

[DRAFT] MEPA Interim Public Involvement Protocol for Environmental Justice Outreach Populations
Issuance Date: **[TBD]**, 2021

Anticipated Effective Date: October 1, 2021

Important transition rules regarding public involvement requirements for the period from June 24, 2021 to the effective date of this protocol can be found here.

Following a public comment period, the MEPA Office anticipates issuing a final protocol to be effective as of October 1, 2021. All new Environmental Notification Forms (ENFs) and Expanded Environmental Notification Forms (EENFs) submitted on or after the effective date must ensure compliance with all aspects of this protocol, including the anticipated requirement to file a Letter of Intent (LOI) with the MEPA Office at least 45 days prior to filing and to conduct a community meeting with interested parties at least two (2) weeks prior to filing. Other filings, including Environmental Impact Reports (EIRs), Notices of Project Change (NPCs), Project Commencement Notices (PCNs), Environmental Status and Planning Reports (ESPRs), and Environmental Data Reports (EDRs), must comply with applicable requirements as described below. Any filing that fails to meet the requirements of this protocol starting on the effective date will be rejected as incomplete. Consistent with 301 CMR 11.05(5), the final protocols and corresponding revisions to the ENF form will be published in the Environmental Monitor at least two weeks prior to the effective date.

Authority and Background

This protocol addresses the new public involvement requirements for MEPA projects under Chapter 8 of the Acts of 2021: An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy (the “Climate Roadmap Act” or “the Act”), as well as the on-going public involvement requirements under the 2017 Executive Office of Energy and Environmental Affairs (EEA) Environmental Justice Policy (the “2017 EJ Policy”). This protocol accompanies corresponding changes to the Environmental Notification Form (ENF), which are shown in Attachment A and which will be incorporated into the template ENF to be made available on the MEPA website.

On March 26, 2021, Governor Baker signed into law the Climate Roadmap Act, which enacted a new definition of “Environmental Justice [EJ] Population” for purposes of enhancing public involvement and other procedures in the MEPA review process. The new statutory definition of “EJ population” includes four categories of neighborhoods (defined as census blocks) with certain demographic characteristics based on income level, minority status, and English language proficiency. In turn, the Act provides that, “[t]o enable the public to assess the impact of proposed projects that affect their environment, health and safety through the [MEPA] project review process . . . , the secretary [of EEA] shall provide opportunities for meaningful public involvement” by EJ populations. The Act also gives the Secretary discretion to require additional measures as appropriate for projects that do not require the filing of an ENF, which include projects that are required to submit Notices of Project Change or other MEPA filings.

Starting in 2020, the MEPA Office embarked on an effort to update its EJ related review protocols, in consultation with the EEA EJ Director and other EEA agencies. This effort coincides with parallel efforts to update MEPA regulations at 301 CMR 11.00 et seq. The MEPA Office is issuing this MEPA Public Involvement

Protocol for Environmental Justice Populations (“MEPA EJ Public Involvement Protocol”) as one component of its overall MEPA Office EJ Strategy to be finalized in 2021. This protocol addresses only the public involvement requirements of the Climate Roadmap Act; other requirements relative to the content of Environmental Impact Reports (EIRs) will be addressed through separate regulations and guidance, to be proposed through a formal rulemaking process under M.G.L. c. 30A.

In 2017, the Executive Office of Energy and Environmental Affairs (EEA) issued a revised ~~Environmental Justice (EJ) Policy (the 2017 EJ Policy)~~. Among other items, the 2017 EJ Policy requires that projects triggering certain MEPA ENF review thresholds provide opportunities for “enhanced public participation” by surrounding EJ neighborhoods,¹ and that projects triggering certain mandatory EIR thresholds conduct an “enhanced analysis of impacts and mitigation,” in addition to enhanced public participation.² The MEPA thresholds to which these EJ requirements apply are those related to wastewater (301 CMR 11.03(5)), air emissions (11.03(8)), and solid and hazardous waste (11.03(9)). This MEPA EJ Public Involvement Protocol is intended to supplement, and shall not supersede, the requirements of the 2017 EJ Policy. Therefore, the 2017 EJ Policy remains in effect for all projects to which its requirements apply.

~~Starting in 2020, the MEPA Office has embarked on an effort to update its EJ related review protocols, in consultation with the EEA EJ Director and other EEA agencies. This effort will coincide with parallel efforts to update MEPA regulations at 301 CMR 11.00 et seq. While these efforts are ongoing, the MEPA Office is issuing this interim protocol to improve notification and outreach to, and engagement with, EJ neighborhoods by project proponents. The protocol will remain in place until amended or superseded by a formal MEPA EJ strategy and associated policy or guidance to be developed through a public stakeholder process.~~

Interim Protocol

Presumptions of Project Impacts on EJ Populations

Effective ~~[TBD], [1], 2021~~, all ~~new projects filing ENF/EENFs filed~~ with the MEPA Office will be required to identify the location of the project relative to “Environmental Justice Populations” (“EJ Populations”) as depicted on this on this EJ mapping tool,³ and include a printout of the project location shown on the mapping tool as an attachment to the ~~Environmental Notification Form (ENF)~~ENF (or EENF) submittal.

~~If any portion of the project site is~~ The printout shall identify all EJ Populations within a one (1)-mile and five (5)-mile radius of the project, and shall measure the distance from the approximate center of the limit of work for the project. For linear projects, the distance shall be measured from the start and end points, as well as from representative locations along the length of the project. In the event of any doubt or “close calls” as to whether EJ populations are located within an “EJ population” as defined in the 2017 EJ Policy, the designated geographical areas around the project site, the Proponent is required to consult with the MEPA Office at least 10 days prior to

¹ The specific ENF thresholds are 301 CMR 11.03(5)(b)(1)-(2), (5); 301 CMR 11.03(8)(b); and 301 CMR 11.03(9)(b).

² The specific EIR thresholds are 301 CMR 11.03(5)(a)(1)-(2), (5); 301 CMR 11.03(8)(a); and 301 CMR 11.03(9)(a).

³ The mapping tool will be updated by the effective date of the Climate Roadmap Act (June 24, 2021) to reflect the definition of “Environmental Justice Population” in the Act.

filing to determine an appropriate EJ outreach strategy. In most cases, such strategy shall include, at a minimum, conducting outreach to local EJ groups and, if “English Isolation” (limited English proficiency) is indicated on the mapping tool as an identifying feature of the EJ population, offering, to the extent practicable, translation and interpretation services in languages spoken by a significant portion of the population. These language service requirements shall apply to notices, documents and community meetings that pertain to the proposed project. The MEPA Office can provide assistance in identifying the relevant languages for the neighborhood. In lieu of pre-filing consultation, the Proponent may voluntarily conduct EJ outreach prior to filing and include a summary of these outreach activities as part of the ENF/EENF filing. Remediation projects will be exempted from this requirements should err on the side of inclusiveness.

In addition to these pre-filing requirements, the MEPA Office will consider the potential need for enhanced outreach to EJ neighborhoods during the course of MEPA review, for any project that is subject to the requirement to file a mandatory environmental impact report (EIR). In addition to attaching the above printout, the ENF/EENF shall indicate whether the project is “reasonably likely” to negatively affect EJ populations within a 1-mile or 5-mile (if affecting air quality) radius of the project site. In construing this requirement, the MEPA Office will presume that *any* project impacts will negatively affect EJ populations located within a 1-mile radius of the project, absent compelling information to the contrary. Accordingly, the public involvement requirements described in this protocol will apply in most cases over a 1-mile radius around the project site.

For air quality, the MEPA Office will presume that project impacts exceeding MEPA review thresholds for air emissions at 301 CMR 11.03(8)(a)-(b) will affect air quality and negatively affect EJ populations within a 5-mile radius around the project site. In addition, any project that will require an unusually large volume of project- or construction-related diesel trucks or equipment may be regarded as affecting air quality up to a 5-mile radius, depending on the specific routes of travel for the trucks or equipment. The Proponent is encouraged to consult with the MEPA Office prior to filing to ensure accuracy in determining the geographical area over which public involvement requirements will apply. The ENF/EENF shall, in any event, describe any air emissions associated with the project, and whether such emissions are anticipated to affect air quality within an area up to 5 miles around the project site.

If a Proponent wishes to modify the presumptions set forth in this protocol for determining the geographical area for public involvement, it must provide documentation as part of the ENF/EENF to clearly demonstrate the *absence* of negative impacts within the designated geographical areas around the project site. Based on this documentation, the Secretary may expand or reduce the designated geographical areas to which the public involvement requirements of this protocol will apply, or may exempt the project altogether from such requirements. However, the Secretary shall retain discretion to reject any documentation and associated ENF/EENF filing as incomplete based on non-compliance with EJ public involvement requirements, and may require an extension or repetition of the MEPA review due to such non-compliance.

Public Involvement Requirements Prior to Filing ENF/EENF

If the project is identified as negatively affecting EJ populations within a 1-mile or 5-mile radius of the project site, the Proponent must submit, at least 45 days prior to filing the ENF/EENF, a Letter of Intent to file (“LOI”) with the MEPA Office. The LOI shall contain basic details about the project—including the project or facility type,

project location and uses, size of project site and associated buildings/structures, anticipated construction schedule, and anticipated local, state, and federal permits/approvals—in addition to the expected date of filing of the ENF/EENF with the MEPA Office and contact information for the proponent, including information on how to obtain language translation/interpretation services. If “English Isolation” (limited English proficiency) is indicated as an identifying feature of any affected EJ population, the LOI must be translated into all relevant languages as described in the *Protocol for Language Translation/Interpretation Services* section below and submitted to the MEPA Office as an attachment to, or as part of, the same LOI filing. Upon receipt, the MEPA Office will post the LOI’s on a dedicated section of the MEPA website until such time the ENF/EENF is filed or the LOI is withdrawn by the Proponent. To ensure that information remains current, the Proponent shall make best efforts to file the LOI as close to the anticipated date of filing for the project as possible (provided that it is at least 45 days prior to filing the project). Any ENF/EENF filed more than 180 days after the LOI will not be accepted by the MEPA Office. In this instance, the LOI filed prior to this date shall be withdrawn and refiled at least 45 days (and no more than 180 days) prior to resubmittal of the ENF/EENF. The MEPA Office may choose to publish all filed LOI’s in the *Environmental Monitor* in lieu of posting on the MEPA website; in this case, the 180-day period may run from the date of publication of the LOI.

In addition to filing the LOI, the Proponent must promptly prepare and make publicly available a written project summary. If “English Isolation” (limited English proficiency) is indicated as an identifying feature of the affected EJ population, the project summary must be translated into all relevant languages as described in the *Protocol for Language Translation/Interpretation Services* section below. The project summary shall be written in a succinct, non-technical format, and contain basic details about project components; the expected date of filing with the MEPA Office and anticipated review procedures under MEPA; an anticipated timetable for construction and pre-construction activities; a listing of all required state, federal and local permits; a high-level description of the environmental impacts associated with the project, including impacts that may not be specifically listed as MEPA review thresholds at 301 CMR 11.03; measures proposed to avoid, minimize or mitigate such impacts; a description of community outreach activities conducted to date; and information about how to obtain further information about the project, including contact information for the proponent, a website and/or physical locations/repositories where project materials can be obtained, and guidance on how to obtain a translated version of the document or other project materials. The project summary should identify any known demographic information about the affected EJ population(s) based on readily available data, including race or ethnicity, limited English proficiency, income level, and public health information indicating increased vulnerabilities of such populations. It should also describe any known climate risks of the project, including a description of greenhouse gas emissions sources associated with the project and any known impacts of sea level rise, extreme precipitation, and extreme heat.

The Proponent shall make the project summary publicly available by sending it to the EEA Director of Environmental Justice (the “EEA EJ Director”) and to community-based organizations (CBOs) that serve or advocate for EJ populations in the designated geographical areas. The Proponent is also encouraged to make use of alternative language media (radio stations, specialized newspapers, social media, and neighborhood postings) that serve the designated geographical areas. The CBOs should be identified through the Proponent’s own research, including through consultation with the EEA EJ Director or designee. To the extent feasible, the Proponent shall make the project summary available on a public website, and consider establishing a local

repository for written materials associated with the project, including the project summary and additional future notices, filings and decisions. The Proponent is strongly encouraged to widely disseminate the project summary to meet the spirit and goals of this protocol, regardless of the specific geographical area for public involvement determined under the *Presumptions of Project Impacts on EJ Populations* section above.

After circulating the project summary, the Proponent shall promptly conduct an information meeting, by no later than two (2) weeks prior to filing the ENF/EENF, to review the proposed project and answer questions. All identified CBOs, local elected officials, the EEA EJ Director, and other interested parties shall be invited, and the project summary, including translated versions, shall be circulated to confirmed participants in advance of the meeting. The information meeting must be offered once during regular office business hours, and again, if requested, during evening or weekend hours. The information meeting(s) must be held in-person at accessible locations near public transportation to the greatest extent possible, and shall include provision for remote attendance through zoom, facebook live, or other similar service. Oral interpretation shall be provided, if requested at least 48 hours in advance.

The ENF/EENF filing shall contain a summary of the information meeting conducted with interested parties as described in the preceding paragraph, and shall describe any project changes that were made to address concerns raised in the course of these meetings or other outreach conducted prior to filing.

Protocol for Language Translation/Interpretation Services

If “English Isolation” (limited English proficiency) is indicated on this EJ mapping tool as an identifying feature of any affected EJ population, the Proponent shall provide written and oral translation/interpretation services in all languages spoken by a significant portion of the population. “Significant portion” shall mean each language spoken by at least 5% of the census block where such residents are identified as lacking English proficiency (*i.e.*, responded to the U.S. census as “not speaking English very well”). This link is available as a resource in identifying relevant languages on a *census tract* level, which may encompass multiple census blocks in the designated geographical area. The Proponent is also encouraged to consult local school districts or other sources that may maintain more granular language data better tailored to the project site.

Language services shall be provided prior to filing the ENF/EENF by translating the LOI and written project summary into all relevant languages and circulating it in the manner described in the *Public Involvement Requirements Prior to Filing ENF/EENF* section above. All translated versions of the LOI and project summary shall be made available on the same date on which the English version is made available. Oral interpretation shall be provided during the information meeting(s) undertaken prior to filing, if such interpretation is requested at least 48 hours prior to the meeting(s).

In addition to the requirements for the LOI, project summary and community meeting, the Proponent shall offer language translation/interpretation services when issuing any other public notices for the project, conducting other community or informational meetings, including the MEPA Site Visit, and circulating additional project summaries or supplemental information during the course of MEPA review. As a general matter, including an offer to provide language translation or oral interpretation services in written project materials (assuming the offer itself, together with a brief description of the content, are translated into all relevant languages) and

providing oral interpretation if requested at least 48 hours prior to any event will be sufficient to meet the additional requirements of this paragraph. In appropriate circumstances, the Proponent may be requested by the MEPA Office to provide oral interpretation at the MEPA Site Visit, regardless of whether requests are made in advance. In addition, any specific requests for ongoing language translation/interpretation should be fulfilled to the greatest extent possible. The Proponent is encouraged to include alternative language media (radio stations, specialized newspapers, social media, and neighborhood postings) when issuing notices for the project, in addition to the already required publication in a newspaper of local circulation. In instances where a request for language services is made for a language that is spoken by less than 5% of residents in any census block where such residents are identified as lacking English proficiency, the Proponent is encouraged to provide translation/interpretation in those languages to the greatest extent possible.

Public Involvement Requirements After Filing ENF/EENF

The Proponent shall continue to promote meaningful public involvement by EJ populations after filing the ENF/EENF by maintaining a distribution list of CBOs and individuals who have requested to receive ongoing project updates. The Proponent shall use the distribution list to circulate notices of the MEPA Site Visit, summaries of supplemental information submitted to the MEPA office, and any other relevant notices or materials during the course of MEPA review. The Proponent shall comply with all requirements of the *Protocol for Language Translation/Interpretation Services* section above, except those that apply prior to the filing of an ENF/EENF.

For any project that is required to file an EIR, the Secretary will consider the need for additional public involvement activities during the period between issuance of the Certificate on the ENF/EENF and the subsequent EIR filing, and during the course of EIR review. This determination will be made on a case-by-case basis, in consideration of the project's proximity to EJ neighborhoods and its specific impacts. If required, ~~enhanced outreach activities~~ such additional public involvement requirements will be specified in the ~~EIR~~ Scope for the EIR.

This Interim Protocol is intended to supplement, and shall not supersede, the requirements of the 2017 EJ Policy. The 2017 EJ Policy shall remain in effect for all projects to which its requirements apply. *Public involvement Requirements for Other MEPA Filings*

For Notices of Project Change (NPC), Project Commencement Notices (PCNs), DEIRs, FEIRs, Environmental Status and Planning Reports (ESPRs), Environmental Data Reports (EDRs), or other filings where the initial ENF/EENF was submitted prior to the effective date of this protocol, the filing shall identify the location of the project or project change relative to EJ Populations as depicted on this EJ mapping tool. The description shall identify all EJ Populations within a one (1)-mile and five (5)-mile radius of the project, and measure such distances in the same manner as stated in the *Presumptions of Project Impacts on EJ Populations* section above with respect to ENF/EENF filings.

If the project or project change identified in the applicable filing is located within one (1) mile of an EJ population, the Proponent shall identify CBOs that serve or advocate for EJ populations in that geographical area by conducting its own research, including by consulting with the EEA EJ Director or designee, and shall distribute

a copy of the filing to those CBOs. If the project or project change is located within five (5) miles of an EJ population and exceeds MEPA review thresholds for air emissions at 301 CMR 11.03(8)(a)-(b), the distribution requirements to CBOs shall extend to a 5-mile radius around the project site. When distributing a copy of the filing, the Proponent shall offer to provide language translation/interpretation services (provided the *offer itself*, together with a brief description of the filing, are translated into all relevant languages as determined in the *Protocol for Language Translation/Interpretation Services* section above). The Proponent shall also comply with all other requirements of the *Protocol for Language Translation/Interpretation Services* section, except those that apply prior to the filing of an ENF/EENF. The Proponent is encouraged to maintain a distribution list of CBOs and other interested parties to use to circulate further notices about the project, summaries of supplemental information submitted to the MEPA office, and any other relevant materials during the course of MEPA review.

The Proponent is encouraged to consult with the MEPA Office prior to filing NPCs, PCNs, DEIRs, FEIRs, ESPRs, EDRs or other similar filings to ensure compliance with this protocol.

Addendum: ENF Revisions

ATTACHMENTS:

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8. Printout from this EJ mapping tool showing the project location relative to Environmental Justice (EJ) Populations within a 1-mile and 5-mile radius of the project site.

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[NEW] ENVIRONMENTAL JUSTICE SECTION

Potential Impacts to EJ Populations

- I. If an Environmental Justice (EJ) Population has been identified using this EJ mapping tool within 1 mile of the project site, has the Proponent determined that the project is reasonably likely to negatively affect EJ populations within such 1-mile radius?⁴ Yes No
- A. If yes, provide the basis for this determination.
- B. If no, provide a detailed explanation of the basis for this determination and attach relevant documentation, analysis or mapping (or refer to such materials provided elsewhere in the ENF).
- II. If an Environmental Justice (EJ) Population has been identified using this EJ mapping tool within 5 miles of the project site, has the Proponent determined that the project is reasonably likely to negatively affect EJ populations within such 5-mile radius (i.e., between 0 and 5 miles around the project site) based on air quality impacts?⁵ Yes No
- C. If yes, provide the basis for this determination and the specific radius of anticipated impact.
- D. If no, provide a detailed explanation of the basis for this determination and attach relevant documentation, analysis or mapping (or refer to such materials provided elsewhere in the ENF).

⁴ As stated in the MEPA Public Involvement Protocol for Environmental Justice Populations, the MEPA Office will presume that any project impacts will negatively affect EJ populations located within a 1-mile radius of the project, absent compelling information to the contrary.

⁵ As stated in the MEPA Public Involvement Protocol for Environmental Justice Populations, the MEPA Office will presume that project impacts exceeding MEPA review thresholds for air emissions at 301 CMR 11.03(8)(a)-(b) will affect air quality and negatively affect EJ populations within a 5-mile radius around the project site. In addition, any project that will require an unusually large volume of project- or construction-related diesel trucks or equipment may be regarded as affecting air quality up to a 5-mile radius, depending on the specific routes of travel for the trucks or equipment.

Outreach to EJ Populations

- III. If the project has been identified as reasonably likely to negatively affect EJ populations, provide an explanation of outreach activities conducted in accordance with the *MEPA Public Involvement Protocol for Environmental Justice Populations*, including the date on which a Letter of Intent to File (LOI) was submitted to the MEPA Office, the date(s) of pre-filing community meeting(s) conducted for the project, language services provided (if applicable) including specific languages for which translation was provided, and alternative media (if any) where public notices of the project were published. Attach copies of the LOI and written project summary prepared for the project.
- IV. Provide (or attach) a distribution list of community-based organizations (CBOs) and individuals that the Proponent intends to maintain for additional public notices, community meetings, and circulation of supplemental information during the course of MEPA review. Indicate if any CBOs and/or individuals have requested ongoing translation/interpretation services.
- V. Provide a statement regarding any project changes that were made to address concerns raised during the outreach activities described above.