

Comments of the Nature Conservancy in Massachusetts on 301 CMR 11

November 10, 2025

The Nature Conservancy (“TNC”) respectfully submits its comments on 301 CMR 11 developed by the Massachusetts Executive Office of Energy and Environmental Affairs (EEA). TNC is a global conservation organization committed to finding durable solutions that support ecosystems and communities with a mission to conserve the lands and waters on which all life depends.

TNC is pleased to submit these comments in support of the Healey-Driscoll administration’s efforts to balance the growing need for housing, while tackling climate change, and protecting nature. We value the interdisciplinary nature of advancing housing affordability in alignment with other statewide priority goals for biodiversity and climate resiliency, and we believe it is possible to both advance housing goals and avoid, minimize, and mitigate impacts through a faster review process than the current average. To avoid conflicts with these land-related goals, we should support robust land use criteria, and the application of an enhanced mitigation hierarchy to sequentially avoid, minimize, and mitigate impacts.

General Comments:

We support the general approach to avoiding impacts and thresholds for environmental criteria to help provide guardrails and guidelines as part of a streamlined permitting process.

DEFINITIONS

We recommend adding the following definitions to MEPA’s regulations for clarity and transparency.

Avoid: *Measures taken to avoid creating impacts from the outset, such as careful, science-based, and clearly defined spatial or temporal placement of elements of infrastructure, in order to completely avoid direct, indirect, and cumulative impacts on certain components of biodiversity, forest carbon, and other values.*

- **Comment:** With respect to the mitigation hierarchy, avoidance is the first and most important step for supporting conservation goals and protecting sensitive resources. Efforts to avoid and minimize impacts should be made to the maximum extent practicable before mitigation is considered. Accordingly, the regulations should require that mitigation to address residual impacts should only be considered after avoidance and minimization efforts are sequentially applied.

Minimize: *Measures taken to reduce the duration, intensity, and/or extent of impacts (including direct, indirect, and cumulative impacts, as appropriate) that cannot be completely avoided, as far as is practically feasible.*

- **Comment:** Once a site has been selected for development, the design and operation of a facility have significant influence on the overall impact. Considerations such as design of fencing, height and spacing, site preparation, and vegetation management can all contribute to improved outcomes for habitat, carbon, and other values by minimizing impacts and enhancing co-benefits of the facility.

Mitigation (Mitigate): *Mitigation should include reducing or eliminating the impact over time by preservation and maintenance operations during the life of the facility, and/or compensation for the impact by replacing or providing substitute resources or environments. Two types of mitigation should be considered:*

- *Rehabilitation/Restoration: Measures taken to rehabilitate degraded ecosystems or restore cleared ecosystems following exposure to impacts that cannot be completely avoided and/or minimized.*
- *Offset: Measures taken to compensate for any residual significant, adverse impacts that cannot be avoided, minimized, and/or rehabilitated or restored, to achieve no net loss or a nature positive outcome for biodiversity, forest carbon, and other values. Offsets can take the form of positive management interventions such as restoration of degraded habitat and ecologically valuable lands and waters, arrested degradation or averted risk, and protecting areas to prevent loss of biodiversity, forest carbon, and other values.*
- **Comment:** Mitigation should result in no net loss, or nature positive outcomes for **ecological functions**, such as habitat quality, quantity, structure and composition; carbon storage and sequestration; hydrological regimes, soil formation; and other measurable variables.
- **Comment:** These activities can occur on-site, if there are available opportunities, or more likely off-site, to achieve no net loss of ecological function.

Nature Positive. *is a net positive for ecosystem values, where impacted and/or converted lands and waters are mitigated through the protection and restoration of lands and waters of greater ecological value.*

No Net Loss. *No Net Loss of land of equal ecosystem value to replace land that is impacted or converted.*

Previously Developed Lands: Land degraded by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, golf courses, abandoned dumping yards, or other degraded areas as determined by EEA.

PROJECT REVIEW THRESHOLDS: LAND USE

- **Acreage:** We request that the acreage thresholds be scaled to reflect development trends in all types of environments/neighborhoods whether urban, suburban, or rural. For example, there may be projects in urban environments that are far below five acres that warrant consideration of the impacts of land use conversion.
- **Trees:**
 - Regardless of the size of parcel being developed, we suggest that reduction of tree canopy cover be avoided where possible due to its many benefits to people and nature such as providing wildlife habitat, stormwater management, flood reduction, and heat island remediation. These benefits are especially meaningful in urban communities that often lack green and open space. We also suggest using tree canopy as the measure against which impacts and benefits are considered.
 - We support tree retention and planting. However, clearing a forest for development should be mitigated by protecting a forest of similar or greater size and ecological value. If cutting horticultural trees, tree replacement is adequate.
- **Biodiversity:** We recommend including BioMap Core Habitat because it includes many critical habitat and ecosystem components that are irreplaceable and critical for biodiversity conservation in the Commonwealth, and which are not represented within Priority Habitat. These resilient and intact ecosystems and habitats include Forest Core, Wetland Core, Aquatic Core, and Vernal Pool Core.

- **Forest Carbon:** We support the proposed metrics.
- **Redevelopment of previously developed land:** we request using the definition we provided above.

Mitigation: We support the enhancement of a robust mitigation program similar to that included in the Department of Energy Resources Solar Massachusetts Renewable Target (SMART) Program that effectuates the protection, restoration, establishment, enhancement, or preservation of comparable assets to compensate for impacts on biodiversity, carbon storage and sequestration, and climate resiliency,. The program should develop ecological standards and metrics, identify locations and geographies, facilitate and approve the projects and actions, and provide oversight and accountability to achieve these goals.

The mitigation hierarchy should be followed sequentially - avoid, minimize, and then offset impacts. Avoidance is the first and most crucial step for supporting landscape-level conservation goals. Efforts to avoid and minimize impacts should be made to the maximum extent practicable – considering existing technology, available science, costs relative to ecological benefits, and the likelihood of success for offset actions – before offsets are considered. Offsets are then applied to address residual impacts.

We concur with comments on two topics being submitted by our NGO colleagues:

Flood Resilience

- We strongly recommend that no new development is eligible for streamlining within the 500-year flood area, and redevelopment should not be eligible in the highest hazard areas.
- We also strongly urge the use of data that projects future flooding, not just the decades-old look-back precipitation data used for FEMA maps.

Before MEPA finalizes these regulations

- We request additional but swift dialogue across sectors and stakeholders—through a short-term reconvening of the MEPA Advisory Committee for one or two additional conversations focused on discrepancies.
- We request MEPA issue a revised draft of the proposed regulations for public comment before finalizing them.

Thank you for your time and consideration. Please feel free to contact me if you have any questions at: slong@tnc.org, 617-312-5932.

Sincerely,



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The Nature Conservancy in Massachusetts