MEPA/NEPA Webinar
Regulatory, Design, Process Overview

February 26, 2020
Goals and Objectives

Understand MassDOT expectations for MEPA/NEPA documentation

Better Identify Resource Areas

Procedure and Timeline for Documentation
NEPA

- Federal Funding/Approval
- Qualitative
- Lead Federal Agency
- Focus on Purpose and Need
- Necessary for all federal actions

MEPA

- State Funding/Approval
- Quantitative
- EEA—MEPA Office
- Focus on Impact Disclosure
- Necessary if state action and exceeds review threshold
**NEPA**

- **No Significant Impact**
  - Categorical Exclusion (CE)

- **Unknown Significant Impact**
  - Environmental Assessment (EA)

- **Significant Impact**
  - Environmental Impact Statement (EIS)

**Programmatic Agreement: FHWA & MassDOT**

- Delegates authority to MassDOT to evaluate projects for CE eligibility
- CE Checklist provides procedure to document CE determination

**Types:**

- **Programmatic** (MassDOT in-house)
- **Individual** (FHWA Concurrence)

>95% of MassDOT projects qualify as CEs
Categorical Exclusion (CE) - Timeline/Chronology

25% Review—analyze impacts

Conduct DPH/Utility site walk—finalize ROW requirements

Conduct Federal Reviews

| Section 7 | Section 106 | Section 4(f) |

75%—Finalize CE
CE Format

• Project Narrative
• Checklist
  • Section 1—CEs
  • Section 2—Unusual Circumstances
  • Section 3—Segmentation & Independent Utility
  • Section 4—Programmatic CE Questions
Environmental Notification Form - Timeline/Chronology

Gather specific detail to file and disclose impacts
(independent of design)

- Wetland impacts, stormwater management, Article 97, historic properties, etc.

Consideration of Alternatives (Pre-25%)

Submit ENF to MEPA (75% Stage)

- Requires public notice in newspaper. 37 day review and public comment.

Secretary Certificate—no further review
MEPA

Confirm there is a state action

Review Thresholds

Thresholds Not Exceeded

ENF Required

ENF & EIR Required

Secretary Determination

MEPA Certificate

No Further Action

Completed EIR & Certificate
Common ENF Thresholds

**Land**
- Creation of 5 or more acres of impervious area
- Conversion of land held for natural resource purposes (Article 97)

**Wetlands and Waterways**
- Greater than 5,000 square feet of BVW alteration
- Alteration of ½ acre or more of “other” wetlands
- Alteration of 500 linear feet or more inland bank; Any alteration to Coastal Bank

**Transportation**
- The cutting of 5 or more living public shade trees (14” dbh)
- Widening of a roadway by 4’ or more for a ½ mile or more
- Elimination of 300’ or more of stone wall
Alternatives/Purpose and Need

State

Alternatives analysis should:

• Identify the project purpose and criteria for selecting the preferred alternative.

• Clearly identify the environmental impacts associated with each alternative.

• Alternative cross section, alignment, multimodal accommodations, slope treatments.

• Support the selection of the Preferred Alternative and ensure that the project avoids, minimizes, and mitigates environmental impacts to the maximum extent feasible.

Federal

Alternatives analysis should:

Describe each alternative and why it was eliminated. Focus on:

• No-Build
• Build

*Data driven approach to define deficiency/support transportation need.

Purpose and Need:

• Why the project is needed/why improvements are being proposed.

• Positive outcome that is expected from implementation of the project.
Regulatory Framework & Impacts
# Wetlands/Natural Resources

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<tr>
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<th>State</th>
<th>Federal</th>
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<tbody>
<tr>
<td><strong>Regulation</strong></td>
<td>• Wetlands Protection Act</td>
<td>• Clean Water Act (Section 401/404)</td>
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<td>• Chapter 91</td>
<td>• Section 9/10 Rivers and Harbors Act</td>
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<td>• MESA</td>
<td>• Section 7 Endangered Species Act</td>
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<td>• Consistency Review</td>
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<td>• Magnuson-Stevens Act (Essential Fish Habitat [EFH])</td>
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<td>• Office of Coastal Zone Management</td>
<td>• USFWS</td>
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<td>• NMFS</td>
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<td><strong>Resources</strong></td>
<td>• Bordering vegetated wetlands</td>
<td>• Waters of the United States</td>
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<td>• Floodplain</td>
<td>• Endangered Species (northern long-eared bat)</td>
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<td></td>
<td>• Coastal zone</td>
<td>• Essential Fish Habitat</td>
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<td>• Estimated/priority habitat</td>
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Wetlands Protection Act

What Does it Protect?

- 310 CMR 10.02(1)
  - 100’ Buffer Zone
  - 200’ Riverfront Area
  - Bordering Land Subject to Flooding
  - Isolated Land Subject to Flooding
  - Land Subject to Coastal Storm Flowage
  - Bank
  - Bordering Vegetated Wetland
  - Land Under Water

Conservation Commission Process

| Request for Determination of Applicability (RDA) | Negative Determination |
| Notice of Intent (NOI) | Order of Conditions |

**ENF Applicability:** Need to know cumulative impacts to resource areas and how project meets applicable performance standards.
MA General Law Chapter 91
The MA Public Waterfront Act

What Does it Protect?

Any work in, over, or under:
- Filled tidelands
- Flowed tidelands
- Great ponds
- Non-tidal rivers and streams

DEP Authorization Types

- Waterways Permit
- Waterways License
- Minor Modification

MEPA ENF threshold:
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.
MA Endangered Species Act

**What Does it Protect?**

- Rare species and their habitats
- Prohibits a “Take” of any plant or animal species listed as Endangered, Threatened, or Special Concern

**NHESP Consultation Process**

- MESA Checklist
- Coordination on Conservation Management Plans
- Permit for “taking” rare species
- Joint review of NOI with conservation commission if within habitat

**MEPA ENF threshold:**
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.
Massachusetts Stormwater Standards

• 10 Stormwater Standards
• Applicable to projects requiring NOI and ENF

ENF Applicability:
Required to disclose how the project will manage stormwater
Bridge Exemption

Applies for projects proposing repair, reconstruction, replacement, or demolition of existing state highway and municipally-owned bridges and their immediate approaches

- Article 97 compliance still applies
- Charles River for the Central Artery/Tunnel Project not applicable

MassDOT is exempt from MEPA, Chapter 91, and WPA if the proposed bridge design is substantially the functional equivalent of, and in similar alignment to, the existing structure
Bridge Exemption—Functional Equivalency

- ‘Substantially’ looks at how similar or dissimilar the existing structure is to the proposed structure
- Viewed in terms of the project context and setting
- Must be of similar horizontal and vertical alignment to the original structure
Clean Water Act

Section 401 (MassDEP)

• Required for waters of the United States
• Water Quality Certification (WQC) permit type depends on impact amount

<5,000 square feet impacts
OOC from WPA serves as WQC (unless in Outstanding Resource Water)

>5,000 square feet impacts
Separate WQC required

Section 404 (USACE)

• Required for waters of the United States

Permit Type Determination:

Self Verification (SV)
Minor impacts

Pre-Construction Notification (PCN)
Screening and authorization based on General Permit conditions

Individual Permit (IP)
Major impacts
Section 7 of the Endangered Species Act

**What Does it Protect?**
- Endangered or Threatened species
- Northern Long-Eared Bat

**USFWS Consultation**
- Informal consultation through IPaC
- Formal consultation and Biological Opinion
- Northern Long-Eared Bat Online 4(d) Rule

**Resource:** Information for Planning and Consultation (IPaC) tool
## Open Space/Conservation

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<thead>
<tr>
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<th>State</th>
<th>Federal</th>
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<tbody>
<tr>
<td><strong>Regulation</strong></td>
<td>Article 97</td>
<td>Section 4(f)</td>
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<td>Section 6(f)</td>
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<td>Owner/FHWA</td>
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<td><strong>Resources</strong></td>
<td>Publicly-owned, serves Article 97 interests</td>
<td>• Publicly-owned land of public park,</td>
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<tr>
<td></td>
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<td>recreation area, wildlife or waterfowl</td>
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<td>refuge, or land of a historic site of</td>
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<td>National, State, or local significance</td>
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<td>• Recreational areas funded by LWCF</td>
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<td><strong>Outcome</strong></td>
<td>Land disposition/Legislation, ENF Mitigation</td>
<td>• Temporary Occupancy</td>
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<td>• De Minimis</td>
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<td>• Programmatic 4(f)</td>
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<td>• Individual 4(f)</td>
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STATE
Article 97

What Does it Protect?

Any transfer or conveyance of ownership or other interests; any change in physical or legal control; and any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth.

Disposition Process

• Unanimous vote of the Conservation Commission
• Unanimous vote of the Park Commission if the land proposed for disposition is parkland
• Two-thirds Town Meeting or City Council vote in support of the disposition
• Two-thirds vote of the legislature in support of the disposition
• Comply with all requirements of the Self-Help, Urban Self-Help, Land and Water Conservation Fund, and any other applicable funding sources
• Comply with EOEA Article 97 Land Disposition Policy

MEPA ENF threshold:
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.
# Section 4(f) of the US DOT Act

## What Does it Protect?

Publicly-owned land of public park, recreation area, wildlife or waterfowl refuge, or land of a historic site of National, State, or local significance.

## Common Authorization Types

### Temporary Occupancy:
Temporary, typically construction-related activities.

### De Minimis:
- A Section 106 finding of no adverse effect or no historic properties affected on a historic property; or
- A determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f).

## Resource:
FHWA Section 4(f) Policy Paper
Section 6(f)

What Does it Protect?

Also known as the Land and Water Conservation Fund Act
- Preserves outdoor recreation resources
- Applies when a project proposes to convert property that was purchased or improved through Land and Water Conservation Act funding

Process
- Identify lands funded by the Land and Water Conservation Fund
- If proposed to be converted to a non-recreational use, the National Park Service must be contacted to request conversion

Swasey Field. Haverhill, MA
## Cultural and Historic Resources

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## Section 106 of the National Historical Preservation Act

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<th>Scenario</th>
<th>Action Details</th>
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<td>• Determination to MHC for concurrence (30 days)</td>
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<td>• Determination/Memorandum of Agreement (MOA) to FHWA and MHC</td>
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<td><strong>4(f) Temporary Occupancy</strong></td>
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<td><strong>4(f) De Minimis Determination</strong></td>
<td>• Send to MHC for concurrence (30 days) • Send to FHWA for records</td>
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Other Important MEPA and NEPA Components
Right of Way

Nexus to Section 4(f) and Article 97

CE/ROW Timing

ROW Review

Utility Impacts

Identify wetland replication/stormwater BMP areas
ROW Plan Review

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<th>PLAN SHEET NO</th>
<th>TITLEHOLDER</th>
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Are we taking more than minor amounts of ROW?

Do we have easements on Article 97/4(f) property?
What type of easements are they?
Other items to consider:

- Environmental Justice
- Wild and Scenic Rivers
- State Air Quality Implementation Plan
- Office of Coastal Zone Management
- Noise
MEPA and NEPA Resources


- https://www.mass.gov/service-details/mepanepa-massdot-environmental-services
Thank You

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857-368-8813

Join us for a more detailed dive into MEPA and NEPA!

MEPA Training—March 25th
NEPA Training—April 16th