

## 301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

### 301 CMR 11.00: MEPA REGULATIONS

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#### 11.01: General Provisions

##### (1) Authority and Purpose.

(a) General. 301 CMR 11.00 is promulgated to create a uniform system for compliance with the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62L (MEPA). The purpose of MEPA and 301 CMR 11.00 is to provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required, and to assist each Agency in using (in addition to applying any other applicable statutory and regulatory standards and requirements) all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable.

(b) MEPA Review. MEPA review is an informal administrative process that is intended to involve any interested Agency or Person as well as the Proponent and each Participating Agency. The Secretary conducts MEPA review in response to one or more review documents prepared and filed by a Proponent. The Secretary's decision that a review document is adequate or that there has been other due compliance with MEPA and 301 CMR 11.00 means that the Proponent has adequately described and analyzed the Project and its alternatives, and assessed its potential environmental impacts and mitigation measures. A Participating Agency retains authority to fulfill its statutory and regulatory obligations in permitting or reviewing a Project that is subject to MEPA review, which does not itself result in any formal adjudicative decision approving or disapproving a Project. Consistent with M.G.L. c. 30, § 62K, the Secretary and all EEA agencies must consider Environmental Justice Principles in implementing MEPA review. Accordingly, MEPA review shall be conducted in a manner that provides sufficient disclosures to allow for a

full consideration of Environmental Justice Principles in order to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations.

(c) MEPA and Agency Actions. MEPA review is intended to inform the Proponent and each Participating Agency, to maximize consistency between Agency Actions, and to facilitate coordination of all environmental and development review and permitting processes of the Commonwealth. It provides an opportunity in one or more review documents for the Proponent to identify required Agency Actions and describe and analyze how the Project complies with applicable regulatory standards and requirements. Each Participating Agency shall review the MEPA submittals and specify any aspects of the Project or issues regarding its Agency Action that require additional description or analysis (beyond that already provided in the review documents or any application for a Permit, Financial Assistance, or a Land Transfer) to enable it to take Agency Action on the Project or fulfill its obligations in accordance with M.G.L. c. 30, § 61 and M.G.L. c. 30, § 62K. The Secretary may specify in the certificate on a review document any appropriate consultation by and between the Proponent and each Participating Agency and may hold informational meetings prior to or during MEPA review to ensure appropriate consultation.

(d) MEPA and Environmental Planning. MEPA review is intended to facilitate environmental planning for Projects requiring Agency Action, including an Agency's programs, regulations, or policies. It enables the Proponent and each Participating Agency to consider the positive and negative, short-term and long-term potential environmental and public health impacts for all phases of a Project, and the cumulative impacts of the Project and any other Project or other work or activity in the immediate surroundings and region. It also enables an Agency to consider the cumulative impacts of Projects requiring individual Agency Actions taken in accordance with each of its programs, regulations and policies that may not otherwise be subject to adequate MEPA review or that may have similar environmental impacts such that a common assessment may be necessary or appropriate. MEPA review can influence the planning and design of a program, regulations, policy, or other Project to enable an Agency to achieve these goals, provided that MEPA review is initiated sufficiently early and in any event prior to the Proponent finalizing or otherwise irreversibly committing to the program, regulations, policy, or other Project.

## (2) Applicability.

### (a) Jurisdiction.

1. MEPA establishes jurisdiction over: a Project undertaken by an Agency; those aspects of a Project within the subject matter of any required Permit; a Project that seeks the provision of Financial Assistance; and those aspects of a Project within the area of any Land Transfer. MEPA jurisdiction determines the Scope, if an EIR is required. The Scope shall enable Agencies to fulfill their obligations under 301 CMR 11.12(5).

2. MEPA jurisdiction is broad when a Project is undertaken by an Agency or seeks the provision of Financial Assistance. Broad, or full scope, jurisdiction means that the Scope, if an EIR is required, shall extend to all aspects of a Project that are likely, directly or indirectly, to cause Damage to the Environment.

3. MEPA jurisdiction is limited when a Project is undertaken by a Person and requires one or more Permits or involves a Land Transfer, but does not seek the provision of Financial Assistance. Limited, or subject matter, jurisdiction means that the Scope, if an EIR is required, shall be limited to those aspects of the Project within the subject matter of any required Permit or within the area subject to a Land Transfer that are likely, directly or indirectly, to cause Damage to the Environment. Subject matter jurisdiction may be functionally equivalent to full scope jurisdiction in the case of a Project, for example, requiring a Chapter 91 License or involving a Land Transfer of the entire Project site. Subject matter jurisdiction may be limited to a particular structure, facility or activity and its direct and indirect environmental impacts in the case of a Project, for example, requiring a Sewer Extension/Connection Permit or involving a Land Transfer of a discrete portion of the Project site on which the access roadway is proposed.

(b) Review Thresholds.

1. 301 CMR 11.00 establishes review thresholds that identify categories of Projects or aspects thereof, of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required.

2. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (i.e., the Project is undertaken by an Agency or seeks the provision of Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer.

3. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; any Project consisting of one single family dwelling for which the only required Agency Action is a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document.

4. Any Project seeking to qualify in its entirety as an Ecological Restoration Project, but not including an Ecological Restoration Limited Project under 310 CMR 10.24(8) and 10.53(4), shall not be required to undergo MEPA review, provided the requirements of this 301 CMR 11.01(2)(b)4. are met. At least 60 days prior to filing a Notice of Intent for a Restoration Order of Conditions, the Proponent shall submit a Notice of Project with the MEPA Office for publication in the Environmental Monitor. Said Notice of Project shall include, in a format prescribed by the Secretary, a scope of work for the proposed restoration activities, an estimate of the nature and extent of wetlands alteration, and a statement that the Project will meet the eligibility criteria for a Restoration Order of Conditions under 310 CMR 10.13 for an Ecological Restoration Project, but not including an Ecological Restoration Limited Project under 310 CMR

10.24(8) and 10.53(4), together with identification of the project type and a list of the documentation that will be provided to the issuing authority. Any Project that is located within a Designated Geographic Area around one or more Environmental Justice Populations shall also comply with 301 CMR 11.05(4), and shall include in the Notice of Project a description of measures taken to enhance public involvement opportunities by the identified Environmental Justice Populations, and a description of any Environmental Burdens or Environmental Benefits that may result for the Environmental Justice Populations by reason of the Project. Advance notification shall be provided in accordance with 301 CMR 11.05(4)(b) no later than 45 Days, and no earlier than 90 Days, prior to submitting the Notice of Project to the MEPA Office for publication. Comments on the Notice of Project shall be received for 20 Days following publication of the notice, and unless the Secretary issues a determination within 10 Days after the close of the comment period indicating that the Project requires an ENF filing, any Agency Action required for the Project may be taken if required to obtain a Restoration Order of Conditions, provided that the Agency Action shall be deemed to be conditioned on the ultimate issuance of the Restoration Order of Conditions. If the Restoration Order of Conditions for an Ecological Restoration Project is denied, a Project that requires Agency Action and meets or exceeds one or more MEPA review thresholds must thereafter undergo MEPA review, and any conditional Agency Action taken in accordance with this 301 CMR 11.01(2)(b)4. shall not become effective until MEPA review is completed. Consistent with 301 CMR 11.12(6), the Agency may reconsider the Agency Action and any conditions thereof following the completion of MEPA review.

(c) The following categories of Projects shall not be presumed likely or reasonably likely to cause Damage to the Environment, notwithstanding that the Project exceeds one or more review thresholds in 301 CMR 11.03, provided an ENF is filed in accordance with 301 CMR 11.01(2). The Secretary, after review of the ENF, shall issue a written certificate in accordance with 301 CMR 11.06(7)(a).

1. Any Project satisfying all of the criteria in 301 CMR 11.01(2)(c)1.a.-g.:

a. devotes 67% or more of the gross floor area of the Project to residential uses, with the remainder devoted to supportive commercial uses. For the purpose of this 301 CMR 11.01(2)(c)1.a., gross floor area shall not include parking, utility space, and other ancillary spaces not intended for exclusive occupancy by the user or tenant;

b. achieves density of at least 8 units per acre for single-family, at least 12 units per acre for two and three -family buildings, and at least 15 units per acre for multi-family housing of more than three-family residential uses;

c. alters up to 5 acres of previously undeveloped land; or alters up to 10 acres of previously undeveloped land and the Project proposes a tree retention and replanting plan that demonstrates measures to minimize tree removal and replace removed trees to the maximum extent practicable. To satisfy this 301 CMR 11.01(2)(c)1.c., no portion of the Project site shall include any land where projected total ecosystem carbon stocks for the Project site are in the top quintile statewide, as defined by the United States Forest Service's National Forest Carbon Monitoring System, Total Ecosystem Carbon in 2070 data layer, or a comparable data source that the Secretary may adopt through guidance; any designated priority habitat, as defined in 321 CMR 10.02; or any land with soils classified as prime farmland by the United States Department of Agriculture which is currently in active agricultural use or was in active agricultural use within the past five years. Redevelopment of previously developed land, or redevelopment of land

within or appurtenant to an office or industrial park or large institutional property, shall not be defined as alteration of previously undeveloped land for purposes of this 301 CMR 11.01(2)(c)1.c.

d. the Project site is located outside of highest hazard areas and outside the Special Flood Hazard Area as defined by the Wetlands Protection Act regulations at 310 CMR 10.00; or for a redevelopment Project, the Project site is located outside of highest hazard areas and complies with the American Society of Civil Engineers Guidance on Structural Safety in Flood Areas (ASCE 24-24). For the purposes of 301 CMR 11.01(2)(c)1.d., highest hazard areas shall be those areas subject to high erosion or with exposure to flooding characterized by factors such as high-velocity flows, high-velocity wave action, breaking wave heights, sheet flow and scour and flash flooding. Such highest hazard areas shall include, but not be limited to, the following areas as defined by the Federal Emergency Management Agency: V, Coastal A and AO zones on a Flood Insurance Rate Map (FIRM) and floodways and A zones along the banks of waterbodies. The Secretary shall set forth in guidance methodology for delineating highest hazard areas. For the purposes of 301 CMR 11.01(2)(c)1.d., redevelopment means replacement, rehabilitation, or expansion of existing structures, improvement of existing roads or reuse of degraded or previously developed areas.

e. complies with the Massachusetts Stretch Energy Code adopted pursuant to Chapter 169 of the Acts of 2008;

f. does not require approval of a new interbasin transfer of water or wastewater, unless determined to be insignificant by the Water Resources Commission pursuant to the Interbasin Transfer Act and implementing regulations at 313 CMR 4.00, and does not require new or expanded gas mains; and

g. generates fewer than 3,000 New adt of traffic on roadways providing access to a single location; or generates fewer than 6,000 New adt of traffic on roadways providing access to a single location if the Project is located either in a transit-oriented development district or mixed-use district or less than one-half mile from a public transit stop with an existing or proposed safe and accessible path of travel to the Project site. Projects with over 3,000 New adt must consult with the Massachusetts Department of Transportation and Massachusetts Bay Transit Authority prior to filing the ENF.

2. Any Project that does not meet or exceed any mandatory EIR threshold in 301 CMR 11.03, provided the Project satisfies the criteria in 301 CMR 11.01(2)(c)1.a., d., -e., and either 11.01(2)(c)1.b. or 11.01(2)(c)1.c. For the purposes of 301 CMR 11.01(2)(c)2., a redevelopment Project located in the highest hazard area, as defined in 301 CMR 11.01(2)(c)1.d., shall be deemed to satisfy the criterion in 301 CMR 11.01(2)(c)1.d. if the Project complies with the American Society of Civil Engineers Guidance on Structural Safety in Flood Areas (ASCE 24-24) and demonstrates the absence of off-site flood impacts on adjacent properties and infrastructure.

3. Any Project that does not meet or exceed any mandatory EIR threshold in 301 CMR 11.03 and seeks to qualify as an Ecological Restoration Limited Project under 310 CMR 10.24(8) and 10.53(4), but does not qualify as an Ecological Restoration Project eligible for the procedures in 301 CMR 11.01(2)(b)4.

4. Any Project that meets or exceeds any review threshold in 301 CMR 11.03(12), provided that the Project does not independently propose any work, project or activity that exceeds any other review threshold in 301 CMR 11.03.

(de) Segmentation In determining whether a Project is subject to MEPA jurisdiction or meets or exceeds any review thresholds, and during MEPA review, the Proponent, any Participating Agency, and the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review. The Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether various work or activities constitute one Project including, but not limited to, whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative. Examples of work or activities that constitute one Project include work or activities that: 1. meet or exceed one or more review thresholds on an area previously subject to a Land Transfer, provided that not more than five years have elapsed between the Land Transfer and the work or activities; and 2. construct more than one structure (such as more than one single family dwelling) and appurtenant structures, facilities, and other improvements on a site, unless a plan for the subdivision or other legal division creating or allowing separate lots or parcels was definitively approved or endorsed in accordance with applicable statutes and regulations prior to the effective date of 301 CMR 11.00.

### (3) Relation to Other Authority.

- (a) Information regarding Other Authority. The Secretary may require a Proponent to provide information regarding a Project's consistency or compliance with any applicable Federal, municipal, or regional statutes and regulations. MEPA and 301 CMR 11.00 do not give the Secretary authority to make any formal determination regarding such consistency or compliance.
- (b) Applicability of Other Authority. MEPA and 301 CMR 11.00 do not alter the review or permitting authority of any Agency or any Federal, municipal, or regional governmental entity over, or otherwise alter the applicability of any statutes and regulations to, a Project.

### (4) General Procedure.

- (a) ENF. If a Project is subject to MEPA jurisdiction and either it meets or exceeds one or more review thresholds or the Secretary requires fail-safe review, the Proponent begins MEPA review by preparing and filing an ENF with the Secretary. The Secretary publishes the appropriate pages of the ENF in the next Environmental Monitor. A 30-Day review period follows, during the first 20 Days of which Agencies, Persons, the MEPA Office (which ordinarily conducts a site visit and public consultation session), and the Secretary review and/or comment on the ENF. At the close of the review period for an ENF, the Secretary decides whether to require an EIR. If the Secretary does not require an EIR, an Agency may take Agency Action on the Project (see 301 CMR 11.05 and 11.06).

- (b) EIR. If the Secretary requires an EIR, the Proponent prepares and files it with the Secretary. The Secretary shall ordinarily require a draft and final EIR, but may allow a single or rollover EIR. The Secretary publishes notice of the availability of the EIR in the next Environmental Monitor. A 37-Day review period follows, during the first 30 Days of which Agencies, Persons, the MEPA Office, and the Secretary review and/or comment on the EIR. At the close of the review period, the Secretary decides whether the EIR is adequate, and must consider Environmental Justice Principles in making this determination. An Agency may take Agency

Action on the Project, provided that the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the Environmental Monitor (see 301 CMR 11.07 and 11.08).

(c) Section 61 Findings. An Agency that takes Agency Action on a Project for which the Secretary required an EIR:

1. issues Section 61 Findings that specify, based on the EIR, all feasible means to be used to avoid Damage to the Environment, or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable;
2. if applicable, includes in its Section 61 Findings any and all actions to be taken to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations;
3. makes its Section 61 Findings part of the Permit or other document allowing or approving the Agency Action; and
4. files a copy of its Section 61 Findings with the MEPA Office (see 301 CMR 11.12(5)).

(5) Administration.

(a) Authority of Assistant Secretary. The staff of the Secretary that carries out day-to-day administration of MEPA and 301 CMR 11.00 is organized as the MEPA Office, under the direction of the Assistant Secretary of Energy and Environmental Affairs, who is also known as the MEPA Director. The Secretary may delegate to the Assistant Secretary any of the Secretary's authority in accordance with MEPA and 301 CMR 11.00 that the Secretary deems appropriate. Any certificate, determination, or other document executed by the Assistant Secretary in accordance with the delegation shall be deemed the valid and duly authorized certificate, determination, or other document of the Secretary.

(b) Responsibilities of MEPA Office. The MEPA Office is responsible for: responding to inquiries from Proponents and other Agencies and Persons; reviewing documents filed in accordance with MEPA and 301 CMR 11.00; conducting site visits and public consultation sessions; ensuring adequate prior public notice of site visits, public consultation sessions, and comment periods, and meaningful opportunities for public review of review documents; coordinating with any Agency that expects to take Agency Action on a Project; preparing drafts of certificates, determinations, and other documents for the Secretary; and maintaining publicly accessible files that contain the complete administrative record on which the Secretary's decisions in certificates, determinations, and other documents are based.

(6) Advisory Opinion.

(a) Request for Advisory Opinion. In case of doubt as to the meaning or applicability of any provision or requirement in MEPA or 301 CMR 11.00 (including whether an entity is an Agency, whether a decision or action is Agency Action, whether a Project is subject to MEPA jurisdiction, or whether a Project meets or exceeds one or more review thresholds) an Agency or Person may request an advisory opinion of the Secretary in accordance with M.G.L. c. 30A, § 8, and 301 CMR 11.00.

(b) Decision on Advisory Opinion. The Secretary shall respond within 20 Days of receiving a request for an advisory opinion either with a request for further information or with the advisory



opinion, unless the Secretary publishes notice of the request in accordance with 301 CMR 11.01(6)(c). If the Secretary requests further information, the Secretary shall provide the advisory opinion 20 Days of receiving the requested information.

(c) Public Comment on a Request for an Advisory Opinion. In the case of a request for an advisory opinion concerning Routine Maintenance or a Replacement Project, the Secretary shall, and in all other cases, the Secretary may: publish notice of the request in the next Environmental Monitor and receive into the record, within 20 Days following publication of the notice of the request (unless extended by the Secretary with the consent of the Proponent), written comments from any Agency or Person concerning the request. The Secretary shall provide the advisory opinion within 20 Days after the close of the comment period.

## 11.02: Definitions

(1) Undefined Terms. As used in 301 CMR 11.00, any term not defined in accordance with 301 CMR 11.02(2) shall have the meaning given to the term by any statutes, regulations, executive orders or policy directives governing the subject matter of the term. Examples include a term pertaining to:

- (a) wetlands, which is defined by the Massachusetts Wetlands Protection Act, M.G.L. c. 131 § 40, and its implementing regulations, 310 CMR 10.00: Wetlands Protection, and 33 USC 1341 and 314 CMR 9.00: 401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States within the Commonwealth regarding Water Quality Certification, as well as other statutes, regulations, executive orders, or policy directives that govern wetlands issues; and
- (b) roadways or traffic, which is defined by the Massachusetts Department of Transportation Highway Division at 700 CMR 13.00: Approval of Access to State Highways.

(2) Defined Terms. As used in 301 CMR 11.00, the following terms shall have the following meanings:

### Agency.

- (a) Any agency, department, board, commission, or authority of the Commonwealth.
- (b) Agency shall not be considered to include a Federal, municipal, or regional agency, department, board, commission or authority, unless it is:
  - 1. a municipal redevelopment agency created or acting in accordance with M.G.L. c. 121A or c. 121B; or
  - 2. any other authority of any political subdivision of the Commonwealth that is created or acting specifically as an authority in accordance with applicable statutes.

### Agency Action.

- (a) In the case of a Project undertaken by an Agency, any formal and final authorization, appropriation, execution of a contract or other decision by the Agency to proceed to Commencement of a Project.
- (b) In the case of a Project undertaken by a Person, any formal and final action taken by an



Agency in accordance with applicable statutes and regulations that grants a Permit, provides Financial Assistance, or closes a Land Transfer.

(c) Agency Action is not final if the Permit, contract or other relevant document approving or allowing the Agency Action contains terms such as a condition or restriction that provides that such Agency Action shall be deemed not to have taken place, unless and until the Secretary has determined that:

1. no EIR is required; or
2. a single or final EIR is adequate and 60 Days have elapsed following publication of notice of the availability of the single or final EIR in the Environmental Monitor in accordance with 301 CMR 11.15(2), provided that the Agency shall reconsider and confirm or modify the Agency Action and any conditions thereof following completion of MEPA review.

(d) Agency Action is final even if subject to subsequent judicial or administrative appeal. Archaeological Site. Any location of a significant event, prehistoric or historic occupation or activity, or building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value, regardless of the value of any existing building or structure.

#### Capacity.

(a) Design capacity, i.e., the maximum capacity for which a facility or system is designed and at which a facility or system can operate, regardless of statutory, regulatory, contractual or other conditions or restrictions.

(b) Daily Capacity shall be considered maximum Capacity on any given Day of operation and not an annual average.

Carbon Dioxide (CO<sub>2</sub>) Equivalent. The amount of carbon dioxide by weight that would produce the same amount of global warming impact as a given weight of another greenhouse gas, based on the best available science, including information from the Intergovernmental Panel on Climate Change.

Commonwealth. The Commonwealth of Massachusetts.

#### Commencement of Construction.

(a) Initiation of on-site physical or construction work or activity.

(b) Research, design, or other work or activity necessary to evaluate a Project for purposes of MEPA and 301 CMR 11.00 and other environmental statutes or regulations shall not be considered Commencement of Construction.

#### Commencement of a Project.

(a) The earliest of:

1. initiation of the operational phase of the Project;
2. Commencement of Construction; or
3. initiation of any preparatory phase of the Project, including any action or expenditure of funds on the financing, marketing, or development of the Project.

(b) Research, design, or other work or activity necessary to evaluate a Project for purposes of MEPA and 301 CMR 11.00 and other environmental statutes or regulations shall not be considered Commencement of a Project.

Damage to the Environment. Any destruction or impairment (not including insignificant damage or impairment), actual or probable, to any of the natural resources of the Commonwealth including, but not limited to, air pollution, GHG emissions, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, reduction of groundwater levels, impairment of water quality, increases in flooding or storm water flows, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites.

Day.

(a) Calendar day.

(b) If the deadline for the Secretary to issue a certificate, determination, or other document, or for an Agency to take Agency Action, or for any Agency or Person to file comments, notices, or review documents in accordance with MEPA and 301 CMR 11.00 falls on a Saturday, Sunday or legal holiday, the deadline shall be considered to fall on the next business day.

Designated Geographic Area.

(a) With respect to a Project, the area within one mile of the Project; or, for a Project that meets or exceeds MEPA review thresholds at 301 CMR 11.03(8)(a) and (b) or that generates 150 or more New adt of diesel vehicle traffic over a duration of one year or more, excluding public transit trips, the area within five miles of the Project.

(b) With respect to an Environmental Justice Population, the area within one mile of the Environmental Justice Population; or, for a Project that meets or exceeds MEPA review thresholds at 301 CMR 11.03(8)(a) and (b) or that generates 150 or more New adt of diesel vehicle traffic over a duration of one year or more, excluding public transit trips, the area within five miles of the Environmental Justice Population.

Ecological Restoration Project. Any Project defined as an Ecological Restoration Project under 310 CMR 10.00 Wetlands Protection. For the purposes of 301 CMR 11.00, this term does not include an Ecological Restoration Limited Project.

Ecological Restoration Limited Project. Any Project defined as an Ecological Restoration Limited Project under 310 CMR 10.00 Wetlands Protection and described in 310 CMR 10.24(8) and 10.53(4).

Environmental Benefits. Access to clean natural resources, including air, water resources, open space, constructed playgrounds and other outdoor recreational facilities and venues, clean renewable energy sources, environmental enforcement, training and funding disbursed or administered by the executive office of energy and environmental affairs.

Environmental Burden. Any destruction, damage or impairment (not including insignificant

destruction, damage or impairment) of any of the natural resources of the Commonwealth, resulting from intentional or reasonably foreseeable causes including, but not limited to, climate change, air pollution, water pollution, improper sewage disposal, dumping of solid wastes and other noxious substances, excessive noise, activities that limit access to natural resources and constructed outdoor recreational facilities and venues, inadequate remediation of pollution, reduction of ground water levels, impairment of water quality, increased flooding or storm water flows, and damage to inland waterways and waterbodies, wetlands, marine shores and waters, forests, open spaces, and playgrounds from private industrial, commercial or government operations or other activity that contaminates or alters the quality of the environment and poses a risk to public health.

#### Environmental Justice Population.

(a) A Neighborhood that meets one or more of the following criteria:

1. the annual median household income is not more than 65% of the statewide annual median household income;
2. minorities comprise 40% or more of the population;
3. 25% or more of households lack English language proficiency;
4. minorities comprise 25% or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150% of the statewide annual median household income; or

(b) a geographic portion of a Neighborhood designated by the Secretary as an Environmental Justice Population pursuant to M.G.L. c. 30, § 62; provided, however, that a Neighborhood or a geographic portion of a Neighborhood that the Secretary has determined shall not be designated an Environmental Justice Population pursuant to M.G.L. c. 30, § 62 shall not be considered an Environmental Justice Population under 301 CMR 11.00.

Environmental Justice Principles. Principles that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes:

- (a) the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies; and
- (b) the equitable distribution of energy and environmental benefits and environmental burdens.

Expansion. Any material increase in Capacity, demand on infrastructure, or physical dimensions of a Project or frequency of activity associated with the Project.

#### Financial Assistance.

(a) Any direct or indirect financial aid to any Person provided by any Agency including, but not limited to, mortgage assistance, special taxing arrangements, grants, issuance of bonds, loans, loan guarantees, debt or equity assistance, and the allocation of Commonwealth or Federal funds.

(b) Financial Assistance shall not be considered to include:

1. the grant of aid for medical services or personal support, such as welfare or unemployment funds, to an individual or third party on behalf of an individual;
2. pass-through of Federal funds or issuance of bonds solely on behalf of a local economic development or financing agency, without allocation by an Agency; or
3. routine staff assistance.

Greenhouse Gas (GHG). Includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Historic Structure or District. Any historic property, landmark, building, structure, or district that is significant to the history or prehistory of the Commonwealth, its counties, or municipalities.

Land Transfer.

- (a) The execution and delivery by an Agency of any deed, lease, license or other document that transfers real property or an interest in real property.
- (b) For purposes of review thresholds, Land Transfer shall not be considered to include the execution and delivery of a deed, lease or license to continue a preexisting lawful use on a Project site, or amendments or extensions thereof.

MEPA Office. The Secretary's staff that carries out day-to-day administration of MEPA and 301 CMR 11.00.

Neighborhood. A census block group as defined by the United States Census Bureau, excluding people who live in college dormitories and people who are under formally authorized, supervised care or custody, including federal, state or county prisons.

New. Any work or activity that is not:

- (a) existing;
- (b) being carried out currently as part of, used by, or generated by a previous, actual or permitted use of the Project site; or
- (c) being carried out within three years since the later of discontinuance of the previous use or issuance of the relevant Permit.

Participating Agency. Any Agency to which the Proponent has made or will make an application for a Permit, Financial Assistance, or a Land Transfer.

Permit.

- (a) Any permit, license, certificate, variance, approval, or other entitlement for use, granted by an Agency for or by reason of a Project.
- (b) Permit shall be considered to include an entitlement for use granted by an Agency in accordance with delegated authority in accordance with Federal environmental statutes or regulations (including certification of compliance with the statutes and regulations).
- (c) Permit shall not be considered to include a general entitlement to a Person to carry on a trade or profession, or to operate mechanical equipment which does not depend upon the location of such trade or operation.
- (d) For purposes of review thresholds, Permit shall not be considered to include:

1. a consent order or agreement to the extent it addresses noncompliance with applicable statutes and regulations and does not allow or approve a New Project or an Expansion of a Project;
2. a general or programmatic permit, license, certificate, variance or approval applying to a category of Projects rather than to each individual Project;
3. a permit, license, certificate, variance or approval by rule or by self-certification of compliance; and
4. a permit, license, certificate, variance, or approval to continue a preexisting lawful use on a Project site, or amendments or extensions thereof.

Person. Any individual, corporation, partnership, trust, association, or other business or nonprofit organization, or any Federal, municipal, or regional governmental, intergovernmental or other entity that is not an Agency.

Project. Any work or activity that is undertaken by:

- (a) an Agency; or
- (b) a Person and requires a Permit or a Land Transfer, or seeks the provision of Financial Assistance.

Proponent. Any Agency or Person, including a designee or successor in interest, that undertakes, or has a significant role in undertaking, a Project.

Replacement Project. Any Project to repair, replace, or reconstruct a previous use of or Project on a Project site that does not:

- (a) increase potential environmental impacts or need additional or changed environmental Permits for the increased impacts; or
- (b) result in any substantial (10% or more) Expansion of the use or Project, provided that the previous use or Project has not been discontinued for more than three years and that the Expansion does not meet or exceed any review thresholds.

Routine Maintenance. Any maintenance work or activity carried out on a regular or periodic basis in a manner that has no potential for Damage to the Environment or for which performance standards have been developed that avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable.

Scope. The written certificate issued by the Secretary in accordance with 301 CMR 11.06(7) that specifies the form, content, level of detail, and alternatives required for an EIR.

Secretary. The Secretary of Energy and Environmental Affairs.

Section 61 Findings. The determinations and findings that an Agency shall make in accordance with M.G.L. c. 30, § 61, and 301 CMR 11.12(5) prior to or when taking Agency Action on a Project for which the Secretary required an EIR.

Stationary Source. Any individual stationary piece of equipment from which any air pollutant or greenhouse gas is emitted to the ambient air, or any other stationary emission point.

(3) Abbreviations and Acronyms. As used in 301 CMR 11.00, the following abbreviations and acronyms shall have the following meanings:

adt Average Daily Trips.

ACEC Area of Critical Environmental Concern.

CAC Citizens Advisory Committee.

CO<sub>2</sub> Carbon dioxide.

cy Cubic yards.

EEA Executive Office of Energy and Environmental Affairs.

ENF Environmental Notification Form.

EIR Environmental Impact Report.

GHG Greenhouse Gas.

gpd Gallons per day.

HAP Hazardous Air Pollutant.

kv Kilovolts.

MEPA The Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62L.

MW Megawatts.

NO<sub>x</sub> Oxides of Nitrogen.

NPC Notice of Project Change.

PM<sub>10</sub> Particulate matter less than or equal to 10 microns in diameter.

PM<sub>2.5</sub> Particulate matter less than or equal to 2.5 microns in diameter.

sf Square feet.

SO<sub>2</sub> Sulfur Dioxide.

tpd Tons per day.

tpy Tons per year.

VOC Volatile Organic Compound.

#### 11.03: Review Thresholds

The review thresholds identify categories of Projects or aspects thereof of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (i.e., the Project is undertaken by an Agency or seeks the provision of Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential

environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document.

The review thresholds are the following:

(1) Land.

(a) ENF and Mandatory EIR.

1. Direct alteration of 50 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.

2. Creation of ten or more acres of impervious area.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.

2. Creation of five or more acres of impervious area.

3. Disposition or change in use of land or an interest in land subject to Article 97 of the Amendments to the Constitution of the Commonwealth, unless the Secretary waives or modifies the replacement land requirement pursuant to section 5A of chapter 3 of the Massachusetts General Laws and its implementing regulations.

4. Conversion of land in active agricultural use to nonagricultural use, provided the land includes soils classified as prime, state-important or unique by the United States Department of Agriculture, unless the Project is accessory to active agricultural use or consists solely of one single family dwelling.

5. Release of an interest in land held for conservation, preservation or agricultural or watershed preservation purposes, unless the Secretary waives or modifies the replacement land requirement pursuant to section 5A of chapter 3 of the Massachusetts General Laws and its implementing regulations.

6. Approval in accordance with M.G.L. c. 121A of a New urban redevelopment project or a fundamental change in an approved urban redevelopment project, provided that the Project consists of 100 or more dwelling units or 50,000 or more sq. ft. of nonresidential space.

~~7. Approval in accordance with M.G.L. c. 121B of a New urban renewal plan or a major modification of an existing urban renewal plan.~~

(2) State-listed Species under M.G.L. c. 131A (Massachusetts Endangered Species Act).

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Alteration of designated significant habitat.

2. Greater than two acres of disturbance of designated priority habitat, as defined in 321 CMR 10.02, that results in a take of a state-listed endangered or threatened species or species of special concern.

(3) Wetlands, Waterways and Tidelands.

(a) ENF and Mandatory EIR.



1. Provided that a Permit is required:
  - a. alteration of one or more acres of salt marsh or bordering vegetating wetlands; or
  - b. alteration of ten or more acres of any other wetlands.
2. Alteration requiring a variance in accordance with the Wetlands Protection Act.
3. Construction of a New dam.
4. Structural alteration of an existing dam that causes an Expansion of 20% or any decrease in impoundment Capacity.
5. Provided that a Chapter 91 License is required, New non-water dependent use or Expansion of an existing non-water dependent structure, provided the use or structure occupies one or more acres of waterways or tidelands.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Provided that a Permit is required:
  - a. alteration of coastal dune, barrier beach or coastal bank;
  - b. alteration of 500 or more linear feet of bank along a fish run or inland bank;
  - c. alteration of 1,000 or more sf of salt marsh or outstanding resource waters;
  - d. alteration of 5,000 or more sf of bordering or isolated vegetated wetlands;
  - e. New fill or structure or Expansion of existing fill or structure, except a pile-supported structure, in a velocity zone or regulatory floodway; or
  - f. alteration of ½ or more acres of any other wetlands.
2. Construction of a New roadway or bridge providing access to a barrier beach or a New utility line providing service to a structure on a barrier beach.
3. Dredging of 10,000 or more cy of material.
4. Disposal of 10,000 or more cy of dredged material, unless at a designated in-water disposal site.
5. Provided that a Chapter 91 License is required, New or existing unlicensed non-water dependent use of waterways or tidelands, unless the Project is an overhead utility line, a structure of 1,000 or less sf base area accessory to a single family dwelling, a temporary use in a designated port area, or an existing unlicensed structure in use prior to January 1, 1984.
6. Construction, reconstruction or Expansion of an existing solid fill structure of 1,000 or more sf base area or of a pile-supported or bottom-anchored structure of 2,000 or more sf base area, except a seasonal, pile-held or bottom-anchored float, provided the structure occupies flowed tidelands or other waterways.

(4) Water.

(a) ENF and Mandatory EIR.

1. New withdrawal or Expansion in withdrawal of:
    - a. 2,500,000 or more gpd from a surface water source; or
    - b. 1,500,000 or more gpd from a groundwater source.
  2. New interbasin transfer of water of 1,000,000 or more gpd or any amount determined significant by the Water Resources Commission.
  3. Construction of one or more New water mains ten or more miles in length.
  4. Provided that the Project is undertaken by an Agency, New water service to a municipality or water district across a municipal boundary through New or existing pipelines, unless a disruption of service emergency is declared in accordance with applicable statutes and regulations.
- (b) ENF and Other MEPA Review if the Secretary So Requires.

1. New withdrawal or Expansion in withdrawal of 100,000 or more gpd from a water source that requires New construction for the withdrawal.
2. New withdrawal or Expansion in withdrawal of 500,000 or more gpd from a water supply system above the lesser of current system-wide authorized withdrawal volume or three-years' average system-wide actual withdrawal volume.
3. Construction of one or more New water mains five or more miles in length.
4. Construction of a New drinking water treatment plant with a Capacity of 1,000,000 or more gpd.
5. Expansion of an existing drinking water treatment plant by the greater of 1,000,000 gpd or 10% of existing Capacity.
6. Alteration requiring a variance in accordance with the Watershed Protection Act, unless the Project consists solely of one single family dwelling.
7. Non-bridged stream crossing 1,000 or less feet upstream of a public surface drinking water supply for purpose of forest harvesting activities.

(5) Wastewater.

(a) ENF and Mandatory EIR.

1. Construction of a New wastewater treatment and/or disposal facility with a Capacity of 2,500,000 or more gpd.
2. New interbasin transfer of wastewater of 1,000,000 or more gpd or any amount determined significant by the Water Resource Commission.
3. Construction of one or more New sewer mains ten or more miles in length.
4. Provided that the Project is undertaken by an Agency, New sewer service to a municipality or sewer district across a municipal boundary through New or existing pipelines, unless an emergency is declared in accordance with applicable statutes and regulations.
5. New discharge or Expansion in discharge of any amount of sewage, industrial wastewater or untreated stormwater directly to an outstanding resource water.
6. New Capacity or Expansion in Capacity for storage, treatment, processing, combustion or disposal of 150 or more wet tpd of sewage sludge, sludge ash, grit, screenings, or other sewage sludge residual materials, unless the Project is an Expansion of an existing facility within an area that has already been sited for the proposed use in accordance with M.G.L. c. 21 or M.G.L. c. 83, § 6.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Construction of a New wastewater treatment and/or disposal facility with a Capacity of 100,000 or more gpd.
2. Expansion of an existing wastewater treatment and/or disposal facility by the greater of 100,000 gpd or 10% of existing Capacity.
3. Construction of one or more New sewer mains:
  - a. that will result in an Expansion in the flow to a wastewater treatment and/or disposal facility by 10% of existing Capacity; or
  - b. five or more miles in length.
4. New discharge or Expansion in discharge:
  - a. to a sewer system of 100,000 or more gpd of sewage, industrial waste water or untreated stormwater;
  - b. to a surface water of:
    - i. 100,000 or more gpd of sewage;

- ii. 20,000 or more gpd of industrial waste water; or
- iii. any amount of sewage, industrial waste water or untreated stormwater requiring a variance from applicable water quality regulations; or
- c. to groundwater of:
  - i. 10,000 or more gpd of sewage within an area, zone or district established, delineated or identified as necessary or appropriate to protect a public drinking water supply, an area established to protect a nitrogen sensitive embayment, an area within 200 feet of a tributary to a public surface drinking water supply, or an area within 400 feet of a public surface drinking water supply;
  - ii. 50,000 or more gpd of sewage within any other area;
  - iii. 20,000 or more gpd of industrial waste water; or
  - iv. any amount of sewage, industrial waste water or untreated stormwater requiring approval by the Department of Environmental Protection of a variance from Title 5 of the State Environmental Code for New construction.
- 5. New Capacity or Expansion in Capacity for:
  - a. combustion or disposal of any amount of sewage sludge, sludge ash, grit, screenings, or other sewage sludge residual materials; or
  - b. storage, treatment, or processing of 50 or more wet tpd of sewage sludge or sewage sludge residual materials.

(6) Transportation.

(a) ENF and Mandatory EIR.

- 1. Unless the Project consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project:
  - a. construction of a New roadway two or more miles in length; or
  - b. widening of an existing roadway by one or more travel lanes for two or more miles.
- 2. New interchange on a completed limited access highway.
- 3. Construction of a New airport.
- 4. Construction of a New runway or terminal at an existing airport.
- 5. Construction of a New rail or rapid transit line along a New, unused or abandoned right-of-way for transportation of passengers or freight (not including sidings, spurs or other lines not leading to an ultimate destination).
- 6. Generation of 3,000 or more New adt on roadways providing access to a single location.
- 7. Construction of 1,000 or more New parking spaces at a single location.

(b) ENF and Other MEPA Review if the Secretary So Requires.

- 1. Unless the Project consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project:
  - a. construction of a New roadway one-quarter or more miles in length; or
  - b. widening of an existing roadway by four or more feet for one-half or more miles, excluding widening to add bicycle or pedestrian accommodations.
- 2. Construction, widening or maintenance of a roadway or its right-of-way that will:
  - a. alter the bank or terrain located ten more feet from the existing roadway for one-half or more miles, unless necessary to install a structure or equipment;
  - b. cut five or more living public shade trees of 14 or more inches in diameter at breast height; or

- c. eliminate 300 or more feet of stone wall.
- 3. Expansion of an existing runway at an airport.
- 4. Construction of a New taxiway at an airport.
- 5. Expansion of an existing taxiway at Logan Airport.
- 6. Expansion of an existing terminal at Logan Airport by 100,000 or more sf.
- 7. Expansion of an existing terminal at any other airport by 25,000 or more sf.
- 8. Construction of New or Expansion of existing air cargo buildings at an airport by 100,000 or more sf.
- 9. Conversion of a military airport to a non-military airport.
- 10. Construction of a New rail or rapid transit line for transportation of passengers or freight.
- 11. Discontinuation of passenger or freight service along a rail or rapid transit line.
- 12. Abandonment of a substantially intact rail or rapid transit right-of-way.
- 13. Generation of 2,000 or more New adt on roadways providing access to a single location.
- 14. Generation of 1,000 or more New adt on roadways providing access to a single location and construction of 150 or more New parking spaces at a single location.
- 15. Construction of 300 or more New parking spaces at a single location.

(7) Energy.

(a) ENF and Mandatory EIR.

- 1. Construction of a New electric generating facility with a Capacity of 100 or more MW.
- 2. Expansion of an existing electric generating facility by 100 or more MW.
- 3. Construction of a New fuel pipeline ten or more miles in length.
- 4. Construction of electric transmission lines with a Capacity of 230 or more kv, provided the transmission lines are five or more miles in length along New, unused or abandoned right of way.

(b) ENF and Other MEPA Review if the Secretary So Requires.

- 1. Construction of a New electric generating facility with a Capacity of 25 or more MW.
- 2. Expansion of an existing electric generating facility by 25 or more MW.
- 3. Construction of a New fuel pipeline five or more miles in length.
- 4. Construction of electric transmission lines with a Capacity of 69 or more kv, provided the transmission lines are one or more miles in length along New, unused or abandoned right of way.

(8) Air.

(a) ENF and Mandatory EIR.

- 1. Construction of a New Stationary Source with federal potential emissions, after construction and the imposition of required controls, of: 250 tpy of any criteria air pollutant; 40 tpy of any HAP; 100 tpy of any combination of HAPs; or 100,000 tpy of GHGs based on CO<sub>2</sub> Equivalent.
- 2. Modification of an existing Stationary Source with federal potential emissions that collectively will result, after construction and the imposition of required controls, of 75,000 tpy of GHGs based on CO<sub>2</sub> Equivalent.

(b) ENF and Other MEPA Review if the Secretary So Requires.

- 1. Construction of a New Stationary Source with federal potential emissions, after construction and the imposition of required controls, of: 100 tpy of PM<sub>10</sub>, PM<sub>2.5</sub>, CO, lead or SO<sub>2</sub>; 50 tpy of VOC or NO<sub>x</sub>; 10 tpy of any HAP; or 25 tpy of any combination of HAPs.

2. Modification of an existing Stationary Source resulting in a "significant net increase" in actual emissions, provided that the stationary source or facility is major for the pollutant. For purposes of this threshold, a "significant net increase" in actual emissions shall mean an increase in emissions of: 15 tpy of PM<sub>10</sub>; 10 tpy of PM<sub>2.5</sub>; 100 tpy of CO; 40 tpy of SO<sub>2</sub>; 25 tpy of VOC or NO<sub>x</sub>; 0.6 tpy of lead.

(9) Solid and Hazardous Waste.

(a) ENF and Mandatory EIR. New Capacity or Expansion in Capacity of 150 or more tpd for storage, treatment, processing, combustion or disposal of solid waste, unless the Project is a transfer station, is an Expansion of an existing facility within a validly site assigned area for the proposed use, or is exempt from site assignment requirements.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. New Capacity or Expansion in Capacity for combustion or disposal of any quantity of solid waste, or storage, treatment or processing of 50 or more tpd of solid waste, unless the Project is exempt from site assignment requirements.

2. Provided that a Permit is required in accordance with M.G.L. c. 21D, New Capacity or Expansion in Capacity for the storage, recycling, treatment or disposal of hazardous waste.

(10) Historical and Archaeological Resources.

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires. Unless the Project is subject to a Determination of No Adverse Effect by the Massachusetts Historical Commission or is consistent with a Memorandum of Agreement with the Massachusetts Historical Commission that has been the subject of public notice and comment:

1. demolition of all or any exterior part of any Historic Structure listed in or located in any Historic District listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth; or

2. destruction of all or any part of any Archaeological Site listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth.

(11) Areas of Critical Environmental Concern.

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires. Any Project of ½ or more acres within a designated ACEC, unless the Project consists solely of one single family dwelling.

(12) Regulations and Planning.

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Promulgation of New or revised regulations, of which a primary purpose is protecting against Damage to the Environment, that significantly reduce:

a1. standards for environmental protection;

b2. opportunities for public participation in permitting or other review processes; or

c3. public access to information generated or provided in accordance with the regulations.

2. Approval in accordance with M.G.L. c. 121B of a New urban renewal plan or a major modification of an existing urban renewal plan.

#### 11.04: Fail-Safe Review

(1) Petition or Secretary's Initiative. Upon written petition by one or more Agencies or ten or more Persons, or at the initiative of the Secretary, the Secretary may require a Proponent to file an ENF or undergo other MEPA review for a proposed program, regulations, policy, or other Project that does not meet or exceed any review thresholds unless all Agency Actions for the Project have been taken, provided that the Secretary finds in the decision on the petition or initiative that:

(a) the Project is subject to MEPA jurisdiction;

(b) the Project has the potential to cause Damage to the Environment and the potential Damage to the Environment either:

1. could not reasonably have been foreseen prior to or when 301 CMR 11.00 was promulgated; or

2. would be caused by a circumstance or combination of circumstances that individually would not ordinarily cause Damage to the Environment; and

(c) requiring the filing of an ENF and other compliance with MEPA and 301 CMR 11.00:

1. is essential to avoid or minimize Damage to the Environment; and

2. will not result in an undue hardship for the Proponent.

A written petition for fail-safe review shall state with specificity the Project-related facts that the petitioners believe support the Secretary's required findings.

(2) Notice and Effect of Petition or Secretary's Initiative. Within ten Days of receiving of a petition, or immediately when the Secretary initiates fail-safe review, the Secretary shall notify the Proponent and any Participating Agency of the petition or initiative and may request further information from the Proponent. Following such notice, a Participating Agency shall not take Agency Action on the Project unless and until the Secretary has issued a decision that the Project does not require the filing of an ENF or, if the Secretary requires an ENF, the Secretary has determined that an EIR is not required or the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the Environmental Monitor in accordance with 301 CMR 11.15(2).

(3) Secretary's Decision. The Secretary shall issue a written decision stating whether the Proponent shall file an ENF or undergo other MEPA review within 20 Days of the latest of receiving a petition for fail-safe review, notifying the Proponent of the petition or initiative, or receiving any requested further information. The Secretary shall send notice of any fail-safe review decision to the Proponent and any Participating Agency and shall publish notice of the decision in the next Environmental Monitor in accordance with 301 CMR 11.15(2). The Secretary's failure to issue a decision within the 20 Day period shall have the effect of a determination that no ENF or any other MEPA review is required.

(4) Effect of Secretary's Decision. The Secretary's decision to require fail-safe review shall not in itself invalidate any Agency Action previously taken by an Agency or any conditions thereof.

#### 11.05: ENF Preparation and Filing

(1) Filing and Circulation Requirements. If a Project requires MEPA review in accordance with

301 CMR 11.01(2), the Proponent shall complete an ENF and file it with the Secretary. Prior to or when filing the ENF with the Secretary, the Proponent shall circulate copies of the ENF in accordance with 301 CMR 11.16(2) and publish a Public Notice of Environmental Review in accordance with 301 CMR 11.15(1). The Proponent's failure to circulate the ENF or publish the Public Notice properly shall allow the Secretary to require an extension or repetition of the ENF review. The Secretary may reject an incomplete ENF, in which case the Secretary shall notify the Proponent, who shall file and circulate a new ENF and publish a new Public Notice.

(2) Timely Filing. In all cases, the Proponent shall file the ENF sufficiently prior to Commencement of the Project and any required Agency Action to allow timely compliance with MEPA and 301 CMR 11.00 including analysis of alternatives, consideration of cumulative environmental impacts, and providing meaningful opportunities for public review. In the case of a Project undertaken by an Agency, the Proponent shall ordinarily file the ENF not less than one year prior to the expected Commencement of the Project, and in any event prior to the Agency's finalizing the design or making an irreversible commitment of financial resources to the Project. In the case of a Project that is undertaken by a Person and requires one or more Permits or seeks the provision of Financial Assistance but does not involve a Land Transfer, the Proponent shall file the ENF at any time prior to but no later than ten Days after filing the first application for a Permit or Financial Assistance. In the case of a Project that is undertaken by a Person and involves a Land Transfer, the Proponent shall file the ENF prior to closing the Land Transfer unless the Land Transfer is not final Agency Action in accordance with 301 CMR 11.02(2). The Proponent may consult with the Secretary for specific advice as to when to file the ENF.

(3) Consultation. Prior to filing the ENF, the Proponent may consult with the Secretary and any Participating Agency to determine any review thresholds the Project may meet or exceed and any Agency Action it may require, and to avoid unnecessary MEPA review if the Project may not be eligible for the required Agency Action.

(4) Environmental Justice Populations.

(a) If a Project requires MEPA review in accordance with 301 CMR 11.01(2) and one or more Environmental Justice Populations are located within the Designated Geographic Area around the Project, the Proponent shall undertake measures to provide public involvement opportunities for such Environmental Justice Populations.

(b) A Proponent shall provide advance notification of a Project, in a form determined by the MEPA Office, to the MEPA Office and organizations and individuals based on recommendations by the EEA Environmental Justice Director, for any Project that is located within a Designated Geographic Area around one or more Environmental Justice Populations. required to file an EIR in accordance with 301 CMR 11.06(7)(b), and either meets or exceeds mandatory EIR thresholds or intends to request that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8) or a rollover EIR in accordance with 301 CMR 11.06(13). Such advance notification shall be provided no later than 45 Days, and no earlier than 90 Days, prior to filing the ENF.

(c) The Proponent's failure to provide advance notification as required 301 CMR 11.05(4) shall allow the Secretary to require an extension or repetition of the ENF review. The Secretary may also reject an ENF as incomplete if the Proponent has failed to provide



advance notification as required, or has undertaken no measures to provide public involvement opportunities for Environmental Justice Populations prior to filing the ENF.

(d) Any project consisting of one single family home shall be exempt from the requirements of this 301 CMR 11.05(4).

(5)(a) Description of the Project and Potential Impacts. The ENF shall include a concise but accurate description of the Project and its alternatives, identify any review thresholds the Project may meet or exceed and any Agency Action it may require, present the Proponent's initial assessment of potential environmental impacts, propose mitigation measures, indicate whether the Project is reasonably likely to negatively affect any Environmental Justice Population located in whole or in part within the Project's Designated Geographic Area and what measures were taken prior to the filing of the ENF to provide meaningful opportunities for public involvement by such Environmental Justice Populations, and may include a proposed Scope. The ENF shall also identify all languages spoken by 5% or more of residents who identify as not speaking English very well in any census tract that is located in whole or in part within the Designated Geographic Area around the Project. The ENF shall indicate whether the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent shall not limit description of the Project or assessment of its potential environmental and public health impacts on account of any jurisdictional or other limitation that may apply to the Scope, if an EIR is required. The ENF shall separately assess potential environmental and public health impacts and proposed mitigation. The ENF shall identify the sources on which the assessments are based.

(b) If the Project is located in landlocked tidelands as defined in 310 CMR 9.02, the ENF shall include an explanation of the Project's impact on the public's right to access, use, and enjoy tidelands that are protected by chapter 91 and shall identify measures to avoid, minimize, or mitigate any adverse impact on those rights. If the Project is located in landlocked tidelands and an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, the ENF shall also include an explanation of the Project's impact on groundwater levels and identify and commit to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The ENF shall also describe the Project's compliance with any municipal regulations designed to protect groundwater levels. The Proponent may combine the information provided under 301 CMR 11.05(4)(b) with the information provided under 301 CMR 13.03.

(c) For Projects in tidelands other than landlocked tidelands, follow 301 CMR 13.00: Public Benefit Determination.

(d) The information provided in the ENF shall be designed to facilitate consultation, elicit comments identifying any relevant and significant issues, and identify any additional measures to be used to provide opportunities for public involvement by Environmental Justice Populations located in whole or in part within the Designated Geographic Area around the Project. The Proponent's submission of a proposed Scope with the ENF shall not mean that the Proponent believes an EIR is required or that the Secretary will require an EIR. The Proponent's assessment of potential environmental and public health impacts or proposed Scope shall not limit the Secretary's discretion in determining the Scope.

(6) The ENF. The Secretary shall prescribe the form and content of the ENF, which shall be available from the MEPA Office. The Proponent shall complete the ENF in accordance with 301 CMR 11.00 and any instructions provided on or with the ENF, and shall use an original or full-sized photocopy or other version of the ENF expressly approved by the Secretary. The Secretary may from time-to-time modify the ENF or instructions, provided that the Secretary shall first publish the modified form or instructions in the Environmental Monitor and shall at the same time specify the effective date of the modified ENF or instructions.

(7) Required ENF Attachments. The Proponent shall attach to the ENF an original United States Geologic Survey Map or other location map expressly approved by the Secretary that includes and indicates the Project site, a site plan at an appropriate scale and level of detail, a map depicting all Environmental Justice Populations within five miles of the Project site, and a list of all Agencies and Persons to whom the Proponent circulated the ENF in accordance with 301 CMR 11.16(2).

(8) Expanded ENF. In addition to filing a completed ENF and the required attachments, the Proponent may file more extensive and detailed information describing and analyzing the Project and its alternatives, and assessing its potential environmental and public health impacts and mitigation measures. The Proponent may provide this additional information whenever it is available. The Proponent shall provide this additional information when the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent may refer to 301 CMR 11.07(6) for guidance and may consult with the Secretary for specific advice as to the form and content of this additional information. The Secretary shall duly consider this additional information in the ENF, although it shall not limit the Secretary's discretion to determine the Scope. A Proponent who files an expanded ENF requesting a single EIR or Special Review Procedure shall be deemed to consent to an extension of the ENF review period in accordance with 301 CMR 11.06(1) and of the ENF public comment period in accordance with 301 CMR 11.06(3).

(9) Dual Expanded ENF and Proposed EIR. For any Project that does not meet or exceed mandatory EIR thresholds but is required to file an EIR in accordance with 301 CMR 11.06(7)(b), the Proponent may file a dual Expanded ENF and Proposed EIR which contains, in addition to a completed ENF and the required attachments, a Proposed EIR following the form and content of 301 CMR 11.07(6) that describes and analyzes the Project and its alternatives, assesses its potential environmental and public health impacts and mitigation measures, and contains the analysis required in 301 CMR 11.07(6)(n). A Project seeking to qualify in its entirety as an Ecological Restoration Project or Ecological Restoration Limited Project may file a dual Expanded ENF and Proposed EIR under this 301 CMR 11.05(9) and may provide the analysis in 301 CMR 11.07(6)(n) in a checklist format as determined by the Secretary. The Proponent may file a dual Expanded ENF and Proposed EIR when requesting that the Secretary allow a rollover EIR in accordance with 301 CMR 11.06(13). A Proponent who files a dual Expanded ENF and Proposed EIR requesting a rollover EIR shall be deemed to consent to an extension of the ENF review period in accordance with 301 CMR 11.06(1) and of the ENF public comment period in accordance with 301 CMR 11.06(3).

(10) Voluntarily Filed ENF. The Proponent may voluntarily file an ENF and, with the Secretary's consent, undergo MEPA review for a Project that does not meet or exceed any review thresholds. Once the Secretary publishes the ENF in the Environmental Monitor in accordance with 301 CMR 11.15(2), the Proponent may withdraw the ENF only with the Secretary's consent.

(11) Enforcement Actions. If an Agency's ability to undertake an action enforcing its statutory or regulatory obligations is impeded by the failure of a Proponent to file an ENF, the Agency may, with the consent of the Secretary and after 30 Days prior written notice to the Proponent, file an ENF on behalf of the Proponent.

#### 11.06: ENF Review and Decision

(1) Publication and Review Period. Upon receiving and accepting the ENF, the Secretary shall publish the appropriate pages of the ENF in the next Environmental Monitor in accordance with 301 CMR 11.15(2), which begins the ENF review period. The ENF review period lasts for 30 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. The review period for an expanded ENF requesting a single EIR, rollover EIR, or Special Review Procedure lasts for 37 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent.

(2) Consultation and Investigation. After receiving and accepting an ENF, the Secretary shall review the ENF and may review relevant information from any other source to determine whether to require an EIR, and, if so, what to require in the Scope. The Secretary shall ordinarily schedule with the Proponent a site visit and public consultation session to review the Project and discuss its alternatives, its potential environmental impacts and mitigation measures. The Proponent shall be required to provide accompanied public access to the Project site during the site visit and public consultation session, unless such access is infeasible for public safety reasons or protection of proprietary information. Any Agency or Person may inquire of the MEPA Office as to the date, time, and location of the consultation session. The Proponent shall consult with the MEPA Office about additional measures to be taken during the site visit and public consultation session to provide meaningful opportunities for public involvement by Environmental Justice Populations.

(3) Public Comment Period, Extensions, Late Comments. After receiving and accepting an ENF, the Secretary shall receive into the record written comments from any Agency or Person, concerning the Project, its alternatives, its potential environmental and public health impacts, mitigation measures, and whether to require an EIR and, if so, what to require in the Scope. Comments shall be filed with the Secretary within 20 Days following publication of the ENF in the Environmental Monitor, unless the public comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. If the Proponent has filed an expanded ENF requesting a single EIR, rollover EIR, or a Special Review Procedure in accordance with 301 CMR 11.05(8), comments shall be filed within 30 Days following publication of the ENF in the Environmental Monitor, unless the comment period is extended by the Secretary on account of the Proponent's failure

to meet circulation or Public Notice requirements or with the consent of the Proponent. An extension shall not ordinarily exceed 30 Days. The Secretary may accept a late comment, provided it is received prior to the Secretary's decision on the ENF.

(4) Agency Review An Agency shall review an ENF circulated to it by the Proponent. If it appears that the Project requires Agency Action by the Agency or may significantly affect any interest of the Agency or any statutes or regulations administered by the Agency, the Agency shall:

(a) participate in the consultation session scheduled by the Secretary in accordance with 301 CMR 11.06(2) and file comments with the Secretary in accordance with 301 CMR 11.06(3); and

(b) specify in its comments: any Agency Action required to be taken by the Agency for the Project; any aspect of the Project or issue requiring additional description or analysis in an EIR; and any opportunity to maximize consistency and facilitate coordination between the Agency Action and MEPA review or any other Agency Actions.

A Participating Agency's failure to specify an aspect of the Project or issue requiring additional description or analysis in an EIR shall have the effect of a determination that the information presented in the ENF, together with information already provided in any application for a Permit, Financial Assistance or a Land Transfer, sufficiently defines the nature and general elements (but not necessarily the technical details) of the Agency Action on the Project, such that the Participating Agency recommends that the Secretary require no further MEPA review or that the Scope not include any requirements relating to the aspect or issue.

(5) Secretary's Request for Copy of Application or Other Information. Upon request of the Secretary during the review period for an ENF, the Proponent shall file with the Secretary a copy of any application for a Permit, Financial Assistance, or a Land Transfer and any other information relevant to the Secretary's review of the Project, its alternatives, its potential environmental impacts and mitigation measures. Upon request of the Secretary, the Proponent shall make available a copy of any application for a Permit, Financial Assistance, or Land Transfer when the application is filed with a Participating Agency subsequent to the Secretary's decision on the ENF.

(6) Effect of Proponent's Failure to Cooperate. The Secretary and any Participating Agency may consider the Proponent's failure to participate in the ENF consultation session to be withdrawal of the ENF. The Proponent's failure to provide requested information may result in the Secretary requiring the Proponent to consider in an EIR the aspect of the Project or the issue about which information was requested, provided that the aspect or issue is within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b).

(7) Decision on ENF and Scope.

(a) After the close of the public comment period and on or prior to the last Day of the ENF review period, the Secretary shall issue a written certificate stating whether or not an EIR is required and, if so, what to require in the Scope in accordance with 301 CMR 11.06(9). The Secretary's failure to issue a timely certificate shall have the effect of a determination that no EIR is required, unless the Project meets or exceeds one or more mandatory EIR review

thresholds or an EIR is required in accordance with 301 CMR 11.06(7)(b), in which case such failure shall have the effect of a determination that an EIR is required, and that it shall address all aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment, provided that such aspects are within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b). The Secretary's decision on the ENF shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

(b) Except for the Project categories listed in 301 CMR 11.01(2)(c), which shall be subject to 301 CMR 11.06(7)(a), the Secretary shall require an EIR for any Project that is located within a Designated Geographic Area around an Environmental Justice Population.

(8) Decision Allowing Single EIR. When issuing a Scope in accordance with 301 CMR 11.06(7), the Secretary shall ordinarily require a draft and final EIR, but may allow a single EIR, provided that the Secretary finds that the expanded ENF requesting a single EIR in accordance with 301 CMR 11.05(8):

- (a) describes and analyzes all aspects of the Project and all feasible alternatives, regardless of any jurisdictional or other limitation that may apply to the Scope;
- (b) provides a detailed baseline in relation to which potential environmental and public health impacts and mitigation measures can be assessed;
- (c) demonstrates that the planning and design of the Project use all feasible means to avoid potential environmental impacts; and
- (d) for any Project for which an EIR is required in accordance with 301 CMR 11.06(7)(b), describes and analyzes all aspects of the Project that may affect Environmental Justice Populations located in whole or in part within the Designated Geographic Area around the Project; describes measures taken to provide meaningful opportunities for public involvement by Environmental Justice Populations prior to filing the expanded ENF, including any changes made to the Project to address concerns raised by or on behalf of Environmental Justice Populations; and provides a detailed baseline in relation to any existing unfair or inequitable Environmental Burden and related public health consequences impacting Environmental Justice Populations in accordance with 301 CMR 11.07(6)(n)1.

(9) Limits on Scope.

(a) Potential Environmental Impacts. The Secretary shall limit the Scope to those aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment. The Scope shall enable Agencies to fulfill their obligations under 301 CMR 11.12(5).

(b) Subject Matter Jurisdiction. In the case of a Project undertaken by a Person that requires one or more Permits or involves a Land Transfer, but does not seek the provision of Financial Assistance, the Scope shall be limited to the direct and indirect potential environmental and public health impacts from those aspects of the Project that are within the subject matter of any required Permit or within the area subject to a Land Transfer, regardless of whether or not those aspects met or exceeded any review thresholds.

(c) Elements of Scope. The Secretary shall determine the form, content, level of detail, and alternatives required for the EIR and may establish guidelines as to page length and time necessary for preparation. The Secretary may direct the Proponent to consult with any Participating Agency and describe in the EIR any opportunity to maximize consistency and facilitate coordination between any Agency Action and MEPA review or any other Agency Action.

(10) Environmental Mediation. The Proponent, an Agency, or a Person may conclude that environmental mediation, either alone or in addition to the preparation of an EIR, may be helpful in settling unresolved issues. The Secretary may assist parties in identifying the need for and sources of such services. This assistance shall not alter any of the review periods, deadlines, or other provisions or requirements of MEPA or 301 CMR 11.00, except with the consent of the Proponent.

(11) Suspended, Abandoned, or Changed Project. If a Proponent does not proceed with a Project or changes a Project after filing an ENF, the Proponent shall file a Notice of Project Change in accordance with 301 CMR 11.10.

(12) Notification to Department of Environmental Protection for Projects Located in Landlocked Tidelands. If the Project is located in landlocked tidelands as defined in 310 CMR 9.02: Definitions, then within 30 days after a certificate is issued determining that an ENF is adequate and no EIR is required or within 30 days after the Secretary issues a decision waiving the requirement to file an EIR, the Proponent shall file with the Department of Environmental Protection a completed form notifying the Department of Environmental Protection that work will be conducted within landlocked tidelands. The Proponent shall attach the certificate to the form. The Proponent shall comply with all obligations set forth in the certificate and the Department of Environmental Protection shall enforce such conditions consistent with M.G.L. c. 30, § 62I.

(13) Rollover EIR. For any Project that is required to file an EIR in accordance with 301 CMR 11.06(7)(b), and has submitted a dual Expanded ENF and Proposed EIR in accordance with 301 CMR 11.05(9), the Secretary may allow a rollover EIR, provided that the Secretary finds that the dual Expanded ENF and Proposed EIR:

- (a) presents a complete and definitive description and analysis of the Project and its alternatives, and an assessment of its potential environmental and public health impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, §§ 61 and 62K and 301 CMR 11.12(5);
- (b) demonstrates that the Project will not materially exacerbate any existing unfair or inequitable Environmental Burden and related public health consequences impacting an Environmental Justice Population, and will not result in a disproportionate adverse effect or increased climate change effects on an Environmental Justice Population;
- (c) describes measures taken to provide meaningful opportunities for public involvement by Environmental Justice Populations prior to filing the dual ENF and Proposed EIR, including any changes made to the Project to address concerns raised by or on behalf of Environmental Justice Populations;
- (d) shows that comments received on the dual ENF and Proposed EIR do not raise substantial issues not previously considered by the Proponent; and
- (e) shows that no substantive issues remain to be resolved.

(14) A rollover EIR shall mean that the Secretary may:

- (a) publish notice in the next Environmental Monitor that the Proposed EIR shall be reviewed as a final EIR; or

(b) require the Proponent to file responses to comments on the Proposed EIR together with Proposed Section 61 Findings, and direct that the responses and findings shall be filed, circulated, and reviewed as a final EIR in a subsequent Environmental Monitor.

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#### 11.17: Transition Rules

(1) Project Without Previous ENF. 301 CMR 11.00 shall apply to any Project for which no ENF was filed prior to ~~XXJanuary 6, 2023~~, unless all Agency Actions for the Project were taken by each Participating Agency:

(a) prior to ~~XXJanuary 6, 2023~~; or

(b) within 60 Days after ~~XXJanuary 6, 2023~~, provided that the Proponent and each Participating Agency certify in writing to the Secretary that the Proponent filed a complete application and that the Participating Agency completed its review of the application for each required Permit or Financial Assistance prior to ~~January 6, 2023XX~~.

(2) Project With Previous ENF. 301 CMR 11.00 shall apply to any Project for which an ENF was filed prior to ~~January 6, 2023XX~~.

#### REGULATORY AUTHORITY

301 CMR 11.00: M.G.L. c. 30, §§ 61 through 62L