



For a thriving New England

CLF Massachusetts 62 Summer Street
Boston MA 02110
P: 617.350.0990
F: 617.350.4030
www.clf.org

Tegin Teich, Executive Director
Betsy Harvey, Manager
Boston Region MPO CTPS
State Transportation Building
10 Park Plaza, Suite 2150
Boston, MA 02116

Oct. 30, 2020

Via email to tteich@ctps.org and eharvey@ctps.org

Dear Ms. Teich and Ms. Harvey:

Conservation Law Foundation appreciates the commitment that the Boston Region Metropolitan Planning Organization (“MPO”) and Central Transportation Planning Staff (“CTPS”) have made to evaluate and address disparate impacts and disproportionate burdens that result from the Boston Region MPO’s activities, and the opportunities to provide feedback on the Draft Boston MPO Disparate Impact / Disproportionate Burden (DI/DB) Policy (“Policy”) through the series of stakeholder meetings. We offer these comments on the draft Policy in the spirit of ongoing dialogue and in service of a policy that can meaningfully address such burdens.

Implementation of the Policy provides the MPO with an opportunity and a mechanism with which to begin to remedy disproportionality in burdens and benefits allocated to communities in the region based on race and income. To facilitate that goal, we recommend the MPO take the critical step of setting the disparate impact threshold at a negative value. CTPS’s recommendation that the disparate impact score be set at a zero percent threshold is far preferable to a positive value percentage, but the lack of consideration of negative values for this threshold significantly constrains the scope and efficacy of this Policy. A negative value disparate impact score would ensure that any projects subject to the Policy would create additional benefit to low-income communities and communities of color, thereby reducing negative disparate impact and disproportionate burden over time.

Federal environmental justice policies and Title VI of the Civil Rights Act of 1964 require the MPO to identify and address the disparate impacts and disproportionate burdens caused by their activities. The DI/DB policymaking process recognizes that government investments, including those of the Boston Region MPO, have had a negative disparate impact and placed disproportionate burdens on people of color and low-income people for generations. Those

impacts and burdens are still felt and suffered in those communities today, most notably in the forms of inferior service and greater exposure to pollution, among others. The draft Policy does not redress these deep and significant disparate impacts and disproportionate burdens. Choosing to address only the impacts of future MPO activity ignores current disparate impacts and that those impacts will continue in perpetuity unless addressed. This choice also ignores feedback from stakeholders which consistently asked for a policy that would eliminate disparate impacts, not accommodate them.

Because the Policy only applies to future investments in major infrastructure projects in the Long-Range Transportation Plan, the recommendation that these projects not exacerbate current inequities makes sense. However, because the MPO does not have any policy designed to undo past harm from unequal distribution of burdens and benefits, and a seemingly minor adjustment to one of the thresholds in this flagship equity policy could advance that goal, CLF strongly advocates that you consider making that adjustment to significantly strengthen the Policy.

CLF understands that the Policy is meant to guide the MPO in its compliance with Federal Transit Administration and Federal Highway Administration requirements, and that these requirements do not require that projects undo past harms or perform redress. However, CLF is concerned that if the MPO does not seek to address the current disparate impacts and disproportionate burdens in this policy, it puts the responsibility to begin remedying those harms off indefinitely, potentially resulting in the unnecessary perpetuation of the disproportionality in benefits and burdens on people of color and low-income people for decades or generations; the time and effort put into this policy, and that it is named broadly the Disparate Impact / Disproportionate Burden Policy raise the concern that a further policy to address the current inequities is not on the horizon, or even contemplated for the future.

The Policy as currently proposed may serve to prevent significant deepening of inequity, but does so without significant progress to remedy longstanding existing inequity. As such, it functions more as a status quo perpetuation scheme than a policy designed to address disparate impacts or disproportionate burdens. The MPO and its stakeholders have invested significant energy put into policy development, resulting in sophisticated modeling. The MPO should maximize these efforts with a Policy that achieves more than simply getting as close as possible to not making things worse.

A negative disparate impact score could be tailored to address known existing disparate impacts and disproportionate burdens, and could be designed to remedy these inequities over a set period of time or value of investment. For example, if communities of color and low-income communities are known to bear a greater burden of increased pollution and underinvestment in service of a certain percentage than whiter and more affluent communities, then a certain negative disparate impact value compounded over a number of years or over a number of projects combined for a target investment value could seek to remedy past discriminatory investments and reduce current harm.

CONSERVATION LAW FOUNDATION

Thank you for your consideration of these comments and our input throughout the process. We are available to discuss our concerns and recommendations further.

Sincerely,

A handwritten signature in black ink that reads "Johannes Epke". The signature is written in a cursive, flowing style.

Johannes Epke, Esq.
Conservation Law Foundation
62 Summer St.
Boston, MA 02110
Phone: 617.850.1761
Email: jepke@clf.org