Tree cover also has water quality benefits, which should be addressed in analysis of projects.
- Potential approach for tree related threshold could be number of trees with minimum 3" dbh (diameters at breast height), calculated over certain acreage.
- Could alternatives analysis cover individual components of the project (e.g., impervious cover)? However, if impervious cover threshold is lowered (e.g., 5 to 2.5 acres), this could encourage suburban sprawl.
- Even small art 97 conversion could be significant for a community; possible approach could be to focus on permanent conversions, and not temporary impacts that will be restored.





# MEPA advisory committee feedback

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## Rare species

- NHESP would support increasing acreage for species of special concern from 2 to 5 acres. Based on past projects, this will likely affect only a small number of projects.

## Historic resources

- Should threshold be expanded to include resources that are not listed in the state inventories (e.g., for Native Am burial sites)? Non-federally recognized tribes often are not part of the process.
- There are sometimes disputes over whether a structure or site is eligible for listing; one suggestion is to remove the preface “unless no adverse effect determination is received from MHC”
- It may be possible to ask the proponent to conduct research into potential presence of archaeological/historic sites, similar to wetlands delineation. Would need clear methodology.
- MEPA is constrained in the ability to scope for these impacts due to lack of “related” Permits.



# MEPA advisory committee feedback

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## ACEC

- No minimum acreage, so very small projects can trigger this threshold.
- Ecological restoration projects could be viewed differently, e.g., through a categorical exemption as with replacement/maintenance.
- Could recognize same exemptions for approved forest cutting plans/agricultural plans as in Land threshold.

## Regulations

- As previously discussed, this threshold could be expanded to include major “programmatic” actions by the state that may have environmental impacts.