



August 5, 2021

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

RE: Comments on MEPA Interim Environmental Justice and Climate Change Protocols

Dear Director Kim,

NAIOP Massachusetts, The Commercial Real Estate Development Association, appreciates the opportunity to comment on the revised MEPA Public Involvement Protocol for Environmental Justice Populations (EJ Protocol). We support 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 members have long appreciated the clearly defined and timely processes in place for projects undergoing MEPA review. Unfortunately, NAIOP believes that the revised EJ Protocol undermines the hallmark predictability and clarity of MEPA. Given that this Protocol would apply to 89% of the Commonwealth, with all but 37 out of 351 municipalities inside the radius, NAIOP hopes that our comments are taken in the spirit intended – to implement an EJ policy that both serves Massachusetts' residents and respects MEPA's virtues of timely action and focus on outcomes. NAIOP respectfully submits the below comments based on feedback from members who are committed to the success of this program and the proposed Protocol.

I. Presumption of Project Impacts on EJ Populations

The current revised Protocol states that "the MEPA Office will presume that any project impacts will negatively affect EJ populations within a 1-mile radius of the project, absent compelling information to the requirements." MEPA has never before required proof of a negative. NAIOP is concerned that this presumption will discourage desirable development, that, absent the presumption, has ordinary and customary impacts, with potentially substantial economic, social, and other community benefits. Additionally, NAIOP is concerned that the phrase "compelling information to the contrary" is undefined. For example, there are questions as to whether the redevelopment of a brownfield site would be considered compelling in this context. Additionally, there is no guidance or predictability about how MEPA would account for the positive impact housing and economic development projects would have on an EJ community or how that would be determined.

The revised Protocol also states that, if the proponent wishes to modify presumptions for determining the geographical area for public involvement, the proponent must provide documentation as part of the ENF/EENF that clearly demonstrates the absence of negative impact within the designated areas around the project site. Again, NAIOP is concerned that this language requires the proof of a negative, provides no room for proponents to demonstrate benefits of the project, provides no clarity on how this will be incorporated into

MEPA's review, and requires the application of a subjective standard of harm. NAIOP believes that, contrary to the goals of the revised EJ policy, this language will not help EJ populations and instead will serve to dissuade Proponents from pursuing projects in areas that need them most.

Given the lack of clarity and predictability and the potential harmful consequences of this language, NAIOP urges the MEPA Office to remove the presumption of harm, as well as the process currently drafted for modifying this presumption, and instead focus its efforts on avoiding demonstrable (not assumed) negative effects and documenting the meaningful ways in which projects such as community housing and job creation can benefit EJ communities.

NAIOP is also concerned about the manner in which the presumption of a negative effect on EJ populations built into the EJ Protocol to address the new public outreach requirements of MGL c.30 § 62J would impact the regulatory implementation of the new EIR requirements of MGL c. 30 §§ 62B and E. The EJ Protocol public outreach threshold is "reasonably likely to negatively affect EJ populations", while the statutory EIR threshold is "likely" / "reasonably likely to cause damage to the environment." To the extent that a process is established by the EJ Protocol for determining the reasonable likelihood of negative effect on EJ Populations, it should be developed in parallel with a process for determining the reasonable likelihood of damage to the environment.

NAIOP strongly recommends that the MEPA Office consider modifying the EJ Protocol and developing a coordinated regulatory amendment approach to provide a means to avoid requiring the filing of an EIR for every project that meets an ENF threshold, solely because it is located within a 1-mile radius of an EJ community (or 5 miles if affecting air quality). While we recognize that the Climate Bill prescribes the filing of an EIR for certain situations, the thresholds for review in the MEPA regulations provide a reasonable amount of flexibility that should allow for a determination that certain categories of projects do not require the filing of an EIR.

II. Expanded Administrative and Analytical Burden with No Relief

NAIOP applauds the MEPA Office's efforts to increase accessibility in its efforts to better serve EJ populations and all residents of the Commonwealth. However, NAIOP is concerned that, as currently drafted, the Protocol exponentially expands the requirements for project proponents with little to no relief or support from the MEPA Office. Examples of these expanded proponent requirements include identifying relevant community-based organizations with no guidance or support from the MEPA Office; translating all documents; providing oral interpreters; and identifying relevant languages on the census block group level based solely on information provided at the census tract level. NAIOP is concerned that with no relief or resources from the MEPA office, this expanded administrative and analytical burden will serve as a disincentive for pursuing projects in EJ communities. **NAIOP hopes that the MEPA office will consider these requirements and adopt internal protocols, guidance, and official resources for obtaining the required information so that MEPA staff can provide support to achieve successful, equitable implementation.**

III. Unclear Requirements and Timeline Impacts

In the Protocol, the LOI and Project Summary are both required to precede the ENF filing - however it is unclear what content should be included at this stage, given that the pre-filing information meeting would not be coordinated with the MEPA consultation session until a month later. NAIOP is concerned that these requirements will cause confusion among the recipients of the information as to which matters more and confusion among project proponents as to when certain information should be included. Given that predictability and clarity are critical to a successful MEPA review, **NAIOP urges clarifying language be adopted to ensure consistency throughout the process and that the LOI process be shortened considerably.**

Additionally, for any project required to file an EIR, the Secretary is given the power to consider the need for additional public involvement during the period between the certificate issuance on the ENF/EENF and the subsequent EIR filing, and during the course of EIR review. As drafted, this determination will be made on a case-by-case basis. There is no clarity defining what would demonstrate a need for additional public involvement, no predictability as to what kinds of projects would need to go through this process, and no defined timeline. **Given that the hallmark of the MEPA review process is predictability and timeliness, NAIOP strongly urges the MEPA Office to remove this language to ensure the integrity of the MEPA program.**

NAIOP's understanding throughout (supported by the words of the statute) has been that the EJ Policy would apply solely to new filings and to NPCs submitted after the effective date of the EJ Policy (anticipated to be October 1, 2021). The updated Protocol essentially expands that list by requiring proponents to also conduct outreach and distribute translated project materials to EJ populations within one mile (or five miles if air quality is implicated) in connection with EIRs and "other filings where the initial ENF/EENF was submitted prior to the effective date of this protocol." As a practical matter, proponents are most likely already conducting outreach to the affected populations. **However, NAIOP respectfully requests that any projects for which the initial filing (or NPC, if applicable) predates the effective date of the Protocol, would be exempt.**

Finally, during our meeting in July, NAIOP appreciated your **clarification that the EJ Protocol would not require projects that would not otherwise be subject to MEPA review to undergo review or file an ENF** given that the Protocol does not modify any jurisdictional aspects of the program. NAIOP agrees with this position and suggests that this be included in the Protocol to provide needed clarity.

IV. RMA Tool Requires Further Technical Review

Though NAIOP understands that MEPA has not extended the comment period for the Revised Interim Protocol on Climate Adaptation and Resiliency (Climate Protocol), in addition to

NAIOP's previously stated concerns from our March letter, NAIOP is concerned with the application of the RMAT tool outlined in the revised Protocol.

It is NAIOP's understanding that the RMAT Climate Resilience Design Standards Tool was designed to be used by public agencies. By requiring all new project filings to print the output report generated from the tool and submit it as an attachment to the ENF or EENF, it appears MEPA is greatly expanding the applicability of this tool. It seems that these design standards and recommendations will likely become requirements, and therefore applicants are requested to submit feedback. NAIOP is greatly concerned that this Protocol appears to be designed to circumvent a technical discussion of design standards. As such, NAIOP urges the implementation of a full technical review process, rather than an ad hoc request for feedback, to ensure that all aspects are thoroughly vetted and interested parties have an opportunity to provide technical comments. Alternatively, NAIOP would suggest that MEPA study this tool first with public agencies before requiring it for all projects.

Taken together, these excerpts from the Protocols suggest that additional time and revisions are needed before either Protocol can be used for projects filed under MEPA. NAIOP and its members welcome the opportunity to participate in a stakeholder process that can yield the most useful and effective tools for informing agency decisions on project permits and other actions.

NAIOP is grateful for the opportunity to provide comment on behalf of our more than 1700 members involved with the development, ownership, management, and financing of office, lab, industrial, mixed use, multifamily, retail, and institutional space throughout the Commonwealth. Please contact me if you have any questions.

Sincerely,



Tamara C. Small
Chief Executive Officer
NAIOP Massachusetts, The Commercial Real Estate Development Association

CC: Kathleen Theoharides, Secretary, Executive Office of Energy and Environmental Affairs
Benjamin Goldberger, General Counsel, Executive Office of Energy and Environmental Affairs