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October 20, 2021

Secretary Kathleen A. Theoharides
Executive Office of Energy & Environmental Affairs
Attn: MEPA Office, Tori Kim
100 Cambridge Street, 9th Floor
Boston, MA 02114

RE: Proposed Amendments to 301 CMR 11.00 MEPA Regulations

Dear Secretary Theoharides:

Thank you for the opportunity to comment on the proposed amendments to 301 CMR 11.00 MEPA Regulations developed to implement some of the new requirements under *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* (Chapter 8 of the Acts of 2021, hereinafter the Act). The Neponset River Watershed Association (NepRWA) is a member-supported conservation organization dedicated to cleaning up and protecting the Neponset River, its tributaries and watershed lands.

First, NepRWA is pleased that the MEPA Office has acted so quickly to implement enhanced protections against environmental degradation within Environmental Justice (EJ) communities. EJ communities are so designated in large part because they have been burdened by inappropriate development that has reduced access to clean natural resources and related recreational opportunities. We applaud the Commonwealth's commitment to implementing broad policy to ensure that communities are not further burdened, and to mitigate the inappropriate development already established. This is particularly important in the face of climate change and the impacts that are expected to disproportionately affect EJ communities. For example, the Act's required analysis of environmental impacts to surrounding environmental justice communities, and their meaningful engagement in the MEPA process serves to elevate the consideration of the needs and desires of historically underserved and burdened communities.

Our primary concern with the proposed regulations lies within unintended consequences of the mandatory Environmental Impact Report (EIR) for any project within 1 mile of an EJ community (§ 11.06(7)(b)). As a general matter, we support this enhanced requirement for most projects, particularly those that pose a threat to environmental resources. However, the manner in which the proposed regulations implement this requirement is likely to unintentionally create a disincentive for restoration projects and activities designed to enhance access to natural resources within EJ communities. Such a disincentive directly contradicts the intention of the Act, which is to ensure that EJ communities gain access to more environmental benefits, including meaningful access to natural resources.

The Act states: “An environmental impact report 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” (M.G.L. ch. 30, § 62B).

As well-intentioned as this requirement is, in practice it will make it more expensive and time consuming to restore natural resources (*e.g.*, dam removals, culvert upgrades, wetlands restoration) or enhance access to them (*e.g.*, remove invasives, or other obstacles to public access) in EJ communities compared to non-EJ communities. For example, the preparation of an EIR for a dam removal project by the Massachusetts Division of Ecological Restoration added 6-12 months of time and tens of thousands of dollars to the budget.

Enhancement projects are also beneficial, particularly in communities with less access to open space and other natural resources. By way of example, NepRWA is currently investigating access restoration to a trail along the Neponset River Estuary by installing a small boardwalk over a consistently flooded area of the paved walkway. Because it is located in an ACEC, the project requires the filing of an ENF. Under the proposed rules, the project would also require a mandatory EIR, further delaying and increasing the cost of a project that will restore public access to a vital resource in an EJ community.

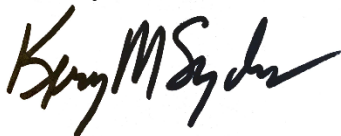
We believe it is consistent with the Act to allow such beneficial projects the opportunity to obtain a waiver from the EIR requirements. This could be accomplished by:

- Allowing projects that qualify for an Ecological Restoration Order of Conditions under the Wetlands Protection Act the opportunity to request a waiver from the proposed mandatory EIR requirement; and/or
- Revise the proposed definition of “Environmental Benefits” to include restoration and enhancement of environmental resources in EJ communities, and permit an exemption from the mandatory EIR requirement for projects meeting that definition.

Restoration and enhancement projects within EJ communities will serve to reduce the inequities the Act seeks to mitigate. The proposed regulations, however, will likely have the practical effect of disproportionately burdening environmentally beneficial projects in EJ communities.

Thank you for your consideration of this matter. Should you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry Malloy Snyder".

Kerry Malloy Snyder, JD
Advocacy Director