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# MEPA REGULATORY REVIEW UPDATE

**June 23, 2021**

***Public Input on Environmental Justice Protocol  
Due by July 30, 2021***



# MEPA PROGRAM OVERVIEW

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- **Modeled on National Environmental Policy Act (NEPA)**
  - NEPA (1970) premised on federal action
  - MEPA (1972) premised on state action
  - About 16 states have “little NEPA” programs (CA, NY, WA, MN, CT, HI consider GHG/climate in reviews)
  
- **Enacted in 1970s together with modern environmental laws**
  - Clean Water Act (1972)
  - Clean Air Act (1970)
  
- **Key principles**
  - Comprehensive environmental review before permitting
  - Alternatives analysis
  - Public participation and transparency



# KEY THEMES FOR REGULATORY REVIEW

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- **Alignment with policy and planning efforts**
  - Climate resilience (draft interim protocol issued 2/2021)
  - Environmental justice (draft interim protocol issued 2/2021)
  - Greenhouse gas (GHG) mitigation
- **Updates to thresholds and process**
  - Update thresholds
  - Clarify definitions
  - Clarify review procedures



# MEPA OVERVIEW - Jurisdiction

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- **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

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- **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



# **PUBLIC COMMENTS RECEIVED TO DATE (36 total)**

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## **Consultants/Industry**

**NAIOP**

**Epsilon**

**Law firms and consultants**

## **Utilities**

**National Grid**

**Eversource**

## **State Agencies**

**MassDEP**

**Massport**

## **Municipalities/Regional**

**MAPC**

**City of Cambridge**

**Berkshire Regional Planning Commission**



# **PUBLIC COMMENTS RECEIVED TO DATE (36 total)**

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## **Advocates**

- **Conservation Law Foundation**
- **Environmental Justice Table**
- **Friends of Melnea Cass Boulevard**
- **The Trustees of Reservations**
- **Boston Harbor Now**
- **Stone Living Lab**
- **Community Land & Water Coalition**
- **Herring Pond Wampanoag Tribe**
- **WalkBoston**
- **Charles River Watershed Association**
- **Mystic River Watershed Association**
- **Neponset River Watershed Association**
- **Connecticut River Conservancy**
- **Mass Audubon, Appalachian Mountain Club, Massachusetts Association of Conservation Commissions, Massachusetts Land Trust Coalition, The Nature Conservancy in Massachusetts (joint letter)**



# NEXT STEPS – Climate Resiliency

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- **Comments Received on Interim Protocol**

- ❖ *Business Groups*

- Interim protocol not fully developed; should seek further input
    - Formal policy should be released after stakeholder process

- ❖ *Advocacy/Planning Groups*

- Interim protocol should consider more factors and incorporate local data
    - MEPA review should be consistent with RMAAT tool; suggest new review “threshold” based on flooding risk

- **Next Steps**

- Interim protocol has been revised to require submission of output report from RMAAT climate tool (anticipated effective date of Oct. 1)
  - Formal climate resiliency policy deferred to later time





## NEXT STEPS – Environmental Justice

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### • Comments Received on Interim Protocol

#### ❖ *Business Groups*

- Support goals of EJ policy; request clarification of requirements

#### ❖ *Advocacy/Planning Groups*

- Protocol should reflect requirements of climate legislation
- Proponents should engage early with EJ communities up to 60 days prior to filing; comment periods should be extended

### • Next Steps

- EJ protocol has been revised to incorporate statutory provisions. MEPA is seeking comments **by July 30** (anticipated effective date of Oct. 1)
- MEPA is also proceeding with implementation of Sections 57-58 of St. 2021, c. 8. Stakeholder engagement will continue on these topics.



## Revised EJ Outreach Protocol – Key Provisions

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- ✓ Submit with ENF a map identifying project location relative to environmental justice (EJ) populations (1 mile and 5 mile radius)
- ✓ Describe in ENF whether the project is reasonably likely to negatively affect EJ populations; if not, provide detailed explanation
- ✓ Public participation requirements include:
  - Submit letter of intent with MEPA 45 days prior to filing and make written project summary publicly available thereafter
  - Hold community meeting at least 2 weeks prior to filing and invite local officials, community organizations, EEA EJ Director
  - Provide language translation for pre-filing consultation; MEPA site visit; other key documents and meetings as needed
  - Additional outreach to be included in Scope for EIRs as appropriate

**\*\*Public comments due by July 30, 2021\*\***



# NEXT STEPS – GHG Policy Revisions

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- **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

- **Comment**

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

- **Next Steps**

- Coordinate MEPA updates with development of “specialized” stretch code. Public comment opportunity anticipated in Fall/Winter 2021-22.



# Key Regulatory Revisions Under Consideration

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- **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



# NEXT STEPS – Regulatory Revisions

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- **Key Comments received**

- ❖ *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 review thresholds for land, transportation, wetlands, water, wastewater and energy

- ❖ *Definitions and Procedures*

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

- **Next Steps**

- MEPA to continue stakeholder engagement and open formal rulemaking under G.L. c. 30A in Fall 2021.



# TENTATIVE SCHEDULE

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- **June 23-July 30, 2021: Public comment period for environmental justice (EJ) related materials**
- **Summer/Fall 2021:** Continue with stakeholder meetings on MEPA requirements in climate legislation (St. 2021, c. 8) and other topics
- **Fall 2021:** File draft regulations with Secretary of State's Office to open formal G.L. c. 30A rulemaking
- **Oct. 1, 2021:** Anticipated effective date for EJ outreach/climate protocols
- **Fall/Winter 2021-22:** Issue revised GHG policy for comment
- **2022:** Develop climate resiliency policy after testing of RMAT climate tool

***\*\*Ongoing updates will be posted on MEPA website, and dedicated email box ([MEPA-regs@mass.gov](mailto:MEPA-regs@mass.gov)) and listserv remain open.***



## HOW TO PARTICIPATE

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- Comments on environmental justice materials can be sent to [MEPA-regs@mass.gov](mailto:MEPA-regs@mass.gov) by July 30, 2021.
- Send blank email to [subscribe-mepa\\_reg\\_review@listserv.state.ma.us](mailto:subscribe-mepa_reg_review@listserv.state.ma.us) to receive ongoing alerts.
- Ongoing updates will be posted at MEPA website at <http://mass.gov/service-details/information-about-upcoming-regulatory-updates>