

March 31, 2021

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Assistant Secretary/MEPA Director

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RE: Comments on the Interim Protocol for Environmental Justice
Outreach and Interim Protocol for Climate Change Adaptation and
Resiliency

Dear Assistant Secretary Kim:

The Neponset River Watershed Association (NepRWA) provides the following comments regarding MEPA regulatory updates. NepRWA's mission is to protect, preserve, and enhance the Neponset River, its tributaries and watershed lands.

We frequently comment on projects within the watershed undergoing MEPA review, but applications do not always include enough information to evaluate important project impacts. We would like to echo the recommendations of the Charles River Watershed Association and suggestions of the following updates to the MEPA regulations to ensure that climate resilience, water quality impacts, and environmental justice are robustly evaluated as part of the MEPA process. We also provide several recommendations regarding the MEPA process, including updating the MEPA review thresholds, improving the availability of information, and ensuring that critical components of the review are carried throughout the process.

The MEPA regulations should require climate resilience to be fully disclosed and analyzed.

To effectively address climate resilience, EEA must focus on the full range of current and future climate impacts, including extreme weather (storms, wind, etc.), changes in precipitation (including drought), sea level rise, and rising temperatures. MEPA regulations should prioritize adaptation measures that promote the preservation, protection, restoration and enhancement of natural systems through nature-based solutions. Any project that proposes altering wetland or stream areas, including intermittent streams, should be required to conduct detailed hydrologic and hydraulic modeling of downstream flood impacts caused by the loss of that flood storage.

NepRWA is simultaneously submitting detailed comments on the MEPA Interim Protocol on Climate Change Adaptation and Resiliency, which we incorporate here by reference. The same considerations and principles described in our comments on the interim policy should be incorporated into the MEPA regulations.

The MEPA regulations should require water quality impacts to be fully disclosed and analyzed.

Most projects undergoing MEPA review have the potential to affect water quality, both during construction and over the long-term, often through the discharge of stormwater into municipal drainage systems or directly into nearby waterways. Many projects do not address how they will comply with approved Total Maximum Daily Loads (“TMDLs”) and protect water quality limited water bodies (any water body that does not meet applicable water quality standards, including, but not limited to, waters listed in categories 5 or 4b on the Massachusetts Integrated Report of waters listed pursuant to Clean Water Act section 303(d) and 305(b)) from further degradation, including increased discharges. In addition, project proponents frequently do not explain how the project will affect the respective municipality’s ability to comply with its requirements under the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“MS4”) in Massachusetts (“MS4 permit”), particularly those related to impaired waters, construction site stormwater runoff, and post-construction stormwater runoff.

For example, the Neponset River is impaired due to phosphorus pollution from stormwater runoff and has a pathogen TMDL for significant portions, and the Neponset Estuary. Stormwater pollution is one of the most significant threats to the Neponset River today, but many project proponents do not address this issue in their MEPA filings.

A project’s present and anticipated contribution to stormwater discharges is critical to understanding its effect on water quality. Stakeholders cannot adequately evaluate and comment on a project’s overall environmental impact unless stormwater considerations--and pollutant loading specifically--are required to be disclosed as part of the MEPA review process. It is not sufficient that a project proponent indicate that they will comply with the Massachusetts Stormwater Handbook and Standards. The TMDL, water quality impairments, and MS4 considerations discussed below must also be addressed by project proponents.

The MEPA regulations should require environmental justice to be fully disclosed and analyzed.

Environmental justice must be incorporated into the MEPA regulations in order to effectively protect the rights and interests of environmental justice communities. Through MEPA, there is an opportunity to holistically look at a community to determine whether a project can improve (or exacerbate) environmental, energy, climate, and public health conditions, particularly for those who have historically been excluded from consideration. In addition, there is an opportunity to provide these residents with equal access to the decision-making (*i.e.*, MEPA review) process. NepRWA is simultaneously submitting detailed comments on the MEPA Interim Protocol for Environmental Justice Outreach, which we incorporate here by reference. The same considerations and principles described in our comments on the interim policy should be incorporated into the MEPA regulations.

The MEPA review thresholds should be updated.

The current thresholds that trigger the various levels of MEPA review do not adequately capture the full range of impacts that should be considered in connection with climate change and adaptation/resilience. We recommend creating or expanding MEPA thresholds based on future flood mapping, including sea level rise and precipitation-based flood-prone areas and other climate-related impacts.

The considerations recommended herein should be carried throughout the MEPA review process.
While we agree that it makes sense for proponents to submit information related to climate resilience and environmental justice, as well as water quality impacts, at the ENF stage, the MEPA office should make it clear in updated regulations that those considerations must also be carried through the rest of the environmental review process.

MEPA information should be provided in a publicly-accessible way.

NepRWA echoes comments made by the Conservation Law Foundation regarding improved access to online documents. NepRWA reviews many MEPA filings and Certificates and we rarely see comments submitted by local residents, even though we know many residents have concerns about developments in their communities. This is likely because the public is not aware of the MEPA process and how to participate. Additionally, accessing documents submitted by proponents often require a secondary step to obtain them directly from the proponent, which may or may not happen in a timely manner. Finally, it is currently very difficult to find MEPA documents associated with a particular project unless you know in which edition of the Environmental Monitor the documents were published. An easily searchable system or database that includes both current and archived documents would enhance public participation in the MEPA process. Many other agencies have online systems where one can search using various criteria, including project name, location, key words, etc. that could be used as a template for the MEPA program.

MEPA review should occur prior to local permitting decisions.

While MEPA review is not triggered for all local processes, where it is, proponents should be required to file with the MEPA office prior to obtaining local permits. The MEPA review process is comprehensive, and identifies all of the state agencies that must be involved in reviewing a project. Moreover, there is a more robust outreach effort from MEPA on new filings and ongoing review than most municipalities are able to engage in. However, many proponents obtain local permits first, which hinders the ability of state agencies and community stakeholders to secure modifications, including climate change resilience measures, or mitigation of impacts to EJ communities.

Thank you very much for your consideration of these comments. Should you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry Snyder", is written over a light gray rectangular background.

Kerry Snyder
Advocacy Director