



September 30, 2024

Executive Office of Energy and Environmental Affairs
Massachusetts Environmental Policy Act (MEPA) Office
Attn: Tori Kim, Assistant Secretary and MEPA Director
100 Cambridge Street, STE 900
Boston, MA 02114

Submitted via e-mail to MEPA-regs@mass.gov

Subject: MEPA Straw Proposals on Greenhouse Gas Emissions Protocol & Policy and Climate Change Adaptation & Resiliency Protocol

Dear Tori Kim and MEPA Office,

Conservation Law Foundation (CLF) and Alternatives for Community & Environment (ACE) are pleased to submit these comments on the MEPA Straw Proposals on Greenhouse Gas Emissions and Climate Change Adaptation and Resiliency. We commend the MEPA Office for their engagement with advocates and appreciate the opportunity to meet with MEPA staff and discuss these proposed policy changes. These comments are provided both as direct responses to the straw proposals, but also in the spirit of continued MEPA updates and future policy and regulatory changes. As such, we suggest policy and regulatory changes for the MEPA Office's consideration in the future, as well as in response to this immediate proposal.

Regarding this straw proposal, we ask that the MEPA Office not move forward with an opt-out pathway for GHG analyses for transportation projects or with an in-lieu fee for mitigation of land alteration impacts. We also request that MEPA work with affordable housing advocates in crafting policies regarding building emissions and to better understand the way that MEPA intersects with the housing sector. We support many of the other components of the straw proposal, but urge MEPA to go further in developing policies that can help build a resilient Commonwealth and combat climate change. MEPA is an important tool to incentivize both energy efficient and climate resilient change and action. We look forward to continuing to work with MEPA staff on these updates and future revisions.

Greenhouse Gas Emissions Protocol and Policy

- 1. The MEPA Office should consider how the review process can help meet state climate and housing goals.**
 - A. We support the proposed opt-out pathway for GHG analyses that adhere to applicable DOER pathways.

We appreciate the straw proposal's intention to incentivize construction of buildings that will have a lower greenhouse gas (GHG) impact through energy efficiency and electrification. The buildings sector is a significant contributor to GHG emissions and all of the Commonwealth's policies related to buildings

should play a role in decarbonization. We support the concept of an opt-out process that is narrowly tailored to apply only to GHG analyses and not to other parts of the MEPA process. Any opt-out pathways should be narrow and specific enough so as not to allow inappropriate activities to slip through loopholes. We also request that MEPA should track and report information on which projects utilize the opt-out process. MEPA should use this information to evaluate the success of the opt-out pathway in making progress toward decarbonization of the building sector and also in terms of impact on project proponents, particularly housing justice proponents and affordable housing projects.

B. The MEPA Office should work with other state agencies to examine how the MEPA review process can support housing justice and affordable housing goals in the Commonwealth.

We urge the MEPA Office to work closely with housing justice and affordable housing advocates to consider how the proposed opt-out pathway will impact affordable housing, and should explore ways that the project review framework overall can be used to affect positive change upon the affordable housing industry. The MEPA review process offers an opportunity to incentivize or ask project proponents to pursue beneficial measures in terms of their project's impact, and we suggest that the MEPA Office consider affordable housing in this context as well.¹ While housing as an issue is not directly within MEPA's purview, all state agencies are responsible for helping to create a livable Commonwealth and the MEPA Office can play a role by supporting the construction of affordable housing that is resilient, healthy, and energy-efficient.

Due to the state's aging building stock, varying weather, and high cost of living, Massachusetts residents, especially members of Environmental Justice communities, face undue burdens from household energy bills. We encourage the MEPA Office to collaborate with agencies such as the Executive Office of Housing and Livable Communities (EOHLC), DOER, the Massachusetts Clean Energy Center, the Massachusetts Department of Public Utilities (DPU), and the Office of Climate Innovation of Resilience to work together² to ensure the financing and construction of resilient, healthy, and energy-efficient affordable housing throughout the Commonwealth. In addition, state agencies should work together, including with the MEPA Office, to ease any financial constraints for affordable housing developers in the construction of all-electric residential affordable housing projects. Collaboration amongst agencies to address environmental health disparities and inequities is crucial during the clean energy and

¹ To clarify, we ask that the MEPA Office consider incentives to the construction of affordable housing and/or benefits to affordable housing developers whether or not a project falls within the scope of MEPA's protocol for project impact analyses on environmental justice populations. While affordable housing availability is an environmental justice issue, the development of affordable housing can and should occur both inside and outside of environmental justice census blocks.

² For example, the MEPA Office could collaborate with EOHLC, DOER, DPU and others to address barriers toward all-electric construction of affordable housing. Affordable housing tenants are not accustomed to paying for hot water, heat, and electricity – which would occur in a housing unit that meets the residential Specialized Code all-electric pathway. Since energy affordability must be examined through an energy equity and environmental justice lens (as historically, low-income communities, communities of color, and linguistically isolated communities have been disproportionately affected by pollution, extreme weather, events, other environmental impacts, in addition to existing structural inequities), it would behoove these agencies to create an all-electric pathway framework that allowed affordable housing tenants to continue to pay one central bill where the owner would retain responsibility for heat and water heating (*i.e.*, master-metering).

electrification transition. Finally, we also suggest that MEPA work with stakeholders to consider ways that the review process can further support affordable housing development, such as by offering a streamlined process for developments that will provide a certain amount (i.e., percentage) of affordable units within the proposed project that meet certain quality standards in terms of safety, quality, and health.

2. Greenhouse gas analysis should be required for projects exceeding any land alteration threshold, and MEPA should not pursue the creation of a fund for fees in-lieu of mitigation.

A. We support the proposal to require GHG analysis for land alteration projects, and encourage MEPA to provide mitigation guidance.

We support the proposal to require GHG analysis for any project that exceeds any MEPA threshold for land alteration. Land clearing can have significant GHG impacts and more review and consideration of these types of projects would help in monitoring those impacts. We suggest that MEPA consider where even lower thresholds might be appropriate; the current lowest threshold is 25 acres, but there are likely to be smaller projects in heavily developed areas where tree canopy is already scarce and where review for projects below 25 acres would be warranted. The straw proposal also references the possibility of providing guidance on mitigation options, which we encourage the MEPA Office to do. To the extent possible, such mitigation options should be required or MEPA should do as much as possible to encourage and incentivize the adoption of these options, especially in already overburdened areas as the proposal indicates and particularly in state-designated Environmental Justice Areas. This is in alignment with MEPA's role of minimizing environmental impact of major projects.

B. MEPA should not create an in-lieu fee for mitigation.

We note that the straw proposal raises the idea of creating a fund for a fee in-lieu of mitigation and we oppose this idea. MEPA runs the risk of creating a "pay-to-pollute" scenario where larger developers find it easier to opt into paying a fee rather than avoiding harm. Such a fee should therefore only be used in the case of absolute last resort; the ideal hierarchy of action would be to first avoid or minimize environmental impacts through the project design, then to mitigate any impacts as directly as possible, with the option to pay into a fund only available when it has been demonstrated that mitigation is not possible and there is no feasible alternative project design. The fee amount would also have to be carefully set so as to be most effective and appropriate for the project impacts, and the fund should only be used to help state agencies provide mitigation. The Office should also carefully consider equity implications of any fee structure to avoid a disproportionate burden on smaller developers or proponents of desirable projects such as affordable housing.

C. MEPA should work with expert stakeholders to develop a carbon accounting methodology for impacts of forest conversion.

We support MEPA's proposal to develop a carbon accounting methodology for use in estimating the GHG impacts of forest conversion. The MEPA Office should work with experts in this subject to

determine the best methodology, and we encourage the Office to make any methodology, calculations, and findings publicly available.

3. The MEPA Office should consider how the review process can help meet state climate targets and should not allow transportation projects to opt-out of GHG analyses.

A. MEPA review should be used as a way to help the Commonwealth achieve its climate goals.

The transportation sector is the largest contributor to greenhouse gas emissions in Massachusetts at 43 percent.³ As with other sectors, the MEPA review process offers an opportunity to examine these impacts and affect change. MEPA has a role to play in helping the Commonwealth meet its climate targets and in making sure those targets are set so as to have real impact. For example, the Vehicle Miles Traveled (VMT) “soft targets” in the Clean Energy and Climate Plan for 2025 and 2030 (CECP) are too low to be effective, so MEPA could consider ways that the review process can help make more meaningful VMT reductions.

We support the proposed change that would require the project proponent to analyze emissions based on building with and without mitigation, as well as based on existing and future build and no-build scenarios. In other words, we encourage the MEPA Office to continue requiring a GHG analysis that looks at how mitigation can achieve improvements for project’s emissions, as they do currently, along with the proposed new analyses. MEPA should not abandon the current mitigation-based analysis. The MEPA Office should also consider the inclusion of a GHG analysis designed to assess what progress the project might make toward meeting state climate targets: specifically whether a project would further or detract from goals in the CECP to reduce transportation-sector emissions.

B. MEPA should work with state agencies and other stakeholders to set targets for VMT reduction.

VMT is a useful metric in that it can encapsulate multiple aspects of transportation including fossil fuel emissions and other vehicle impacts such as pollution from tire wear, mode shift, and safety. We fully support the state and the MEPA Office tracking VMT, and suggest that MEPA consider developing policies to encourage reduction in VMT in projects that come under their review. We also urge MEPA and the state to make public any data they collect regarding VMT and VMT reduction. However, the current VMT thresholds or “soft targets” from the CECP referred to in the straw proposal (1 percent by 2025 and 3 percent by 2030) are far too low to have any meaningful impact. To the extent that MEPA can help drive a reduction in VMT, CLF is eager to work alongside the office to achieve this. MEPA is but one piece of the puzzle in inter-agency efforts to meet our GWSA targets. Massachusetts needs to commit to much more impactful VMT reduction goals broadly, and MEPA’s VMT reduction goals should not be the only effort within EEA, DEP, MassDOT, and other relevant agencies to set VMT reduction targets ahead of the next CECP due January 1, 2028.

A coordinated, multi-agency approach to reducing VMT is especially important as the Commonwealth attempts to catch-up to its current targets for electrification of personal vehicles. The

³ Commonwealth of Massachusetts, Office of Climate Innovation & Resilience and Massachusetts Department of Transportation, *Massachusetts Priority Climate Action Plan*, p.44-45 (March 13, 2024), available at <https://www.mass.gov/doc/massachusetts-priority-climate-action-plan/download>.

CECP aims for the Commonwealth to have 200,000 light-duty electric vehicles on the road by 2025, and 900,000 on the road by 2030.⁴ The Office of Climate Innovation & Resiliency estimates that we are significantly behind these goals—with roughly 70,000 vehicles on the road as of December 2023.⁵ As the United States Department of Transportation (“USDOT”) recently made clear in a report to Congress, VMT reduction goals are especially important if electrification of personal vehicles happens slower than expected.⁶ Although USDOT does not offer a baseline suggestion for VMT reduction percentage scenarios across the board, it estimates that scenarios with 10 percent reduction goals fall short of what is needed to reduce the national estimates below 80 percent of the 2005 baseline.⁷ As such, we recommend that MEPA and EEA revisit the estimates that led to the 1 percent and 3 percent currently proposed, reviewing best available information from state and federal sources.

C. MEPA should not offer an opt-out pathway for GHG analyses for transportation projects.

We oppose the concept included in the straw proposal of offering an opt-out pathway for proponents when their project meets certain mitigation criteria. In the transportation sector, the relationship between project design and transportation decisions is simply too complex for this to be effective since behavioral change is required. For example, a proponent may include EV chargers or access to a bike share station as part of a project, but that is not guaranteed to result in mode shift. Unlike the stationary sources/building sector policy, where the opt-out pathway is achieved by meeting specific green construction goals, the desired outcome of mode shift or emissions reduction is not as closely tied to the analysis in this case and therefore is not guaranteed. Furthermore, GHG analyses are important pieces of information in tracking climate commitments and are a useful component of MEPA documentation, and as such should continue to be conducted.

D. MEPA should require a social cost of carbon analysis for certain projects.

Finally, we support the inclusion of the inclusion of a social cost of carbon (SC-C) analysis at the Secretary’s discretion. The MEPA Office should incorporate this per the Climate Chief’s recommendation, and results of these analyses when conducted should be publicly published. We suggest that this metric should be required for projects of a certain size, rather than just left up to the Secretary’s discretion. We encourage the MEPA Office to consider which project types or thresholds might have the

⁴ Commonwealth of Massachusetts, Executive Office of Energy and Environmental Affairs, *Massachusetts Clean Energy and Climate Plan for 2025 and 2030*, p.31-2 (June 30, 2022), available at <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download>.

⁵ Commonwealth of Massachusetts, Office of Climate Innovation & Resiliency, *Massachusetts Climate Report Card - Transportation Decarbonization*, <https://www.mass.gov/info-details/massachusetts-climate-report-card-transportation-decarbonization>

⁶ U.S. Department of Transportation, *DOT Report to Congress: Decarbonizing U.S. Transportation*, (July 2024), p.12 https://www.transportation.gov/sites/dot.gov/files/2024-07/Decarbonizing%20U.S.%20Transportation_July%202024.pdf. USDOT also assumes scenarios of a zero-carbon electricity grid by 2035, which skews even further the need for large VMT-reduction goals under scenarios where grids are not zero-carbon.

⁷ *Id.* at 13.

most impact in terms of the social cost of carbon, and require the analysis be included in EIRs for such projects. We encourage MEPA to work with environmental justice advocates and other partners in determining these requirements.

We encourage the MEPA Office to consider how all of the projects it reviews can help reach, or might impede, achievement of state climate targets. While we do not support the proposed GHG analysis opt-out, we suggest exploring other options for streamlining or otherwise easing the MEPA process for projects that could help achieve climate goals.⁸

Climate Change Adaptation and Resiliency Protocol

1. The MEPA Office should consider how the review process can help build a more resilient Commonwealth.

A. We support the proposal of additional ENF and EIR reporting requirements to include more information on climate impacts from the ResilientMass Action Team (RMAT) Tool.

We are strongly in support of the proposal of additional ENF and EIR reporting requirements that reflect climate impacts. In particular, the proposed requirements for EIRs regarding structure elevation and stormwater sizing are good, and will help more clearly illustrate how well-prepared a project is to withstand climate impacts. We again suggest that MEPA can play a role here in facilitating climate resiliency across the Commonwealth, and recommend that the final Climate Change Adaptation and Resiliency Protocol should provide clear and robust guidance on what measures project proponents can pursue to achieve this. This should include guidance on implementing nature-based solutions and green infrastructure wherever possible, since these projects provide multiple benefits beyond resiliency.⁹ We generally encourage MEPA to consider the ways that each individual project can provide benefits, build resiliency, and improve existing conditions, rather than just how to minimize any environmental harms.

It is worth noting that the ResilientMass Action Team (RMAT) Tool only provides climate risk data up to 2070, a planning horizon that will be exceeded by the useful life of many projects coming under MEPA review. MEPA should work with applicable state agencies and stakeholders to generate data out to a farther time horizon and should encourage proponents to design conservatively so as to withstand climate conditions well into the future.

B. MEPA should require additional analyses that better reflect the true extent of climate threats that a project will face.

The straw proposal suggests that on- or -offsite flood impacts, culvert sizing, and coastal erosion could be considered as other potential analyses for inclusion in the Secretary's scope, and we encourage

⁸ For example, projects such as multi-use paths that would provide bicycle and pedestrian connectivity could benefit from a streamlined MEPA process, whereas highway expansions or other projects that would increase VMT may require more rigorous review.

⁹ Depending on the project, nature-based solutions can enhance biodiversity, provide recreational opportunities, or beautify an area, for example. They also provide multiple climate solutions; trees and vegetation can help to both capture and filter stormwater, cool an area, and filter the air.

the MEPA Office to pursue this. Flood risk should not just be considered on a property-by-property basis, because concentrated development can compound flood impacts by increasing impervious surface or disrupting natural hydrology. Appropriate culvert sizing is an important aspect of managing flooding and for ensuring a resilient and safe transportation network. Coastal erosion is a major risk as well, and we encourage the MEPA Office to consult with appropriate state agencies such as the Office of Coastal Zone Management, especially in the context of the current Resilient Coasts Initiative, to consider this.

Conclusion

We encourage the MEPA Office to think creatively about the ways that the MEPA review framework can be used to help meet the Commonwealth's climate and other goals, and to influence positive change, not just for natural resources and the environment but across multiple sectors. We ask that the MEPA Office not move forward with an opt-out pathway for GHG analyses for transportation projects or with a fee in lieu of mitigation for mitigation of land alteration impacts. We also ask that MEPA work with affordable housing and housing justice advocates in crafting policies regarding building emissions and to better understand the way that MEPA intersects with the housing sector. We support many of the other components of the straw proposal, but urge MEPA to go further in developing policies that can help build a resilient Commonwealth and combat climate change. We look forward to working with the MEPA Office on continued updates to MEPA policies and regulatory language. We encourage the reformation of an advisory committee, and recommend that such a committee include a wide range of stakeholders including less traditional partners such as affordable housing developers and advocates.

We appreciate the thorough engagement by the MEPA Office so far, and look forward to working with the Office on final language and future updates. Please direct any questions to Ali Hiple at ahiple@clf.org.

Sincerely,

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