



November 23, 2021

Tori Kim, Director
Massachusetts Environmental Policy Act Office
100 Cambridge Street, #900
Boston, MA 02114

RE: Comments on *DRAFT MEPA Public Involvement Protocol for Environmental Justice Populations* and *Draft MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations*

Dear Director Kim,

NAIOP Massachusetts, The Commercial Real Estate Development Association, appreciates the opportunity to comment on the DRAFT MEPA Public Involvement Protocol for Environmental Justice Populations (Public Involvement Protocol) and the Draft MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations (Analysis Protocol). As we have repeatedly stated throughout this regulatory process, NAIOP supports the legislature's thoughtful amendments to MEPA in this year's Climate Bill (Chapter 8 of the Acts of 2021). NAIOP considers Environmental Justice an important and pressing priority.

NAIOP respectfully submits the below comments based on feedback from members who are committed to the success of this program, the regulatory implementation and the proposed Protocols.

I. Draft MEPA Public Involvement Protocol for Environmental Justice Populations

Overall, NAIOP is supportive of the Draft Public Involvement Protocol, and has suggested minor revisions in the attached redline. However, in the section outlining Advance Notification (Section II, A), **NAIOP would like clarity regarding the "EJ Reference List." Specifically, answers to the questions of when this list will be developed; how this list will be developed; and whether or not the finalized EJ reference List will be widely available and posted online?**

Finally, regarding the Draft Public Involvement Protocol, in the attached redline **NAIOP has suggested shortening certain timeframes outlined to ensure the hallmark predictability and timeliness of the MEPA process is maintained.**

II. Draft MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations

NAIOP has attached a redline with suggested language meant to complement our October 20 comment letter regarding the Draft Regulations and NAIOP's proposed Environmental Justice Certification. Specifically, NAIOP would like to address the Applicability of the EIR Requirement given this is an ongoing discussion with the MEPA Advisory Group.

[DRAFT] MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations
Anticipated Effective Date: January 1, 2022

Authority and Background

This *MEPA Protocol for Analysis of Impacts on Environmental Justice Populations* (hereinafter, “*MEPA Protocol for Analysis of EJ Impacts*”) addresses new requirements for MEPA project filings set forth in **Section 58** of 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”). This guidance accompanies the MEPA Public Involvement for Environmental Justice Populations (hereinafter, the “EJ Public Involvement Protocol”), which implements public involvement requirements set forth in Section 60 of the Act.

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 MEPA review procedures. The new statutory definition of “EJ population” includes four categories of neighborhoods (defined as census block groups) with certain demographic characteristics based on median income level, percentage of residents who are people of color (a.k.a. minority), and percentage of residents who lack English language proficiency (LEP). In turn, Section 58 of the Act provides that an “environmental impact report [EIR] shall be required for any project that is likely to cause damage to the environment and is located within a distance of 1 mile of an environmental justice population; provided, that for a project that impacts air quality, such environmental impact report shall be required if the project is likely to cause damage to the environment and is located within a distance of 5 miles of an environmental justice population.” Section 58 further defines the analysis that must be contained in the EIR to assess the level of existing “environmental burden” borne by the EJ population, and whether the project’s impacts will likely result in a “disproportionate adverse effect” on such population, or increase or reduce the effects of climate change.¹

On June 24, 2021, the Executive Office of Energy and Environmental Affairs (EEA) updated the 2017 EJ Policy that was previously in effect. The 2021 update (the “2021 EJ Policy”)², consistent with the 2017 EJ Policy, requires that projects triggering certain MEPA ENF review thresholds provide opportunities for “enhanced public participation” by surrounding EJ neighborhoods,³ and that projects triggering certain mandatory EIR thresholds conduct an “enhanced analysis of impacts and mitigation,” in addition to enhanced public participation.⁴ 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 Protocol for Analysis of EJ Impacts* expands on, but remains consistent with, the requirements of the 2021 EJ Policy. Accordingly, this guidance shall define the requirements for analyzing EJ impacts for all MEPA projects filed after its effective date.

¹ Under Section 102A of the Act, the Secretary of EEA is required to promulgate regulations to implement Sections 57 and 58 of the Act within 180 days of the effective date of the Act. In accordance with this statutory mandate, the Secretary issued draft regulations for public comment under M.G.L. c. 30A on September 17, 2021.

² <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>

³ 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).

⁴ The specific EIR thresholds are 301 CMR 11.03(5)(a)(1), (6); 301 CMR 11.03(8)(a)(1); and 301 CMR 11.03(9)(a).

Protocol

I. **Applicability of EIR Requirement**

Section 58 of the Act requires that an EIR be submitted:

- for any project that is likely to cause damage to the environment and is located within a distance of 1 mile of an EJ population; or
- if a project impacts air quality, for any project that is likely to cause damage to the environment and is located within a distance of 5 miles of an EJ population.

Consistent with MEPA regulations at 301 CMR 11.00, the term “likely to cause damage to the environment” in Section 58 of the Climate Roadmap Act is construed to mean project impacts that meet or exceed applicable and relevant MEPA review thresholds set forth in 301 CMR 11.03. See 301 CMR 11.01(2)(b) & 11.03 (MEPA “review thresholds identify categories of Projects or aspects thereof of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment”). Thus, Section 58 ~~requires is only applicable to~~ projects that are already subject to the requirement to file for MEPA review jurisdiction because they and meet or exceed one or more MEPA review thresholds (in the case of limited MEPA jurisdiction under 301 CMR 1.01(2)(a)(3), those thresholds related to the subject matter scope of required state permit[s]);; and Section 58 requires any such projects that exceeds one or more of the applicable and relevant review thresholds to submit an EIR, if the project is located within 1 mile of an EJ population, unless the Secretary determines that the EJ Analysis submitted with the ENF/EENF is sufficient to serve as an EIR for this purpose and issues an Environmental Justice Certification so stating.

A project that is otherwise required to file for MEPA review is also ~~required to submit an EIR~~ subject to Section 58, if it is located within 5 miles of an EJ population and will impact air quality. In accordance with *new* [proposed] 301 CMR 11.05(4)(d) and 11.06(7)(b), such a project will be determined to impact air quality if it meets or exceeds MEPA review thresholds under 301 CMR 11.03(8)(a)-(b) ~~or generates 150 or more New adt of diesel vehicle traffic over a duration of 1 year or more~~. Thus, any such project that ~~falls under either criterion and is otherwise subject to MEPA jurisdiction~~ required to file for MEPA review -and exceeds the referenced air quality thresholds will be required to submit an EIR, if the project is located within 5 miles of an EJ population, unless the Secretary determines that the EJ Analysis submitted with the ENF/EENF is sufficient to serve as an EIR for this purpose and issues an Environmental Justice Certification so stating.

The respective 1-mile and 5-mile areas around a project site shall be referred to in this *MEPA Protocol for Analysis of EJ Impacts* as the “designated geographical area” for the project.

II. **Assessment of Existing Unfair or Inequitable Environmental Burden**

Under Section 58 of the Act, and consistent with *new* [proposed] 301 CMR 11.06(7)(b) and 11.07(6)(n), each project to which the new EIR requirement applies under Part I of this MEPA Protocol for Analysis of EJ Impacts must submit an EIR that contains “statements about the results of an assessment of any existing unfair or inequitable environmental burden and related public health consequences impacting the environmental justice population from any prior or current private, industrial, commercial, state, or municipal operation or project

that has damaged the environment.”

This assessment should include all identified EJ populations within the designated geographical area for the project, depending on which applicability criteria is triggered as stated in Part I above.⁵ The assessment should then survey past and current polluting activities that may have contributed to an overall “environmental

⁵ The specific EJ populations and the 1-mile and 5-mile distances shall be calculated in the manner described in Part I of the *MEPA Public Involvement Protocol for Environmental Justice Populations*.

burden” currently borne by the EJ population that may be “unfair and inequitable” as compared to the general population. While measuring the individual effects of a multitude of past and current activities is a complex endeavor, publicly available mapping tools exist as a resource, as described below.

First, Proponents should consult the Massachusetts Department of Public Health (DPH) EJ Tool⁶ to identify whether any municipality or census tract that includes any of the identified EJ populations exhibits one or more of four specific “vulnerable health criteria,” which are environmentally related health indicators that are measured to be 110% above statewide averages in the DPH EJ Tool.⁷ Any EJ population that exists within those municipalities or census tracts could then be viewed as exhibiting “vulnerable health EJ criteria,” and therefore potentially bearing an “unfair or inequitable” environmental burden and related public health consequences.

Second, the Proponent should consult additional data layers in the DPH EJ Tool to survey other potential sources of pollution within the boundaries of the EJ population. While comparisons to statewide averages are not presently available in the DPH EJ Tool, the Proponent should provide a narrative description of the estimated number and type of mapped facilities/infrastructure in the area, and survey enforcement histories of any facilities permitted by Massachusetts Department of Environmental Protection (MassDEP).⁸

Available mapping layers in the DPH EJ Tool include the following:

- MassDEP major air and waste facilities
- M.G.L. c. 21E sites
- “Tier II” toxics use reporting facilities
- MassDEP sites with AULs
- MassDEP groundwater discharge permits
- Wastewater treatment plants
- MassDEP public water suppliers
- Underground storage tanks
- EPA facilities
- Road infrastructure
- MBTA bus and rapid transit
- Other transportation infrastructure
- Regional transit agencies
- Energy generation and supply

⁶ <https://matracking.ehs.state.ma.us/Environmental-Data/ej-vulnerable-health/environmental-justice.html>

⁷ Specifically, “vulnerable health criteria” refers to environmentally related health indicators that are measured to be equal to or greater than 110% of statewide rates based on a 5-year average. Four such health criteria are tracked in the DPH EJ Viewer (heart attack hospitalization, childhood asthma, childhood blood lead, and low birth [rateweight](#)) on a municipal level.

Childhood blood lead and low birth [rateweight](#) are also available on a census tract level.

⁸ Enforcement information is available at <https://eeaonline.eea.state.ma.us/Portal#!/search/enforcements>

Third, Proponents should consult the standard output report generated from the RMAT Climate Resilience Design Standards Tool (the “RMAT Tool”),⁹ which is required as an attachment to the ENF/EENF.¹⁰ Proponents should identify in the EIR whether the RMAT Tool indicates a “High” risk rating for sea level rise/storm surge or extreme precipitation (urban or riverine flooding) as applied to the project site. A “High” ranking for these parameters could be an indicator of elevated climate risks for EJ populations (census block groups) in which the project site is located. The risk rating for the “extreme heat” parameter should not be used as a definitive indicator of elevated climate risks.

Fourth, Proponents, at their option, may consult U.S. EPA’s “EJ Screen,”¹¹ which provides a percentile ranking by census block group, compared against statewide averages, for 11 environmental indicators. When using the tool, Proponents should turn off the “EJ index” data layer—while the EJ index is calculated from the 11 environmental indicators after considering demographic information and population density, this calculation may be inconsistent with the definition of “EJ population” codified in Massachusetts law. In addition, while the environmental indicators/percentiles could be relevant for assessing potential environmental exposures in the relevant area, it should not be used as a definitive indicator of “unfair or inequitable” environmental burden.

The environmental indicators available through the EPA EJ Screen are as follows:

Indicator	Exposure v. Risk	Key Medium
NATA Air Toxics Cancer Risk (lifetime exposure)	Risk/Hazard	Air
NATA Respiratory Hazard Index Ratio	Risk/Hazard	Air
NATA Diesel PM (DPM)	Potential Exposure	Air
Particulate Matter (PM2.5) (annual average)	Potential Exposure	Air
Ozone (summer seasonal average, daily 8-hr max)	Potential Exposure	Air
Lead Paint (% of housing built before 1960)	Potential Exposure	Dust/lead paint
Traffic Proximity and Volume Count of vehicles (average annual)	Proximity/Quantity	Air
Proximity to RMP (Risk Management Plan / hazardous waste cleanup) Sites	Proximity/Quantity	Waste/Water/Air
Proximity to TSDFs (Hazardous waste Treatment, Storage, and Disposal Facilities)	Proximity/Quantity	Waste/Water/Air

⁹ https://resilientma.org/rmat_home/designstandards/

¹⁰ See <https://www.mass.gov/doc/mepa-interim-protocol-on-climate-change-adaptation-and-resiliency-effective-oct-1-2021/download>.

¹¹ <https://www.epa.gov/ejscreen>. Note that online user guides and training videos are available at <https://www.epa.gov/ejscreen/learn-use-ejscreen>.

Proximity to NPLs (National Priority List / Superfund sites)	Proximity/Quantity	Waste/Water/Air
Wastewater Discharge Toxicity (based on NPDES permitted discharge locations)	Proximity/Quantity	Water

Finally, any specific concerns raised or feedback received during pre-filing consultations conducted by the Proponent with community-based organizations (CBOs), tribes, or other residents or individuals pursuant to the *MEPA Public Involvement Protocol for Environmental Justice Populations* should be reviewed to determine whether such feedback should be viewed as indicating existing environmental burdens or related public health consequences. As stated in the *MEPA Public Involvement Protocol*, the quality of public involvement efforts shall be considered when determining whether to approve a request for expedited review procedures under 301 CMR 11.05(7), together with the analysis provided under this *MEPA Protocol for Analysis of EJ Impacts*.

Based on the information gathered as described in this Part II, and any other relevant data or information obtained through the Proponent’s own research, the Proponent should provide a qualitative assessment of whether the factors reviewed appear to indicate that the identified EJ populations currently bear an existing “unfair or inequitable” environmental burden and related public health consequences as compared to the general population. As a general matter, any project that demonstrates “vulnerable health criteria” measured at or above 110% of statewide average or a “High” risk rating in the RMAT tool for sea level rise/storm surge or extreme precipitation (urban or riverine flooding) should be assessed as creating a strong potential for unfair or inequitable burden, such that the project should move to Part III.

III. Analysis of Project Impacts to Determine Disproportionate Adverse Effect

Unless the assessment in Part II [of this MEPA Protocol for Analysis of EJ Impacts](#) definitively shows the absence of any “unfair or inequitable” environmental burden or related public health consequence borne by the identified EJ population as compared to the general population, the Proponent must further analyze whether the environmental and public health impacts from the project will likely result in a disproportionate adverse effect on such population. If the only applicable screening criterion relates to climate change risks identified through the RMAT tool, refer to Part IV below.

The project should be analyzed as creating a disproportionate adverse effect if it will have direct and adverse impacts on the EJ population that will materially exacerbate any existing environmental or public health burden borne by the EJ population. Other indirect impacts on the EJ population must be analyzed, but may be compared against project benefits intended to improve environmental conditions or the public health of the EJ population.

In analyzing direct impacts, the Proponent should consider:

- The nature and severity of the project’s environmental and public health impacts; and
- The comparative impact on EJ populations versus non-EJ populations within the project site or other comparable area.

In analyzing indirect impacts, the Proponent should consider:

- Whether project benefits are specifically intended to improve environmental conditions or the public health of the EJ population

A. Nature and Severity of Project Impact

In reviewing any direct project impacts on the EJ population, the Proponent should analyze whether the nature and severity of such impacts will materially exacerbate an existing environmental or public health burden borne by the EJ population. Direct impacts should be construed to mean any addition of environmental pollution or other burden directly to the EJ population and its immediately surrounding environment, including air pollution to the surrounding neighborhood, water pollution to drinking water or water bodies directly used or accessed by the EJ population, and loss of open space, recreational opportunities and waterfront access directly within or adjacent to the EJ population.¹²

For example, a project that adds traffic directly to an EJ population identified as having elevated public health conditions could be viewed as having a disproportionate adverse effect on such population. This is especially so, if any identified environmental or public health indicators related to air quality (such as PM 2.5/ozone exposure or asthma rates) are elevated in the EJ population. The Proponent should conduct analysis or modeling sufficient to demonstrate the magnitude of any relevant project impacts, and, at a minimum, should conduct air quality analysis of new traffic consistent with the *MassDEP Guidelines for Performing Mesoscale Analysis of Indirect Sources (1991)*. It is important to note that, where the level of existing burden is high, even a small addition of project impacts may create disproportionate adverse effects. For instance, if the DPH vulnerable health criteria or other indicator demonstrates public health or environmental indicators that are well above statewide rates, even a small addition of impacts should be viewed as potentially creating a disproportionate adverse effect.

In addition, while MEPA review thresholds at 301 CMR 11.03 provide a guide for a discussion of impacts, the Proponent shall not limit the discussion to impacts that meet or exceed MEPA review thresholds, and, instead, shall address all short-term and long-term impacts associated with the project, including construction period activities, that are within the Scope of MEPA jurisdiction, consistent with 301 CMR 11.07(6)(h). For instance, an estimate of construction vehicle traffic and routes of travel may be warranted if construction activities will be occurring in close proximity to already-burdened EJ populations.

B. Comparable Impacts on EJ and Non-EJ Populations

In reviewing any direct project impacts on the EJ population, the Proponent should also analyze whether the impacts on the EJ population are greater or less than those on non-EJ populations within the project site or other comparable area. If a comparable area is selected outside the project site, the Proponent should provide a clear justification for why the area is viewed to be “comparable” or “similarly situated” such that a comparison with the applicable EJ population is reasonable. While a comparison of impacts may not be possible to conduct with mathematical precision, the EIR should contain a description of the proposed methodology and justification

¹² Consistent with [proposed] new 301 CMR 11.05(4)(d), a project that meets or exceeds MEPA review thresholds under 301 CMR 11.03(8)(a)-(b), ~~or generates 150 or more new average daily trips (adt) of diesel vehicle traffic over a duration of 1 year~~

| ~~or more,~~ should be viewed as impacting air quality over a 5-mile radius of the project site.

for any conclusions reached. Any direct impacts on EJ populations that are greater than those on non-EJ populations in the selected area should be viewed as indicating a disproportionate adverse effect.

C. Project Benefits

In reviewing indirect project impacts on the EJ population, the Proponent may analyze such impacts in comparison to project benefits that are specifically intended to improve environmental conditions or public health of the EJ population (and thereby reduce the existing burden borne by such population). Indirect impacts should be construed to mean the addition of environmental pollution or other burden in a manner in which potential effects to the EJ population and its immediately surrounding environment may be unknown or speculative, not subject to quantitative measurement, or established only through a long chain of causation.

For instance, a project that alters wetland resource areas in a manner that requires a water quality certification (with unspecified impacts to surrounding waterbodies and unknown potential for indirect impacts to EJ populations) could compare such impacts with project benefits that specifically benefit EJ populations, such as improved resiliency of public infrastructure or increased open space/recreational opportunities. Similarly, the loss of open space or recreational opportunities at a location that is far removed from EJ populations may present an indirect impact to such populations.

IV. **Analysis of Project Impacts to Determine Climate Change Effects**

Unless the assessment in Part II definitively shows the absence of any “unfair or inequitable” environmental burden or related public health consequence borne by the identified EJ population as compared to the general population, the Proponent must further analyze, in addition to the analysis in Part III, whether the environmental impact or public health consequence from the proposed project will increase or reduce the effects of climate change on the EJ population.

In conducting this assessment, the Proponent should consider the following:

- Whether the climate change risks identified through the RMA Tool are likely to affect the applicable EJ population(s); and
- Whether the greenhouse gas (GHG) emissions associated with the project are significant (2,500 tons per year (tpy) or more) and are likely to affect EJ populations that use or occupy the project

A. Climate Adaptation

The Proponent should review the output report generated from the RMA Tool to assess whether the climate parameters for sea level rise/storm surge and extreme precipitation (urban or riverine flooding) are ranked “High” and would affect the applicable EJ population(s). For instance, a residential dwelling that may not be sufficiently elevated to accommodate future sea level rise conditions may affect EJ populations, if it is located within an EJ population or is specifically intended for use by EJ populations. Also, if a project proposes to cut a significant number of trees in a manner that potentially adds to heat conditions in the area, or proposes to add impervious cover in a manner that worsens flooding conditions in the surrounding neighborhood, such impacts

could have effects on EJ populations located in and around the project site. Any aspects of the project that could reduce climate risks, such as improvements to stormwater management systems and the use of pervious pavement and surfaces should also be reviewed. The Proponent should conduct analysis or modeling to quantify any anticipated climate change effects to the extent practicable, and should apply best available data on future climate conditions. The recommended design standards in the RMA tool may provide a resource in performing such quantitative analyses.

B. GHG Emissions

The Proponent should conduct a GHG analysis if a project is expected to generate 2,500 or more tpy of GHG (CO₂) emissions from both stationary and mobile sources,¹³ and is likely to be used or occupied by EJ populations. For instance, a residential dwelling or office building located within an EJ population should be analyzed if total emissions from stationary and mobile sources are estimated to equal or exceed 2,500 tpy. The analysis should generally follow the methodology set forth in the 2010 MEPA Greenhouse Gas Emissions Policy and Protocol (the “2010 GHG Policy”), and should provide energy efficiency modeling to support GHG estimates for the Base Case and Design Case. To the extent a project is already required to conduct a GHG analysis under the 2010 GHG Policy, that analysis will satisfy the requirements of this Part IV.B.

V. **Mitigation and Section 61 Findings**

To the extent any disproportionate adverse effects or increased climate change risks are identified for the EJ population as described in Parts II-IV, the Proponent must describe measures to be taken to avoid, minimize and mitigate such effects to the maximum extent practicable. These measures should be considered in addition to those that the project proposes to take to address its impacts more generally. For instance, measures proposed to reduce traffic congestion in the area (such as roadway improvements or traffic signals) may be sufficient to address potential deterioration in traffic conditions, but may not sufficiently address the disproportionate adverse effects that may result from the addition of air pollutants to an already burdened EJ population. In this instance, additional mitigation to further reduce project impacts (such as a more robust traffic demand management (TDM) program) or to ameliorate the existing burden borne by the EJ population (such as contributions to public health services or air quality monitoring) may be warranted. Measures to address climate change risks are particularly important, in light of the vulnerabilities faced by the EJ populations that hinder access to affordable energy resources and the ability to adapt to extreme climate events, such as extreme and more frequent storms and associated flooding.

¹³ As a general matter, estimates of GHG emissions can be generated (without energy efficiency modeling) by applying building type and square footage to energy use estimates included in the most recent International Energy Conservation Code (IECC). Mobile source emissions should be generated from estimates of vehicles miles traveled (VMT) using the EPA’s MOVES model. More guidance can be provided by the MEPA Office upon request.

[DRAFT] MEPA Public Involvement Protocol for Environmental Justice Populations
Anticipated Effective Date: January 1, 2022

IMPORTANT: this MEPA Public Involvement Protocol will supersede the transition rules regarding environmental justice issued on June 24, 2021. Accordingly, the transition rules shall be RESCINDED on the effective date of this protocol. Following a public comment period, the MEPA Office anticipates issuing a final protocol to be effective as of January 1, 2022. 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. Consistent with 301 CMR 11.05(5), the final protocol and corresponding revisions to the ENF form will be published in the Environmental Monitor at least ten (10) days prior to the effective date.

Authority and Background

This protocol addresses the new public involvement requirements for projects undergoing MEPA review as set forth in: (i) **Section 60** of 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”); and (ii) the 2021 update to the Executive Office of Energy and Environmental Affairs (EEA) Environmental Justice Policy (the “2021 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 included a new definition of “Environmental Justice [EJ] Population” for purposes of enhancing public involvement and other aspects of the MEPA review process. The new statutory definition of “EJ population” includes four categories of neighborhoods (defined as census block groups) with certain demographic characteristics based on median income level, percentage of residents who are people of color (i.e., minority) status, and percentage of residents who lack English language proficiency (LEP). In turn, Section 60 of 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.

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 implemented in 2021. This protocol addresses only the public involvement requirements of the Climate Roadmap Act; other requirements of the Act relative to the content of

Environmental Impact Reports (EIRs) will be addressed through separate guidance, to be issued in conjunction with formal regulations promulgated under M.G.L. c. 30A.¹

On June 24, 2021, EEA updated the 2017 EJ Policy that was previously in effect.. The 2021 update (the “2021 EJ Policy”)², consistent with the 2017 EJ Policy, requires that projects triggering certain MEPA ENF review thresholds provide opportunities for “enhanced public participation” by surrounding EJ neighborhoods,³ and that projects triggering certain mandatory EIR thresholds conduct an “enhanced analysis of impacts and mitigation,” in addition to enhanced public participation.⁴ 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* expands on, but remains consistent with, the requirements of the 2021 EJ Policy. Accordingly, the *MEPA EJ Public Involvement Protocol* shall define the public involvement requirements for all MEPA projects filed after the effective date.

Protocol

I. Identifying Characteristics of and Likely Effects on EJ Populations

A. Project Location

Effective [], 2021, all 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 the EEA Environmental Justice Maps Viewer (the “EJ Maps Viewer”),⁵ and include a printout of the project location shown on the EJ Maps Viewer as an attachment to the ENF (or EENF) submittal. The printout shall identify all EJ Populations within 1-mile and 5-miles of the project, and shall measure the distance from the outer boundaries of the project site.⁶ For linear projects along a right of way (ROW) (such as utility and roadway projects), the distance shall be measured from the edge of the ROW in all directions along the entire length of the project.

B. Characteristics of EJ Populations

In addition to attaching the above printout, the ENF/EENF shall describe the characteristics of the EJ populations within 1 mile and 5 miles of the project site as identified in the EJ Maps Viewer (i.e., the census block group identification number and EJ characteristics of “Minority,” “Minority and Income,” etc.).

The ENF/EENF shall also list all languages identified in the “Languages Spoken in Massachusetts” tab of the EJ Maps Viewer as spoken by 5 percent or more of the EJ population who also identify as not speaking English “very well.” Because language access responsibilities of the Commonwealth under Title VI of the Civil Rights Act

¹ Draft regulations addressing the EIR requirement set forth in Section 58 of the Climate Roadmap Act and other topics were issued for public comment on September 17, 2021.

² <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>

³ 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).

⁴ The specific EIR thresholds are 301 CMR 11.03(5)(a)(1), (6); 301 CMR 11.03(8)(a)(1); and 301 CMR 11.03(9)(a).

⁵ <https://mass-eoeea.maps.arcgis.com/apps/MapSeries/index.html?appid=535e4419dc0545be980545a0eeaf9b53>

⁶ The EJ Maps Viewer allows the user to measure the distance between selected points on the map. However, it does not presently allow for a radius to be drawn around a particular location.

of 1964 and Executive Office for Administration and Finance (A&F) Bullet #16 extend beyond the requirements of the Climate Roadmap Act, languages should be identified for the project for each *census tract* that intersects with all areas within 1 mile and 5 miles of the project site, regardless of whether the areas of intersection contain any designated EJ populations. All identified languages should be used for purposes of providing public involvement opportunities under Part II.

With the approval of the EEA EJ Director, the Proponent may modify the list of languages to be used for purposes of providing public involvement, if information made available through local school districts, local boards of health, or other knowledgeable local sources provide more accurate data that are better tailored to the project site. The Proponent may choose to increase the number of languages beyond those identified in the “Languages Spoken in Massachusetts” tab of the EJ Maps Viewer without the approval of the EEA EJ Director. If the list of languages shown in the EJ Maps Viewer has been modified through these means, the ENF/EENF shall provide a list of approved languages for the project, or, if the list has been expanded by the Proponent without input from the EEA EJ Director, shall provide a list of the additional languages that will be used to provide public involvement opportunities under Part II. If a project is exempt from the requirements of Part II, this shall be specified in the ENF/EENF.

C. Likely Effects on EJ Populations

The ENF/EENF shall describe whether the project is “reasonably likely” to negatively affect EJ populations within 1 mile of the project site. Consistent with [proposed] *new* 301 CMR 11.05(4)(d), the ENF/EENF shall also indicate whether the project meets or exceeds MEPA review thresholds under 301 CMR 11.03(8)(a)-(b), or generates 150 or more new average daily trips (adt) of diesel vehicle traffic over a duration of 1 year or more. If either or both conditions apply, then the ENF/EENF shall further describe whether the project is reasonably likely to negatively affect EJ populations within 5 miles of the project site. The respective 1-mile and 5-mile areas around a project site shall be referred to in this *MEPA EJ Public Involvement Protocol* as the “designated geographical area” for the project.

In describing the project’s likely effects on EJ populations, the ENF/EENF shall discuss both the project’s anticipated benefits, as well as its environmental impacts and related public health consequences. While MEPA review thresholds at 301 CMR 11.03 provide a guide for a discussion of impacts, the ENF/EENF shall not limit the discussion to impacts that meet or exceed MEPA review thresholds, and, instead, shall address all direct and indirect potential environmental impacts of the project, with a focus on whether such impacts and related public health consequences are likely to extend to EJ populations located within the designated geographical area around the project site. Any relevant analyses available at the time of the ENF/EENF filing, such as traffic studies or air quality assessments, should be referenced in describing the geographical extent of the project’s anticipated impacts. In addition, any regional benefits or impacts that may result from the project, such as the potential expansion or reduction in economic opportunities, public transportation, open space or greenhouse gas emissions (GHG), should be addressed. The discussion of likely effects included at the ENF/EENF stage may take the form of a narrative and need not be exhaustive; however, it must contain a reasonable level of specificity and more than a conclusory statement that the project will have a “net benefit” for the EJ population.

II. Measures to Enhance Public Involvement Prior to Filing ENF/EENF

Section 60 of the Climate Roadmap Act, now codified as M.G.L. c. 30, § 62J, requires that, “[i]f a proposed project affects an environmental justice population,” the Secretary of EEA shall require additional measures to improve public participation by the EJ population. Such measures shall include, as appropriate: “(i) making public notices, environmental notification forms, environmental impact reports, and other key documents related to the secretary’s review and decisions of a project review available in English and any other language spoken by a significant number of the affected environmental justice population; (ii) providing translation services at public meetings for a significant portion of an affected environmental justice population that lacks English proficiency in the project’s designated geographic area; (iii) requiring public meetings be held in accessible locations that are near public transportation; (iv) providing appropriate information about the project review procedure for the proposed project; and (v) where feasible, establishing a local repository for project review documents, notices and decisions.”

Section 60 indicates a broad intent to enhance opportunities for public involvement in reviews of MEPA projects that affect EJ populations. To effectuate this statutory purpose—and to align with the requirement in Section 58 of the Act that all projects that are “likely to cause Damage to the Environment” and is located, at a minimum, within 1 mile from an EJ population must submit an EIR to describe impacts on the EJ population—all MEPA projects that are subject to MEPA jurisdiction and meet or exceed any MEPA review threshold in 301 CMR 11.03 must undertake measures to provide public involvement opportunities by EJ populations located within 1 mile of the project site.⁷ Consistent with [proposed] new 301 CMR 11.05(4)(d), all MEPA projects that are subject to MEPA jurisdiction must undertake measures to provide public involvement opportunities by EJ populations located within 5 miles of the project site,⁸ if the project meets or exceeds MEPA review thresholds under 301 CMR 11.03(8)(a)-(b), or generates 150 or more new average daily trips (adt) of diesel vehicle traffic over a duration of 1 year or more.

To ensure that EJ populations have ample opportunity to meaningfully engage in MEPA project reviews, best practice dictates that Proponents take early steps to provide public involvement opportunities, starting well before the filing of the ENF/EENF with the MEPA Office. Specific strategies for such pre-filing outreach and community engagement are described below. It is important to note that the quality of public involvement efforts will be considered when determining whether to approve a request for expedited review procedures under 301 CMR 11.05(7), once the ENF/EENF is filed. Any project consisting of one single family home shall be exempt from the requirements of Part II, but must comply with Part I.

A. Advance Notification

All MEPA projects subject to the requirements of this Part II must endeavor to provide advance notification of the project to community-based organizations (CBOs) and tribes identified by the EEA EJ Director in a reference list (the “EJ Reference List”) for the designated geographical area around the project site. The Proponent is encouraged to supplement this list by conducting its own local research into additional CBOs, tribes or

Commented [A1]: When and how is this list developed? Will it be available online?

⁷ The 1-mile radius shall be determined in the manner described in Part I above.

⁸ The 5-mile radius shall be determined in the manner described in Part I above.

neighborhood leaders who may have an interest in projects undertaken at the project site. The EEA EJ Director and the MEPA Office shall be copied on such notification. The advance notification shall take the form of a completed "Environmental Justice Screening Form," included as an Addendum hereto, and shall be sent through electronic means at the designated email addresses provided on the EJ Reference List.

While no set time period is prescribed for all projects, advance notification between ~~45~~30 and ~~90~~45 days prior to filing the ENF/EENF with the MEPA Office is strongly recommended. For any project that: (i) meets or exceeds mandatory EIR thresholds (ii) is subject to "enhanced outreach" requirements under the 2021 EJ Policy, or (iii) will seek to avail itself of expedited review procedures under 301 CMR 11.05(7), advance notification ~~between of~~ 45 ~~and 90~~ days is mandatory, and failure to comply may result in rejection of the ENF/EENF as incomplete under 301 CMR 11.05(1).

To the extent any languages have been identified for the designated geographical area (as described in Part I above), the Environmental Justice Screening Form shall be translated into each language identified and attached to the notification sent to each addressee from the EJ Reference List, as well as to the EEA EJ Director and MEPA Office. If the list of languages has been modified with or without approval of the EEA EJ Director, as described in Part I, the modified list of languages shall be utilized.

B. Community Outreach and Engagement

In addition to providing advance notification of the project, all MEPA projects that are subject to the requirements of this Part II shall undertake measures to promote public involvement through meaningful community outreach and engagement. The CBOs and tribes listed in the EJ Reference List may serve as a resource in efforts to solicit feedback from EJ populations. The specific forms of outreach and community engagement should be tailored to the specifics of each project and the residents and neighborhoods that characterize the applicable EJ populations surrounding the project site. Best practices in community engagement and consensus building should be consulted, including but not limited to the following:

- https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf
- <https://environment.transportation.org/education/environmental-topics/environmental-justice/>
- https://www.environment.fhwa.dot.gov/env_topics/environmental_justice.aspx

A non-exhaustive list of specific outreach and engagement strategies is included below. The Proponent is encouraged to implement as many of these strategies as is feasible and appropriate for the project. It is important to note that the quality of public involvement will be a central consideration when determining whether to approve a request for expedited review procedures under 301 CMR 11.05(7).

Potential public involvement strategies include:

- ~~(At a minimum) h~~ Holding a community meeting upon request by anyone contacted through advance notification provided, or upon further dissemination of a written project summary as referenced below
- Wide dissemination of a written project summary (with translation into relevant languages) with basic project details

- Hosting a project website or making project information available through other similar electronic means
- Ensure outreach to the public is communicated in clear, understandable language and in a user-friendly format
- Engage in creative outreach by making use of pre-existing groups – such as grassroots organizations and high school groups – and natural areas of congregation – like places of worship, libraries, and farmer’s markets – to disseminate information about new projects, as well as traditional locations such as libraries and government offices
- Use of non-English and/or community-specific media outlets to publicize the project, including local public broadcasting stations, specialized newspapers, and community newspapers
- Disseminating information through social media channels
- Organizing town hall meetings or other focused community meetings organized by topic, neighborhood, or interest group
- Holding community meetings during weekend or evening hours, at accessible locations near public transportation, and/or through Zoom or other similar web-based service if requested or determined to be more effective for reaching EJ populations. In addition, a “hybrid format” could be considered which allows members of the public to join in-person, on Zoom, or by phone, and makes the content of the meeting available afterwards for those who cannot attend.
- Organizing public education efforts for technical aspects of the project, such as fact sheets with visuals that include a summary of the project and associated technologies and processes, using lay-person language and terms in an effort to ensure the community understands the potential impacts of the project and can provide meaningful input, and holding “science fair” type presentations or teach-ins broken by topics
- Considering door-to-door education efforts through the use of flyers or other canvassing methods
- Identifying specific neighborhoods, residents, or other communities surrounding the project site that may be affected and considering targeted outreach and engagement strategies directed at such areas
- Establishing a local information repository that is convenient and accessible for the EJ Population where information related to the project can be obtained

To the extent written materials are provided, or in-person or remote meetings held, the Proponent must provide written and oral language interpretation in all the languages identified in Part I above, and should make best efforts to provide translation/interpretation in any other languages requested by members of the public to the extent necessary to ensure meaningful engagement by such individuals. The Proponent may require that requests for oral interpretation be made in advance with sufficient time to allow for cancellation of the service by the Proponent without incurring a cancellation fee.

C. Pre-Filing Consultation

Any project that meets or exceeds any mandatory EIR threshold, or any others that seek to avail themselves of expedited review procedures under 301 CMR 11.05(7), are encouraged to schedule a pre-filing consultation meeting with the MEPA Office and the EEA EJ Director to discuss the outreach and community engagement strategies for the project. Any project that falls within any of the categories of projects requiring “enhanced outreach” under the 2021 EJ Policy must schedule a pre-filing consultation, and will be expected to undertake comprehensive measures to involve EJ populations in discussions about the project prior to filing.

In certain circumstances, the MEPA Office, in consultation with the EEA EJ Director, may designate projects as requiring a higher level of pre-filing community engagement, based on the following factors:

- Whether any municipality or census tract surrounding the project site exhibits “vulnerable health criteria” as defined by the Massachusetts Department of Public Health (DPH) EJ Tool,⁹ or the EJ Tool indicates the existence of multiple other sources of pollution affecting the identified EJ populations within the designated geographical area;
- Whether the project’s impacts will directly and adversely affect the identified EJ populations within 1 mile of the project site, and whether any mitigation is considered for such impacts; and
- Whether the project’s location is subject to acute climate change risks.

If a project is so designated, the MEPA Office will contact the Proponent to request a pre-filing consultation within 20 days of receiving advance notification of the project under Part II.A.

III. Public Involvement Requirements After Filing ENF/EENF

For any projects subject to the requirements of Part II above, the Proponent shall continue to promote meaningful public involvement by EJ populations after filing the ENF/EENF by maintaining a distribution list that includes the CBOs and tribes identified on the EJ Reference List and the EEA EJ Director (unless any CBO, tribe or the EEA EJ Director elects not to be included on the distribution list), as well as any other individual or entity that specifically requests to be placed on the distribution list during pre-filing consultations or during the course of MEPA review. . 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 generated during the course of MEPA review. The MEPA Site Visit shall be translated into any languages identified in Part I above. For other documents, the Proponent shall make best efforts to translate the document, or a summary thereof, upon request by any member of the public, provided that the Proponent may require that the request be made with sufficient time to allow for written translation prior to the event or other deadline to which the materials relate.

In addition to maintaining a distribution list, the Proponent should generally maintain the same level of outreach and community engagement conducted prior to filing, throughout the MEPA review process. As an example, if certain non-English language media were identified as an effective way to communicate with the applicable EJ population, the Proponent should continue to use the same means to convey information about the project during the course of MEPA review. The Proponent should also consider holding additional community meetings as needed or upon request at key milestones in the project review, such as when the Proponent is preparing the filing of a final EIR. Specific strategies for outreach and community engagement may be included in the Secretary’s Scope for an EIR.

⁹ <https://matracking.ehs.state.ma.us/Environmental-Data/ej-vulnerable-health/environmental-justice.html>

IV. Public Involvement Requirements for Other MEPA Filings

For Notices of Project Change (NPC), DEIRs, and FEIRs, where the initial ENF/EENF was submitted prior to the effective date of this protocol, the Secretary will determine on a case-by-case basis the need for enhancing public involvement opportunities to meet the spirit of the Climate Roadmap Act. The Secretary will consider the nature and level of impacts associated with the filing, the extent of community engagement conducted to date, and the passage of time since the conclusion of the prior MEPA review (*i.e.*, filings made after a long passage of time may require more public involvement efforts as the public may be unaware of the proposed project or project change). As a general matter, additional requirements for public involvement will be considered for filings that involve EIR-level impacts or projects located within EJ populations, and will consist of an additional circulation of the filing to the EEA EJ Director and CBOs and tribes on the EJ Reference List. At the discretion of the MEPA Office, a MEPA Site Visit may be held during the MEPA review period, and other applicable provisions of Part III may be applied.

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ADDENDUM: Environmental Justice Screening Form

Project Name	
Anticipated Date of MEPA Filing	
Proponent Name	
Contact Information (e.g., consultant)	
Public website for project or other physical location where project materials can be obtained (if available)	
Municipality and Zip Code for Project (if known)	
Project Type* (list all that apply)	
Is the project site within a mapped 100-year FEMA flood plain? Y/N/yes/unknown	

Project Description

1. Provide a brief project description, including overall size of the project site and square footage of structures where possible
2. List anticipated MEPA Review Thresholds (301 CMR 11.03) (if known)
3. List all anticipated state, local and federal permits needed for the project (if known)
4. Identify EJ Populations and characteristics (Minority, Income, English Isolation) within 5 miles of project site (can attach map from EEA EJ Maps Viewer in lieu of narrative)
5. Identify any municipality or census tract meeting the definition of “vulnerable health criteria” in the DPH EJ Tool within 1 mile of project site
6. Identify potential environmental and public health impacts that may affect EJ Populations and any anticipated mitigation

[NEW] ENVIRONMENTAL JUSTICE SECTION

Identifying Characteristics of EJ Populations

- I. If an Environmental Justice (EJ) Population has been identified within 5 miles of the project site, describe the characteristics of each EJ populations as identified in the EJ Maps Viewer (i.e., the census block group identification number and EJ characteristics of "Minority," "Minority and Income," etc.). Provide a breakdown of those EJ populations within 1 mile of the project site, and those within 5 miles of the site.

- II. For each EJ Population identified within 5 miles of the project site, identify all languages identified in the "Languages Spoken in Massachusetts" tab of the EJ Maps Viewer as spoken by 5 percent or more of the EJ population who also identify as not speaking English "very well." The languages should be identified for each *census tract* that intersects with all areas within 1 mile and 5 miles of the project site, regardless of whether the areas of intersection contain any designated EJ populations. All identified languages should be used for purposes of providing public involvement opportunities under Part II.

- III. If the list of languages identified under Question II has been modified with approval of the EEA EJ Director, provide a list of approved languages that the project will use to provide public involvement opportunities during the course of MEPA review. If the list has been expanded by the Proponent (without input from the EEA EJ Director), provide a list of the additional languages that will be used to provide public involvement opportunities during the course of MEPA review.

Potential Effects on EJ Populations

- I. If an Environmental Justice (EJ) Population has been identified using this EEA EJ Maps Viewer within 1 mile of the project site, describe the likely effects of the project on the identified EJ Populations.

- II. If an Environmental Justice (EJ) Population has been identified using the EEA EJ Maps Viewer within 5 miles of the project site, will the project: (i) meet or exceed MEPA review thresholds under 301 CMR 11.03(8)(a)-(b) Yes No; or (ii) generate 150 or more new average daily trips (adt) of diesel vehicle traffic over a duration of 1 year or more. Yes No

