Docket # 70

THE COMMONWEALTH OF MASSACHUSETTS
William Francis Galvin
Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: **301 CMR 11.00**

CHAPTER TITLE: **MEPA Regulations**

AGENCY: **Executive Office of Energy and Environmental Affairs**

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

The changes in 301 CMR 11.00 are revisions of an existing regulation to 1) incorporate aspects of the Global Warming Solutions Act of 2008, 2) codify practice under the existing MEPA Greenhouse Gas Emissions Policy and Protocol (GHG Policy), and 3) create new MEPA review thresholds for GHG emissions that are equivalent to permitting requirements established by the United States Environmental Protection Agency under the federal Clean Air Act. The revisions also include a change to the notice requirements for parties seeking to appeal MEPA decisions. Minor text edits and corrections are also included in the revisions.

REGULATORY AUTHORITY: M.G.L. c. 30, §§ 61 through 62I.

AGENCY CONTACT: **Maeve Vallely Bartlett** PHONE: **617-626-1041**

ADDRESS: **100 Cambridge Street, Suite 900, Boston MA 02114**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *If this regulation is adopted as an emergency, state the nature of the emergency.*

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

LGAC notification provided on September 28, 2012

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **November 14, 2012**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: **Minimal; same as needed for federal compliance.**

For the first five years: **Minimal; same as needed for federal compliance.**

No fiscal effect:

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: January 3, 2013

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

301 CMR 11.01, 301 CMR 11.02, 301 CMR 11.03, 301 CMR 11.06, 301 CMR 11.07, 301 CMR II.09, 301 CMR 11.10, 301 CMR 11.11, 301 CMR 11.12, and 301 CMR 11.14

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: John J Bartlett DATE: 3/28/13

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1234 DATE: 5/10/13

EFFECTIVE DATE: 5/10/13

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages:	*Insert these pages:*
75 - 82	75 - 82.2
85, 86	85, 86
89 - 106	89 - 108

A TRUE COPY ATTEST
WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH
DATE 4/24/13 CLERK CM

301 CMR 11.00: MEPA REGULATIONS

Section

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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 62I (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.

(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. 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.

11.01: continued

(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 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 involving 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.

2. MEPA jurisdiction is broad when a Project is undertaken by an Agency or involves 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 involve 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 involves 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; 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.

11.01: continued

(c) 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 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. 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. makes its Section 61 Findings part of the Permit or other document allowing or approving the Agency Action; and

11.01: continued

3. 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. 30, § 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 Wetlands Protection Act, M.G.L. c. 131 § 40, and its implementing regulations, 310 CMR 10.00, and 33 USC 1341 and 314 CMR 9.00 regarding Water Quality Certification, as well as other statutes, regulations, executive orders, or policy directives that govern wetlands issues;

(b) roadways or traffic, which is defined by the Massachusetts Department of Transportation Highway Division at 720 CMR 13.00: *Approval of Access to State Highways*.

11.02: continued

(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_2) 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

11.02: continued

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.

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.

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.

11.02: continued

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 non-profit 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 involves Financial Assistance or a Land Transfer.

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; 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.

11.02: continued

(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_2	Carbon dioxide.
cy	Cubic yards.
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 62I.
MW	Megawatts.
No_x	Oxides of Nitrogen.
PM10	Particulate matter less than or equal to 10 microns in diameter.
PM 2.5	Particulate matter less than or equal to 2.5 microns in diameter.
sf	Square feet.
SO_2	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 involves 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.

11.03: continued

3. Conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97.

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.

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 sf of non-residential 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.

NON-TEXT PAGE

11.03: continued

(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.

11.03: continued

(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 waste water 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;
   b. five or more miles in length; or
   c. ½ or more miles in length, provided the sewer mains are not located in the right of way of existing roadways.
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;

11.03: continued

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.
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.

11.03: continued

(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_2 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_2 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 PM10, PM 2.5, CO, lead or SO_2; 50 tpy of VOC or NO_x; 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 PM10; 10 tpy of PM 2.5; 100 tpy of CO; 40 tpy of SO_2; 25 tpy of VOC or NO_x; 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.

11.03: continued

(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 within a designated ACEC, unless the Project consists solely of one single family dwelling.

(12) Regulations.

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires. Promulgation of New or revised regulations, of which a primary purpose is protecting against Damage to the Environment, that significantly reduce:

1. standards for environmental protection;
2. opportunities for public participation in permitting or other review processes; or
3. public access to information generated or provided in accordance with the regulations.

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 involves 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) (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, and may include a proposed Scope. 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 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 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 310 CMR 13.00.

11.05: continued

(d) The information provided in the ENF shall be designed to facilitate consultation and elicit comments identifying any relevant and significant issues. 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 impacts or proposed Scope shall not limit the Secretary's discretion in determining the Scope.

(5) 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.

(6) 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, and a list of all Agencies and Persons to whom the Proponent circulated the ENF in accordance with 301 CMR 11.16(2).

NON-TEXT PAGE

11.05: continued

(7) 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 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).

(8) 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.

(9) 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 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.

(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 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 or a Special Review Procedure in accordance with 301 CMR 11.05(7), 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.

11.06: continued

(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. 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, 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.

(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(7):

(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 impacts and mitigation measures can be assessed; and

(c) demonstrates that the planning and design of the Project use all feasible means to avoid potential environmental impacts.

11.06: continued

(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.

(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 involve Financial Assistance, the Scope shall be limited to the direct and indirect potential environmental 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, 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.

11.07: EIR Preparation and Filing

(1) Filing and Circulation Requirements. If the Secretary requires an EIR in accordance with 301 CMR 11.06(7), the Proponent shall prepare the EIR and file it with the Secretary. Prior to or when filing the EIR with the Secretary, the Proponent shall circulate copies of the EIR in accordance with 301 CMR 11.16(3) and the Scope. The Proponent's failure to circulate the EIR properly shall allow the Secretary to require an extension or repetition of the EIR review.

(2) Timely Filing. The Proponent shall file the EIR as soon after the Secretary issues the Scope as is reasonably possible given the status of Project planning and design, the type and size of the Project, and the Scope. The Proponent may consult with the Secretary for specific advice as to when to file the EIR.

(3) Draft EIR. If the Secretary requires an EIR in accordance with 301 CMR 11.06(7), the Proponent shall first prepare a draft EIR, unless otherwise indicated in the Scope. The draft EIR shall present in accordance with 301 CMR 11.07(6) and the Scope a reasonably complete and stand-alone description and analysis of the Project and its alternatives, and an assessment of its potential environmental impacts and mitigation measures. The Proponent shall ordinarily use the review and comments by any Person or Agency on the draft EIR as an additional opportunity to improve the planning and design of the Project.

11.07: continued

(4) Final EIR. If the Secretary determines that the draft EIR is adequate in accordance with 301 CMR 11.08(8)(b), the Proponent shall prepare a final EIR, unless otherwise indicated in the Scope. The Secretary may limit the Scope of the final EIR to aspects of the Project or issues that require further description or analysis and a response to comments, instead of requiring a stand-alone document that meets all of the form and content requirements for an EIR in accordance with 301 CMR 11.07(6), provided that the draft and final EIRs shall present a complete and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(5).

(5) Single EIR. If the Secretary allows a single EIR in accordance with 301 CMR 11.06(8), the Proponent shall prepare a single EIR. The single EIR shall build on the information in the expanded ENF and shall present in accordance with 301 CMR 11.07(6) and the Scope a complete, stand-alone and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(5).

(6) Form and Content of EIR. Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the depth and level of description and analysis in the EIR shall reflect the status of Project planning and design, the type and size of the Project, the requirements of any Agency Action, the availability of reasonable alternatives and methods to avoid or minimize potential environmental impacts, and the opportunity to assess environmental impacts and to identify appropriate mitigation measures. The EIR shall ordinarily contain the following sections (unless the Secretary indicates in the Scope or as a part of a Special Review Procedure that specific issues shall be described or analyzed in additional sections in the EIR or that any of these sections shall not be included in the EIR):

(a) Title Page. The name and location of the Project, the EEA File Number, the type of EIR, the name of the Proponent, the name of the preparer, and the date of filing;

(b) Table of Contents. The title and page number of all sections, maps, plans, tables, figures, and appendices of the EIR;

(c) Secretary's Certificates. A copy of each Secretary's certificate for the Project, including on the ENF, a draft EIR, or a Notice of Project Change, and any other determination or document issued by the Secretary for the Project.

(d) Summary. A brief description in clear, nontechnical language including:

1. the name and location of the Project, and the EEA File Number;
2. a brief Project description listing in particular any changes made to the Project since the review of the previous review document;
3. a list of any Permit, Financial Assistance, or Land Transfer, and any required Federal environmental, or land-use permit, license, certificate, variance, or approval with a summary of the current status of each application;
4. a summary of alternatives to the Project;
5. a summary of potential environmental impacts of the Project; and
6. a list of mitigation measures for the Project.

(e) Project Description. A detailed description and analysis of the nature and location of the Project including:

1. the type, size, and proposed use of the Project;
2. the objectives and anticipated benefits of the Project;
3. a description of the physical characteristics of the Project and its surroundings, illustrated with a location map and site plan at an appropriate scale and level of detail; and
4. a timetable, approximate cost, and the methods and timing of construction of the Project.

(f) Alternatives to the Project. A description and analysis of alternatives to the Project including:

1. all feasible alternatives, including but not limited to those indicated in the Scope;

11.07: continued

2. the alternative of not undertaking the Project (*i.e.*, the no-build alternative) for the purpose of establishing a future baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed;

3. an analysis of the feasible alternatives in light of the objectives of the Proponent and the mission of any Participating Agency, including relevant statutes, regulations, executive orders and other policy directives, and any applicable Federal, municipal, or regional plan formally adopted by an Agency or any Federal, municipal, or regional governmental entity;

4. an analysis of the principal differences among the feasible alternatives under consideration, particularly regarding potential environmental impacts;

5. a brief discussion of any alternatives no longer under consideration including the reasons for no longer considering these alternatives.

(g) Existing Environment. A description and analysis of the physical, biological, chemical, economic, and social conditions of the Project site, its immediate surroundings, and the region (in sufficient detail to provide a baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed) including:

1. topography, geology, and soils;
2. surface and groundwater hydrology and quality;
3. air quality, GHG emissions and noise;
4. plant and animal species and habitat;
5. traffic, transit, and pedestrian and bicycle transportation;
6. scenic qualities, open space and recreational resources;
7. Historic Structures or Districts, and Archaeological Sites;
8. the built environment and human use of the Project site, its immediate surroundings and the region, including existing infrastructure (*i.e.*, water supply, wastewater treatment and/or disposal, transportation, waste management, *etc.*), zoning districts and other relevant land-use designations or plans (*i.e.*, local or regional capital improvement plans or infrastructure investments, economic development, growth planning and open space plans, *etc.*), business districts, industrial parks, housing stock, and vacancy rates; and
9. rare or unique features (including environmental and social conditions) of the Project site and its immediate surroundings such that any increase in environmental impacts, however small or gradual, may result in an unusual or disproportionate effect on environmental resources or quality or public health.
10. if the Project is located in landlocked tidelands as defined in 310 CMR 9.02, 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 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, an explanation of the Project's impact on groundwater levels and identification and commitment to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The EIR 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 11.07(6)(g)10. with the information provided under 301 CMR 13.03.
11. For Projects in tidelands other than landlocked tidelands, follow 310 CMR 13.00.

(h) Assessment of Impacts. A detailed description and assessment of the negative and positive potential environmental impacts of the Project and its alternatives. The EIR shall assess (in quantitative terms, to the maximum extent practicable) the direct and indirect potential environmental impacts from all aspects of the Project that are within the Scope. The assessment shall include both short-term and long-term impacts for all phases of the Project (*e.g.*, acquisition, development, and operation) and cumulative impacts of the Project, any other Projects, and other work or activity in the immediate surroundings and region.

(i) Statutory and Regulatory Standards and Requirements. A list of any Permit, Financial Assistance, or Land Transfer that is or may be required, and a brief description and analysis of the applicable statutory and regulatory standards and requirements thereof and the measures to be taken to ensure due compliance therewith.

11.07: continued

(j) Mitigation Measures. A description and assessment of physical, biological and chemical measures and management techniques designed to limit negative environmental impacts or to cause positive environmental impacts during development and operation of a Project. The EIR shall specify in detail: the measures to be taken by the Proponent or any other Agency or Person to avoid, minimize, and mitigate potential environmental impacts; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that shall ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts. The EIR shall also discuss alternatives to the proposed mitigation measures considered by the Proponent or suggested in comments by any Agency or Person, noting the relative benefits and costs of these alternative mitigation measures.

(k) Proposed Section 61 Findings. Proposed findings in accordance with M.G.L. c. 30, § 61 for each Agency for each Agency Action to be taken on the Project. These Proposed Section 61 Findings shall specify in detail: all feasible measures to be taken by the Proponent or any other Agency or Person 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; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that will ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts.

(l) Response to Comments. A response to the certificate of the Secretary on the previous review document and each comment received on the previous review document, provided that the subject matter of the comment is within the Scope. Unless the Secretary has indicated otherwise in the certificate on the previous review document, the EIR shall contain a copy of each comment either in this section or in a separate appendix, provided that this section clearly explains the location of each comment and the response to each comment.

(m) Appendices. A presentation of detailed technical data (*e.g.*, traffic analyses, hydrologic calculations, modeling data), to the extent necessary to keep the main text of the EIR clear and readable. The main text of the EIR shall refer to and summarize any information contained in any appendix. Unless the Secretary has indicated otherwise in the Scope or as a part of a Special Review Procedure, the Proponent shall circulate appendices with the main text of the EIR in accordance with 301 CMR 11.16(3).

The Proponent may vary the outline of ordinary EIR sections (*e.g.*, by combining 301 CMR 11.07(6)(g) through (l) to address one aspect of the Project or issue at a time), provided that the EIR addresses the substance of each section. The EIR shall ordinarily be printed on both sides of each page, be paginated, clearly reference maps, plans, tables and figures, and contain an index and a circulation list.

11.08: EIR Review and Decision

(1) Publication and Review Period. Upon receiving the EIR, the Secretary shall publish notice of the availability of the EIR in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the EIR review period. The EIR review period lasts for 37 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements, with the consent of the Proponent for a draft EIR or as part of a Special Review Procedure.

(2) Investigation. After receiving the EIR, the Secretary shall review the EIR and may review any relevant information from any other source to determine whether the EIR is adequate.

(3) Informal and Informational Public Consultation. An Agency undertaking a Project may hold public hearings, informal workshops, or public meetings at appropriate times prior to and during preparation of an EIR. The Agency shall provide at least seven Days notice of any hearing, workshop, or meeting to allow any other Agency or Person to prepare adequately and to make informed comments at the hearing, workshop, or meeting. The Secretary may hold an informational meeting prior to or during review of the EIR, and may, in the Scope, require the Proponent to hold an informational meeting.

11.08: continued

(4) Public Comment Period, Extensions, Late Comments. After receiving the EIR, the Secretary shall receive into the record written comments from any Agency or Person, concerning the Project, its alternatives, its potential environmental impacts, mitigation measures and the adequacy of the EIR, provided that the subject matter of the comment is within the Scope. Comments on the EIR shall be filed with the Secretary within 30 Days of the publication of the notice of the availability of the EIR 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, with the consent of the Proponent for a draft EIR or as a part of a Special Review Procedure. An extension shall not ordinarily exceed 30 Days. The Secretary may accept a late comment, provided that it is received prior to the Secretary's decision on the EIR.

(5) Withdrawal and Refiling of Single or Final EIR. With the consent of the Secretary, the Proponent may withdraw a single or final EIR prior to the Secretary's decision on the single or final EIR to provide further opportunity for public review. After such withdrawal, the Proponent may refile the single or final EIR, with or without changes, additions, or deletions, which shall be clearly identified in the refiled single or final EIR. The Secretary shall publish notice of the availability of the refiled single or final EIR in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2). A refiled single or final EIR restarts the EIR review period in accordance with 301 CMR 11.08(1) and the public comment period in accordance with 301 CMR 11.08(4) and the legal challenge periods in accordance with 301 CMR 11.14.

(6) Comments Outside Scope. The Secretary may accept a comment not within the Scope provided that the Secretary finds that it is material and that it was not reasonably possible with due diligence to have made it during review of the previous review document or that the comment raises critically important issues regarding the potential environmental impacts of the Project.

(7) Agency Review. An Agency shall review an EIR 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) file comments with the Secretary in accordance with 301 CMR 11.08(4); 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; 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 shall have the effect of a determination that the information presented in the EIR and any previous review document, 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 can fulfill its obligations in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(5).

NON-TEXT PAGE

11.08: continued

(8) Secretary's Determination on EIR.

(a) General. Within seven Days after the close of the public comment period in accordance with 301 CMR 11.08(4), the Secretary shall issue a written certificate stating whether or not the EIR adequately and properly complies with MEPA and 301 CMR 11.00. The Secretary shall attach to the certificate a copy of each comment timely received. The Secretary's failure to issue a timely certificate shall have the effect of a determination that the EIR is adequate and does so comply. The Secretary's decision on the EIR shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

(b) Draft EIR. Upon review of a draft EIR, the Secretary shall:

1. determine that the draft EIR is adequate, even if certain aspects of the Project or issues require additional description or analysis in a final EIR, provided that the Secretary finds that the draft EIR is generally responsive to the requirements of 301 CMR 11.07 and the Scope;

2. determine that no substantive issues remain to be addressed and:

a. publish notice in the next *Environmental Monitor* that the draft EIR shall be reviewed as a final EIR; or

b. require the Proponent to file responses to comments on the draft EIR and Proposed Section 61 Findings and publish notice in the next *Environmental Monitor* that the responses and findings shall be filed, circulated, and reviewed as a final EIR; or

3. determine that the draft EIR is inadequate and require the Proponent to file a supplemental draft EIR in accordance with 301 CMR 11.07.

(c) Final EIR. Upon review of a final EIR, the Secretary shall:

1. determine that a final EIR is adequate, even if certain aspects of the Project or issues require additional analysis of technical details, provided that the Secretary finds that the aspects and issues have been clearly described and their nature and general elements analyzed in the EIR or during MEPA review, that the aspects and issues can be fully analyzed prior to any Agency issuing its Section 61 Findings, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency taking Agency Action on the Project; or

2. determine that the final EIR is inadequate and require the Proponent to file a supplemental final EIR in accordance with 301 CMR 11.07.

(d) Single EIR. Upon review of a single EIR allowed by the Secretary in accordance with 301 CMR 11.06(8), the Secretary shall:

1. determine that the single EIR is adequate, even if certain aspects of the Project or issues require additional analysis of technical details, provided that the Secretary finds that the aspects and issues have been clearly described and their nature and general elements analyzed in the EIR or during MEPA review, that the impacts and issues can be fully analyzed prior to any Agency issuing its Section 61 Findings, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency taking Agency Action on the Project;

2. determine that substantive issues remain to be addressed and require the Proponent to file a final EIR in accordance with 301 CMR 11.07; or

3. determine that the single EIR is inadequate and require the Proponent to file a supplemental single EIR in accordance with 301 CMR 11.07.

(9) 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, then within 30 days after a certificate is issued determining that a final EIR or a single EIR is adequate 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.

11.08: continued

(10) Notification of Commencement of Construction. The Proponent shall notify the Secretary upon Commencement of Construction for any Project for which the Secretary required an EIR.

11.09: Special Review Procedures

(1) General. With the consent of the Proponent, and after consulting with any Participating Agency, the Secretary may establish a Special Review Procedure for a Project, notwithstanding the other provisions of 301 CMR 11.00. Among other things, a Special Review Procedure may provide for: review documents other than ENFs and EIRs and other periodic reports to be filed and reviewed; shortened or extended review periods; review of a Project in phases; lapses of time between review documents not requiring a Notice of Project Change; coordination or consolidation of MEPA review with other environmental or development review and permitting processes; and establishment of a CAC. The final review document called for in a Special Review Procedure shall be considered a final EIR. A Special Review Procedure may be appropriate, for example, for reviewing a proposed program, regulations, policy, or other Project in which there is more than one Proponent or more than one Participating Agency with a significant role, or a Project that is undefined or is expected to evolve during MEPA review, or a Project that may benefit the environment if there is early Commencement of a portion of the Project. The Secretary may establish a Special Review Procedure for a Project regardless of its size or complexity.

(2) Establishment. The Proponent shall ordinarily request a Special Review Procedure prior to or when filing the ENF. In the certificate establishing the Special Review Procedure, the Secretary shall find that a Special Review Procedure shall serve the purposes of MEPA, including providing meaningful opportunities for public review, analysis of alternatives, and consideration of cumulative environmental impacts. The Proponent may file a Notice of Project Change after the Secretary's decision on the ENF to request a Special Review Procedure or to modify a previously established Special Review Procedure. The Secretary shall publish notice in the *Environmental Monitor* of: the establishment of a Special Review Procedure; any modification of a Special Review Procedure; the establishment of a CAC; significant events in a Special Review Procedure including meetings of the CAC; and the availability of review documents called for in a Special Review Procedure.

(3) Citizens Advisory Committee. When establishing or modifying a Special Review Procedure, the Secretary shall ordinarily (in the case of a Project undertaken by an Agency) or may (in the case of a Project undertaken by a Person) establish a CAC to assist in reviewing the Project.

(a) Membership of CAC. The CAC shall ordinarily consist of at least ten Persons appointed by the Secretary. The Secretary shall solicit nominations for the CAC when announcing its establishment or modification in the *Environmental Monitor* from those individuals and entities whose interests are affected by the Project, including any neighbor, neighborhood association, ad-hoc committee, business or non-profit organization, Agency, Federal, municipal, or regional governmental entity, or other organization. The Proponent shall be entitled to one representative on the CAC. The membership of the CAC shall be diverse in affiliation and experience and fairly represent a range of viewpoints.

(b) Role of CAC During Special Review Procedure. The CAC shall ordinarily participate in the Special Review Procedure by advising in the Secretary's establishment of the Special Review Procedure and review of review documents called for in the Special Review Procedure, and in the Proponent's review of detailed scopes of service for the consultant and preliminary review of the consultant work product.

(c) Meetings of CAC. The CAC shall establish its own schedule of meetings. The CAC may establish working groups on particular aspects of the Project or issues within the Scope. The CAC shall be entitled to meet monthly with the Proponent and its consultants and shall be kept informed of progress on any review document called for in the Special Review Procedure. The CAC may direct questions concerning the Special Review Procedure to the Proponent or the Secretary.

(d) Staff for CAC. The Secretary may require the Proponent to provide staff support to the CAC such as secretarial services, keeping of minutes, mailings, and arrangement of meetings. In the case of a Project undertaken by an Agency, the Secretary may require the Proponent to transfer funds to assist the Secretary in maintaining the CAC.

11.09: continued

(e) Document Review by CAC. The Proponent shall ordinarily submit a draft of any review document called for in the Special Review Procedure to the CAC at least one month prior to filing the review document with the Secretary. The CAC may suggest changes or additions to the review document prior to the Proponent filing the review document with the Secretary. The CAC may file its comments with the Secretary prior to or when the Proponent files the review document with the Secretary. The CAC shall present a consensus in its comments to the extent to which its members have reached a consensus, although it may present the diverse views of its members when consensus has not or cannot be attained. The Proponent shall distribute any comments of the CAC or its members with the filed review document, provided that the CAC or its members file the comments with the Secretary prior to the Secretary publishing notice of the availability of the filed review document in the *Environmental Monitor*.

(f) Role of CAC After Special Review Procedure. After the Proponent files the final review document called for in the Special Review Procedure, the CAC may consult with the Secretary and the Proponent to determine whether it shall have any role in any future actions on the Project.

(4) Eligible Projects.

(a) Programmatic Review. The Secretary may establish a Special Review Procedure on the implementation of a program, the promulgation of new or revised regulations, or the development of a policy. Programmatic Review may be appropriate, for example, if the cumulative environmental impacts of Projects requiring individual Agency Actions taken in accordance with the program, regulations or policy may not otherwise be subject to adequate MEPA review or may have similar environmental impacts such that a common assessment may be necessary or appropriate. Programmatic Review shall be designed to assist an Agency in fulfilling its obligations in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(1) to review periodically, to evaluate, and to determine the potential significant environmental impacts of its implementation of its programs, regulations, and policies.

(b) Area-Wide Review. The Secretary may establish a Special Review Procedure if a Project may affect a large area or several sites. Area-Wide Review may be appropriate, for example, for master plan areas, watersheds and other ecosystems, roadway and utility corridors, redevelopment areas, major public facilities, or large developments to be constructed in phases. Area-Wide Review shall be designed to assist a Proponent in establishing a future baseline in relation to which a Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed.

(c) Coordinated Review. The Secretary may establish a Special Review Procedure for a Project to coordinate or consolidate MEPA review with other environmental or development review and permitting processes conducted by any Agency or Federal, municipal, or regional governmental entity. Coordinated Review may be appropriate, for example, if there is a comprehensive review or permitting process by a Federal, municipal, or regional governmental entity that provides meaningful opportunities for public review, analyzes alternatives, and considers cumulative impacts. Coordinated Review shall be designed to assist the Secretary in adopting scoping decisions by the Agency or entity, deferring to its scoping decisions, issuing joint scoping decisions or accepting a review document prepared in accordance with the statutes and regulations of the Agency or entity as the full or partial equivalent of an ENF, EIR, or other review document.

(d) Prototype Projects. The Secretary may establish a Special Review Procedure for a Project or portions of a Project that will be replicated in substantially similar form at one or more future times or locations. Prototype project review shall be designed to streamline review, in whole or in part, of future Projects that will be sufficiently like the original Project such that the predicted environmental impacts for the proposed mitigation measures shall be deemed to be substantially similar. In considering issuance of a Special Review Procedure for prototype projects, the Secretary shall adopt specific guidelines for eligible projects to ensure that the environmental impacts of future projects are substantially similar to a previously reviewed project. The Secretary shall state in the certificate establishing the Special Review Procedure the time period that is appropriate for the special review procedure and the conditions under which the Proponent shall file a Notice of Project Change.

(e) Other Special Review. The Secretary may establish a Special Review Procedure for any other Project.

11.09: continued

(5) Presumptive Filings. Unless the Secretary has indicated otherwise in the certificate establishing the Special Review Procedure, the Proponent shall file a final Special Review Procedure review document within 18 months following that certificate, and shall file a new Special Review Procedure review document within two years following the certificate on the final Special Review Procedure review document. The Secretary may deem the Special Review Procedure closed if the Proponent fails to file a timely review document. The Secretary shall state in the certificate establishing the Special Review Procedure when the Proponent shall file any interim review documents and shall establish the conditions under which the Proponent shall file a Notice of Project Change.

(6) Individual Agency Actions. The Secretary shall state in the certificate on the final Special Review Procedure review document whether and to what extent an individual Agency Action taken in accordance with or as part of the Project subject to the Special Review Procedure shall require further MEPA review. The Secretary may find that an individual Agency Action does not require an ENF if it is subject to specified conditions or restrictions, that an ENF is required but may deal with some issues by reference to the Special Review Procedure, or that an ENF is required but that an EIR is presumed not to be required except under circumstances identified during review of the ENF.

11.10: Project Changes and Lapses of Time

(1) Notice of Project Change for Project Change. Unless the Secretary has indicated otherwise in the certificate on a review document or as part of a Special Review Procedure, the Proponent shall, and any other Agency or Person may, file a Notice of Project Change with the Secretary if there is any material change in a Project prior to the taking of all Agency Actions for the Project. The selection by the Proponent or the imposition as a condition or restriction in a Permit or other relevant review document allowing or approving an Agency Action of any alternative that similarly avoids, minimizes, or mitigates potential environmental impacts shall not constitute a change in the Project, provided that the alternative was previously reviewed in an EIR. The continuation of the Project by a new Proponent shall not by itself constitute a change in the Project, provided that the new Proponent adopts all mitigation measures to which the previous Proponent committed. The Notice of Project Change shall specify in detail any change in the information provided in any previous review document.

(2) Notice of Project Change for Lapse of Time. Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the Proponent shall, and any other Agency or Person may, file a Notice of Project Change with the Secretary if more than three years have elapsed between the publication of the ENF and the publication of the notice of the availability of the single or final EIR or between:

(a) the publication of the notice of the availability of the single or final EIR; and
(b) the earlier of:
1. notification of Commencement of Construction in accordance with 301 CMR 11.08(9), provided that the Proponent has not thereafter suspended or abandoned construction for more than three years; and
2. commencement of non-construction related work or activity, including expenditure of funds for final design, property acquisition, or marketing, provided that the Proponent has continued to take major steps in a continuous sequence to advance the Project.

(3) New ENF for Lapse of Time. Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the Secretary shall deem MEPA review of a Project closed if more than five years have elapsed between:

(a) the publication of the notice of the availability of the single or final EIR; and
(b) the earlier of:
1. notification of Commencement of Construction in accordance with 301 CMR 11.08(9), provided that the Proponent has not thereafter suspended or abandoned construction for more than three years; and

11.10: continued

2. commencement of non-construction related work or activity, including expenditure of funds for final design, property acquisition, or marketing, provided that the Proponent has continued to take major steps in a continuous sequence to advance the Project.

The Proponent shall file a new ENF to open a new MEPA review, provided that the new Project meets or exceeds one or more review thresholds. In the certificate on the new ENF, the Secretary shall ordinarily make specific findings regarding segmentation.

(4) Lapses of Time and Appeals. The period required to prosecute or defend any judicial or administrative appeal relating to MEPA review, any Agency Action or any Federal, municipal or regional governmental permit, license or approval for the Project shall not be counted in determining the three and five year time periods in accordance with 301 CMR 11.10(2) and (3).

(5) Notice of Project Change Upon Secretary's Determination. If the Secretary determines that a Proponent has, either knowingly or inadvertently, concealed a material fact or submitted false information during MEPA review, or has segmented the Project, the Secretary may consider the determination to be a Notice of Project Change.

(6) Secretary's Consideration of Environmental Consequences. In determining whether a change in a Project or the lapse of time might significantly increase environmental consequences, the Secretary shall consider the following factors:

(a) Expansion of the Project. A change in a Project is ordinarily insignificant if it results solely in an increase in square footage, linear footage, height, depth or other relevant measures of the physical dimensions of the Project of less than 10% over estimates previously reviewed, provided the increase does not meet or exceed any review thresholds.

(b) Generation of further impacts, including an increase in release or emission of pollutants or contaminants during or after completion of the Project. A change in a Project is ordinarily insignificant if it results solely in an increase in impacts of less than 25% of the level specified in any review threshold, provided that cumulative impacts of the Project do not meet or exceed any review thresholds that were not previously met or exceeded.

(c) Change in expected date for Commencement of the Project, Commencement of Construction, completion date for the Project, or schedule of work on the Project.

(d) Change of the Project site.

(e) New application for a Permit or New request for Financial Assistance or a Land Transfer.

(f) For a Project with net benefits to environmental quality and resources or public health, any change that prevents or materially delays realization of such benefits.

(g) For a Project involving a lapse of time, changes in the ambient environment or information concerning the ambient environment.

The Proponent may include in a Notice of Project Change an explanation of why the Secretary should deem the change in the Project or the lapse of time to be insignificant in terms of its environmental consequences, with specific reference to these factors and other relevant information. Within ten Days of receiving a Notice of Project Change that includes such an explanation, the Secretary shall respond either with a request for further information or with a determination whether the change in the Project or the lapse of time may have significant environmental consequences. The Secretary's failure so to respond shall have the effect of a determination that the change in the Project or lapse of time does not have significant environmental consequences and shall not require publication and a comment period in accordance with 301 CMR 11.10(8), provided that the Notice of Project Change has been circulated in accordance with 301 CMR 11.10(7).

(7) Circulation of Notice of Project Change. In the case of a Notice of Project Change filed by the Proponent, the Proponent shall circulate copies of the Notice of Project Change to any Agency or Person who received the ENF or commented on the ENF, any EIR, or any prior Notice of Project Change prior to or when filing the Notice of Project Change with the Secretary. In the case of a Notice of Project Change filed by an Agency or Person other than the Proponent, the Agency or Person filing the Notice of Project Change shall send a copy to the Proponent prior to or when filing the Notice of Project Change with the Secretary.

11.10: continued

(8) Public Comment and Decision on Notice of Project Change. If the Secretary determines that a change in a Project or a lapse of time may have significant environmental consequences, the Secretary shall: consult as appropriate with the Proponent and any Agency or Person who received the ENF or commented on the ENF, any EIR or any other prior review document; publish notice of the Notice of Project Change in the next issue of the *Environmental Monitor*; receive into the record written comments from any Agency or Person concerning the need for and the nature of any further MEPA review, within 20 Days following the publication of the notice of the Notice of Project Change; and determine within ten Days after the close of the public comment period whether the change or the lapse of time significantly increases the environmental consequences of the Project such that it warrants further MEPA review by submission of a new ENF or a supplemental EIR, or changes, additions, or deletions to the Scope.

(9) Notice of Decision on Notice of Project Change. The Secretary shall publish notice of any decision on whether to require further MEPA review as a result of a Notice of Project Change in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2).

(10) Effects of Further Review. Any further MEPA review as a result of a Notice of Project Change shall be subject to the legal challenge periods in accordance with 301 CMR 11.14. The Secretary's decision to require further MEPA review as a result of a Notice of Project Change shall not in itself invalidate any Agency Action previously taken by an Agency or any conditions thereof.

11.11: Waivers

(1) Standards for all Waivers. The Secretary may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would:

(a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and

(b) not serve to avoid or minimize Damage to the Environment.

(2) Presumptions to be Rebutted for EIR Waiver. The mandatory EIR review thresholds identify Projects or aspects thereof that are presumed to have particularly significant environmental impacts, and for which an EIR is presumed to benefit the Project and the environment. Consequently, a waiver of an EIR review threshold shall follow the review of an ENF and shall be based on a rebuttal of these presumptions.

(3) Determinations for EIR Waiver. In the case of a waiver of a mandatory EIR review threshold, the Secretary shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

(a) the Project is likely to cause no Damage to the Environment; and

(b) ample and unconstrained infrastructure facilities and services exist to support the Project (in the case of a Project undertaken by an Agency or involving Financial Assistance) or those aspects of the Project within subject matter jurisdiction (in the case of a Project undertaken by a Person and requiring one or more Permits or involving a Land Transfer but not involving Financial Assistance).

The Proponent may provide evidence satisfactory to the Secretary that the Agency Action on the Project will contain terms such as a condition or restriction that will cause benefits to environmental resources or quality or infrastructure facilities or services in excess of those that would result in the absence of the waiver.

(4) Determinations for Phase One Waiver. In the case of a partial waiver of a mandatory EIR review threshold that will allow the Proponent to proceed with phase one of the Project prior to preparing an EIR, the Secretary shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

(a) the potential environmental impacts of phase one, taken alone, are insignificant;

(b) ample and unconstrained infrastructure facilities and services exist to support phase one;

11.11: continued

(c) the Project is severable, such that phase one does not require the implementation of any other future phase of the Project or restrict the means by which potential environmental impacts from any other phase of the Project may be avoided, minimized or mitigated; and
(d) the Agency Action on phase one will contain terms such as a condition or restriction in a Permit, contract or other relevant document approving or allowing the Agency Action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to Commencement of any other phase of the Project.

(5) Request for Waiver. A Proponent shall request a waiver in writing and shall address with particularity any findings that the Secretary is required to make in accordance with 301 CMR 11.11(1) through (4). The Proponent who requests a waiver shall be deemed to consent to an extension of the review period in accordance with 301 CMR 11.05(7). The Secretary shall publish notice of this request in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2).

(6) Secretary's Decision on Waiver. If the Secretary decides that a waiver request has merit, the Secretary shall prepare a record of decision that describes the Project, the nature and extent of MEPA jurisdiction, and the potential environmental impacts from the Project and mitigation measures, and sets forth the reasons for the waiver, including any findings required in accordance with 301 CMR 11.11(1) through (4). The Secretary shall issue a draft record of decision for each waiver or partial waiver of an EIR review threshold and publish the draft record of decision in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 Days, unless extended by the Secretary with the consent of the Proponent. An extension shall not ordinarily exceed 14 Days. During the public comment period, the Secretary shall receive written comments into the record from any Agency or Person concerning the draft record of decision. The Secretary shall issue a final record of decision or a Scope within seven Days after the close of the public comment period. The Secretary shall publish notice of each decision on a waiver request in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2).

11.12: Agency Responsibilities and Section 61 Findings

(1) Review of Agency Programs. An Agency shall: periodically review and evaluate its own programs, regulations, and policies and determine the potential environmental impacts of its implementation of its programs, regulations, and policies, and ensure that it and each applicant for a Permit, Financial Assistance, or a Land Transfer undertake due compliance with MEPA and 301 CMR 11.00.

(2) Determination by an Agency.
(a) Prior to Agency Action. An Agency shall determine whether MEPA and 301 CMR 11.00 require MEPA review whenever it expects to take Agency Action on a Project. MEPA review is required only if the Project is subject to MEPA jurisdiction and either it meets or exceeds one or more review thresholds or the Secretary requires fail-safe review.
(b) Proponent's Demonstration. A Participating Agency may require the Proponent to demonstrate that a Project does not meet or exceed any review thresholds or that there has been due compliance with MEPA and 301 CMR 11.00, prior to granting a Permit, providing Financial Assistance, or closing a Land Transfer.
(c) Agency's Finding. If an Agency determines that MEPA review is not required, the Agency shall, if requested by the Secretary or an applicant for a Permit, Financial Assistance, or a Land Transfer, or the Agency may, on its own initiative, make a finding regarding the determination that specifies any provisions or requirements of MEPA or 301 CMR 11.00 on which the determination is based, and shall furnish a copy of the finding to the Secretary or applicant upon request. An Agency's making a finding and furnishing a copy to the Secretary shall not mean that the Secretary has issued an advisory opinion in accordance with 301 CMR 11.01(6). The Agency's finding shall not limit the Secretary's discretion in issuing an advisory opinion.

11.12: continued

(3) Prerequisites to Agency Action. If an Agency may take Agency Action on a Project, it shall:
(a) determine in a timely manner whether the Project requires MEPA review in accordance with 301 CMR 11.01(2);
(b) review any review documents for the Project and participate in MEPA review in accordance with 301 CMR 11.06(4) and 11.08(7);
(c) take Agency Action only in accordance with 301 CMR 11.12(4); and
(d) in the case of a Project for which the Secretary required an EIR, prepare Section 61 Findings prior to or when taking Agency Action in accordance with 301 CMR 11.12(5).

(4) Timing of Agency Action.
(a) Earliest Time for Agency Action. Unless otherwise required by other applicable statutes or regulations, an Agency may not take Agency Action on a Project that is subject to MEPA jurisdiction and meets or exceeds any review thresholds unless and until 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*.
(b) Latest Time for Agency Action. Unless otherwise required by other applicable statutes or regulations, a Participating Agency shall take Agency Action by 90 Days from the latest of:
1. the publication of the notice in the *Environmental Monitor* of the Secretary's determination that an EIR is not required;
2. the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor*; or
3. the filing of a complete application for a Permit or Financial Assistance.

(5) Section 61 Findings. In accordance with M.G.L. c. 30, § 61, any Agency that takes Agency Action on a Project for which the Secretary required an EIR shall determine whether the Project is likely, directly or indirectly, to cause any Damage to the Environment and make a finding describing the Damage to the Environment and confirming that all feasible measures have been taken to avoid or minimize the Damage to the Environment.
(a) Contents of Section 61 Findings. In all cases, the Agency shall base its Section 61 Findings on the EIR and shall specify in detail: all feasible measures to be taken by the Proponent or any other Agency or Person 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; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that will ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts. In accordance with M.G.L. c. 30, § 61, the reasonably foreseeable climate change impacts of a project, including its additional GHG emissions, and effects, such as predicted sea level rise, are within the subject matter of any required Permit, Land Transfer or Financial Assistance.
(b) Section 61 Findings and Agency Action. Provided that mitigation measures are specified as conditions to or restrictions on the Agency Action, the Agency shall:
1. make its Section 61 Findings part of the Permit, contract or other document allowing or approving the Agency Action, whic h may include additional conditions to or restrictions on the Project in accordance with other applicable statutes and regulations; or
2. refer in its Section 61 Findings to applicable sections of the relevant Permit, contract or other document approving or allowing the Agency Action.
(c) Subject Matter Jurisdiction Limitations on Section 61 Findings. In the case of a Project undertaken by a Person that requires one or more Permits or a Land Transfer but does not involve Financial Assistance, any Participating Agency shall limit its Section 61 Findings, or any mitigation measures specified as conditions to or restrictions on the Agency Action, to those aspects of the Project that are within the subject matter of any required Permit or within the area subject to a Land Transfer.
(d) Proposed Section 61 Findings. Proposed Section 61 Findings prepared by a Proponent in accordance with 301 CMR 11.07(6)(k) are intended to assist a Participating Agency in fulfilling its obligations in accordance with M.G.L. c. 30, § 61. The Proponent's preparation of Proposed Section 61 Findings shall not mean that a Participating Agency has made its own Section 61 Findings. Except in accordance with 301 CMR 11.06(4) and 11.08(7), the Proponent's Proposed Section 61 Findings shall not limit an Agency's discretion in making its own Section 61 Findings.

11.12: continued

(e) Filing and Distribution of Section 61 Findings. The Proponent and a Participating Agency shall each file a copy of the Section 61 Findings with the Secretary, who shall publish notice of the availability of the Section 61 Findings in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), and shall each circulate copies of the Section 61 Findings to any Agency or Person upon request.

(6) Agency Action Taken Without MEPA Compliance. If an Agency takes Agency Action without due compliance with MEPA and 301 CMR 11.00, the Secretary may thereafter require MEPA review, and may require the Agency to reconsider the Agency Action and any conditions thereof following completion of MEPA review.

11.13: Emergency Action

(1) Commencement of Project for Emergency Action and Initial ENF. In the rare case when Commencement of a Project is essential to avoid or eliminate an imminent threat to environmental resources or quality or public health or safety, the Proponent may undertake Commencement of the Project without prior due compliance with MEPA and 301 CMR 11.00 provided that the Proponent shall make all reasonable efforts to obtain the prior written approval of the Secretary. The Proponent shall limit any emergency action taken without prior due compliance with MEPA and 301 CMR 11.00 to the minimum action necessary to avoid or eliminate the imminent threat. The Proponent shall file an initial ENF describing the Project in as much detail as is then known within ten Days of Commencement of the Project. The initial ENF shall describe all measures taken to avoid or minimize potential environmental impacts from the emergency action, describe any additional measures to be taken to mitigate potential environmental impacts from the emergency action, and list any Agency to which the Proponent provided prior notification of, or from which the Proponent received prior approval for, the emergency action. Within the earlier of 60 Days of Commencement of the Project or when the threat is no longer imminent, the Proponent shall undertake full due compliance with MEPA and 301 CMR 11.00 by filing an amended or substitute ENF or any other review document that the Secretary may require after reviewing the initial ENF.

(2) EIR After Emergency Action. An EIR for a Project on which the Proponent undertook emergency action shall describe specific alternatives to the emergency action, the necessary duration of the emergency action, and the appropriateness or necessity of undertaking similar action in similar future circumstances.

(3) Programs or Projects Not Considered Emergency Action. Any program, regulations, policy, or other Project implemented or undertaken to deal with future emergencies, or periodic recurrence of an emergency condition, shall not be considered an emergency action.

11.14: Legal Challenges

(1) Notice of Intent to Commence Action. An Agency or Person alleging that the Secretary improperly decided that a Project requires an EIR shall provide notice of intent to commence an action or proceeding within 60 Days of the publication of notice of the Secretary's decision in the *Environmental Monitor* in accordance with 301 CMR 11.15(2). An Agency or Person alleging that the Secretary improperly decided that a single or final EIR complies with MEPA and 301 CMR 11.00 shall provide notice of intent to commence an action or proceeding within 60 Days of 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). This notice shall be provided on the form available from the MEPA Office to the Secretary, the Proponent, and the Attorney General. This notice shall include the EEA file number and shall identify with particularity the reasons why the decision is believed to be improper, and the point during MEPA review at which the matter complained of was raised. These notice procedures shall substitute for the notice and waiting period required in accordance with M.G.L. c. 214, § 7A.

11.14: continued

(2) Notice of Agency Action.

(a) For any Project where a timely Notice of Intent is submitted to the Secretary in accordance with 301 CMR 11.14(1), the Secretary shall promptly forward such Notice of Intent to the Agencies that will take Agency Action on the Project.

(b) Any Agency or Person submitting a Notice of Intent for a Project pursuant to 301 CMR 11.14(1) may also submit a Request for Notice of Agency Actions to be taken on the Project. In that case, such Agency or Person must also send a copy of the Notice of Intent to those Agencies that will take Agency Action on the Project (as identified in the ENF, listed in any EIR, specified in any NPC, specified in any Agency comments, or included in any Secretary's certificate) and notify such Agency that it is requesting notice in accordance with 310 CMR 11.14(2)(c).

(c) Any Agency that has received a Notice of Intent and a Request for Notice in accordance with 301 CMR 11.14(2)(b) shall provide a true, accurate and complete copy of any Agency Action (and any Section 61 Findings) it takes on the Project to the Agency or Person who has submitted the Request for Notice no later than ten days following the Agency Action.

(3) Commencement of Action.

(a) For Project by a Person. An action or proceeding alleging that the Secretary improperly decided that a Project undertaken by a Person requires an EIR shall commence no later than the later of: 30 Days following the first issuance of a Permit, grant of Financial Assistance, or closing of a Land Transfer by an Agency; or 60 Days after the publication of the notice of the Secretary's decision in the *Environmental Monitor* in accordance with 301 CMR 11.15(2). An action or proceeding alleging that a single or final EIR for a Project undertaken by a Person fails to comply with MEPA and 301 CMR 11.00 shall commence no later than 30 Days following the first issuance of a Permit, grant of Financial Assistance, or closing of a Land Transfer by an Agency.

(b) For Project by an Agency An action or proceeding alleging that the Secretary improperly decided that a Project undertaken by an Agency requires an EIR shall commence no later than 120 Days after the publication of the notice of the Secretary's decision in the *Environmental Monitor* in accordance with 301 CMR 11.15(2). An action or proceeding alleging that a single or final EIR for a Project undertaken by an Agency fails to comply with the requirements of MEPA and 301 CMR 11.00 shall commence no later than 120 Days after 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).

(4) Issue Preclusion. No allegation shall be made in any action or proceeding challenging a decision by the Secretary unless the matter complained of was raised previously at the appropriate point during MEPA review, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to raise it during MEPA review or that the matter sought raises critically important issues regarding the potential environmental impacts of the Project.

(5) Effect of Court's Determination. If a court determines that a Proponent knowingly concealed a material fact or knowingly submitted false information during MEPA review, there shall be no limit on the manner or time in which an action or proceeding may be commenced and the Secretary may require the Proponent to repeat any or all of the MEPA review for the Project.

11.15: Public Notice and the *Environmental Monitor*

(1) Public Notice of Environmental Review. The Proponent shall, no sooner than 30 Days prior to and no later than the date of the publication of an ENF in the *Environmental Monitor* in accordance with 301 CMR 11.15(2), publish notice of the filing of the ENF in a newspaper of local circulation in each municipality affected by the Project, or in a newspaper of statewide circulation if an affected municipality is not served by a local publication. This notice shall be provided using the form available from the MEPA Office. The Proponent shall certify compliance with this section in the ENF. In the case of a Project potentially affecting more than one municipality, the Proponent shall ordinarily consult with the Secretary for specific advice as to publication requirements.

11.15: continued

(2) *Environmental Monitor*.

(a) Contents. The Secretary shall publish the appropriate pages of the ENF in the next *Environmental Monitor* after the filing of an ENF. The Secretary shall publish in the *Environmental Monitor* a draft record of decision on a waiver request in accordance with 301 CMR 11.11(6). The Secretary shall publish notice of the following filings and decisions in the next *Environmental Monitor*: a request for an advisory opinion in accordance with 301 CMR 11.01(6)(b); a fail-safe decision; a decision whether an EIR is required; the availability of an EIR; a decision on an EIR; matters regarding a Special Review Procedure in accordance with 301 CMR 11.09(2); the filing of a Notice of Project Change in accordance with 301 CMR 11.10(8); a decision regarding a Notice of Project Change; a decision on a waiver request; and the filing of Section 61 Findings. The Secretary may publish in the *Environmental Monitor* notice of: extensions of review periods and deadlines; hearings, workshops, and meetings; and such other matters as the Secretary deems appropriate.

(b) Publication Dates. The Secretary shall publish the *Environmental Monitor* twice each month. The Secretary shall publish notice of filings received by the MEPA Office by 5:00 P.M. on the 15th Day of each month in the *Environmental Monitor* issued seven to ten Days thereafter and notice of filings received by the MEPA Office by 5:00 P.M. on the last Day of each month in the *Environmental Monitor* issued seven to ten Days thereafter. The review periods for ENFs, EIRs, Notices of Project Change, Special Review Procedure review documents, and draft records of decision shall begin on the date of publication of the next *Environmental Monitor*.

(c) Subscriptions and Distribution. The Secretary shall send the *Environmental Monitor* to any Agency or Person who requests a subscription in writing and renews the subscription in writing each January. The Secretary shall also send the *Environmental Monitor* for public posting to all City and Town Halls and public libraries in the Commonwealth.

11.16: Filing and Circulation

(1) Filing with the Secretary. All written communications and review documents required or permitted to be filed with the Secretary in accordance with MEPA and 301 CMR 11.00 shall be addressed as follows:

Secretary of Energy and Environmental Affairs
Attention: MEPA Office
[Analyst Name], EEA No: _____
100 Cambridge Street - 9th floor
Boston, Massachusetts 02202

(2) Circulation of ENF. The Proponent shall circulate the ENF as follows:

(a) To the MEPA Office. Two copies to the Secretary, Attention: MEPA Office.

(b) To Agency and Other Reviewers. One copy to each of the following (or their successors or assigns):

1. Department of Environmental Protection (DEP) - Boston office (attention: MEPA Coordinator); the appropriate regional office (attention: MEPA Coordinator); each program from which a Permit will be sought;
2. Massachusetts Department of Transportation (MassDOT) - Public/Private Development Unit; and the appropriate district office;
3. Massachusetts Historical Commission;
4. The appropriate regional planning agency (RPA);
5. In each municipality affected by the Project - the city council/board of selectmen; the planning board/department; the conservation commission; the department/board of health; and the public library;
6. Massachusetts Coastal Zone Management (MCZM) office and the Division of Marine Fisheries, if the Project is in a Coastal Zone community;
7. Department of Agricultural Resources, if the Project site has been in agricultural use within the last 15 years;
8. Natural Heritage and Endangered Species Program, if the Project site is within or contains designated significant or estimated habitat, or priority sites of endangered or threatened species or species of special concern in accordance with M.G.L. c. 131A the Massachusetts Endangered Species Act;

11.16: continued

9. Department of Conservation and Recreation (DCR) if the Project affects DCR roadways, watersheds or other properties, or if the Project is within or will affect an ACEC;
10. Department of Public Health (DPH), if the Project implicates public health impacts;
11. Division of Energy Resources if the Project is subject to the Greenhouse Gas Emissions Policy and Protocol, and the Energy Facilities Siting Board (EFSB), if the Project is subject to review by EFSB;
12. Massachusetts Water Resources Authority (MWRA), if the Project is in a municipality served by the MWRA;
13. Massachusetts Bay Transportation Authority (MBTA), if the Project affects MBTA facilities or properties and
14. Any other Agency from which an Agency Action may be required for the Project.

(c) Requested Copies. The Proponent shall promptly send a copy of the ENF, free of charge, to any Agency or Person requesting it during the review period for the ENF. The Proponent may send an electronic copy (*e.g.*, CD-Rom or website address) provided that the electronic copy is accompanied by information on how to obtain a paper copy. The Proponent shall maintain a list of each Person or Agency requesting a copy, the date of each request, and the date each copy was sent out. The Secretary may extend the review period for the ENF as a result of undue delay by the Proponent in providing copies.

(3) Circulation of EIR. The Proponent shall circulate the EIR as follows:

(a) To the MEPA Office. Two copies to the Secretary, Attention: MEPA Office;

(b) To Previous Commenters and Others. One copy, free of charge, to each Person or Agency who previously commented on the ENF and to any other Agency or Person identified by the Secretary in the Scope or thereafter.

(c) Requested Copies. The Proponent shall promptly send a copy of the EIR to any Agency or Person requesting it during the public comment period, free of charge, except that the Proponent may, with the consent of the Secretary, charge the cost of reproduction for these additional copies. The Proponent may send an electronic copy (CD-Rom or website address) provided that the electronic copy is accompanied by information on how to obtain a paper copy. The Proponent shall maintain a list of each Agency or Person requesting a copy, the date of each request, and the date each copy was sent out. The Secretary may extend the public comment period for the EIR as a result of undue delay by the Proponent in providing copies.

(4) List of Addresses. The MEPA Office shall maintain a list of current addresses for each Agency, as well as lists of municipalities by coastal zone, watershed, and DEP, MassDOT, RPA, MWRA, and MBTA region or district, and shall make the information available to a Proponent upon request.

(5) Electronic Circulation. The Proponent may circulate electronic copies (CD-Rom or website address) of an ENF or an EIR to any Person or Agency in accordance with 301 CMR 11.16(2) and (3), other than the Secretary or any Agency that may take Agency Action on the Project. Circulation of an electronic copy must be accompanied by information on how to obtain a paper copy in accordance with 301 CMR 11.16(2)(c) and 11.16(3)(c). The Proponent may circulate electronic copies (CD-Rom or website address) of technical appendices to any Person or Agency in accordance with 301 CMR 11.16(2) and (3).

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 May 10, 2013, unless all Agency Actions for the Project were taken by each Participating Agency:

(a) prior to May 10, 2013; or

(b) within 60 Days after May 10, 2013, 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 May 10, 2013.

11.17: continued

(2) Project With Previous ENF. 301 CMR 11.00 shall apply to any Project for which an ENF was filed prior to May 10, 2013.

REGULATORY AUTHORITY

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

(PAGES 109 THROUGH 122 ARE RESERVED FOR FUTURE USE.)