

March 31, 2021

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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) submits the following comments on the MEPA Interim Protocol on Climate Change Adaptation and Resiliency and the MEPA Interim Protocol for Environmental Justice Outreach. At the outset, we thank you for prioritizing both climate adaptation and resilience and environmental justice. These issues are integral to any environmental impact analysis, and we appreciate your effort to explicitly address these in MEPA practices. We also would like to echo the comments previously submitted on these issues by the Charles River Watershed Association, the Conservation Law Foundation, and the Massachusetts Environmental Justice Table.

**Interim Protocol on Climate Change Adaptation and Resiliency**

One priority at NepRWA is to ensure changes to our built environment is responsible. We frequently comment on projects within the watershed undergoing MEPA review, but applications are not always transparent in their analysis of climate adaptation. Thus, we appreciate MEPA efforts to explicitly require information necessary to evaluate proposals. However, we would recommend these requirements be more robust to ensure stakeholders and decisionmakers alike have the information they need to evaluate the project's impact on climate resiliency.

*Impervious surface*

While we appreciate information about net effects on impervious surfaces, evaluation of climate resiliency requires more information. First, we would request MEPA define impervious surface to include not only the "obvious" materials such as roads, driveways and buildings, but also compacted gravel or soil. While the latter are not always considered impervious, they significantly affect drainage characteristics, and, therefore, the impacts of climate change (i.e., precipitation). Next, an evaluation of the impact of the post-construction surface characteristics on flooding and heat effects within the community would be useful in evaluating project impacts.

*Flooding*

MEPA protocols should require predictive information about potential future flooding of a site, rather than simply require an analysis of historical flooding. Information about past

flooding is useful, but climate change has already changed precipitation patterns, and flooding events will only become more significant. Moreover, they should be given instructions on how to find this information, or, at the very least, disclose the basis for their conclusions about flooding information. Finally, they should evaluate flooding history and potential on surrounding properties, that potentially would be impacted by the project. (This disclosure should also include information about mature trees and other vegetation on site, and removal/replacement plans for them.)

### *Heat*

While the protocol indicates it solicits information about extreme heat, there are no specific questions designed to gather that information. Extreme heat is an important consideration in climate change resilience, particularly in the urban and suburban regions our watershed encompasses. Proponents should be required to disclose information about existing extreme heat concerns in the area, and the impact of the project on those concerns (including existence/removal/replacement of mature trees, quality of post-construction surfaces, energy use, etc.)

### *Anticipated useful life of the project*

While the interim protocol should be concerned with the anticipated useful life of any project, the protocol appears to solicit information only about sea level rise. Given the increase in severity of precipitation and heat impacts, these should also be considered. Moreover, the analysis should be broken out to identify specific parts of the project (e.g., stormwater and wastewater infrastructure, energy use/efficiency, flood mitigation, etc.)

### *Evaluation of project criticality*

We support CLF's comments on this component, including the suggestion that RMAT's web tool, when final, should be adopted as part of this analysis. Additionally, the instructions for evaluating each criterion mentioned in the protocol should be clarified to require analysis of each, rather than leaving it to the proponent. Specifically, the following changes to the policy would clarify requirements around the criticality analysis:

- Provide guidance as to what constitutes a low, medium or high level of criticality. These are qualitative descriptors, and there are no thresholds, defining matrix, or list of criteria for each level included in the draft interim policy. The protocol should also clarify how these levels of criticality relate to the criticality thresholds within the state building code.
- Clarify the definitions of environmental justice and/or climate vulnerable populations. While the Commonwealth has a codified definition of environmental justice populations (which we recommend updating to be consistent with the Roadmap Bill below), the interim policy includes the term "climate vulnerable population." The interim policy notes that climate vulnerable populations are "those who have lower adaptive capacity or higher exposure and sensitivity to climate hazards like flooding or heat stress due to factors such as access to transportation, income level, disability, racial inequity, health status, or age." The interim policy should provide a more specific definition of the included populations. The RMAT should also update its mapping tool, which currently only includes a layer for environmental justice populations, to include climate vulnerable populations.
- Include a review of unintended consequences of asset failure or emergency conditions. While the interim policy asks project proponents to describe "the nature and severity of impacts resulting from loss or inoperability," it does not ask proponents to describe any potential unintended consequences of the loss of the asset, or potential dangerous or hazardous emergency scenarios that may emerge under extreme weather conditions. For example, this might include a description of any industrial sites or pollution sources located near the project site.

### *Climate change adaptation and resiliency strategies*

We would echo the suggestions of both CLF and CRWA to both solicit more specific information from proponents, and prioritize measures that preserve, protect and restore natural resources, as well as those that employ nature-based solutions. We appreciate the specific requirement that proponents review and address priorities of the towns in which the project is proposed, including any Municipal Vulnerability Preparedness program plans.

### **Interim Protocol for Environmental Justice Outreach**

NepRWA supports the comments submitted by the Massachusetts Environmental Justice Table, Conservation Law Foundation, and the Charles River Watershed Association regarding the interim EJ policy. There is an opportunity to improve the MEPA process to deepen EEA's commitment to environmental justice.

We urge the MEPA office to take into account several overarching considerations. First, the definition of environmental justice should be updated to be consistent with Section 56 of An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy ("Roadmap Bill"). There should also be more clarity given about similarities and/or distinctions between environmental justice and climate vulnerable populations. Additionally, the interim policy should not be limited to certain types of projects. Projects that involve land development/redevelopment, changes to open space, and exacerbation of heat concerns impact environmental justice populations just like projects involving traditional air and water pollution concerns. Finally, MEPA documents should be available online in full and with a simplified search function.

We also echo others' recommendations about improving the process itself. Proponents should conduct early outreach and engagement prior to filing with MEPA when environmental justice populations are potentially impacted. The 10 day advanced consultation with the MEPA office is completely insufficient for the MEPA office to provide the proponent with ideas for public engagement and then for the proponent to conduct that engagement prior to filing. A longer advance notice period would allow time for proponents and the MEPA office to develop an outreach strategy and conduct adequate outreach prior to filing with the MEPA office. If the project will potentially impact an environmental justice population that is designated as limited English proficiency, the MEPA office should provide guidance to the proponent about the language(s) that should be used in outreach efforts.

EEA and the proponent should engage with potentially impacted communities during MEPA review, including during the MEPA site visit. The MEPA office and project proponent should work together to ensure residents of potentially impacted environmental justice populations know about site visits and the proponent should provide simultaneous language interpretation if the project will potentially impact an environmental justice population that is designated as a limited English proficient neighborhood. During site visits, proponents should review the MEPA filing, answer questions, and listen to attendee concerns and ideas. If site visit attendees raise concerns and/or recommend project changes, MEPA office staff should ensure that they understand the information and address those concerns in the Secretary's Certificate. Consideration should also be given to extending comment periods beyond the standard 20 or 30 days when a project potentially impacts environmental justice populations.

MEPA Certificates should include mitigation measures that are tailored to environmental justice populations. To the extent that environmental justice community residents express concerns or ideas about a project, the MEPA office should consider how to require project changes and mitigation opportunities consistent with those concerns or ideas. Specific mitigation requirements should be included

in the Secretary's Certificate that are tailored to the potentially impacted environmental justice population needs and requests and that reflect community ideas.

Thank you again for prioritizing environmental justice and climate resiliency concerns in MEPA protocols. We look forward to working with EEA as it pursues implementation of these review processes.

Sincerely,

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

Kerry Snyder  
Advocacy Director