

ENVIRONMENTAL LAW & LAND USE UPDATE 2025-2026

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Real Estate Bar Association (April 2, 2026)

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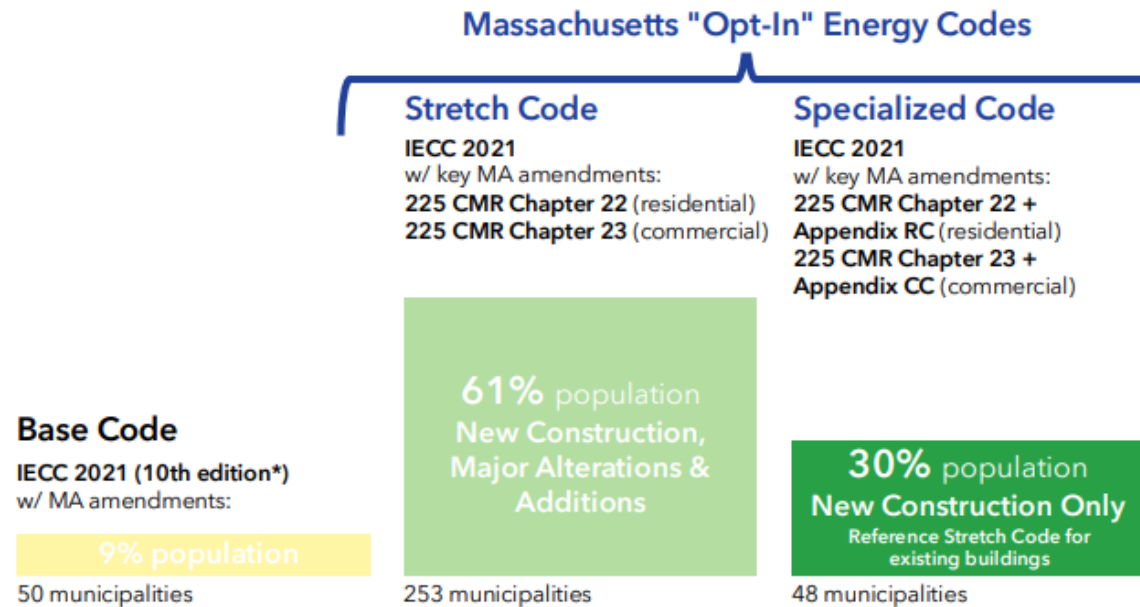
Mr. McGregor thanks legal intern Abigail George for her valuable assistance.



STATE LAW UPDATES

1. BUILDING ENERGY CODE AMENDMENTS

- The State Building Code is a three-tier system, with a mandatory Base Code and optional “Opt-In” stretch and specialized codes.



- The 2025 amendments place additional requirements on residential low-rise buildings for ventilation (R403.6), EV-readiness (R404.4), and passive house certification (R405.2-3) and existing building alterations (R501.2, R506, R503.1.1).
- The MA Building Code establishes energy efficient requirements for certain projects through the Home Energy Rating System (HERS). The lower the number, the more energy efficient the property is.
- The 2025 amendments changed the required HERS rating for new construction, ADUs, and major alterations.

TABLE R406.5 MAXIMUM ENERGY RATING INDEX

Clean Energy Application	Maximum HERS Index score ^{a,b}				
	New construction until June 30, 2024	New construction permits after July 1, 2024	New Construction with R406.5.2 embodied carbon credit	Accessory Dwelling Units	Major alterations, additions, or change of use ^c
<i>Mixed-Fuel Building</i>	52	42	45	52	52 65
Solar Electric Generation	55	42	45	55	55 70
<i>All-Electric Building</i>	55	45	48	55	55 70
Solar Electric & <i>All-Electric Building</i>	58	45	48	58	58 75

2. EXPEDITED PERMITTING FOR SMALL CLEAN ENERGY

- 225 CMR 29.00 establishes a process whereby small clean energy facilities (SCEIFs) may opt into an expedited permit program, through which municipalities must grant a decision within 12 months of completion of the application.
 - In conjunction with the 2024 Climate Act, which seeks to expand clean energy infrastructure by streamlining the approval process.
- This expedited process may be offered by municipalities as early as July 1, 2026, and must be offered by October 1, 2026.

- DOER issued a set of draft guidelines on January 21, 2026. Public comment for the guidelines closed March 13.
- The draft guidelines discuss requirements for pre-filing notices; consolidation of reviews; public participation; meeting public health, safety, and environmental standards; commonly expected conditions; minimization and mitigation measures; and constructive approvals.
- The draft guidelines, in their current state, are very in-depth and provide helpful information for potential SCEIFs hoping to take advantage of the consolidated permitting process.

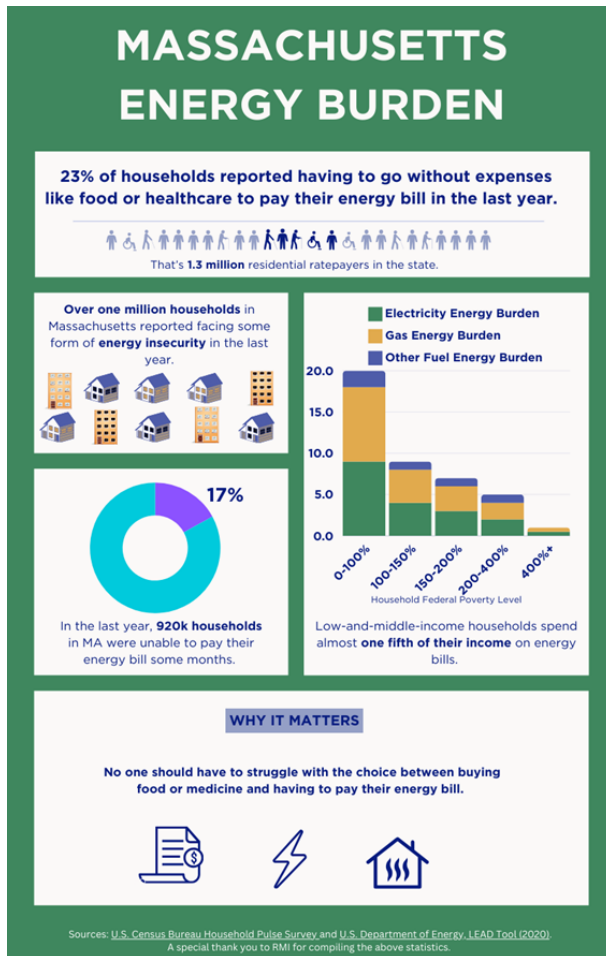
3. CLIMATE ACT ENERGY REGULATIONS

In addition to 225 CMR 29 (and its pending guidelines), a handful of other energy regulations have been recently promulgated in line with the 2024 Climate Act:

- 980 CMR 13, 14, 16: Larger clean energy infrastructure facilities (CEIFs) may also engage in a similar one-stop, consolidated (15 month) permitting process. Very similar requirements as under 225 CMR 29.00. Appeals go directly to EFSB Director for de novo review.
- [220 CMR 34: Financial assistance for stakeholders in DPU or EFSB proceedings (up to \$150,000/party and \$500,000/proceeding).
- [PENDING] 980 CMR 15: Requirements for assessing EJ impacts and site suitability for EFSB projects.
- [PENDING]: 980 CMR 17: Constructive approval for EFSBs.
- [PENDING]: 220 CMR 32: New fee schedules for EFSB filings in docket D.P.U. 26-30.

- In response to the proposed rule on fee applications for energy facilities siting boards, the Massachusetts Association of Health Boards have issued comments urging the Department to:
 - (1) explicitly recognize local boards of health (BOH) as Permit Enforcement Agencies (PEAs);
 - (2) create a BOH pre-siting and operational public-health review fee applicable in all Battery Energy Storage System (BESS) related cases; and
 - (3) establish a dedicated site-assignment/nuisance bond or cash-deposit line item in the amount of \$250,000 that BOHs can draw upon if a facility is later shown, in their opinion, to be a nuisance or noisome trade requiring a full proceeding.
- The comments state various health concerns in their rationale, including noise from cooling fans, inverters, and transformers and toxic contents of smoke.

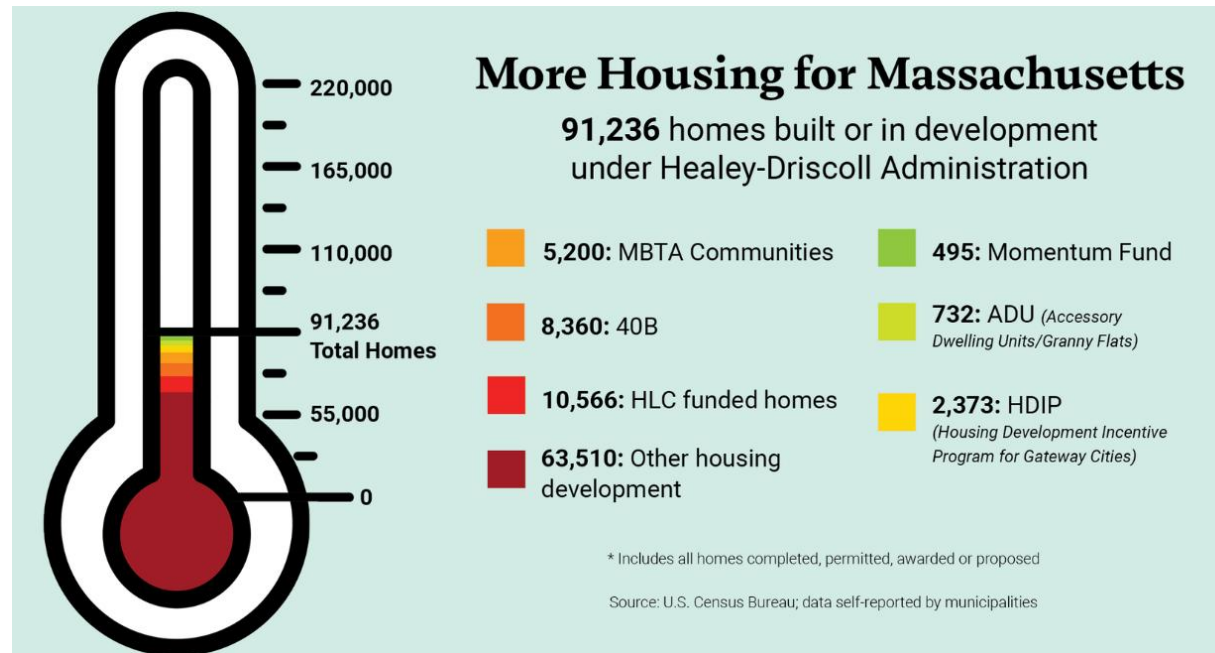
4. DPU ENERGY DISCOUNTS



- January 2024: DPU opens inquiry to examine energy affordability for residential ratepayers.
- June 2024: after receiving input from various stakeholders, DPU solicited written comments for wider input.
- June 2025: DPU holds virtual technical session to gather feedback on how to develop discount rates.
- February 2026: DPU issues Phase I Order, requiring electric and gas utility companies to implement the discount rates for low-income customers.
- Utility companies must implement these discounted rates by November 1, 2026.

5. AFFORDABLE HOMES ACT

- On August 6, 2024, Governor Maura Healy signed the Affordable Homes Act into law, authorizing \$1.5 billion in spending over the next five years to address the state's lack of affordable housing. The legislation seeks to make housing more affordable by drastically increasing the housing supply, both through direction of state funds and changes to the Zoning Act.



5A. SEASONAL COMMUNITIES

- § 5: Designation of communities with substantial season variations in employment and housing needs as “Seasonal Communities.”
 - The Community may acquire year-round housing occupancy restrictions;
 - The Community may acquire and develop housing units with a preference for housing seasonal community public employees that are “necessary to the health and safety of maintaining a year-round community
 - Residential uses are permitted as of right on Undersized Lots if it is to be used for an “attainable housing unit,” it is located in a single-family residential zoning district, complies with floor-to-area ratio and wastewater/sewer requirements, and is not to be used as a seasonal home or short-term rental.

5B. HEIGHTENED ZBA APPEALS

- AHA § 12: Plaintiffs appealing a decision of the Zoning Board may be required to post a cash bond of up to \$250,000 (previously \$50,000).
- AHA § 11: In abutter-commenced appeals under the Zoning Act, abutters no longer have a presumption of standing. Abutters must “sufficiently allege” and “plausibly demonstrate” so as to prove with “credible evidence” that they have some “measurable injury” which is “special and different” to them.
 - Each plaintiff must prove a causal link between the specific zoning relief granted by the challenged permit and their alleged harms, that is the harms “likely flow from the decision.”

5C. MODIFICATION OF THE MERGER DOCTRINE

- AHA § 10: There is no merger if, at the time the instrument creating the lots was recorded, all lots:
 1. Conformed to then existing requirements of areas and frontage, width, yard, or depth,
 2. Had at least 10,000 square feet of area,
 3. Had at least 75 feet of frontage, and
 4. Were located in a zoning district that allows for single-family use.

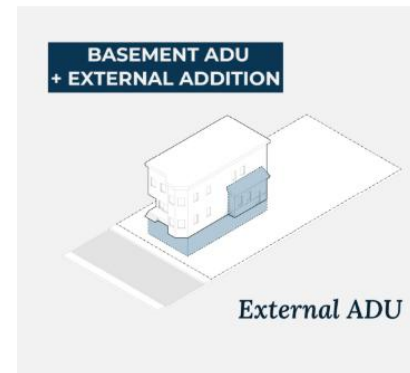
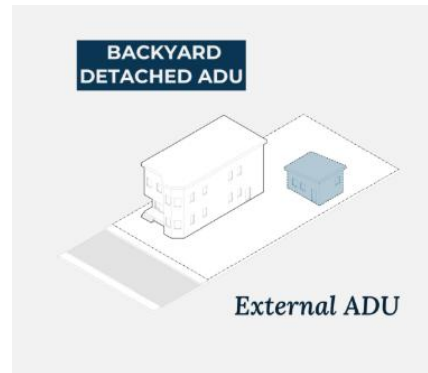
Exception for Starter Homes: A single-family residential structure may be constructed on the undeveloped (non-merged) lot so long as the structure (a) doesn't exceed 1,850 square feet of heated living space, contains at least three bedrooms, and is not used as a seasonal home or short-term rental.

5D. ADUs

- AHA § 3: Subject to reasonable restrictions, accessory dwelling units (ADUs) are allowed as of right in single-family residential zoning districts.
 - May be rented out and will not require a dedicated parking space if located within 0.5 miles of a public transit station.
 - Can be 900 square feet or 50% of the size of the primary dwelling, whichever is smaller.
 - Homeowners can convert existing spaces (like basements or garages) into ADUs.
 - Neither the primary residence nor the ADU must be owner-occupied.
 - Some municipalities, particularly in more rural or less densely populated areas, may be exempt.

AHA § 8: Guidance on “reasonable regulations”

“No zoning ordinance or by-law shall **prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval** for ... single accessory dwelling unit, or the rental thereof, in a single-family residential zoning district... subject to **reasonable regulations**, including, but not limited to... **site plan review, regulations concerning dimensional setbacks and the bulk and height of structures** and may be subject to **restrictions and prohibitions on short-term rental...**”



5E. DRAFT SURPLUS LAND REGULATIONS

- AHA § 121-22: streamlined process for the disposition of state surplus and for housing purposes through the Division of Capital Asset Management and Maintenance (DCAMM)
 - Requires municipalities to allow residential development on property conveyed by DCAMM as of right
 - Municipalities may reasonably regulate the following factors, so long as the development achieves a statutory minimum of 4 housing units per acre: bulk and height of structures; lot area; setbacks; open space coverage requirements; and site plan review.
 - Health, safety, utility, environmental, energy code, and other regulations may be applied to these developments.
 - Public comment on these regulations is open until April 13.

6. STARTER HOME ZONING DISTRICTS

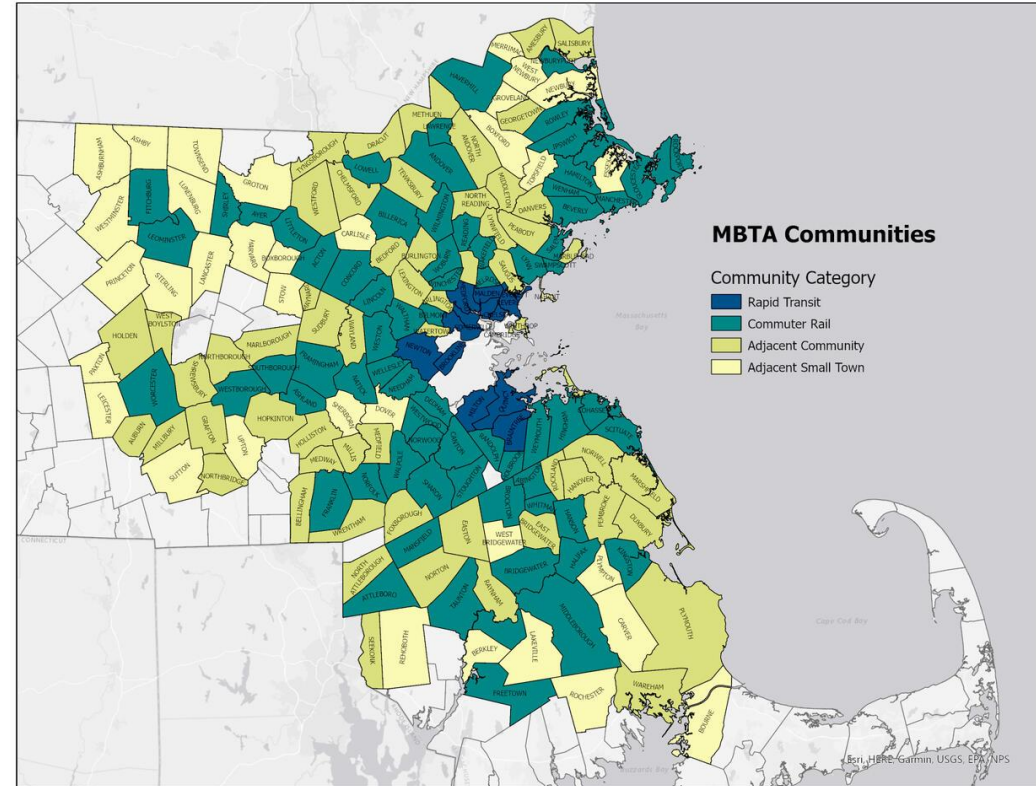
- March 13, 2026: Executive Office of Housing and Livable Communities (EOHLC) finalizes 760 CMR 69.00, implementing the Starter Home Zoning District Program under M.G.L. c. 40Y.
- 40Y districts may be in any location, so long as the zoning meets other requirements under 40Y
 - While prioritizing density, 40Y does not require zoning districts to be near public transit, village centers, etc.

- 40Y districts must have a minimum density of 4 units per acre
- Upon EOHLC approval of a 40Y District, cities and towns are eligible for two grants:
 - Zoning Incentive Payment: one-time payment of \$10,000 to \$60,000, based on the number of additional as-of-right units allowed by the new zoning. Granted at the time of conditional or final approval.
 - Density Bonus Payment: \$3,000 per new unit which are (i) not previously allowed of right and (ii) meet affordability requirements. Granted at construction.
 - These payments have various eligible uses, including community infrastructure, transportation, and utility upgrades.

7. MBTA COMMUNITIES ACT UPDATE

- AHA § 3A: MBTA communities must have at least one zoning district of “reasonable size” in which multi-family housing is permitted as of right. This district must (i) have a minimum gross density of 15 units per acre and (ii) not be located more than 0.5 from public transit.
- *Attorney General v. Town of Milton et. al*, 495 Mass. 183 (2025): SJC rules that the AG can enforce the MBTA Communities Act against cities and towns.

- January 29, 2026: AG Campbell files lawsuit against Dracut, East Bridgewater, Halifax, Holden, Marblehead, Middleton, Tewksbury, Wilmington, and Winthrop for their continued noncompliance with the MBTA Communities Law.
- To date, 165 out of 177 MBTA communities are in compliance, creating nearly 7,000 new homes across 34 communities.



8. THE MASS READY ACT

- Governor Maura Healey announced *An act to build resilience for Massachusetts Communities* (“Mass Ready Act”), her environmental bond bill, on June 24, 2025.
- The bill would authorize \$2.9 billion in funding over 5 years, a 20.8% increase from the previous 2018 environmental bond bill. The administration estimates that \$13 in future costs will be saved for every \$1 invested as a result of the bill.

- Some of the largest budget items in the proposed bill include
 - \$315,000,000 for the municipal vulnerability preparedness grant program
 - \$308,100,000 for the improvement of state-owned or abandoned dams
 - \$385,000 for the water pollution abatement trust (G.L. c. 29C § 2).
- A hearing was held on July 15th, 2025. The bill has been referred to and recommended by the committee on Environment and Natural Resources and the committee on Bonding, Capital Expenditures and State Assets. Currently, the bill sits with the committee on Senate Ways and Means for review.

9. EJ TRUST GRANTS

- On August 14, 2024, Governor Maura Healey signed into law the Environmental Justice Trust. The Trust, proposed by Attorney General Andrea Joy Campbell, supports projects to address environmental harms in EJ communities and is funded through civil penalties obtained by the AGO's Environmental Protection Division.
- On December 18, 2025, AG Campell announced the distribution of \$475,000 from the Environmental Justice Fund to 12 organizations across the Commonwealth provide “aid in addressing economic, environmental, and health-related burden.”
- Recipients vary from universities to community farms. Grants were given in support of a specific project, ranging from projects to decrease heat island impacts through increased tree canopies and the historic restoration of degraded indigenous sites.

10. MEPA AMENDMENTS (301 CMR 11)

- The Massachusetts Environmental Policy Act (MEPA) requires state agencies to assess the potential environmental impacts of a proposed project before deciding to approve it. A project is under MEPA jurisdiction if it is (i) under MEPA's jurisdiction and (ii) is meets the review threshold (whether a Project is likely to cause "Damage to the Environment").
- January 16, 2026: MEPA finalizes amendments to 301 CMR 11.00. The amendments, in part, make it less likely for residential developments to have to undergo MEPA review. This is especially true for residential projects which create high-density housing and/or are located near public transit.
- 11.01(3)(b)3: review thresholds do not apply to "any Project consisting of one single family dwelling for which the only required Agency Action is a Superseding Order of Conditions"

11.01(3)(c)1.a-g: Any Project which meets the following requirements shall not be presumed likely to cause Damage to the Environment:

- (a) devotes 67% or more of its gross floor area to residential uses, with the remainder devoted to “supportive commercial, cultural, educational, community and/or civic uses”;
- (b) achieves density of at least 8 units/are for single-family, 12 units/acre for two and three family buildings, and 15 units/acre for multi-family housing;
- (c) alters up to 5 acres or previously undeveloped land or 10 acres of previously undeveloped land with a plan to minimize tree removal;
- (d) the Project site is located outside of the highest hazard areas and either outside of the Special Flood Hazard Area or, for redevelopment Project, complies with guidelines for structural safety in flood areas;
- (e) complies with the Massachusetts stretch energy code;
- (f) does not require approval of a new interbasin transfer of water or wastewater (unless determined to be insignificant); and
- (g) generate fewer than 3,000 new adt of traffic on roadways providing access to a single location: 6,000 new adt if the Project is located in a transit-oriented development district, a mixed-use district, or less than half a mile from a public transit stop with a path or travel

11. MCP AMENDMENTS (310 CMR 40.00)

- The Massachusetts Contingency Plan (MCP) governs the notification, assessment, and remediation of the release of oil and other hazardous materials. The MCP is created through M.G.L. c. 21E, which outlines the liability of current and past property owners and other potentially responsible parties (PRP) who contributed to the release.
- This most recent round of amendments to the MCP became available on September 1, 2023 and took effect on March 1, 2024. This update provided additional guidance and imposed further requirements on PRPs to avoid liability.
- Alongside the MCP, updates to the Massachusetts Oil and Hazardous Material List (MOHML) list were made, altering some of the amounts at which release of materials must be reported.

Important changes to the MCP include:

- 40.0975(6)(b), Table 3: finalizes cleanup standards and Reportable Concentrations for six PFAS compounds (PFDA, PFHpA, PFHxS, PFNA, PFOS, and PFOA)
- 40.0926: substantial revision of guidance on determining Exposure Point Concentrations (EPCs) for groundwater, soil, indoor air, sediment, surface water, and hot spots
- 40.0996: replaces the term “Upper Concentration Limit” with “Method 3 Ceiling Limit”
- 40.0924(6)(11): defines distinct Exposure points as “Hot Spots” and “visible coal tar deposit”
- 40.0191(3)(f): Response Action Performance Standard (RAP) must consider actions that “incorporate climate change resilience to the extent practicable and consistent with response action requirements”
- 40.1005(1): in defining “foreseeable period of time,” the regulation adds “considering existing site conditions and reasonable future changes in site conditions, including anticipated impacts associated with climate change”

12. BROWNFIELD GRANTS

- \$3 million grant to MassDEP, available through September 2027 (CERCLA § 128(a)).
 - MassDEP contractors perform assessments or sub-grant to municipality/eligible party.
 - Prioritizes projects with public benefit, source removal, sites where private funding unavailable.
- \$2 million “Community-wide Assessment Grant for States and Tribes,” available through September 2029 (CERCLA § 104(k)).
 - MassDEP contractors perform assessment/
 - Prioritizes municipalities or non-profits with limited revenue, projects with public benefit, sites where private funding unavailable.
 - MassDEP has supported assessment at 8 properties with planned residential redevelopment outcome.

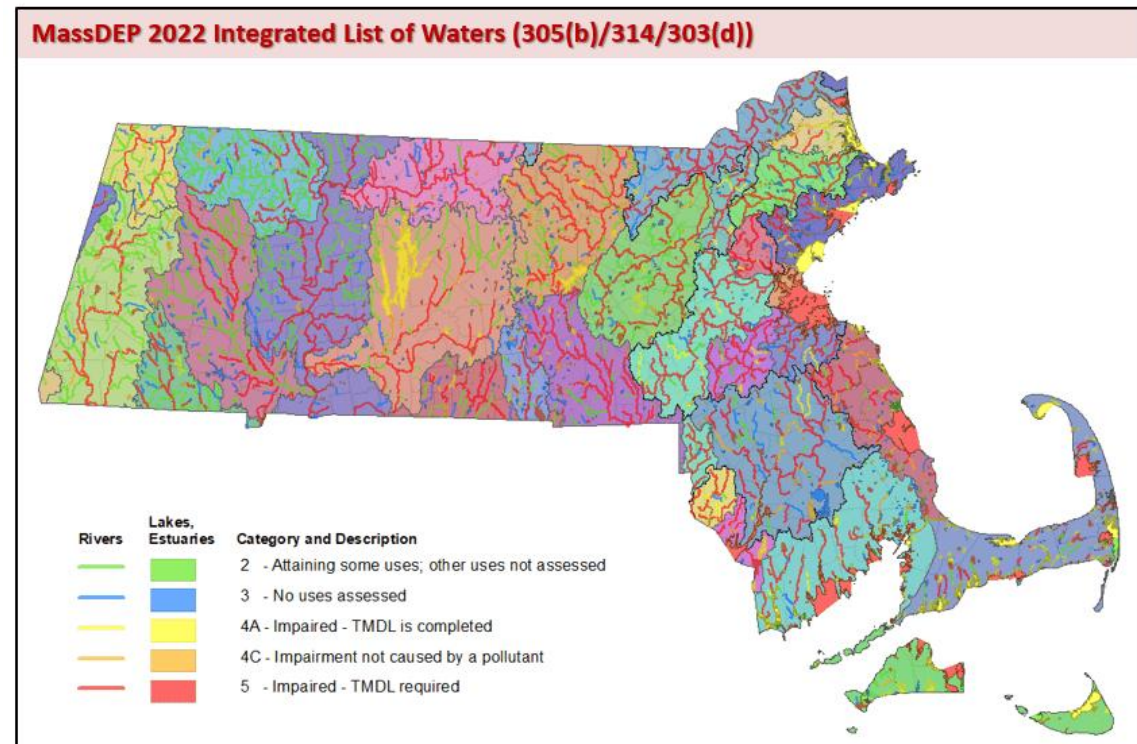
13. DEP STORMWATER HANDBOOK

- DEP promulgated a Draft Stormwater Management Handbook in 2023. The Handbook, once published, will be its third volume. The Handbook addresses updates and revisions to the Wetlands regulations, 310 CMR 10.00 and the Water Quality Regulations, 310 CMR 9.00. These updates are to “to improve the Commonwealth’s resilience to impacts of climate change.”
- DEP held a public comment period on the draft regulation from March 1 to April 30, 2024. As of November 2025, the proposed draft Wetlands and Waterways Regulations and the Stormwater Handbook are moving forward. DEP expects to promulgate Final Regulations in 2026. Once promulgated, there will be a 6-month “amnesty” period.
- These measures are expected to provide consistency between federal and state regulations, simplify stormwater permitting, and help the 260 MS4 communities meet the MS4 deadline to adopt local rules with EPA’s Minimum Control Measures.

- The draft regulations for 310 CMR 9.02 and 10.04 propose significant amendments to the Definitions sections, adding and revising language to account for the increased environmental hazards poses by floods and coastal storm surges.
- 10.05(4)(a): requires a construction period erosion, sedimentation and pollution control plan to accompany the Notice of Intent and poses additional requirements for projects subject to the Stormwater Management Standards (SMS).
- 10.05(6)(k): industrial, commercial, institutional, office, residential, and transportation projects with stormwater runoff in areas subject to M.G.L. c. 131 § 40 or are in a buffer zone are subject to Environmentally Sensitive Design (ESD) and Low Impact Development (LID) standards, wherever feasible, in addition to other SMSs.
- 10.05(6)(k): Stormwater Management Standards apply “to the Maximum Extent Practicable” to maintaining of pedestrian footpaths and Existing Public Roadways.
- 10.24(7)(c): elevation of existing public roadways may be permitted as a limited project, so long as it meets specified conditions.

14. PROPOSED SWQS AMENDMENTS

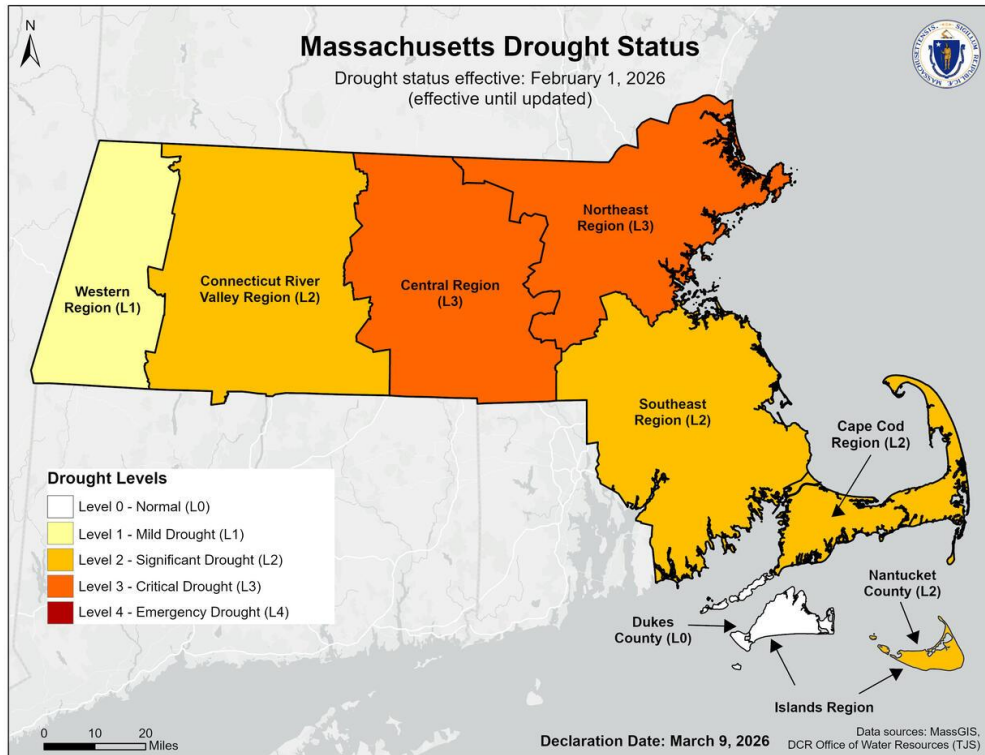
- January 2, 2026: DEP publishes a Public Hearing Notice for amendments to the State Water Quality Standards (SWQS) under 314 CMR 4.00.
- February 9, 2026: 30-day public comment period closes.



The proposed amendments, in part, would make the following changes to 314 CMR 4.00:

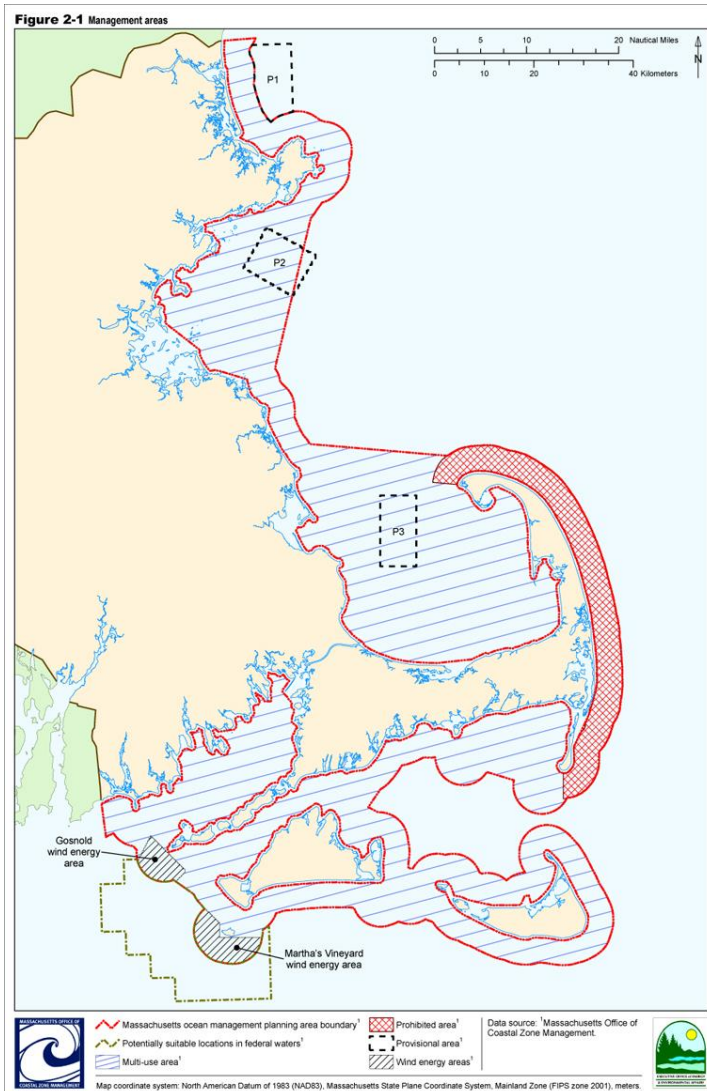
- 4.02, 4.05(3)(c): removal of the Class C Waters and Class SC Waters designation
- 4.05(f): revised bacteria concentration limits for Inland Waters and Coastal and Marine Waters
- 4.06(1)(2): abandoned public water supplies are no longer subject to regulation under 310 CMR 22.00, but remain designated as a public water supply under 314 CMR 4.00
- 4.06(6)(b), Tables 1-27: additional language to clarify the regulated portions of surface water bodies
- 4.06(6)(b), Table 28: adds additional waters which are subject to site-specific criteria
- 4.06(6)(b), Table 29a, Appendix E: establishes marine and estuary toxicity test organisms for marine and coastal waters

15. DROUGHT CONTROVERSY



- Governor Healy’s FY27 budget proposal includes cuts to several agencies that manage the state’s waters, raising concern as MA remains in drought even after record-breaking blizzards.
 - ~\$20 million cut to the EEA
 - \$1.5+ million cut to DEP
 - ~10% cut to DER
- Proposed Drought Bill (S.h86/H.1003) would allow the Secretary of the EEA to require regional conservation of non-essential outdoor water during times of drought, as recommended by MA’s Drought Management Task Force.

16. OCEAN PLAN UPDATE



- 2008 Oceans Act: directs Secretary to establish Ocean Plan
 - Plan must contain goals, siting properties, standards for uses (particularly for renewable energy, pipelines, cables, and sand extraction)
 - Plan must identify and protect special, sensitive, or unique estuarine and marine life and habitats
- First Ocean Plan in 2009, review every 5 years. Review of the 2021 plan is underway.
 - Review is in early stages, with no drafted materials of any proposed updates yet available.
 - The Ocean Science Advisory Council (SAC) held a meeting on March 30th to review the findings of three of the Ocean Plan technical working groups.

17. ARTICLE 97 & PLPA

- Article 97 of the Amendments to the Massachusetts Constitution establishes the right to a clean environment, including to “natural, scenic, historical, and esthetic qualities” as well as conservation and development of natural resources.
- The Public Lands Preservation Act (PLPA), effective February 2023, establishes an administrative process for the transfer or change in any use of land, water, or other real estate interests that are protected by Article 97.
- PLPA was codified in *An Act Preserving Open Space in the Commonwealth* (M.G.L. c. 3, § 5A), also known as the Open State Act. The Open Space Act establishes in-statute requirements and a process for petitioning to authorize for a change in use of Article 97 land. Applicants must submit documentation of several factors in this petition, including (but not limited to) written notification to the public and the Commonwealth, a finding of necessity, and alternatives analysis.

- While not required under M.G.L. c. 3, § 5A, EEA has created an online portal to streamline the submission process, whereby applicants can submit required documents, post alternatives analysis, and comply with notification requirements.

- This portal can be accessed on the Mass.gov website, on the page titled “Online Submittal to Comply with M.G.L.c. 3, § 5A”
- At the bottom of the Mass.gov page “Article 97 & An Act Preserving Open Space in the Commonwealth (M.G.L. c. 3, § 5A),” you can also access a tracker with updates on different Article 97 proposals.

Tracker (Access to M.G.L. c. 3, § 5A Submissions & Decisions)

File Number	Applying Entity	Owner of Art. 97 Interest	Date Submitted	Portal Submission	Alternatives Analysis	EEA Responses	Supplemental Materials Submitted
A97_001_213	Town of North Reading	Town of North Reading			Alternatives Analysis	Waiver	Supplemental Materials
A97_002_305	Wakefield Municipal Light and Gas Department	Town of Wakefield			Alternatives Analysis		Supplemental Materials
A97_003_189	Town of Milton	Town of Milton			Alternatives Analysis	Determination of Natural Resource Value	Supplemental Materials
A97_004_160	City of Lowell	Department of Conservation and Recreation	6/24/2024	Portal Submission Data	Alternatives Analysis		Supplemental Materials
A97_005_223	Town of Orange	Town of Orange	6/26/2024	Portal Submission Data	Alternatives Analysis		Supplemental Materials
A97_006_050	Department of Transportation	Town of Canton			Alternatives Analysis	Report of in Lieu Funding	Supplemental Materials
A97_007_046	Town of Brookline	Town of Brookline			Alternatives Analysis		Supplemental Materials
A97_008_330	Department of Transportation	Town of Westford				Waiver of Replacement Land	Supplemental Materials
A97_009_197	Town of Nantucket	Town of Nantucket				Waiver of Replacement Land	
A97_010_329	Town of Westfield	Department of Conservation and Recreation				Waiver of Replacement Land	

- *Nahant Preservation Trust, Inc., et al. v. Northeastern University Massachusetts*, 104 Mass. App. Ct. 698 (2024)
 - 20.4 acres, including 12 acres of undeveloped land, owned by Northeastern since 1966. Marine Science Center in operation on the developed portion since late 1960s. Northeastern announces plan to expand center, constructing a new facility on the undeveloped land. Town and Nahant Preservation Trust sue under public dedication doctrine under Article 97.
 - Held: The public dedication doctrine “is not intended to catch an owner by surprise... our cases make clear that ‘[t]he owner’s acts and declarations should be deliberate, unequivocal and decisive, manifesting a clear intention to permanently abandon his property to the specific public use.’”
 - This has been satisfied in past cases via express promised or the acceptance of Federal funds for the rehabilitation of the property to a public use.
 - The case was argued in front of and is currently under advisement at the SJC.

18. STATE WILDLIFE ACTION PLAN (SWAP)

- In order to be eligible for State Wildlife Grants, MA must submit a State Wildlife Action Plan (SWAP) to the U.S. Fish and Wildlife Service to be approved. Plans must be revised every 10 years to “evaluate the health of rare, vulnerable, and declining species and to identify opportunities to conserve these species and associated habitats.”
- MassWildlife’s Natural Heritage & Endangered Species Program (MassWildlife) first developed the state’s SWAP in 2005 and updated it in 2015. After closing the public comment period, MassWildlife submitted updates to the MA SWAP on September 29, 2025.
- The 2025 SWAP, available entirely online, maps Core Habitat and Critical Natural Landscape areas, features 620 Species of Greatest Conservation Need (SGCN), describes 35 habitat categories for conservation, and identifies key actions need to help restore and conserve SGCN.

19. MA INTEGRATED LAND USE STRATEGY (MILUS)

- A group of state agencies are working together to align priorities on housing, clean energy, economic development, land conservation, and climate resilience, aiming to prevent land decisions that support one goal but conflict with others.
- Some of the agencies involved include the Executive Office of Energy and Environmental Affairs, the Executive Office of Housing and Livable Communities, the Department of Transportation, the Executive Office of Housing and Livable Development, and the Office of Climate Innovation and Resilience.
- MILUS's action items include identifying optimal, location-efficient uses of land; developing geospatial tools needed to identify and implement land use priorities; and general guide policy and foster collaboration across statewide, regional, and municipal government.

20. APPEALS COURT HOLDS PERMIT EXTENSIONS ADD ONTO TIME PERIOD

- On May 7, 2025, the Massachusetts Appeals Court ruled that permit extensions under the various Permit Extension Acts add onto, rather than running concurrently with, the time period set by the law under which the permit was granted.
- The case, *Palmer Renewable Energy, LLC. v. Zoning Bd. of Appeals of Springfield*, involved the construction of a biomass-fired powerplant in Springfield, MA. The project was twice granted permit extensions, first by the 2010 Permit Extension Act and second by COVID-era permit extensions in 2020.
- The case involves the 2010 Permit Extension Act (enacted in response to the Great Recession) and the COVID-19 Emergency Act.

- Palmer was granted two permits to begin construction in November 2011, which were then revoked by the ZBA in March 2012. Palmer filed suit to appeal the ZBA's decision that month, which was reversed by the Land Court in August 2014 and affirmed by the Appeals Court in 2015.
- The Appeals Court found that the litigation tolling period started on December 12, 2011, when the City filed its appeal to the ZBA. Adding the 153 days remaining on the building permits to the date when litigation finally ended on October 30, 2015, meant that the building permits expired March 31, 2016. The Permit Extension Act extended these permits four years through March 31, 2020, thus affording further extension under the COVID-19 permit extension law.
- Justifying its decision, the Appeals Court held that by starting the Permit Extension Act with “[n]otwithstanding any general or specific law to the contrary,” the phrase “in addition to the lawful term of approval” allows this four-year period to run concurrently with any period provided by litigation tolling.

21. BROOKLINE SMOKING BAN UPHELD

- Brookline 2021 bylaw prohibits the sale of tobacco to anyone born after January 1, 2000.
- Retailers challenged the bylaw in *Six Brothers, Inc. v. Town of Brookline*, 493 Mass. 616, 2278 N.E.3d 565 (2024). Plaintiffs argue (i) the bylaw was explicitly and implicitly preempted by the state law, which sets the legal age to buy tobacco at 21, (ii) the statute violates equal protection laws, and (iii) the cut-off date was arbitrary.
- The SJC held that Brookline had the authority to impose a more stringent law on the legal age to buy tobacco, citing various environmental law cases upholding municipal bylaws as under Home Rule authority.
 - Similar to SJC ruling in *Lovequist v. Town of Dennis Conservation Commission* (1979), a wetlands case which allowed for wetlands bylaws that imposed stricter standards than the Wetlands Protection Act.

- The SJC held that the anti-smoking law was rationally related to a legitimate government interest of curbing “the well-known, adverse health effects of tobacco use.” The Brookline law does not conflict with the State law, rather augments it.
- The Brookline bylaw is the first of its kind in the country, opening the door for other municipalities throughout the state and the U.S. to enact similar bans.
- Receiving pushback by pro-smoking groups (smokers and suppliers), success has not extended beyond Brookline.
 - In October 2024, Worcester City Council dismissed consideration of a request from a City Councilor for a feasibility report looking into how other MA municipalities enacted generational nicotine and tobacco bans.
 - In June 2025, Bellingham, MA town meeting voters rejected a proposal to enact a “nicotine-free generation” policy that would ban the sale of tobacco or nicotine products to anyone born after January 1, 2004.

22. DOVER AMENDMENT CASELAW

- *MJ Operations, LLC, v. Degrazia*, 33 LCR 112 (2025) (Smith, J.)
 - Residential structure w/ 13 dorm-style rooms. Teaches life skills to former adult convicts and persons who completed substance abuse rehabilitation.
 - Held: Primary use of the structure was education; “the residential component is, in and of itself, an essential part of the [project’s] educational mission.”
- *Duxbury Energy Storage, LLC v. Town of Duxbury Bd. of Appeals*, 33 LCR 293 (2025) (Reznick, J.)
 - Held: “standalone” battery energy storage is under the Solar Energy Protection.
- *Morse Bros. v. Town of Halifax*, 106 Mass. App. Ct. 1107
 - Cranberry bog challenge of Halifax bylaw requiring earth removal special permit.
 - Held: Municipalities may not use G.L. c. 40, § 21 to regulate earth removal in a manner that contravenes the Agricultural Protection.

- *Sunpin Energy Services, LLC v. Zoning Bd. of Appeals of Petersham*, 105 Mass. App. Ct. 641, review granted, 496 Mass. 1112 (2025)
 - Appeal from Land Court summary judgment to uphold ZBA decision to deny special permit application for a large-scale ground-mounted solar energy system.
 - Held: ZBA cannot reject on the basis that would “prefer” a different use of the land. Further, given that 97% of the town was forested, denial of permit on this basis is unlawful under *Tracer Lane*.

- *Cogliano v. Planning Bd. of Norton*, 105 Mass. App. Ct 1116 (2025)
 - Appeal from Land Court decision that upheld zoning bylaws which made it easier to obtain approval for solar installations.
 - Held: G.L. c. 40A, § 3’s solar energy protection applies to any aspect of a solar energy project that is “needed to ‘facilitate the primary system’s construction, maintenance, and connection to the energy grid...’”

23. ZONING CASELAW

- *DCAB, LLC v. Thorn*, 2025 WL 2876733 (2025) (Rubin, J.)
 - Plaintiff sought permit under Holliston Stormwater and Land Disturbance Bylaw for outdoor storage of vehicles, materials, and equipment. Bylaw allows as-of-right “general industrialized use” within 15,000 sq.ft. of storage area.
 - Held: 15,000 square feet of storage area required the use to be indoors to be as-of-right. The general bylaw was not a mislabeled zoning bylaw because it did not “prohibit or permit any particular listed uses of land” nor regulate the location or density of buildings.
- *Balser v. Mashpee Zoning Bd. of Appeals*, 33 LCR 387 (Foster, J.)
 - Plaintiff sought declaratory judgment regarding their standing to challenge whether zoning bylaw allowed short-term rentals on abutting property.
 - Held: Plaintiff has standing due to noise-related impacts on enjoyment of property, despite neighbors not recently renting property out short-term.

24. CITIZEN SUIT CASELAW

- *Currence v. A.D. Makepeace Co.*, 106 Mass. App. Ct. 71 (2025), *rev. denied*, 497 Mass. 1102 (2026)
 - Superior Court judge dismissed claim brought by 10 citizens and an environmental advocacy organization under G.L. c. 214, § 7A against earth removal company and the town earth removal committee (ERC) that its operations violated the town's earth removal bylaw.
 - Held: Decision vacated in part, affirmed in part.
 - Plaintiffs properly alleged damage to land or soil resources, satisfying first element.
 - The damage violated the bylaw, the major purpose of which was to “prevent or minimize damage to the environment.”
 - The ERC is not a proper defendant under G.L. c. 214, § 7A.
 - Mandamus action against ERC is not available under G.L. c. 249.
 - G.L. c. 40, § 21 does not vest private individuals with a cause of action to compel compliance with earth removal bylaws.



FEDERAL LAW UPDATES

25. WOTUS PROPOSED DEFINITION

- November 2025: EPA and Army Corp propose update to WOTUS rule
 - Relatively permanent: “standing or continuously flowing year-round or at least during the wet season.”
 - Continuous surface connection: “having surface water at least during the wet season and abutting (*i.e.*, touching) a jurisdictional water.”
 - Comment period closed January 6, no update on when final
- Awaiting this finalized rule, the 2023 rule issued under the Biden administration post *Sackett* remains in effect.

- May 2023: Supreme Court rules in *Sackett v. EPA* that wetlands must have a “continuous surface connection” with the waters of the United States (i.e., must be a “relatively permanent body of water) to be protected under the CWA
- September 2023: EPA and Army Corps update WOTUS rule to reflect *Sackett* rule. Narrows *Sackett*’s application, failing to define “relatively permanent” and “continuous surface connection”
- Training materials and guidance for how to implement the final “Revised Definition of ‘Waters of the United States,’ Conforming” rule are available on the EPA website under the webpage “Current Implementation of Waters of the United States.”

26. MBTA “TAKING” REDEFINED

- January 2017 (Obama): DOI memorandum, M-37041 establishes that “incidental takes [of migratory birds] were unauthorized takings or killings under the MBTA”
- December 2017 (Trump I): DOI memorandum M-37050 withdraws earlier Obama Opinion. MBTA’s prohibitions on pursuing, hunting, taking, capturing, and killing apply to affirmative actions intended to take or kill migratory birds, their nests, or their eggs.
- January 2021 (Trump I): FWS publishes final rule that MBTA prohibitions do not apply to indirect actions.

- March 2021 (Biden): DOI memorandum M-37065 withdraws earlier Trump Opinion.
- October 2021 (Biden): FWS publishes final rule revoking January 2021 rule. Releases advanced notice of proposed rulemaking for an interpretation of the MBTA which prohibits incidental takings.
- April 2025 (Trump II): Solicitor's Opinion memorandum M-37085 reinstates Trump I Opinion (except in S.D.N.Y). FWS withdraws Biden proposed rulemaking.
- Despite greatly restricting the legal force of the MBTA, the DOI has indicated an intent to use the act to target wind projects.

27. ESA ROLLBACKS

- April 2025: FWS propose rule to change the meaning of “harm” under the endangered species act
 - Definition under *Babbitt v. Sweet Home* (1995): “harm” encompasses habitat modification that threatens endangered species and is thus punishable under the act
 - Proposed definition: “harm” only encompasses actions that fall under the statutory definition of “take”
 - Rationale: adherence to the “single best meaning” post *Loper-Bright*; Scalia dissent in *Sweet Home*

- November 2025: FWS announces four proposed ESA rollbacks:
 - Removal of “blanket rule” protection for endangered species
 - Return to 2019 Interagency Cooperation Regulations, modification of definitions governing anticipated climate change and incidental takes
 - Critical habitat designation focus on economic impact, national security
 - Allowing “transparent consideration of economic impacts” in listing process

- March 2026: Trump calls for impromptu meeting of the “God Squad” regarding “an exemption under the [ESA] with respect to oil and gas exploration, development, and production activities in the Gulf of America...”
 - The meeting was livestreamed via YouTube on March 31.

28. CAA MAJOR SOURCES

- Major source: a facility that emits 10 years per ton of any hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPS
- Maximum Achievable Control Technology (MACT): stringent pollution control that require major sources to meet emissions standards achieved by the best-performing sources within its pollution category
- Area source: all sources that are not major, subject to less stringent pollution control (EPA Administrator *may* set a standard according to the “generally available control technology”)

- January 2026: final rule repeals Biden-era classification of major sources under the CAA, replacing with Trump I rule
- Allows facilities to reclassify as an area source after implementing the MACT
- Under the new rule, facilities can apply the more stringent measures required under the MACT until its emissions fall below major source level, then can requalify as an area source (which are only subject to the technology-based standards within the EPA Administrator's discretion to set)

29. CAA NEW SOURCE REVIEW

- September 9, 2025: EPA announces plan to make “begin actual construction” official policy for permit requirements. Alters previous standard by allowing some construction before granting of new source review permit.
- September 15, 2025: EPA reinstates 2017 “no second guessing” policy, requiring EPA to take at face value a facility’s estimated emissions increases from a modification at the facility.
- September 23, 2025: EPA eliminates requirement for new source review permits for facilities that pause operations for 2+ years. Absent a major modification to the facility, NSR permits are not required for idle stationary sources that intend to renew operations.

30. OPENING PROTECTED LAND TO INDUSTRY

- October 2025: DOI and King Cove Corporation (KCC) sign a land swap agreement granting KCC land within the Izembek National Wildlife Refuge for construction of a gravel road in exchange for 1,739 acres to be added to the refuge
- October 2025: BLM reinstitute the Coastal Plain Oil and Gas Leasing Program, opening the 1.56-million-acre Coastal Plan of the Arctic National Wildlife Refuge for oil and gas leasing
- April 2025: EO “Restoring American Seafood Competitiveness” directs secretaries of Commerce and Interior to review existing marine monuments and recommend which should be opened to commercial fishing

- April 2025: Proclamation letter opening the Pacific Island Heritage Marine National Monument to commercial fishing
- August 2025: U.S. District Court for the District of Hawaii granted summary judgment for plaintiffs and vacates, holding the letter violated the APA
- November 2025: BLM rescinds Biden-era rule that banned oil and gas developments on nearly half of Alaska's National Petroleum Reserve.
- December 2025: BLM approved the Integrated Activity Plan for Alaska's National Petroleum Reserve, reopening almost 82% of the reserve to oil and gas leasing
- March 2026: Trump administration plans to propose rescission of the Roadless Rule

31. IMPOUNDMENT OF BIDEN JOB ACT FUNDS

- January 20, 2025: EO “Unleashing American Energy” requires immediate review of all agency actions “that impose an undue burden on...domestic energy resources – with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources”
 - Includes immediate pause of disbursement of funds through the Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act (IIJA), collectively referred to as the “green new deal”
- January 27, 2025: OMB memo requires all agencies to “temporarily pause all activities related to obligation or disbursement of all Federal financial assistance... including, but not limited to, financial assistance for... the green new deal”

32. PARIS CLIMATE AGREEMENT WITHDRAWAL

- The US's withdrawal from the Paris Climate Agreement became effective on January 27, 2026, following the year grace period after the US's request to withdraw.
- The US is the second largest emitter of greenhouse gases in the world, when measured by current emissions. Historically, the US is the largest emitter of greenhouse gases.
- With such a large emitter out of the agreement, climate activists fear a “race to the bottom” and general apathy that may encourage other countries to either drop out of the agreement or not implement it.

33. ENDANGERMENT FINDING RESCINDED

- July 2025: DOE report, created by the five-member Climate Working Group, publish report which claims previous global warming estimates were overexaggerated
 - CWG Membership: physicist, atmospheric scientist, climatologist, meteorologist, economics professor
- August 2025: citing DOE report, EPA proposes rule to repeal 2009 endangerment finding for greenhouse gas in light of “significant doubt” on it’s the reliability of its global warming estimates and thus the EPA’s ability to regulate

- August 2025: Environmental Defense Fund and Union of Concerned Scientists bring suit to preliminarily and permanently disband the CWG, save the endangerment finding, and compel disclosure requirements under the Federal Advisory Committee Act (*Environmental Defense Fund v. Wright*)
 - Violated by working “in secret” to “manufacture a basis to reject” the endangerment finding while failing to provide “fairly balanced viewpoints.”
- January 2026: Judge William Young (D.Mass) rules for plaintiffs, finding that the CWG was subject to FACA requirements and failed to meet them

- February 2026: Trump and EPA Administrator Lee Zeldin repeal the endangerment finding, finalizing the proposed rule. Differing rationales.
 - Trump and Zeldin: climate change is “a hoax,” supposed benefits to the American auto industry, and limiting agency power.
 - Final rule: EPA lacks statutory authority under CAA § 202(a)(1) because the “best reading” of the statute doesn’t encompass regulation of “air pollution.”
- March 19, 2026: a coalition of 24 states (including MA) sue the Trump administration for relinquishing the government’s authority to fight climate change
 - Will likely consolidate with case brought by environmental groups in February, both seeking to reinstate the endangerment finding.
 - AG Campell: “The EPA came out with no new science, no new law or legal precedent that would allow them to walk away from the endangerment finding.”

34. *SHEETZ* APPLIES TO IMPACT FEES

- *Sheetz v. County of El Dorado, California* expanded the U.S. Supreme Court's *Nollan-Dolan-Koontz* trilogy to four regulatory taking cases. In this April 2024 impact fee decision, the Court ruled that monetary exactions are subject to the same regulatory taking tests, whether imposed as permit conditions or legislative enactments. Also, the Fifth Amendment's Takings Clause does not distinguish between legislative and administrative land-use permit conditions.
- The Takings Clause therefore applies equally to legislative takings affecting groups of projects and administrative takings targeting individual projects. This decision is instructive for impact fees and other types of exactions, whether in legislation or regulations, which commonly are applied to classes or types of uses. Massachusetts jurisprudence is scant on impact fees, but there are many types of government exactions that must satisfy this expanded reach of regulatory taking law.

35. DELEGATION DOCTRINE STATUS AND EVOLUTION

- In June 2024, the Supreme Court overturned decades of *Chevron* deference in the case *Loper Bright Enterprises v. Raimondo*.
- Courts must “exercise their independent judgment in deciding whether an agency has acted within its statutory authority.” Courts decide issues of law → agencies cannot conduct statutory interpretation.
 - Authority: APA, Article III, *Marbury v. Madison*
- Invokes the Major Questions Doctrine (MQD); Congress must explicitly delegate authority to agencies for decisions of significant economic and political importance

- *Loper Bright* will have the greatest impact on lower courts, which regularly relied on *Chevron* deference in its decisions.
- *Federal Commc'ns Comm'n v. Consumers' Rsch.*, 606 U.S. 656 (2025)
 - Majority found that (i) Congress provided sufficient guidance to delegate its powers collect Universal Service Money to the FCC and (ii) private, industry-controlled company could be lawfully used for managing collection.
 - Court reviewed the statute de novo, citing *Loper Bright*'s directive for courts to interpret the law.
- *Massachusetts Lobstermen's Ass'n, Inc. v. Menashes*, 127 F.4th 398 (1st Cir. 2025)
 - Upheld final MMPA rule that seasonally closed federal waters off the Massachusetts coast to protect endangered North Atlantic right whales.
 - In footnote, states the court's "de novo reading of the statutory rider" satisfies new standard under *Loper Bright*.

36. EIS AGENCY DEFERENCE

- The U.S. Supreme Court ruled in *Seven County Infrastructure Coalition v. Eagle County* that courts must grant substantial deference to agency decisions regarding the scope of their environmental impact statement (EIS).
- The ruling clarifies that NEPA does not require agencies to analyze the environmental effects of separate projects that are distant in time or place from the action under review, a change expected to speed up infrastructure permitting.
- In 2021, the Surface Transportation Board authorized construction of a railway that would connect waxy crude oil in the Uinta Basin in Utah to the national rail network, where the crude oil would continue its journey to specialized refineries.

- A coalition of environmental groups and Eagle County, Colorado, challenged the decision for failing to address all reasonably foreseeable harms in its EIS.
- The D.C. Circuit agreed that the environmental review was insufficient, but the Supreme Court overruled, finding the impacts of increased oil refining did not bear a “reasonably close causal relationship” to the railway construction.
- While it is possible for impacts which occur outside the project’s geographic area or construction timeframe to be required in an EIS, it is not required in this case because the upstream and downstream effects are geographically removed, are not proximately caused by the project, and fall outside the STB’s regulatory authority.
- Tension with *Loper Bright*: agency deference in assessing which factors aren’t within legal framework of EIS, holding that courts “exercise their independent judgment in deciding whether an agency has acted within its statutory authority”

37. NEPA GUIDANCE

- February 2025: Council on Environmental Quality (CEQ) concedes that it may lack authority to issue binding rules on agencies. Issued an interim final rule to remove its existing NEPA guidelines, leaving agencies responsible for creating their own NEPA guidelines.
- July 2025: first proposed set of agency-created guidelines released.
- Works alongside *Seven County* to create substantial agency deference in its assessment of environmental impacts.

38. SPEED ACT

- The bipartisan Standardizing Permitting and Expediting Economic Development (SPEED) Act is a federal reform bill which would build upon the earlier Fiscal Responsibility Act of 2023's amendments to NEPA.
- The SPEED Act, in its current form, would amend NEPA by simplifying and speeding up the federal permitting process. Codifies much of the *Seven County* decision.
- The House of Representatives passed an amended version of the SPEED Act 221-196 on December 18, 2025. The bill now sits with the Senate.



Bipartisan Policy Center

SPEED Act Judicial Review Timeline



- Excludes “major federal actions” from NEPA review unless the agency has “complete control and responsibility” over the effects of the action
 - Action cannot be considered “major” solely on basis of federal funds
- “Reasonably foreseeable effects” must (i) “share a reasonably close causal relationship” and (ii) be “proximately caused” by the “immediate project under consideration”
 - Excludes effects that are speculative, separate in time or place from the project or action, or in relation to separate or future projects
- Courts must afford “substantial deference” to agency discretion.

QUESTIONS & DISCUSSION

