

## INTEGRATED MEPA/PERMITTING REVIEW: DRAFT FOR PUBLIC COMMENT

Integrated review is intended to make MEPA an integral part of permitting, rather than a separate process that precedes permitting. The result should be a more streamlined and coordinated process of environmental review and permitting that makes regulation of development more predictable, more efficient, and more effective in protecting the environment. EEA will accept public comments for 30 days on the attached draft guidelines. Comments should be sent Secretary Ian Bowles, attention Deerin Babb-Brott, MEPA.

In 2008, and after receiving public comment, the MEPA office within the Executive Office of Energy and Environmental Affairs shall commence a new pilot program in which certain projects are subject to an integrated MEPA/permitting review. For purposes of the pilot program, integrated review will be reserved for projects that have characteristics deemed consistent with stated public policy goals or projects for which integrated review would seem to offer particular public policy benefits.

“Integrated review” means using MEPA as the principal decision-making tool for land use permitting at the state level. The goal of integrated review is to encourage project proponents to provide more and earlier information about the impacts of a project and measures to avoid, minimize and mitigate such impact; to encourage state agencies to take clear positions at an early stage on major permitting issues; and to coordinate input from the various state agencies. If successful, integrated review under MEPA will resolve the important questions about a project’s location, design, and mitigation so that the subsequent permitting is expeditious and predictable.

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We emphasize that this process is not intended in any way to eliminate or circumvent public input or review. On the contrary, this process will encourage public input into a project at an early stage, when a developer is in the best position to make changes in response to such input.

### 1. Eligibility

The program would apply to eligible projects requiring an EIR. A project is eligible if it meets at least one of the location-based or content-based eligibility criteria set forth below. Note that eligible projects are not *required* to use this process; participation is voluntary.

## **Location-Based Criteria**

Chapter 40R Districts

Growth Districts Designated by the Executive Office of Housing and Economic Development with the Concurrence of the Executive Office of Energy and Environmental Affairs

Brownfields

LEED-Neighborhood Development Certifiable Silver or Above

## **Content-Based Criteria**

LEED Certifiable Silver or Above

Use of Clean or Renewable Energy

Low Impact Development

Projects in an environmental justice community that create or substantially expand open space, public recreation, employment opportunities, or access to transportation in those communities.<sup>1</sup>

## **Other**

Developer “Fail-Safe” (project may not fall within above categories but integrated review still beneficial)

Public infrastructure projects deserving a high degree of coordination

We note that a requirement of this integrated review is a commitment by the developer to provide a high degree of detailed information up front to enable agencies and the public to meaningfully review and comment on the project, and enable the MEPA office to determine that the project has avoided, minimized, or mitigated adverse impact to the maximum extent feasible. In other words, the developer seeking to use this process must not use MEPA as a “trial balloon” to vet a vague concept prior to permitting.

Note also that the MEPA office may decline to use this process even for projects that meet the eligibility criteria. For example, novel, unusually complex, or highly controversial projects may not be suitable candidates for this process, as the more traditional, segmented review and permitting processes may be necessary to assure adequate public review and input.

A developer seeking to use this procedure may apply for a determination of eligibility via a letter to the MEPA director. The letter should explain how the project meets the eligibility criteria, and also outline the developer’s commitment to providing

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<sup>1</sup> An eligible project in an environmental justice community would still be expected to comply with the requirements of applicable “environmental justice” policies even if designated for integrated review.

the requisite information at the beginning of the review process. The MEPA director will make a prompt decision on eligibility and transmit that decision in writing.

## **2. Process**

Once a project is deemed eligible, the process would begin with a pre-ENF meeting to be attended by the developer's representatives, a MEPA reviewer, and state agency representatives as appropriate. As appropriate, a representative of the host community, such as a town planner or other local official with permitting expertise, may also be invited to attend. The purpose of the meeting would be to agree on the degree of design detail needed for review, to identify major regulatory hurdles to the project, and to compose a team of agency reviewers who would represent the respective state agencies through MEPA and permitting. The MEPA office's expectation is that the agency reviewers would be senior officials with sufficient experience to effectively convey the perspectives of their respective agencies. It may be appropriate to also negotiate "fast track" permitting agreements with DEP and other agencies at this meeting, so that the timelines for agency permitting at the conclusion of the MEPA process will be known in advance.

When the ENF is filed, the agency representatives would submit comments identifying the information they need to have in the DEIR and in the permit applications. Agencies would also be expected to identify at this time major regulatory obstacles to the project, although with no implication that an agency is barred from raising such issues at a later point.

The ENF certificate would be issued as it is now, but it would reflect an agreement within the team as to the scope of the DEIR.

The proponent would then submit a DEIR. During the DEIR public review, there would be a second meeting of the team to further discuss design, alternatives, and mitigation. The second meeting may include municipal officials and representatives of organized environmental protection organizations, neighborhood associations, or others who have submitted comments during the ENF stage. The goal is for state agency representatives to identify their respective state agencies' principal concerns with a particular project, and to voice their preferences as to different alternatives presented in the DEIR, although with no implication that the representatives' statements are binding upon the agencies.

The DEIR certificate would be issued as it is now. As is the case now, the certificate would highlight additional information or design detail required by the agencies.

The proponent would then submit the FEIR. The FEIR filed under this procedure would likely include design drawings at a fairly advanced stage. This will enable agencies to conduct the more detailed review that typically comes with permitting, and communicate the contents of that review in their MEPA comments. The FEIR would

also include draft section 61 findings, which would constitute the agreed-upon mitigation, and agencies would be expected to comment on the findings in detail and suggest findings of their own that would serve as conditions to the permits to be issued later.

At the same time as the FEIR is filed, the proponent would submit to the agencies and file with MEPA the major permit applications. The reviewing agencies would review the FEIR and at the same time determine whether the permit application is complete. If it is not, the agency will identify in their FEIR comments the additional information they need to act on permits. In other words, the “administrative-technical completeness” phase of permitting would coincide with the FEIR review.

The FEIR certificate would differ from current practice in that it would not include language deferring fundamental issues to subsequent permitting. Accompanying the certificate would be detailed section 61 findings that would serve as the primary template for permit conditions.

If this integrated review process is successful, final permitting would be relatively straightforward, and would mainly consist of agencies reviewing final designs to make sure they comply with the commitments established through MEPA, and evaluating any new issues raised by the public that were not brought forth during the MEPA review.

### 3. Review of the Process

MEPA expects that approximately 5-10 projects will utilize this process during its first year of implementation. At the end of the first year, the MEPA office and participants in the process will analyze whether it achieved the goals of generating better and more timely environmental impact information, coordinating state agency review, and facilitating prompt permitting. MEPA expects to publish a written evaluation of that review in the Environmental Monitor.