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VIA FIRST CLASS AND ELECTRONIC MAIL

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Subject: Petition for Massachusetts Department of Transportation Rulemaking to Establish Regulations to Implement the Global Warming Solutions Act and An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy

Dear Secretary Fiandaca and Undersecretary Tibbits-Nutt:

Conservation Law Foundation (“CLF”)¹ hereby petitions the Massachusetts Department of Transportation (“MassDOT”) to initiate one or more rulemaking proceedings to promulgate new and amended regulations under the Commonwealth’s Global Warming Solutions Act (“GWSA”), An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy (“Roadmap Law”), and An Act Driving Clean Energy and Offshore Wind (“2022 Energy Law”) pursuant to M.G.L. c. 30A, § 4 and 310 CMR 2.00. As a result of the Commonwealth’s new net-zero emission standard, its statutory requirement to update the Clean Energy and Climate Plan (“CECP”) and the recent directive from the Massachusetts Legislature to consider environmental justice in climate programs, CLF asserts that previously enacted regulations require review and revision at this time. This petition is one of several concurrent petitions that CLF has filed as part of a multi-agency GWSA implementation package in which CLF seeks action by MassDOT,

¹ CLF, on behalf of its members, seeks a multi-agency GWSA implementation plan that puts Massachusetts on the path to be a national leader in both addressing the climate crisis and environmental injustice. Founded in 1966, CLF is a nonprofit, member-supported, regional environmental organization working to conserve natural resources, protect public health, and promote thriving communities for all in the New England region. CLF protects New England’s environment for the benefit of all people. We use the law, science, and markets to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. CLF serves to protect and promote the interests of its 5,300 members, including more than 2,900 members residing throughout the Commonwealth.

Energy Facilities Siting Board (“EFSB”), Executive Office of Energy and Environmental Affairs (“EEA”), Massachusetts Department of Energy Resources (“DOER”), Massachusetts Department of Public Utilities (“DPU” or “the Department”), and Massachusetts Department of Environmental Protection (“MassDEP”). The multi-agency GWSA implementation package is summarized in Appendix A.

GWSA compliance and achieving our net-zero climate targets requires a comprehensive set of regulatory amendments. While Massachusetts has begun implementing the GWSA and the Roadmap Law, implementation is lacking and falls short of mandatory climate goals. In particular, the Roadmap Law requires the Secretary to promulgate greenhouse gas (“GHG”) emission limits every five years starting in 2025 and to reach carbon neutrality by 2050.² It also requires that the level of emissions in 2050 should not be higher than 85 percent below the 1990 level.³ Executive Order 569 further holds that agencies should reduce emissions per GWSA limits. With Massachusetts’ new Clean Energy and Climate Plan for 2025/2030 (“2025/2030 CECP”), the state aims to reduce 33 percent of emissions from the 1990 level by 2025 and 50 percent from the 1990 level by 2030.⁴ With this Petition, CLF requests that MassDOT undertake these regulatory changes to ensure that the Commonwealth achieves its climate mandates and effectively decarbonizes the economy in a just and equitable manner.

Regulatory amendments must address historic disinvestment in Black, Brown, Indigenous, low-income, and immigrant communities, while also setting the stage for emissions reductions in the transportation, electricity, gas, buildings, and solid waste sectors as required by the GWSA and Roadmap Law.⁵ Climate justice can only be achieved if MassDOT and other executive agencies promulgate regulations that bring about concrete improvements in the health and lives of communities in the Commonwealth, especially those that both continue to be disproportionately impacted by pollution and experience the worst impacts of climate change and COVID-19. The policies must be holistic and developed and implemented with community participation. Unless climate justice is a central component of the Commonwealth’s path to net-zero emissions, the inequities of the Commonwealth’s past energy and environmental policies will be replicated.

CLF’s significant history of climate and environmental justice advocacy has included litigation to enforce the GWSA, legislative support to advance climate and environmental justice bills, as well as general advocacy to increase zero-emission transportation policies, expand energy efficiency services, reduce reliance on fossil fuels, and support greater reliance on clean energy. For example, in the 2016 case *Kain v. Department of Environmental Protection*, CLF contended that the Commonwealth was obligated to create and implement regulations to meet its carbon emission reduction mandates.⁶ The Massachusetts Supreme Judicial Court agreed with CLF’s assertion and held that the plain language of the statute and Section 3(d) required the

² St. 2021, c. 8, § 9.

³ *Id.* § 8(b).

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

⁵ St. 2021, c. 8, § 10; *see also* St. 2021, c. 8, § 56.

⁶ *Kain v. Dep’t of Env’tl. Prot.*, 474 Mass. 278, 288-90 (2016).

department to promulgate regulations.⁷ CLF has further worked to uphold the goals and purpose of the GWSA through its participation as an amicus curiae in the 2018 case, *New England Power Generators Association v. Department of Environmental Protection*.⁸ Following the above-referenced litigation, MassDEP proceeded to successfully meet its confirmed duties by promulgating GWSA regulations directed at compliance with the GWSA's 2020 targets. In the intervening years climate science, law and policy options have advanced. We are now faced with new information about the climate crisis, more aggressive emissions targets, and the need to formulate and implement a new set of policies aimed at achieving the Commonwealth's new, more stringent emissions mandate for 2030.

CLF has engaged with MassDOT on climate policy over the years through testifying to the MassDOT Board of Directors, negotiating a settlement agreement over the elimination of the I-93 high-occupancy vehicle lane between 2019 and 2020, and engaging with MassDOT employees on projects such as the Allston Multimodal Project. CLF now seeks to work with MassDOT to implement a regulatory package that will advance climate action and climate justice in the Commonwealth. CLF's advocacy and commitment to Massachusetts' communities, environmental protection and justice have yielded significant expertise among CLF staff members in energy and climate matters, as well as matters relating to the transportation, electricity, solid waste, gas, and building sectors. Pursuant to Section 4 of the Massachusetts Administrative Procedure Act,⁹ CLF formally requests through this petition that MassDOT now enact regulations to implement the GWSA, the Decarbonization Roadmap to 2050, and the Commonwealth's emissions limits to mitigate climate change and protect vulnerable environmental justice populations.

⁷ *Id.* at 292.

⁸ *New England Power Generators Ass'n, Inc. v. Dep't of Envtl. Prot.*, 480 Mass. 398, 399 (2018).

⁹ M.G.L. c. 30A, § 4.

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I. BACKGROUND

Legislative and Planning Actions

Recognizing the long-term threat posed by climate change, Massachusetts passed the GWSA in 2008 and was one of the first states to implement a regulatory program to mitigate climate change.¹⁰ The GWSA requires at least an 80 percent reduction in GHG emissions by 2050 from 1990 GHG emission levels.¹¹ It further requires coordinated state agency actions to achieve these GHG emission limits,¹² and mandates MassDOT to promulgate GHG reporting regulations.¹³ The GWSA also sets forth target goals for the reduction of GHG emissions from all sectors of the Commonwealth's economy.

A history of executive, legislative, and judicial actions followed the GWSA to address the grave threats that the climate crisis presents for the people, natural resources, and environment of the Commonwealth. In May 2016, in *Kain*, the Supreme Judicial Court established that MassDEP must set actual enforceable limits for greenhouse gas emissions and not “promulgate regulations that merely establish aspirational goals or unenforceable targets.”¹⁴ The *Kain* decision underscored that the Executive Officer of Energy and Environmental Affairs (“EEA”) and its agencies are primarily responsible for administering the required emission reductions.¹⁵ In September 2016, Governor Baker signed Executive Order 569, which set forth a comprehensive approach to meeting the Commonwealth's GHG emission goals, as well as protecting residents, businesses, and municipalities from the impacts of climate change. In 2018, the Supreme Judicial Court also recognized that the GWSA “is designed to make Massachusetts a national, and even international, leader in the efforts to reduce the greenhouse gas emissions that cause climate change.”¹⁶ In upholding MassDEP's authority to promulgate sector specific regulations under M.G.L. c. 21N, § 3(d), the Supreme Judicial Court stated that the GWSA “establishes significant, ‘ambitious,’ legally binding, short-and long-term restrictions on those emissions.”¹⁷

In January 2020, Governor Baker announced a commitment for Massachusetts to achieve net-zero GHG emissions by 2050 during his State of the Commonwealth Address.¹⁸ A year later, the Legislature passed S.2995, the Roadmap Law, amending the GWSA to incorporate a 2050 net-zero emissions mandate. After an initial veto, refiling, and passage again by the Legislature, a negotiated and amended version of the Act was enacted on March 26, 2021, requiring an updated 2025/2030 Clean Energy and Climate Plan for 2025 and 2030.¹⁹ On June 30, 2022, EEA released its Clean Energy and Climate Plan for 2025 and 2030. On August 11, 2022, Governor

¹⁰ St. 2008, c. 298.

¹¹ M.G.L. c. 21N, § 3B.

¹² M.G.L. c. 21N, §§ 2-3.

¹³ M.G.L. c. 21N §§ 2, 10.

¹⁴ *Kain*, 474 Mass. at 287-290.

¹⁵ See M.G.L. c. 21N, § 7; M.G.L. c. 21A, § 2 clause (30).

¹⁶ *New England Power Generators Ass'n, Inc.*, 480 Mass. at 399.

¹⁷ *Id.* (citations omitted).

¹⁸ Press Release: *Governor Baker Delivers 2020 State of the Commonwealth Address*, MASS GOV (January 21, 2020), <https://www.mass.gov/news/governor-baker-delivers-2020-state-of-the-commonwealth-address>.

¹⁹ St. 2021, c. 8.

Charlie Baker signed another climate law, An Act Driving Clean Energy and Offshore Wind, a climate law that includes new measures to clean energy, energy efficiency, and transportation emissions.

In January 2023, Governor Healey signed Executive Order 604, establishing the Office of Climate Innovation and Resilience and appointing a Climate Chief, a new-cabinet level position responsible for prioritizing climate change policies across all agencies. In the appointment of Climate Chief Hoffer to monitor cross-agency climate work, Governor Healey established Massachusetts as the first state in the nation to establish such a position at the cabinet level.

EEA has determined that Massachusetts must achieve at least an eighty-five percent gross emissions reduction while meeting the Roadmap Law’s net-zero GHG emissions requirement by 2050. Former EEA Secretary Theoharides issued a Letter of Determination on April 22, 2020, defining the net-zero requirement:

*A level of statewide greenhouse gas emissions that is equal in quantity to the amount of carbon dioxide or its equivalent that is removed from the atmosphere and stored annually by, or attributable to, the Commonwealth; provided, however, that in no event shall the level of emissions be greater than a level that is 85 percent below the 1990 level.*²⁰

EEA followed this Determination with the Massachusetts 2050 Decarbonization Roadmap (“2050 Roadmap Report”) on December 30, 2020, a technical report that set forth eight pathways to achieve net-zero emissions by 2050. The 2050 Roadmap Report was the culmination of input from a technical advisory committee and implementation advisory committee, in which CLF participates. A plan styled as an “Interim Clean Energy and Climate Plan” for 2030 and a request for comments accompanied the 2050 Roadmap Report.²¹ CLF filed detailed comments on the Interim 2030 CECP.

On June 30, 2022, former EEA Secretary Beth Card released a final CECP for 2025 and 2030, which aims to achieve a 33 percent reduction in GHG emissions from the 1990 level by 2025 and the Roadmap Law’s statutorily required 50 percent reduction in GHG emissions from the 1990 level by 2030.²² While the 2025/2030 CECP sets overall objectives for the Commonwealth to tackle the climate crisis, the Plan lacks concrete action goals in multiple areas. Regulatory action is timely as MassDOT needs to establish concrete opportunities to achieve those goals and promulgate adequate regulations to meet its climate mandates.

²⁰ Secretary Kathleen Theoharides, *Determination of Statewide Emissions Limit for 2050*, Executive Office of Energy and Environmental Affairs (April 22, 2020), Commonwealth of Massachusetts, <https://www.mass.gov/doc/final-signed-letter-of-determination-for-2050-emissions-limit/download>.

²¹ *Interim Clean Energy and Climate Plan for 2030*, Executive Office of Energy and Environmental Affairs, at 47 (2020) (hereinafter Interim CECP).

²² See generally 2025/2030 CECP, *supra* note 4.

On December 21, 2022, EEA released the 2050 CECP, a comprehensive plan to achieve net-zero GHG emissions by 2050.²³ The 2050 CECP reflects the state’s strategies to reach emission goals and is on the right track on phasing out fossil fuels, but still requires additional work to ensure that no environmental justice populations are left behind.

MassDOT GWSA Implementation

The GWSA directs the Commonwealth’s executive agencies to promulgate regulations that achieve compliance. “In implementing its plan for statewide greenhouse gas emissions limits, the commonwealth and its agencies shall promulgate regulations that reduce energy use, increase efficiency and encourage renewable sources of energy in the sectors of energy generation, buildings and transportation.”²⁴ To implement the 2025/2030 CECP and to achieve the emissions limits set forth by the Baker administration, MassDOT must take advantage of the present opportunity and amend its regulations to ensure achievement of the Commonwealth’s climate goals.

MassDOT’s past regulations have been insufficient to meet the mandates of the GWSA and the Roadmap Law. None of the ten regulations MassDOT promulgated in the past five years have been promulgated in accordance with the GWSA or Roadmap Law, or help the Commonwealth achieve its climate mandates. Most recently, in 2022, MassDOT updated both 700 CMR 7.00, Use of the Massachusetts Turnpike and the Metropolitan Highway System, and 700 CMR 14.00, Prequalification of Contractors and Subcontractors.²⁵ Other regulations focused on improving focuses have been approving access to the DOT highways and property, and using “road flaggers and police details, on public works projects.”²⁶

In the 2025/2030 CECP, the EEA estimates that Massachusetts will achieve a 32 percent emissions reduction in 2025 on the way toward a 50 percent reduction emissions requirement by 2030. While existing policies including the 3-Year Energy Efficiency Plan and power plant emissions limits have helped reduce emissions and decarbonize Massachusetts’ economy, MassDOT must seize other opportunities to maximize emissions reductions through regulatory actions. The regulatory proposals put forth in this petition will help ensure a transition to a clean energy economy while also considering equity and environmental justice.

II. THE THREAT OF THE CLIMATE CRISIS REQUIRES URGENT ACTION

Climate scientists agree that at least net-zero GHG emissions must be achieved by mid-century to have a chance at mitigating the worst effects of climate change. The Massachusetts Supreme Judicial Court has acknowledged the emerging consensus shared by the scientific community that climate change is attributable to increased emissions, as well as perceptions in the Commonwealth that national and international efforts to reduce those emissions are

²³ *Clean Energy and Climate Plan for 2050*, Executive Office of Energy and Environmental Affairs (Dec. 2022) (hereinafter 2050 CECP), <https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download>.

²⁴ M.G.L. c. 21N, § 6.

²⁵ 700 CMR 7.00 et seq., 700 CMR 14.00 et. seq.; 1467 Mass. Reg. 63 (amended effective Apr. 15, 2022).

²⁶ 700 CMR 6.00 et seq.

inadequate.²⁷ As recognized by Governor Healey in her former role as Massachusetts Attorney General, climate change poses an existential threat to living beings.²⁸ The International Panel on Climate Change (“IPCC”) has warned that the time between now and 2030 is the most important for climate action.²⁹

Dire Warnings from Climate Scientists

The IPCC has found that global surface air temperature has risen approximately 1.0 degree Celsius (1.8 degrees Fahrenheit) above pre-industrial temperatures.³⁰ The world and the region are also experiencing higher annual temperatures, increased and more severe storms, extreme weather, and rising sea levels as a result of the global rise of GHG emissions.³¹ A vast majority of these rising emissions are from the burning, extraction, and transportation of fossil fuels over the past decades.³²

The IPCC emphasizes that the effects of climate change are increasingly getting more severe, and drastic decarbonization is needed to meet climate goals. For example, in 2014 the IPCC concluded that “continued emission of greenhouse gases will cause further warming” and long-lasting impacts and limiting climate change would require “substantial and sustained reductions in greenhouse gas emissions.”³³ In 2018, the IPCC provided a graver assessment, concluding that with the current pace of emissions, warming will reach 1.5 degrees Celsius (2.7 degrees Fahrenheit) by mid-century.³⁴ At 1.5 degrees Celsius there are still significant impacts on human health, food and water supply, sea level rise and mass species extinction.³⁵ Similar warnings came from the United States Global Change Research Program in 2018³⁶ and the World Economic Forum’s Global Risks Report in 2019.³⁷ In 2020, the global community collectively experienced the highest temperatures on record, alarming heat and wildfires in the Arctic, and a record 29 tropical storms in the Atlantic.³⁸

²⁷ *Kain*, 474 Mass. at 281.

²⁸ *Massachusetts v. Exxon Mobil Corp.*, No. 19-3333, at 49 Massachusetts Superior Court (Oct. 24, 2019), <https://www.mass.gov/files/documents/2019/10/24/Complaint%20-%20Comm.%20v.%20Exxon%20Mobil%20Corporation%20-%202010-24-19.pdf>.

²⁹ Press Release: *The evidence is clear: the time for action is now. We can halve emissions by 2030*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (April 4, 2022), <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>.

³⁰ *Global Land-Ocean Temperature Index*, NASA, <https://climate.nasa.gov/vital-signs/global-temperature/>.

³¹ *The Effects of Climate Change*, NASA, <https://climate.nasa.gov/effects/>.

³² *Climate Change 2014 Synthesis Report Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, (2014), at 5, https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf.

³³ *Id.* at 8.

³⁴ *Global Warming of 1.5 °C, Chapter 1*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2018), 82, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter1_Low_Res.pdf.

³⁵ *Id.* at 9.

³⁶ *Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States*, US GLOBAL CHANGE RESEARCH PROGRAM (2018), <https://nca2018.globalchange.gov/>.

³⁷ *The Global Risks Report 2019*, WORLD ECONOMIC FORUM (2019), <https://www.weforum.org/reports/the-global-risks-report-2019>.

³⁸ Damian Carrington, *Climate Crisis: 2020 was joint hottest year ever recorded*, THE GUARDIAN (January 8, 2021), <https://www.theguardian.com/environment/2021/jan/08/climate-crisis-experts-2020-joint-hottest-year-ever-recorded>.

In 2021, the IPCC issued another dire report, finding that climate change is “unequivocally” caused by human influence,³⁹ and that recent changes in the climate system are “unprecedented” over hundreds to thousands of years.⁴⁰ The report also stated that human-caused climate change is “already affecting many weather and climate extremes in every region across the globe.”⁴¹ For instance, heavy precipitation events have increased since 1950 in most land areas and ecological and agricultural droughts have increased as well, mainly due to human-caused climate change.⁴² The 2021 IPCC report warned that there is a narrow window to limit climate change to 1.5 degrees Celsius and policies must be enacted immediately to avoid setting off irreversible tipping points.

In fact, the 2021 IPCC report revealed that global surface temperature will continue to rise “until at least mid-century under all emission scenarios considered.”⁴³ Mitigating climate change and its most catastrophic effects requires “limiting cumulative CO₂ emissions, reaching at least net zero CO₂ emissions.”⁴⁴ The 2021 IPCC report emphasized the importance of timely action, as every ton of carbon dioxide contributes to climate change and “[w]ith every increment of global warming, changes in extremes continue to become larger.”⁴⁵ While some effects of climate change would take millennia to reverse, scenarios that severely limit GHG emissions “would have rapid and sustained effects to limit human-caused climate change,” such as flooding.⁴⁶ Limiting emissions in the near term is imperative to minimize future warming and avoid the most devastating and irreversible impacts of climate change.⁴⁷

Since the dire 2021 report, two reports have been released that support cross-cutting regulatory action in Massachusetts. In the 2022 Summary for Policymakers Report on Mitigation, the IPCC recognized that “[c]limate governance is most effective when it integrates across multiple policy domains, helps realise synergies and minimize trade-offs.”⁴⁸ The IPCC further stated that policies shifting behavioral changes can also “open up a broader range of mitigation efforts,” including promoting walkable urban areas, electrification, and renewable

³⁹ *Climate Change 2021: The Physical Science Basis, Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2021) at 4, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf (hereinafter 2021 IPCC Report).

⁴⁰ *Id.* at 6.

⁴¹ *Id.* at 10.

⁴² *Id.* at 8, 10.

⁴³ *Id.* at 14.

⁴⁴ *Id.* at 27.

⁴⁵ 2021 IPCC Report, *supra* note 39, at 15 (“For example, every additional 0.5°C of global warming causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves (very likely), and heavy precipitation (high confidence), as well as agricultural and ecological droughts in some regions (high confidence).”

⁴⁶ *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, Intergovernmental Panel on Climate Change, at 31 (2022), IPCC AR6 WG II, https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf (hereinafter 2022 IPCC Adaptation Report).

⁴⁷ *Id.* at 27-28.

⁴⁸ *Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers*, Intergovernmental Panel on Climate Change, at 59 (2022), IPCC AR6 WG III, https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf.

energy.⁴⁹ Overall, this report called for “a substantial reduction in overall fossil fuel usage,” as well as the “widespread electrification of the energy system.”⁵⁰ The 2022 Summary for Policymakers Report on impacts, adaptation, and vulnerability stated that “[s]oft limits to some human adaptation have been reached,” emphasizing the need for clear action.⁵¹ Furthermore, the 2022 IPCC Adaptation Report concluded that “[i]nclusive governance contributes to more effective and enduring adaptation outcomes and enables climate resilient development.”⁵²

Severe Climate Impacts Already Hitting Massachusetts

Massachusetts is already experiencing harmful impacts from climate change and remains particularly vulnerable if GHG emissions continue to rise. Temperatures in Massachusetts already have increased more than the national average, and heavy precipitation in the region is greater than anywhere else in the country.⁵³ Severe storms have pounded the state in recent years causing flooding, displacement, and millions of dollars of property damage.⁵⁴ Residents living in urban areas such as Boston, particularly the young, ill, and elderly, will also face additional challenges if they live in buildings without air conditioning and “will face greater risks of serious heat-related health illnesses” as heat waves are projected to become more frequent and intense.⁵⁵ Boston is also at risk of coastal flooding, storm surges, and sea level rise, jeopardizing Boston Logan Airport, the train system, and those living throughout the city. Other coastal areas in Massachusetts are also particularly vulnerable to sea level rise and extreme sea level events that previously occurred once per century and are projected to occur at least annually in many areas by 2100. Low-lying areas will experience increases in the frequency and intensity of flooding, and sandy coasts will undergo more severe coastal erosion. These impacts are most severely felt by environmental justice populations, frontline, and marginalized communities. For example, in addition to Boston, Revere (an environmental justice population), Marshfield, Quincy (an environmental justice population), Hull, and Salisbury are particularly exposed to sea level rise and flooding.⁵⁶

Failing to reduce GHG emissions will force higher costs on the people of Massachusetts and impose greater threats to their health, safety, and property.⁵⁷ This will exacerbate issues felt by environmental justice populations already overburdened by pollution.

⁴⁹ *Id.*

⁵⁰ *Id.* at 36.

⁵¹ 2022 IPCC Adaptation Report, *supra* note 46, at 28.

⁵² *Id.* at 33.

⁵³ *Rising Temperatures*, RESILIENT MA CLIMATE CHANGE CLEARINGHOUSE FOR THE COMMONWEALTH, <https://resilientma.org/changes/rising-temperatures>.

⁵⁴ *Billion-Dollar Weather and Climate Disasters: Events*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, <https://www.ncdc.noaa.gov/billions/events>.

⁵⁵ *Id.*

⁵⁶ *U.S. Coastal Property at Risk from Rising Seas*, Union of Concerned Scientists, <https://ucsusa.maps.arcgis.com/apps/MapSeries/index.html?appid=cf07ebe0a4c9439ab2e7e346656cb239>.

⁵⁷ *Id.*

As the United Nations Secretary-General stated:

Today's IPCC Working Group I Report is a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable: greenhouse gas emissions from fossil fuel burning and deforestation are choking our planet and putting billions of people at immediate risk. Global heating is affecting every region on Earth, with many of the changes becoming irreversible.

The internationally agreed threshold of 1.5 degrees Celsius is perilously close.

[...]

*We must act decisively now to keep 1.5 alive.*⁵⁸

The regulations proposed herein provide concrete steps that the Commonwealth should take to immediately implement the 2050 Roadmap and align with the spirit and urgency of the most recent 2022 IPCC report to maintain climate change at 1.5 degrees Celsius.

III. AGENCIES MUST PRIORITIZE AND CENTER EQUITY AND JUSTICE IN GWSA IMPLEMENTATION

The “climate crisis, species loss, pollution, and predatory capitalism have placed increased pressures on our natural and built environment, often leaving the most marginalized communities, especially people of color, low-income residents, and limited English proficient residents, to bear the worst of the burden of environmental pollution.”⁵⁹ Race determines which neighborhoods are safe and healthy places to live, learn, work, commute, and play,⁶⁰ and the COVID-19 pandemic has exacerbated these long-standing inequities in health outcomes between

⁵⁸ Press Release, *Secretary-General's statement on the IPCC Working Group I Report on the Physical Science Basis of the Sixth Assessment*, UNITED NATIONS (Aug. 9, 2021), <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>.

⁵⁹ *Recommendations for 80x50 Study Scenario Planning*, Climate Justice Working Group (February 24, 2020), <https://www.mass.gov/doc/gwsa-iac-climate-justice-working-group-memo/download>.

⁶⁰ Daniel R. Faber and Erie J. Krieg, *Unequal Exposure to Ecological Hazards 2005: Environmental Injustices in the Commonwealth of Massachusetts*, Report by Philanthropy and Environmental Justice Research Project Northeastern University (October 2005), at 1, <https://web.northeastern.edu/ejresearchnetwork/wp-content/uploads/2014/10/Final-Unequal-Exposure-Report-2005-10-12-05.pdf>.

white people and people of color.⁶¹ Environmental justice populations⁶² are specifically at risk of suffering from health conditions from harmful criteria pollutants such as particulate matter, ground-level ozone, lead, carbon monoxide, nitrogen oxides, volatile organic compounds, black carbon, and researchers found that more people have died from fossil fuel pollution than earlier suggested.⁶³ The Commonwealth will not succeed in achieving net zero emissions without ensuring emission reductions in all communities and concurrent improvements in air quality, public health, and economic opportunity in historically disinvested communities.

MassDOT, MassDEP, EEA, EFSB, DOER, and the DPU have a responsibility and opportunity to concurrently meet their obligations under the GWSA, Green Communities Act (“GCA”), Green Jobs Act, Executive Order on Environmental Justice Number 552, the EEA’s 2021 Environmental Justice Policy, and to begin to redress environmental injustice and work toward climate justice. Environmental justice means that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthy environment regardless of race, income, national origin, or English language proficiency.⁶⁴ Climate justice focuses on the root causes of climate change – human-caused GHG emissions – and making systemic changes that are required to address unequal burdens to our communities and realign

⁶¹ *Weekly COVID-19 Public Health Report*, Massachusetts Department of Public Health COVID-19 Dashboard, at 46 (Dec. 24, 2022) (The most recent data set released by the Department of Public Health regarding COVID-19 as of December 2020 shows that 19 of the 20 municipalities with the highest total average daily cases in the Commonwealth contain EJ populations), <https://www.mass.gov/doc/weekly-covid-19-public-health-report-december-24-2020/download>; *See also Weekly Dashboard Data*, City/Town” and “Race and Ethnicity” Tabs, [https://www.mass.gov/doc/weekly-public-health-report-raw-data-december-24-2020/download compared to 2010 Environmental Justice Populations](https://www.mass.gov/doc/weekly-public-health-report-raw-data-december-24-2020/download-compared-to-2010-environmental-justice-populations), <https://www.mass.gov/doc/ej2010communitystatisticspdf/download>. Many of these communities also have poor air quality and are home to essential workers who do not have the luxury of being able to work remotely. *See COVID-19 and Health Neighborhoods Study Communities*, Conservation Law Foundation (2020), <https://www.clf.org/covid-19-and-healthy-neighborhoods-study-communities/>; *see also Data Show COVID-19 is Hitting Essential Workers and Communities of Color Hardest*, ACLA Massachusetts (2020), <https://www.aclum.org/en/publications/data-show-covid-19-hitting-essential-workers-and-people-color-hardest>; and *see Lisa Friedman, New Research Links Air Pollution to Higher Coronavirus Death Rates*, NEW YORK TIMES (April 7, 2020), <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

⁶² M.G.L. c. 30, § 56 (“Environmental justice population”, a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income; provided, however, that for a neighborhood that does not meet said criteria, but a geographic portion of that neighborhood meets at least 1 criterion, the secretary may designate that geographic portion as an environmental justice population upon the petition of at least 10 residents of the geographic portion of that neighborhood meeting any such criteria; provided further, that the secretary may determine that a neighborhood, including any geographic portion thereof, shall not be designated an environmental justice population upon finding that: (A) the annual median household income of that neighborhood is greater than 125 per cent of the statewide median household income; (B) a majority of persons age 25 and older in that neighborhood have a college education; (C) the neighborhood does not bear an unfair burden of environmental pollution; and (D) the neighborhood has more than limited access to natural resources, including open spaces and water resources, playgrounds and other constructed outdoor recreational facilities and venues.”).

⁶³ *Conservation Law Foundation Comments on Interim 2030 Clean Energy and Climate Plan*, at 12, 14-15 (March 22, 2021) (hereinafter CLF Comments on Interim 2030 CECP).

⁶⁴ EXEC. ORDER No. 552 (2014).

our economy with our natural systems.⁶⁵ At its core, climate change is a social and ethical issue as the effects of climate change will be most severely felt by low-income and underserved communities. As a form of environmental justice, climate justice advocates hold that all humans (some would say species/living beings too) have the right to access and obtain the resources needed to have an equal chance of survival and freedom from discrimination.

The GWSA requires the EEA secretary to determine “whether activities undertaken to comply with state regulations and efforts disproportionately impact low-income communities” and to “consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources and other benefits to the economy, environment and public health.”⁶⁶

Massachusetts passed the GCA in 2008 “to help municipalities become more sustainable, control rising energy costs, and incubate clean energy technologies and practices.”⁶⁷ The GCA laid out several provisions to ensure that low-income communities have access to the benefits of energy efficiency resources. Section 141 states that “[i]n all decisions or actions regarding rate designs, the department [of energy resources] shall consider the impacts of such actions” and “[w]here the scale of on-site generation would have an impact on affordability for low-income customers, a fully compensating adjustment shall be made to the low-income rate discount.”⁶⁸ Additionally, the GCA requires the Secretary of EEA to prepare “a 5-year plan for meeting the renewable and alternative energy and energy efficiency goals of the commonwealth” that addresses the “equitable distribution of program benefits to all customers and particularly low income customers to address the affordability and adverse impacts on low-income households of energy costs and demand mitigation strategies, and mitigation of such adverse impacts, such as by compensating adjustments to the low-income rate discount.”⁶⁹

In November 2014, former Governor Deval Patrick issued Executive Order (“EO”) 552 “to encourage sustained and continued efforts now and into the future to ensure that environmental justice (EJ) remains a priority for the Executive branch.” Each Secretariat, including the EEA and MassDOT, must develop a strategy to incorporate environmental justice considerations into its programs, including through permitting processes, economic development opportunities, and public participation and outreach.⁷⁰ EO 552 directs the EEA Secretary to update the Environmental Justice Policy originally issued in 2002.⁷¹ The 2017 Environmental Justice Policy requires that, “EEA agencies shall consider the current and future impacts that climate change will have on EJ populations” and “shall take appropriate measures towards ensuring that EJ populations are equally protected from hazards and health risks imposed by

⁶⁵ *Climate Justice Working Group Memorandum*, Massachusetts GWSA Implementation Advisory Committee (Feb. 24, 2020), <https://www.mass.gov/doc/gwsa-iac-climate-justice-working-group-memo/download>.

⁶⁶ M.G.L. c. 21N, § 5.

⁶⁷ *Massachusetts Clean Energy and Climate Plan for 2020*, Secretary of Energy and Environmental Affairs Matthew A. Beaton, at 111 (2015), <https://www.mass.gov/files/documents/2017/12/06/Clean%20Energy%20and%20Climate%20Plan%20for%202020.pdf>.

⁶⁸ St. 2008, c. 169, § 141.

⁶⁹ St. 2008, c. 169, § 116(b)(3).

⁷⁰ EXEC. ORDER No. 552 § 5.

⁷¹ *Id.* § 3.

future climate changes and properly informed of appropriate measures taken to increase their adaptive capacity.”⁷²

Through initiating rulemaking proceedings as recommended by this petition, executive agencies can simultaneously advance work to achieve the 2030 and 2050 climate targets while complying with a variety of other statutory mandates and benefiting environmental justice populations that have been marginalized and face additional burdens from climate change.

IV. MASSDOT HAS THE AUTHORITY TO AMEND ITS REGULATIONS TO ACHIEVE THE GWSA

The right to petition agencies to engage in rulemaking is enshrined in Section 4 of the Massachusetts Administrative Procedure Act (“MassAPA”), which provides that “[a]ny interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent.”⁷³ It further states: “Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions.”⁷⁴ Agencies in Massachusetts also have a right to engage in the rulemaking process. See *Borden, Inc. v. Commissioner of Public Health*, 338 Mass. 707 (1983) (citing *Cambridge Elec. Light Co. v. Department of Pub. Utils.*, 363 Mass. 474, 486-487 (1973)) (“The nature of the rule-making process is such that one may reasonably contemplate that the regulatory body will, either on the basis of some external or internal impetus, determine that a potential problem exists and further investigation is warranted to determine whether (1) such a problem does, in fact, exist and (2) some regulation is necessary to resolve the problem.”); see also *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 312-313, (1981) (“an agency may adopt policies through adjudication as well as through rule-making.”).

An interested person or entity may submit a petition to MassDOT seeking a new or amended regulation with supporting fact and argument, legal authorities, and proposed language.⁷⁵ MassDOT regulations require that a petition be placed in an envelope clearly marked on the outside with the following words: “Attention General Counsel: Petition or Amendment Under 700 CMR 2.00,” which CLF will comply with by delivering this petition to MassDOT in person. MassDOT’s General Counsel will make an initial determination,⁷⁶ and MassDOT subsequently has the option to take action to hold a hearing and consider the petition.⁷⁷

CLF proposes the following regulatory amendments to enable the Commonwealth to achieve the 2030 and 2050 climate goals and work toward climate justice.

⁷² *Environmental Justice Policy of the Executive Office Of Energy And Environmental Affairs*, at 13, Executive Office of Energy and Environmental Affairs (June 24, 2021), https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf.

⁷³ M.G.L. c. 30A, § 4.

⁷⁴ *Id.*

⁷⁵ 700 CMR 2.02,

⁷⁶ 700 CMR 2.03(6).

⁷⁷ 700 CMR 2.04.

V. MASSDOT HAS AN OPPORTUNITY TO IMPLEMENT A CROSS-SECTOR RULEMAKING PROCESS TO IMPLEMENT THE GWSA AND WORK TOWARD NET ZERO EMISSIONS BY 2050

Based upon the expertise gained through its experience advocating for climate policies, CLF is confident that the best strategy to achieve the Commonwealth's decarbonization and emissions goals is a multi-sectored approach,⁷⁸ wherein the largest gains will come from reforming the building and transportation sectors. The regulations below should be enacted and implemented by sector to achieve the best possible and practicable results.

A. Achieving a Decarbonized Transportation Sector Requires Implementing the Commission on the Future of Transportation Report

Current Status

The transportation sector is the largest contributor of GHG emissions in Massachusetts. In 2017, transportation accounted for 42 percent of GHG emissions in the state.⁷⁹ “60 percent of those emissions from the transportation sector come from light-duty passenger cars, trucks and sport utility vehicles (“SUVs”).”⁸⁰ “14 percent of transportation emission arise from medium- and heavy-duty vehicles (“MDHDVs”), rail, and aviation.⁸¹ The Commonwealth's strategy to reduce light-duty transportation emissions is to switch from “fossil-fueled vehicles to zero emissions vehicles (“ZEVs”),” in addition to “maintaining and supporting existing public transit systems, reducing single occupancy vehicle use where possible, making complementary land use decisions, and supporting active transportation infrastructure such as bike lanes and sidewalks.”⁸² The primary types of ZEVs include electric vehicles (“EVs”) and hydrogen fuel electric vehicles (“FCEVs”).⁸³ For MDHDVs, battery-electricity technology is seen as a “viable strategy,” as well as implementing battery electric vehicles and FCEVs.⁸⁴

Reducing car trips is a key climate measure, but Massachusetts' public transportation systems are in crisis. On a continuing basis, environmental justice populations have disproportionately “borne the environmental and health burdens associated with our current energy economy.”⁸⁵ Before the pandemic, service cuts, safety failures, delayed infrastructure upgrades, and chronic delays denied riders the service they needed, while reliance on fossil fuel vehicles degraded public health and the health of our climate. During the pandemic, riders

⁷⁸ *Massachusetts 2050 Decarbonization Roadmap*, at 12 Massachusetts Executive Office of Energy and Environmental Affairs (Dec. 2020), <https://www.mass.gov/doc/ma-2050-decarbonization-roadmap/download> (hereinafter *Massachusetts 2050 Decarbonization Roadmap*).

⁷⁹ *Summary of Massachusetts GHG Emissions – October 2020*, Greenhouse Gas Baseline, Inventory, and Projection, Appendix C: Massachusetts Annual Greenhouse Gas Emissions Inventory: 1990-2017 with Partial 2018 & 2019 Data, MASSDEP (October 2020), <https://www.mass.gov/doc/appendix-c-massachusetts-annual-greenhouse-gas-emissions-inventory-1990-2017-with-partial-2018/download>.

⁸⁰ *Massachusetts 2050 Decarbonization Roadmap*, *supra* note 78, at 21.

⁸¹ *Id.* at 38.

⁸² *Id.* at 33.

⁸³ *Id.* at 35.

⁸⁴ *Id.* at 39.

⁸⁵ *Massachusetts 2050 Decarbonization Roadmap*, *supra* note 78, at 17.

making essential trips faced crowded conditions on transit routes serving environmental justice populations. Race determines which neighborhoods are safe and healthy places to live, learn, work, commute, and play,⁸⁶ and the COVID-19 pandemic has and is continuing to exacerbate these long-standing inequities in health outcomes between white people and people of color.⁸⁷ Yet, our transportation system is overwhelmed, underfunded, and utterly unprepared for changing climate conditions.

According to the 2025/2030 CECP, “[t]he 2025 GHG emissions sublimit for the transportation sector is set at 24.9 MMTCO₂e, or an 18% reduction from 1990 level.”⁸⁸ In 2020, transportation accounted for 37% of emissions in the State.⁸⁹ “To achieve the 2025 sublimit, the Commonwealth set a goal of 200,000 total EVs on the road and 15,000 public charging stations in 2025. To achieve the 2030 sublimit, the Commonwealth set a goal of 900,000 total EVs on the road.”⁹⁰ However, the CECP failed to set annual air pollution reduction targets. CLF recommends that the Commonwealth implement a transportation strategy that identifies and reduces air pollution hotspots attributed to transportation and launches air quality monitoring programs, especially along routes serving environmental justice populations.

As of December 31, 2020, 21,010 EVs were registered with the Registry of Motor Vehicles according to the U.S. Department of Energy.⁹¹ In 3 years, only 9,010 more EVs were registered within the state of Massachusetts, resulting in the total amount of EVs on the road at 31,000 in 2022,⁹² with more than 16,000 EV owners obtaining a state rebate as of October 2022.⁹³ Over 750,000 EVs are needed to reach GHG emission targets by 2030, demonstrating the need for regulatory amendments.⁹⁴

Legal Authority

Massachusetts law requires agencies to set emission regulations consistent with and equally stringent as those passed in California pursuant to the Clean Air Act.⁹⁵ For example, MassDEP recently promulgated the final regulations approving the Advanced Clean Trucks (ACT), Heavy-Duty omnibus, and Phase 2 Greenhouse Gas regulations for medium- and heavy-duty vehicles, and the Low Emission Vehicle Program, tightening emissions standards for cars,

⁸⁶ See generally Faber et al., *supra* note 60.

⁸⁷ *Weekly COVID-19 Public Health Report*, *supra* note 61; see also *Building Toward Racial Justice and Equity in Health: A Call to Action*, at 10-13 Massachusetts Attorney General Maura Healey (2020), <https://www.mass.gov/doc/building-toward-racial-justice-and-equity-in-health-a-call-to-action/download>.

⁸⁸ 2025/2030 CECP, *supra* note 4, at 31.

⁸⁹ *Id.*

⁹⁰ *Id.* at 31-32.

⁹¹ *Maps and Data – Electric Vehicle Registrations by State*, U.S. DEPARTMENT OF ENERGY, <https://afdc.energy.gov/data/10962> (last accessed on June 15, 2022).

⁹² Sabrina Shankman, Taylor Dolven, *Massachusetts needs at least 750,000 electric vehicles on the road by 2030. We are nowhere close*, BOSTON GLOBE (April 9, 2022).

⁹³ Massachusetts Offers Rebates for Electric Vehicles, <https://mor-ev.org/program-statistics> (last accessed on December 5, 2022).

⁹⁴ *Id.*

⁹⁵ *Transportation Sector Report: A Technical Report of the Massachusetts 2050 Decarbonization Roadmap Study*, Cadmus Group and Evolved Energy Research, at 8 (Dec. 2020), <https://www.mass.gov/doc/transportation-sector-technical-report/download> (hereinafter *Transportation Technical Report*).

sport utility vehicles, minivans, and light-duty trucks under Advanced Clean Cars II.⁹⁶ Additionally, as earlier stated, to decarbonize, the strategy includes three general transitions: (1) replace conventional vehicles with EVs, replace conventional vehicles with FCEVs, and substitute decarbonized fuels for petroleum-based fuels in internal combustion engine vehicles (“ICEVs”).⁹⁷ As of 2017, only 1.4 percent of light-duty vehicles sold in Massachusetts were EVs and 12,000 EVs were registered with the Registry of Motor Vehicles.⁹⁸

Pursuant to Executive Orders 579 and 580, the Commission on the Future of Transportation issued its report identifying transportation initiatives to achieve by 2040 that will both reduce GHG emissions and expand access to transportation options. Per the Commission on the Future of Transportation, “[w]ithout further action, transportation sector GHG emissions are projected to increase.”⁹⁹ The Commission on the Future of Transportation recommended that “bus service, in particular, needs to be reinvented.”¹⁰⁰ The Commission on the Future of Transportation also concluded that all buses purchased with state resources should be zero emissions by 2030.¹⁰¹

Executive Order 594: Leading By Example, sets out targets for the decarbonization of the state fleet, but such targets are too modest to make sufficient contributions to achieving the emissions reductions goals of the GWSA and Roadmap Law.¹⁰² For instance, the Order encourages the state fleet only consist of 20 percent ZEVs by 2030 and reduce emissions “associated with the burning of onsite fossil fuels at building and in vehicles” only 20 percent by 2025 and 35 percent in 2030.¹⁰³ Bolder action is needed to dramatically reduce GHG emissions within the transportation sector.

Citizens may enforce standards or limitations established under any EPA-approved state implementation plan (“SIP”) in the federal courts.¹⁰⁴ The Commonwealth of Massachusetts has an EPA-approved SIP. Massachusetts’ SIP was submitted for amendment on July 9, 1996 and approved by EPA most recently in 2019. Since 1996, the Massachusetts SIP contains the I-93 HOV lane requirement. A Federal Register publication documents the continued inclusion of the I-93 HOV lane, made effective as of April 19, 2019.¹⁰⁵ The Massachusetts SIP provides for MassDOT:

... [T]o construct and operate specified transit facilities and high occupancy vehicle (HOV) lanes established therein.
Implementation and continued monitoring of these projects will

⁹⁶ *Id.*

⁹⁷ *Id.* at 10.

⁹⁸ *Choices for Stewardship: Recommendations to Meet the Transportation Future: Executive Summary*, Commission on the Future of Transportation, at 4 (December 2018), <https://www.mass.gov/files/documents/2018/12/14/FOTC-ExecutiveSummary.pdf> (Hereinafter *Recommendations to Meet the Transportation Future: Executive Summary*).

⁹⁹ *Id.* at 3.

¹⁰⁰ Transportation Technical Report, *supra* note 95, at 36.

¹⁰¹ *Id.* at 54.

¹⁰² EXEC. ORDER No. 594 (2021).

¹⁰³ *Id.*

¹⁰⁴ 42 U.S.C. § 7604(f)(4), (a).

¹⁰⁵ 84 Fed. Reg. 10264.

help reduce the use of automobiles and improve traffic operations on the region’s roadways, resulting in improved air quality. This action will have a beneficial effect on air quality because it is intended to reduce vehicle miles traveled (VMT) and traffic congestion in the Boston Metropolitan Area. Massachusetts has adopted these revisions to reduce emissions of volatile organic compounds (VOC), particulate matter (PM), and nitrogen oxides (NO_x).¹⁰⁶

Further, the Massachusetts SIP states that “EPA is approving 310 CMR 7.37 into the Massachusetts SIP because EPA has found that the requirements are consistent with the [Clean Air Act]”.¹⁰⁷

Needed Action

Massachusetts must pursue a suite of policies to address disproportionate burdens of pollution, reduce greenhouse gas emissions, and improve our transportation systems, particularly for those that were hardest hit by COVID-19. Studies reveal that “ridership on the Massachusetts Bay Transportation Authority (“MBTA”) ... has been declining for the past several years.”¹⁰⁸ Yet transit routes that serve environmental justice populations have shown the lowest reduction in ridership because people must ride buses and trains to get to and from work and make other essential trips.¹⁰⁹ MassDOT should implement low-income fares to incentivize commuters to take public transit, thereby reducing single occupancy trips which produce more GHG emissions per mile than public transportation.¹¹⁰ For example, a study conducted by the Federal Transit Administration showed that “heavy rail transit, such as subways and metros ... produce 76% less in greenhouse gas emissions per passenger mile than an average single-occupancy vehicle. Light rail systems produce 62% less and bus transit produces 33% less.”¹¹¹ Public transit continues to be a useful means to reduce congestion and can help revitalize communities by giving them access to jobs, schools, grocery stores, and healthcare facilities.¹¹² Access to transit is also a lifeline for many who have no other means of transportation. Incentivizing workers to use public transit and keeping rail fares at a lower cost will also help reduce the burden on environmental justice communities.¹¹³

¹⁰⁶ 84 Fed. Reg. 10264-01; 40 CFR Part 52; <https://www.govinfo.gov/content/pkg/FR-2019-03-20/pdf/2019-04874.pdf>.

¹⁰⁷ *Id.*

¹⁰⁸ Recommendations to Meet the Transportation Future: Executive Summary, *supra* note 98, at 3.

¹⁰⁹ *Report from the General Manager to the Fiscal and Management Control Board*, Massachusetts Bay Transportation Authority, at slides 4-8 (October 5, 2020), <https://cdn.mbta.com/sites/default/files/2020-10/2020-10-05-fmcb-E-report-from-general-manager-accessible.pdf>.

¹¹⁰ 2030 SECP Joint Transportation Comment Letter, at 2-3 (March 22, 2021).

¹¹¹ Massachusetts 2050 Decarbonization Roadmap, *supra* note 78, at 3.

¹¹² *Id.*

¹¹³ *Id.*; see also *Choices for Stewardship: Recommendations to Meet the Transportation Future: Volume I*, at 36 (2018), <https://www.mass.gov/doc/choices-for-stewardship-recommendations-to-meet-the-transportation-future-volume-1/download>.

While An Act Driving Clean Energy and Offshore Wind will assist in reducing emissions from the transportation sector, MassDOT must still maximize opportunities to effectively promulgate regulations. The law requires that all new MBTA bus purchases to be electric by 2030 and the entire bus fleet to be all-electric by 2040.¹¹⁴ The law also requires other agencies such as DPU to promulgate vehicle electrification and GHG emission regulations for transportation network companies (“TNC”) and for DOER to provide MOR-EV program data, including data on participation on low-and moderate-income households, for the previous calendar year by June 30th of each year to MassDOT.¹¹⁵ It also requires MassDOT to install EV charging stations at all service plazas on the MA Turnpike, at least five commuter rail stations, at least five subway stations, and at least one ferry terminal.¹¹⁶

Overall, to reach the 2030/2050 climate goals, decarbonizing and reducing emissions from the transportation sector is essential. Highway projects which trigger an environmental impact review (“EIR”) should, where possible, consider the addition of high-occupancy vehicle (“HOV”) lanes and bicycle lanes. Additionally, the 2025/2030 CECP recognized that the bus electrification plan is ambitious, calling it “one of the most aggressive public bus electrification timelines in the United States.”¹¹⁷ Yet the plan anticipates that some progress will be based on contingencies, necessitating clear regulatory action to ensure electrification goals are met. For example, the MBTA fell behind schedule on commuter rail electrification within the year between release of a pilot proposal in April 2021 and the A Better City report in April 2022. It would therefore be prudent for MBTA to accelerate commuter rail electrification plans in order to accommodate further delays in system electrification. Programs that encourage commuters to take public transportation should also be implemented.

In addition to bus electrification, the MBTA must electrify the commuter rail fleet, currently composed of approximately 100 diesel locomotives. To do so, MassDOT can define electric rail through its regulations, expand the purpose of the Industrial Rail Access Program (“IRAP”), and clarify the statutory requirements of MassDOT to implement the IRAP program pursuant to the GWSA. MassDOT must also ensure that its actions do not result in an increase in net greenhouse gas emissions and commit to minimizing local impacts.

Below is a summary of the regulatory amendments that CLF recommends MassDOT integrate into proposed regulations for public comment. Full redline amendment language is included in Appendix B.

Transportation Sector Regulatory Proposals *Encourage electric rail*

- Amend 700 CMR 4.01 to expand the purpose of the program to increase access to electric rail freight service.

¹¹⁴ St. 2022, c. 179, § 78.

¹¹⁵ *Id.* § 45

¹¹⁶ *Id.* § 88(b).

¹¹⁷ 2025/2030 CECP, *supra* note 4, at 36.

- Amend 700 CMR 4.02 to define electric rail.
- Amend 700 CMR 4.04 to clarify the statutory requirements of MassDOT to implement the IRAP program.
- Amend 700 CMR 4.07 to require the applicant to increase a project description that states climate and public health impacts, as well as information on greenhouse gas emissions reductions.
- Amend 700 CMR 4.08 to expand application review based on the Commonwealth's climate laws.

Encourage electric vehicle transition

- Amend 700 CMR 7.01 to clarify the purpose of 700 CMR 7.00 to prioritize safety, equity, and greenhouse gas emissions reductions.
- Amend 700 CMR 7.02 to define an electric vehicle.
- Amend 700 CMR 7.09 to expand fines for those who idle in excess of five minutes.
- Amend 700 CMR 7.09 to require MassDOT to enforce all High Occupancy Vehicle Lanes within the Commonwealth every three years.
- Amend 700 CMR 11.05 mandate a southbound bus-only lane on the Tobin Memorial Bridge.
- Implement 700 CMR 15.00 to require the Transportation Planning division to develop plans for procuring electric vehicles on a schedule that aligns with inventory of all motor vehicles and to monitor all motor vehicles owned, operated, controlled by the Department.

Require contractors to disclose plans to minimize greenhouse gas emissions

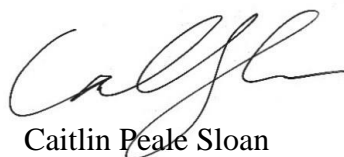
- Amend 700 CMR 14.08 to require contractors to disclose in their bids their plans to minimize greenhouse gas emissions during the project construction process.

VI. CONCLUSION

As outlined above, CLF contends that a multi-sectoral approach will best allow the Commonwealth to achieve its 2030 and 2050 climate targets, while meeting additional statutory mandates and working toward climate justice. CLF is ready and able to work with MassDOT and other agencies to amend current regulations and promulgate new ones, as needed, to meet the 2030 emissions target and more pressing timeline facing Massachusetts. CLF urges MassDOT to take action to make these changes to help protect Massachusetts residents, communities, and natural resources from the potentially devastating effects of climate change.

Thank you for your continued work and dedication. CLF looks forward to continuing to work together to achieve just, equitable, and effective solutions for the Commonwealth.

Respectfully submitted,



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APPENDIX A: COMPREHENSIVE MULTI-SECTOR REGULATORY PACKAGE

Department of Environmental Protection

Regulation	Description
<u>310 CMR 4.01: Purpose, Authority, and General Provisions</u>	Ensures all permits of any kind approved by DEP comply with no net emissions increase requirement
<u>310 CMR 7.00: Statutory Authority; Legend; Preamble; Definitions</u>	Defines net GHG emissions and zero emissions vehicles; adds the GWSA as statutory authority under DEP’s air pollution control chapter
<u>310 CMR 7.02 U Plan Approval and Emission Limitations</u>	Ensures all air permits approved by DEP comply with no increase in net GHG emissions requirement
<u>310 CMR 7.11: U Transportation Media</u>	Accelerates zero emission vehicle deployment for MBTA trains and state or municipality-owned fleets
<u>310 CMR 7.32: Natural Gas-Fired Furnace NOx Emissions Standards</u>	Phases out NOx emitting natural gas-fired furnace and boiler sales and installations between 2024 and 2030
<u>310 CMR 7.35: Water Heater NOx Emissions Standards</u>	Phases out NOx emitting water heater sales and installations between 2024 and 2030
<u>310 CMR 7.37: MB High Occupancy Vehicle Lanes</u>	Increases deployment of bus-only and HOV lanes
<u>310 CMR 7.40: U Low Emission Vehicle Program</u>	Accelerates zero emission vehicle deployment for state or municipality-owned fleets
<u>310 CMR 7.73: Reducing Methane Emissions from Natural Gas Distribution Mains and Services</u>	Accelerates methane emissions reductions from and phase out of gas distribution system
<u>310 CMR 7.75: Clean Energy Standard</u>	Eliminates biomass from Clean Energy Standard; Requires hydroelectric power GHG emissions reporting
<u>310 CMR 7.77: Net Zero Communities Program</u>	Empowers municipalities to accelerate climate action and enforce consistency with climate plans
<u>310 CMR 7.78: Reducing Peak Electric Sector Emissions</u>	Requires electric utilities to reduce the difference between peak and average electric system demand
<u>310 CMR 9.01: Purpose</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 9.02: Definitions</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 9.31: Summary of License and Permit Requirements</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 10.01: Introduction and Purpose</u>	Ensures all wetlands permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 10.04: Definitions</u>	Ensures all wetlands permits approved by DEP comply with no net emissions increase requirement

<u>310 CMR 16.01: General Requirements</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.02: Definitions</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Phases out high heat waste processing facilities
<u>310 CMR 16.03: Exemptions from Site Assignment</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Reduces methane emissions feedstocks from landfills
<u>310 CMR 16.04: General Permit for Recycling, Composting or Aerobic and Anaerobic Digestion Operations</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.05: Permit for Recycling, Composting and Conversion (RCC) Operations</u>	Phases out high heat waste processing facilities
<u>310 CMR 16.08: Site Assignment Application Submission Requirements</u>	Requires application for site suitability to confirm that facility will not increase GHGs or harm EJ populations
<u>310 CMR 16.13: Department Report on Suitability (Report)</u>	Requires that applications that increase net greenhouse gas emissions or harm an environmental justice population receive negative determinations of suitability
<u>310 CMR 19.001: Authority</u>	Adds the GWSA as statutory authority under DEP's solid waste permitting chapter
<u>310 CMR 19.002: Purpose</u>	Adds the reduction of GHG emissions as a purpose under DEP's solid waste permitting chapter
<u>310 CMR 19.006: Definitions</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Requires amendment to definition of recyclable material to create recyclable guidelines document every two years
<u>310 CMR 19.018: Third-party Inspections</u>	Improves enforcement of waste ban requirements
<u>310 CMR 19.032: Permit Procedure for a New Facility or Expansion Permit Application</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 36.01: Authority</u>	Adds the GWSA as statutory authority under DEP's water management permitting chapter
<u>310 CMR 36.02: Purpose</u>	Adds the reduction of GHG as a purpose under DEP's water management permitting chapter
<u>310 CMR 36.03: Definitions</u>	Defines net GHG emissions within DEP's water management permitting chapter.
<u>310 CMR 36.07: Registration Conditions</u>	Ensures all DEP-registered withdrawals comply with no net GHG emissions increase requirement

<u>310 CMR 36.27: Issuance of Permits</u>	Ensures all water management permits approved by DEP comply with no net GHG emissions increase requirement
<u>310 CMR 60.03: U Conformity to the State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. Or the Federal Transit Act</u>	Updates environmental justice and greenhouse gas emissions reduction requirements for transportation implementation plan; adds increased EV charging requirements and reduced internal combustion engine sales numbers as supplemental measures
<u>310 CMR 60.05: Global Warming Solutions Act Requirements for Transportation</u>	Accelerates transportation sector greenhouse gas reduction requirements

Department of Energy Resources

Regulation	Description
<u>225 CMR 4.02: RCS Program</u>	Focuses the RCS program on equity, affordability, and deployment of heat pumps
<u>225 CMR 14.02: Definitions</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives
<u>225 CMR 14.05: Eligibility Criteria for RPS Class I, Solar Carve-out Renewable Generation Units, and Solar Carve-out II Renewable Generation Units</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives
<u>225 CMR 15.02: Definitions</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives; tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.05: Eligibility Criteria for RPS Class II Generation Units</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives; tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.06: Statement of Qualification Process for RPS Class II Renewable Generation Unit</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.07: Renewable Energy Portfolio Standard -- Class II</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.08: Compliance Procedures for Retail Electricity Suppliers</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 22.1.00: [Re] Scope and Administration</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower

	municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 22.2.00: [Re] Definitions</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 22.4.00: [Re] Residential Energy Efficiency</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>Appendix RC: MASSACHUSETTS MUNICIPAL OPT-IN SPECIALIZED STRETCH CODE 2023</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 23.2.00: [Ce] Definitions</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 23.4.00: [Ce] Commercial Energy Efficiency</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
APPENDIX CC - MASSACHUSETTS MUNICIPAL OPT-IN SPECIALIZED ENERGY CODE 2023	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>780 CMR 2.02 Definitions</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.1: Carbon Limits for Building Materials Procurements</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.2 Low-Embodied Carbon Concrete</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.3 Establish a Materials Reuse Facility</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.4 Carbon Reduction or Salvaging Requirement for Demolitions</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.5 Renovation vs. Knock-Down and Rebuild Comparison</u>	Addresses embodied carbon in construction materials

Department of Public Utilities

Regulation	Description
<u>220 CMR 5.02: Format of Tariffs, Schedules and Contracts</u>	Ensures all tariffs explain in plain language how rates reflect resilient infrastructure based on climate science
<u>220 CMR 10.000: Hazard Mitigation and Climate Plans</u>	Mandating the filing of Hazard Mitigation and Climate Plans; prescribing what should be included
<u>220 CMR 11.02: General Definitions</u>	Facilitates ZEV deployment
<u>220 CMR 11.04: Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Facilitates ZEVs; Prohibit utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 11.09: Forward Capacity Market</u>	Triggers for leaving ISO
<u>220 CMR 11.10: Charge Electric Vehicles Utility Pole Program (Charge EVs UPP)</u>	Accelerating municipal EV charging on utility poles
<u>220 CMR 11.11: Electric Vehicle Charging Station Installation</u>	Prohibiting approval of EV charging station installation by EDCs w/o a Dept finding that it will withstand climate change stressors
<u>220 CMR 14.01: Purpose and Scope</u>	Updates LDC purpose to include networked geothermal
<u>220 CMR 14.02: General Definitions</u>	Updates LDC definitions to include networked geothermal
<u>220 CMR 14.03: Local Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Updates LDC requirements to include networked geothermal; Prohibits utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 14.05: Information Disclosure Requirements</u>	Updates LDC info disclosure requirements to include networked geothermal; requires GHG disclosures; requires analysis before using alternative gases
<u>220 CMR 17.05: General Criteria for Long-term Contracts and Renewable Energy Generation Sources</u>	Ensures long-term contracts have RE generation sources that are resilient to current and future climate hazards
<u>220 CMR 19.03: Performance Standards for Emergency Preparation and Restoration of Service</u>	Ensures LDCs consider their Hazard Mitigation and Climate Adaptation Plan and general hazard mitigation and climate resilience planning in the development of emergency preparation
<u>220 CMR 19.04: Emergency Response Plans</u>	Requires LDCs to identify applicable components of their Hazard Mitigation and Climate Adaptation Plans that considers climate science in making hazard predictions and response plans

<u>220 CMR 19.05: Department Investigation into Company Performance; Remedies</u>	Allows Department denial of LDC recovery for failure to follow a Hazard Mitigation and Climate Adaptation Plan during outages
<u>220 CMR 79.01: Annual Return for Gas Companies</u>	Requires reporting of just transition workforce data for LDCs
<u>220 CMR 79.04: Annual Return for Electric Companies</u>	Requires reporting of just transition workforce data for EDCs
<u>220 CMR 112.11: Plans and Procedures</u>	Ensures that LNG plant operators update plans and procedures every 5 years for safety planning, using climate science
<u>220 CMR 115.04: Annual Reporting Requirements</u>	Requires accurate tracking of methane emissions from gas leaks
<u>220 CMR 274.02: Definitions</u>	Requires TNC fleet decarbonization
<u>220 CMR 274.08: Transportation Network Vehicle Requirements</u>	Requires TNC fleet decarbonization
<u>220 CMR 274.12: Reporting Requirements</u>	TNC fleet reporting statistics

Energy Facilities Siting Board

Regulation	Description
<u>980 CMR 1.01: Scope and Construction of Rules</u>	Environmental justice and GHG emissions updates to definitions
<u>980 CMR 1.04: Institution of an Adjudicatory Proceeding</u>	Environmental justice, GHG emissions, and climate resilience pre-filing requirement
<u>980 CMR 1.08: Rendering of Decisions in Adjudicatory Proceedings</u>	Environmental justice, GHG emissions, and climate resilience conditions for granting petitions
<u>980 CMR 1.09: Supplemental Procedures</u>	Environmental justice site visit procedures
<u>980 CMR 5.02: Environmental Assessment</u>	Environmental justice requirements for environmental assessments
<u>980 CMR 13.01: Facility Construction and Maintenance</u>	Environmental justice, GHG emissions
<u>980 CMR 14.00: Site Restoration and Decommission</u>	Requiring a decommissioning site and restoration plan

Executive Office of Energy and Environmental Affairs

Regulation	Description
<u>301 CMR 11.01: General Provisions</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.02: Definitions</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.03: Review Thresholds</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.04: Fail-Safe Review</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.05: ENF Preparation and Filing</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.06: ENF Review and Decision</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.07: EIR Preparation and Filing</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.08: EIR Review and Decision</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.11: Waivers</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.01: Authority and Purpose</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.02: Definitions</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.03: Implementation of the Coastal Zone Management Program</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.01: Purpose</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.02: Definitions</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.04: Review Procedures</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.01: Authority and Purpose</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.02: Definitions</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.03: Toxic Use Fees</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.05: Fee Waiver</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement

Department of Transportation

Regulation	Description
<u>700 CMR 4.01: Purpose</u>	Accelerates deployment of electric rail
<u>700 CMR 4.02: Definitions</u>	Accelerates deployment of electric rail
<u>700 CMR 4.04: Administration</u>	Accelerates deployment of electric rail
<u>700 CMR 4.07: Application Process</u>	Accelerates deployment of electric rail
<u>700 CMR 4.08: Evaluation Criteria</u>	Accelerates deployment of electric rail
<u>700 CMR 7.01: Scope and Effect</u>	Adds equity and GHG reductions to Purpose of DOT
<u>700 CMR 7.02: Definitions</u>	Defines electric vehicle
<u>700 CMR 7.09: Traffic, Operation, and Safety</u>	Accelerates deployment of HOV lanes
<u>700 CMR 11.05: Vehicle Operations</u>	Codifies Tobin Bridge bus-only lane
<u>700 CMR 14.08: Miscellaneous for Contractors</u>	Requires GHG-related disclosures in bidding documents
<u>700 CMR 15.00 Planning and Transit Operations</u>	Accelerates electrification of MBTA-owned vehicles

APPENDIX B: REDLINED REGULATIONS

700 CMR 4.01: Purpose

700 CMR 4.00 establishes a program, referred to as the Industrial Rail Access Program. The purpose of this program is to provide funding for projects that increase access to rail freight service and preserve or stimulate economic development through the generation of new or expanded rail service or to increase access to electric rail freight service. To accomplish this objective, the program may provide funding to implement rail improvements under M.G.L. c. 161C, and for transportation planning, design, engineering, permitting, and/or the acquisition of interests in land related to such rail improvements.

700 CMR 4.02: Definitions

Electric Rail means rail powered by electric sources that have reduced greenhouse gas emissions compared to diesel-powered units. Electric multiple units or catenary wire are two examples of electric rail.

700 CMR 4.04: Administration

MassDOT, in consultation with EOHED, shall administer St. 2012, c. 242, § 2C, Item 6622-1280 and 700 CMR 4.00 in accordance with St. 2012, c. 242, § 2C, Item 6622-1280 and 700 CMR 4.00 **and St. 2021, c. 8**. MassDOT is authorized, in consultation with EOHED, to issue guidelines, guidance, applications or other materials as necessary to implement the IRAP Program **in a way that ensures no net increase in greenhouse gas emissions and air quality**. MassDOT is authorized to enter into any and all interagency agreements or other agreements to reflect the interdisciplinary nature of this program and to increase the coordination of this program.

700 CMR 4.07: Application Process

- (a) Information demonstrating that the applicant is an Eligible Applicant;
- (b) The size and scope of the Project in relation to the Eligible Applicant's total operations, and the strategic importance of the Project to the Eligible Applicant's operations;
- (c) A detailed Project description, including plans and specifications for the proposed Project, and greenhouse gas emissions reduction measures;
- (d) The costs, benefits, and impacts (including the economic development, climate, and public health impact) of the Project;
- (e) A Project budget showing all sources and uses of funding for the Project;
- (f) A capital budget for the Project, and an operating budget demonstrating the Project's economic viability;
- (g) Documentation that the Eligible Applicant possesses or will possess control of the Project Location(s) (if the proposed Project requires land acquisition, proponents must identify the interests to be acquired and the manner in which such interests will be acquired);
- (h) A detailed Project schedule that identifies key milestones and completion dates;
- (i) A list of any and all federal, state and local permits required for the Project;
- (j) Documentation of the Eligible Applicant's capacity to meet the IRAP Program requirements and to complete the Project;
- (k) Information demonstrating the long-term transportation cost savings and greenhouse gas emissions reductions expected to be realized in connection the Project;
- (l) Means and methods of ensuring the quality of the work to be performed in connection with the proposed Project;
- (m) Evidence of the Project's readiness to proceed;
- (n) Documentation of any local and/or statewide support; and
- (o) Such other documentation or information that the Secretary may require.

700 CMR 4.08: Evaluation Criteria

All applications will be reviewed based on the following evaluation criteria:

- (a) The extent to which the proposed Project will improve freight rail transportation in Massachusetts and support the Commonwealth of Massachusetts State Rail Plan, transportation, land use, economic development, and climate laws and environmental policies, and advance electric rail;
- (b) The level of public benefits to be gained through the implementation of the Project;
- (c) The Project's consistency with local and regional transportation, land use and economic development plans;
- (d) The level of documented support for the Project by Shippers and/or Railroads, locally elected officials, abutters and others who are involved in economic or community development;
- (e) The financial feasibility of the Project;
- (f) The Project's readiness to proceed;
- (g) The useful life of the Project; and
- (h) Such other criteria as the Secretary may require provided that such criteria are not inconsistent with 700 CMR 4.00.

700 CMR 7.01: Scope and Effect

(1) Scope. 700 CMR 7.00 regulates activity, and establishes procedures, requirements, and penalties, with respect to the use of ways under the jurisdiction of the Massachusetts Department of Transportation. The sections of 700 CMR 7.00 shall be construed in a way to prioritize safety, equity, and greenhouse gas emissions reductions. A provision of 700 CMR 7.00 applies equally to each such way, whether or not the provision refers explicitly to a way, unless the provision states otherwise.

(2) Effect. The headings of 700 CMR 7.00 are provided for ease of reference only and should not be used to construe its provisions. A judicial determination that a provision of 700 CMR 7.00 is unenforceable does not affect another provision of 700 CMR 7.00 unless the provisions are integrally related and cannot be severed.

700 CMR 7.02: Definitions

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Electric Vehicle refers to vehicles that rely solely on electric motors for propulsion and includes non-combustion vehicles.

700 CMR 7.09: Traffic, Operation, and Safety

...

(28) Idling. An operator of a motor vehicle shall comply with the provisions of M.G.L. c. 90, § 16A, regarding the unnecessary operation of the engine of a motor vehicle. The Department has the authority to enforce the provisions of this section and issue a fine to an operator who unnecessarily idles for a period of time in excess of five minutes.

...

(33) High Occupancy Vehicle Lanes. High Occupancy Vehicle Lanes encourage the movement of more people in fewer vehicles, which results in reduced greenhouse gas emissions and improved air quality. The Department will assess every three years, beginning on June 30, 2024, the ability to increase the number of High Occupancy Vehicle Lanes in the Commonwealth. The Department will enforce all High Occupancy Vehicle Lanes within the Commonwealth including working with State Police and exploring the use of technology for enforcement to limit vehicles that are not a bus, car pool vehicle, pupil vehicle, school bus or van pool vehicle from traveling in the High Occupancy Vehicle Lane. The Department will recommend priority locations for enforcement and collect data on the number of High Occupancy Vehicle Lane citations issued disaggregated by lane location and the frequency of police inspections disaggregated by lane location. The Department shall report to the Department Board of Directors once every six months the High Occupancy Vehicle Lane enforcement data. The Department will adhere to the High Occupancy Vehicle Lane project substitution procedures set out in 310 CMR 7.37(12), if at any time it proposes to temporarily or permanently alter restrictions applicable to any High Occupancy Vehicle Lane. The Department shall conduct a feasibility study for implementing a bus-only or high occupancy vehicle lane for all highway projects aimed at repairing a structurally deficient bridge and on a roadway that carries an average of 10,000 vehicles per day as determined by an average over the past three years.

700 CMR 11.05: Vehicle Operations

...

(14): Miscellaneous: There shall be a southbound bus-only lane on the Tobin Memorial Bridge to allow buses to travel without interference by cars and trucks.

700 CMR 14.08: Miscellaneous for Contractors

...

(5) Disclosure. All contractors shall disclose in their bid how they will reduce greenhouse gas emissions during the project construction or operation.

700 CMR 15.00: Planning and Transit Operations

(a) The Transportation Planning division within the Department shall inventory all motor vehicles owned, operated, controlled by the Department to identify the model year, and anticipated date of retirement or end of useful life. The Transportation Planning division shall then identify electric vehicles that can be procured to replace fossil fuel-powered vehicles reaching the end of their useful life. The inventory shall be developed not later than January 15, 2024 and updated every year thereafter by January 15 of each subsequent year. As part of the inventory, the division shall determine the estimated greenhouse gas emissions reduction savings from replacing fossil-fuel powered vehicles with electric vehicles. If there is a reason why fossil-fuel powered vehicles cannot be replaced by electric vehicles, the Transportation Planning division shall indicate in writing why and consider that information to be a public record.

(b) The Transportation Planning division shall develop plans for procuring electric vehicles on a schedule that aligns with the inventory of all motor vehicles to procure replacements that are electric vehicles.

(c) The Transportation Planning division within the department shall work with the Massachusetts Bay Transportation Authority and Regional Transit Authorities to develop and implement a plan to procure and operate buses that are electric vehicles. The plan shall include a procurement timeline for obtaining electric vehicles. The first plan to procure and operate electric buses shall be finalized by January 15, 2024 and updated every year thereafter by January 15 of each subsequent year.

(d) The Transportation Planning division shall work with the Massachusetts Bay Transportation Authority and Regional Transit Authorities to develop a plan for implementing a low-income fare available on all modes of transportation and an assessment of how to offer fare-free buses.

(e) The Transportation Planning division shall comply with the U.S. Department of Transportation Act of 1966, Pub. L. No. 89-670, 80 Stat. 931 (1966) and 23 U.S.C. § 138 to avoid and minimize use of historic properties, public parks, and recreation areas subject to 4F, or, if there are no feasible and prudent alternatives, then include all possible planning to minimize harm to the property, consider greenhouse gas emissions, and impacts to environmental justice populations.