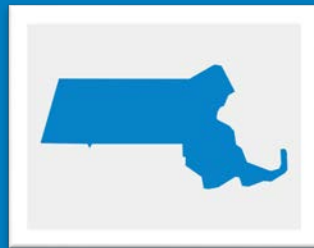


# MEPA/NEPA Webinar

## Regulatory, Design, Process Overview



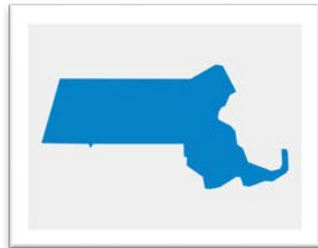
*February 26, 2020*

# Goals and Objectives

Understand  
MassDOT  
expectations for  
MEPA/NEPA  
documentation

Better Identify  
Resource  
Areas

Procedure and  
Timeline for  
Documentation





Policy  
Umbrella



## 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)

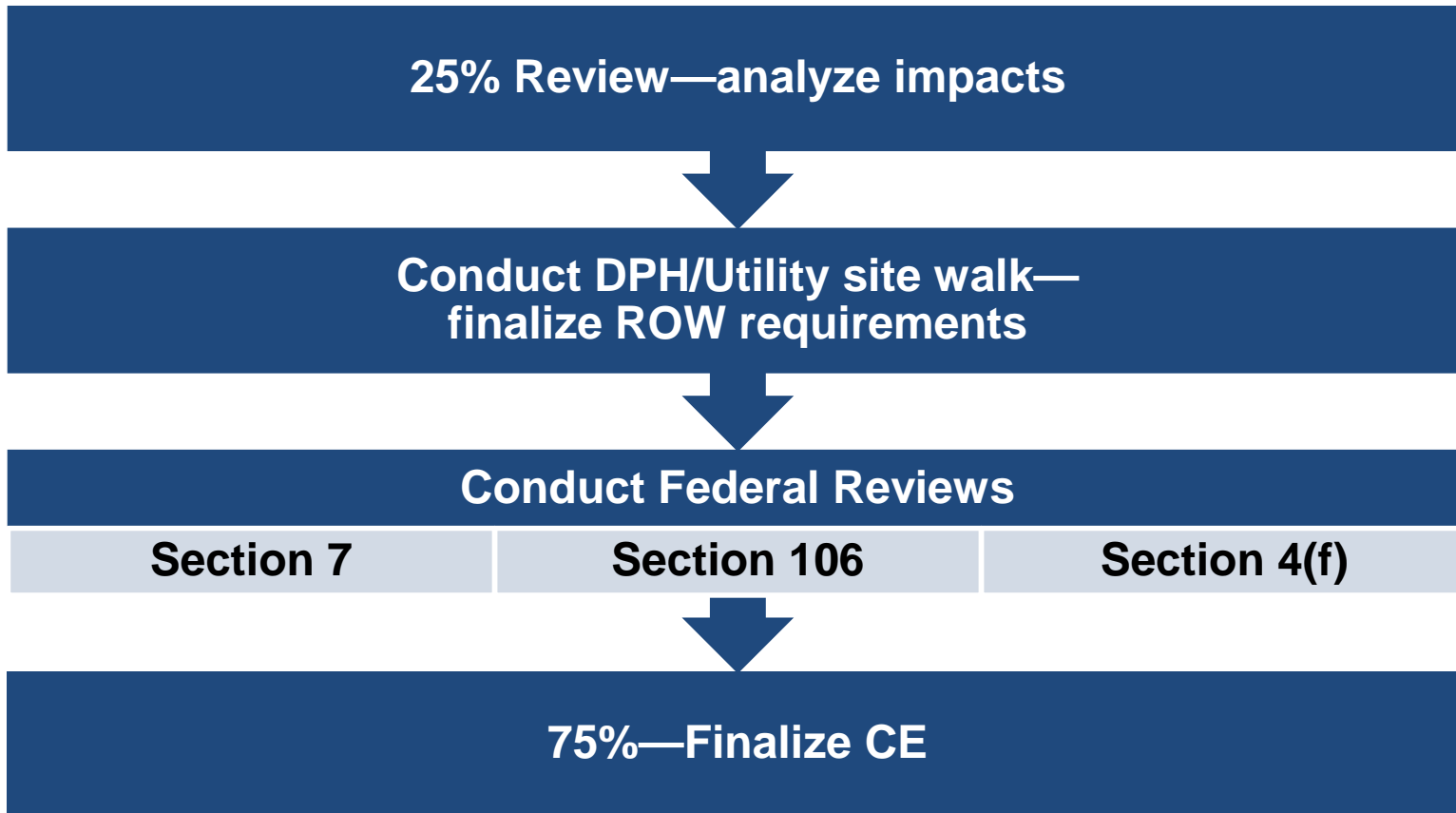
**Individual**  
(FHWA Concurrence)



>95% of MassDOT projects qualify as CEs



# Categorical Exclusion (CE) - Timeline/Chronology





# 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)**

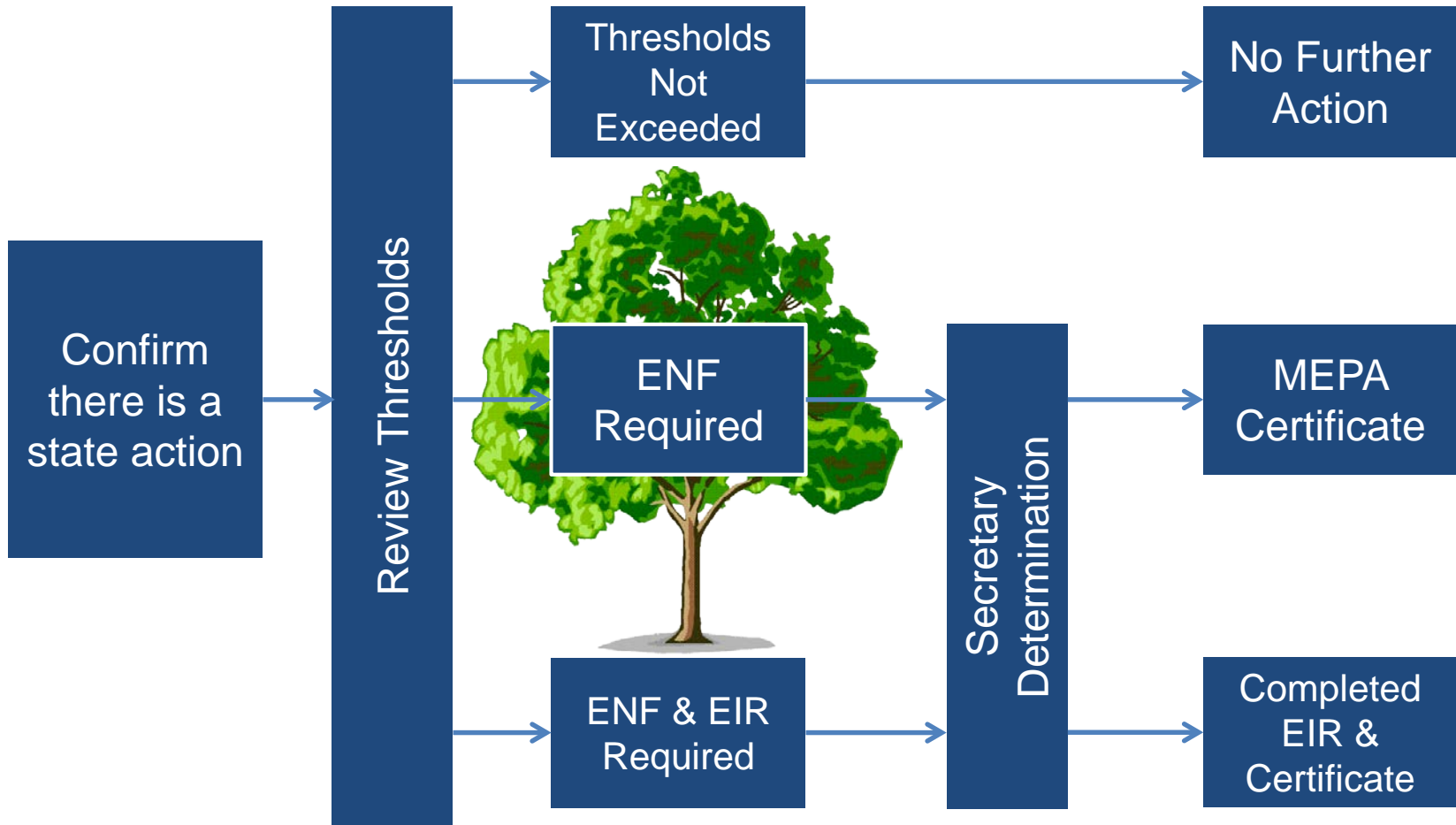
**Requires public notice in newspaper. 37 day review and public comment.**



**Secretary Certificate—no further review**



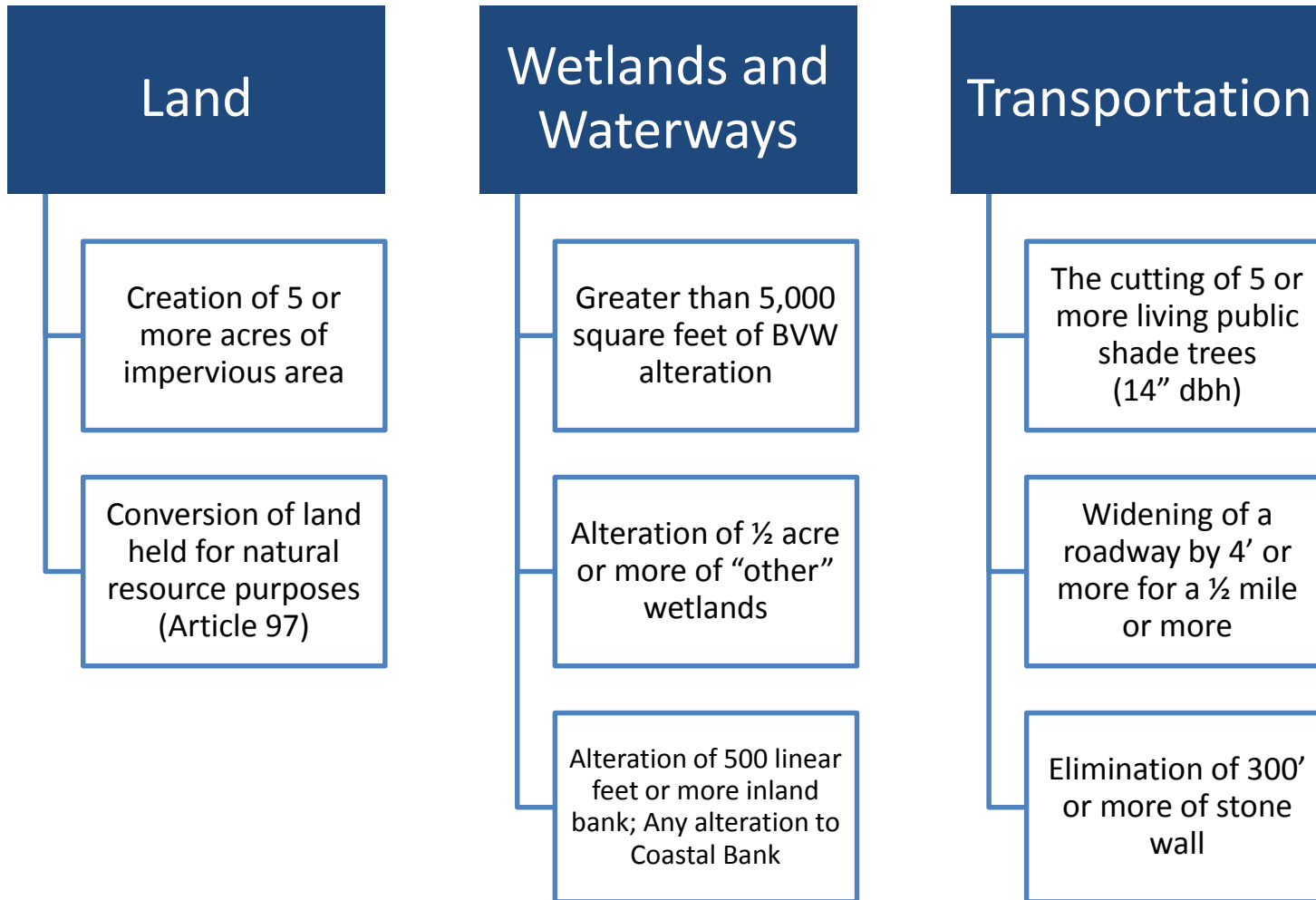
# MEPA







# Common ENF Thresholds



# 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.

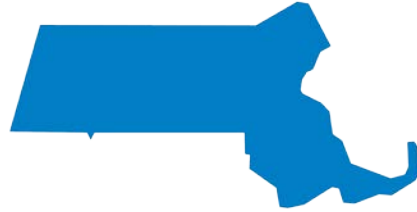
# Regulatory Framework & Impacts



# Wetlands/Natural Resources



	State	Federal	
<b>Regulation</b>	<ul style="list-style-type: none"> <li>Wetlands Protection Act</li> <li>Chapter 91</li> <li>MESA</li> <li>Consistency Review</li> </ul>	<ul style="list-style-type: none"> <li>Clean Water Act (Section 401/404)</li> <li>Section 9/10 Rivers and Harbors Act</li> <li>Section 7 Endangered Species Act</li> <li>US Coast Guard</li> <li>Magnuson-Stevens Act (Essential Fish Habitat [EFH])</li> </ul>	
<b>Agency</b>	<ul style="list-style-type: none"> <li>MassDEP</li> <li>Conservation Commission</li> <li>NHESP</li> <li>Office of Coastal Zone Management</li> </ul>	<ul style="list-style-type: none"> <li>MassDEP</li> <li>USACE</li> <li>USCG</li> </ul>	<ul style="list-style-type: none"> <li>USFWS</li> <li>NMFS</li> </ul>
<b>Resources</b>	<ul style="list-style-type: none"> <li>Bordering vegetated wetlands</li> <li>Floodplain</li> <li>Coastal zone</li> <li>Estimated/priority habitat</li> </ul>	<ul style="list-style-type: none"> <li>Waters of the United States</li> <li>Endangered Species (northern long-eared bat)</li> <li>Essential Fish Habitat</li> </ul>	



**STATE**

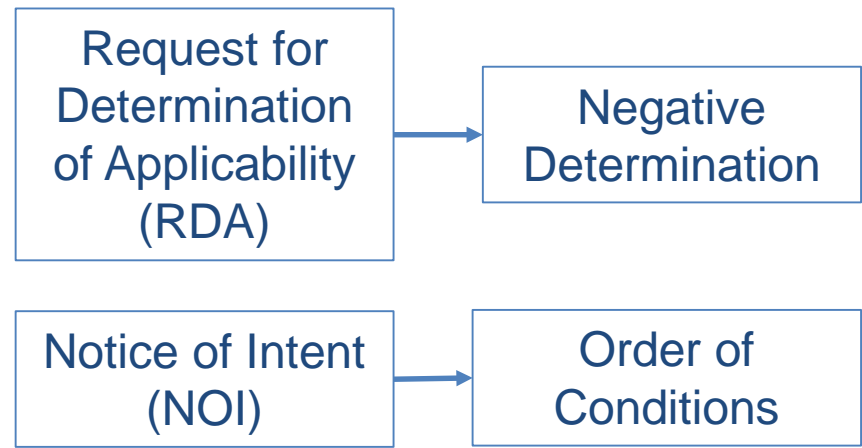


# Wetlands Protection Act

## 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



**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

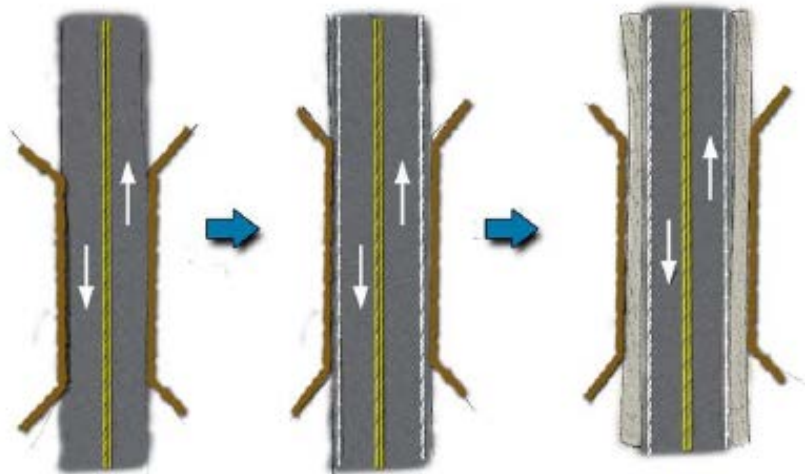


MassDOT is exempt from **MEPA**, **Chapter 91**, and **WPA** if the proposed bridge design is substantially the functional equivalent of, and in similar alignment to, the existing structure



# 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





# FEDERAL

# 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

OOB 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



	State	Federal
<b>Regulation</b>	Article 97	Section 4(f) Section 6(f)
<b>Agency</b>	Owner/MEPA	Owner/FHWA National Park Service
<b>Resources</b>	Publicly-owned, serves Article 97 interests	<ul style="list-style-type: none"> <li>Publicly-owned land of public park, recreation area, wildlife or waterfowl refuge, or land of a historic site of National, State, or local significance</li> <li>Recreational areas funded by LWCF</li> </ul>
<b>Outcome</b>	Land disposition/Legislation, ENF Mitigation	<ul style="list-style-type: none"> <li>Temporary Occupancy</li> <li><i>De Minimis</i></li> <li>Programmatic 4(f)</li> <li>Individual 4(f)</li> </ul>



**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.



# FEDERAL



# 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



	State	Federal
<b>Regulation</b>	Chapter 254	Section 106, Section 4(f)
<b>Agency</b>	MHC	SHPO
<b>Resources</b>	State register-listed properties	NR-eligible/listed properties/districts
<b>Outcome</b>	Project Notification Form (PNF)	<ul style="list-style-type: none"> <li>• In-house Clearance</li> <li>• No Adverse Effect</li> <li>• Adverse Effect</li> <li>• Temporary Occupancy</li> <li>• <i>De minimis</i></li> <li>• PNF</li> </ul>







# FEDERAL



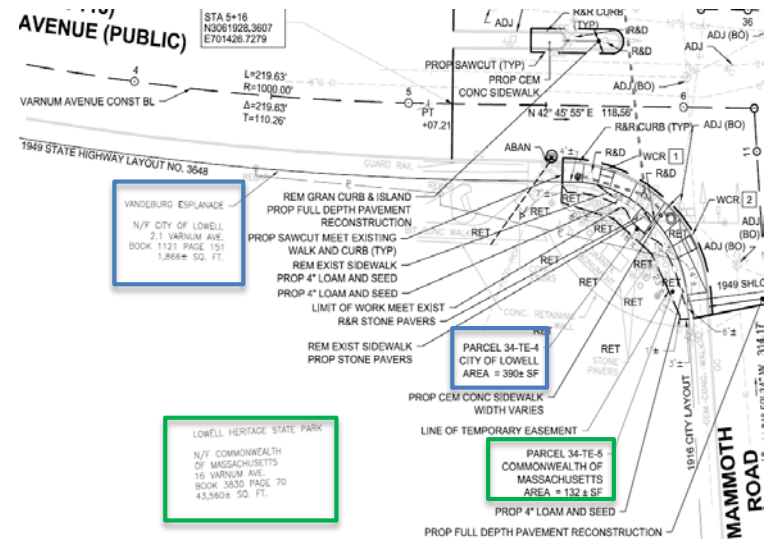
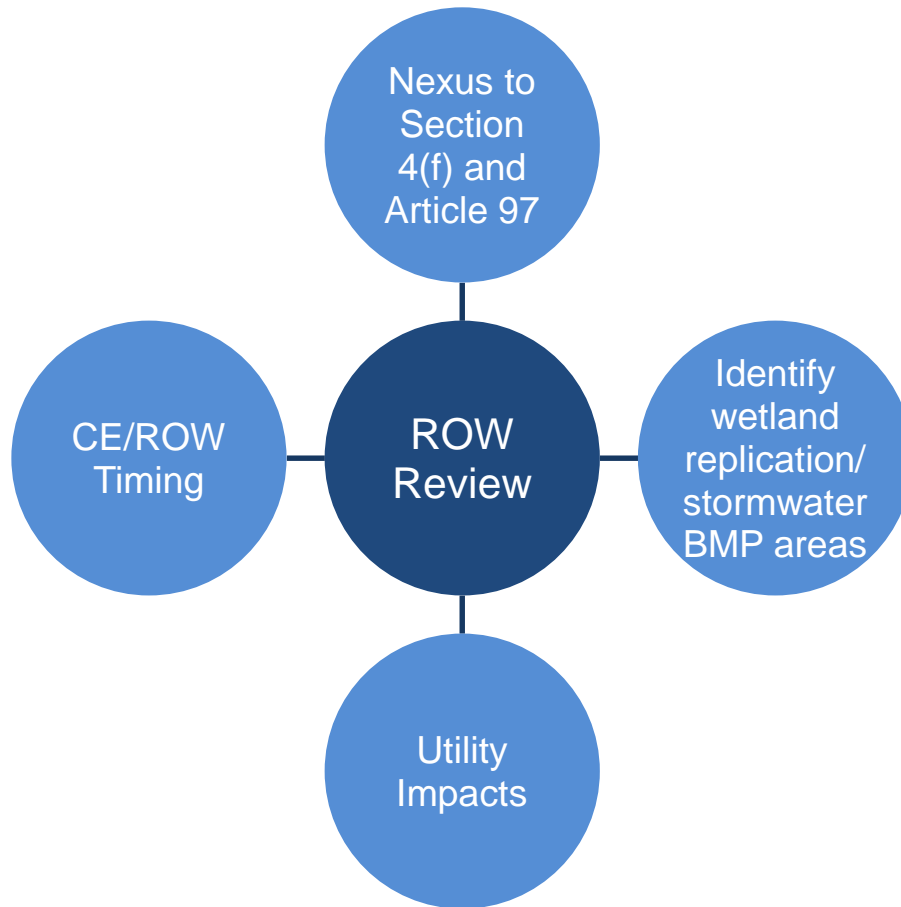
# Section 106 of the National Historical Preservation Act

In-House Clearance	<ul style="list-style-type: none"><li>• Appendix 1/Stipulation V.B</li></ul>
No Adverse Effect	<ul style="list-style-type: none"><li>• Determination to MHC for concurrence (30 days)</li></ul>
Adverse Effect	<ul style="list-style-type: none"><li>• Determination/Memorandum of Agreement (MOA) to FHWA and MHC</li></ul>
4(f) Temporary Occupancy	<ul style="list-style-type: none"><li>• Determination to MHC for concurrence (30 days)</li></ul>
4(f) De Minimis Determination	<ul style="list-style-type: none"><li>• Send to MHC for concurrence (30 days)</li><li>• Send to FHWA for records</li></ul>

Other Important  
 MEPA and NEPA   
Components



# Right of Way



# ROW Plan Review

PARCEL NO.	PLAN SHEET NO.	TITLEHOLDER	TITLE REFERENCE				AREA (S.F. +/-)				TOTAL PROPERTY AREA (S.F.)	REMARKS	
			DEED BOOK	PAGE NO.	LCC NO.	CERT NO.	TAKEN		EASEMENT	TOTAL TAKEN			REMAINING
							CITY	STATE					
23-1-C	8	CITY OF BROCKTON	1700	345			1,318			1,318	2,911,104	2,912,4	
<del>23-W-1-C</del>	8	CITY OF BROCKTON	1700	345					PERM	191			
<del>23-W-2-C</del>	8	CITY OF BROCKTON	1700	345					PERM	340			
<del>23-PUE-W-1-C</del>	8	CITY OF BROCKTON	1700	345					PERM	26			
<del>23-PUE-E-1-C</del>	8	CITY OF BROCKTON	1700	345					PERM	96			
<del>23-TE-1</del>	8	CITY OF BROCKTON	1700	345					TEMP	1,300			TO CONSTRUCT WALL, SLOPE
<del>23-TE-2</del>	8	CITY OF BROCKTON	1700	345					TEMP	216			TO CONSTRUCT SLOPE
23-2	8	ASHWOOD HOMES, INC	3758	750			322			322	311,568	311,890	
23-PUE-2	8	ASHWOOD HOMES, INC	3758	750					PERM	644			
23-TE-3	8	ASHWOOD HOMES, INC	3758	750					TEMP	1,384			TO CONSTRUCT PAVEMENT
23-3	8	BRINKER FAMILY LIMITED PARTNERSHIP	22488	1			249			4,596	336,043	340,639	
23-4	8,9	BRINKER FAMILY LIMITED PARTNERSHIP	22488	1			4,347						
<del>23-PUE-3</del>	8	BRINKER FAMILY LIMITED PARTNERSHIP	22488	1					PERM	1,843			
23-TE-4	8	BRINKER FAMILY LIMITED PARTNERSHIP	22488	1					TEMP	109			TO CONSTRUCT PAVEMENT
23-TE-5	8	BRINKER FAMILY LIMITED PARTNERSHIP	22488	1					TEMP	91			TO CONSTRUCT SLOPE
23-TE-6	8,9	BRINKER FAMILY LIMITED PARTNERSHIP	22488	1					TEMP	4,692			TO CONSTRUCT DRIVE
23-PUE-4	8	BELMONT SOUTH STREET, LLC								37			
23-TE-7	8	BELMONT SOUTH STREET, LLC								2,098			TO CONSTRUCT DRIVE

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/orgs/massachusetts-environmental-policy-act-office>
- <https://www.mass.gov/service-details/mepanepa-massdot-environmental-services>

# Thank You

Bryan Cordeiro

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857-368-8813

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



MEPA Training—March 25<sup>th</sup>

NEPA Training—April 16<sup>th</sup>