

6/2 FINAL DRAFT

INTEGRATED MEPA/PERMITTING REVIEW POLICY

In 2008, and after receiving public comment, the MEPA office within the Executive Office of Energy and Environmental Affairs commenced 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.

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 important questions about a project’s location, design, and mitigation so that the subsequent permitting is expeditious and predictable.

Integrated review is intended to make a detailed review of permitting information an integral part of MEPA, 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.

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 project proponent is in the best position to make changes in response to such input. We also emphasize that the process is purely voluntary.

1. Eligibility

In making a determination on eligibility, the Secretary will consider the location and other aspects of the project in the context of the Commonwealth's Smart Growth/Smart Energy agenda. Eligible projects will be expected to serve as models for sustainable development and redevelopment, and incorporate Low Impact Development (LID), Leadership in Energy and Environmental Design (LEED) certification and other measures to achieve smart growth/smart energy goals as applicable to the project. Eligible projects in Environmental Justice (EJ) communities will be expected to conduct expanded outreach to the EJ population and demonstrate that the proposed project will benefit community residents. Examples of the type of projects that will be considered for eligibility include:

Projects in areas designated as Chapter 40 R Districts (as approved by the Massachusetts Department of Housing and Community Development) and projects that are eligible for Chapter 40R designation;

- Urban redevelopment projects that are consistent with EEA's Sustainable Development and Urban Environments agenda.
- Transit-Oriented Development (TOD) projects
- Brownfields redevelopment and/or restoration;
- Habitat restoration projects;
- Projects in Growth Districts designated by the Executive Office of Housing and Economic Development with the concurrence of the Executive Office of Energy and Environmental Affairs;
- Projects that generate renewable energy or make significant net reductions in Greenhouse Gas (GHG) emissions (as shown through compliance with the EEA/MEPA GHG Emissions Policy and Protocol); and
- 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 proponent 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.

2. Process

1. A proponent 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 proponent's commitment to providing the requisite information at the beginning of the review process.
2. The MEPA Office will coordinate an inter-agency team that will meet with the proponent to discuss project eligibility.¹ The inter-agency team may include Regional Planning Agency (RPAs) and local government representatives, and may include federal agencies (for projects with federal permit requirements). The MEPA office's expectation is that

¹ The proponent may also meet separately with individual agencies. Prior to filing the ENF, the Proponent may consult with the Secretary and any Participating Agency regarding review thresholds and Agency Actions pursuant to Section 11.05(3) of the MEPA regulations.

the state agency reviewers would be representatives with sufficient experience to effectively convey the perspectives of their respective agencies. The purpose of this meeting will be to make a preliminary determination on eligibility and/or to identify any additional information needed for the Secretary's determination. The meeting will also serve to identify applicable MEPA thresholds and permits required for the project, to provide guidance on the content of the ENF filing², and to discuss potential Fast-Track permitting agreements³. A follow-up meeting prior to the filing of an ENF may be held by the team if necessary.

3. Following this meeting, the MEPA director will issue a response letter stating whether the project is eligible for integrated review.
4. The proponent will file an ENF for public review and comment, which may include a proposed Scope for the EIR pursuant to 301 CMR 11.05(4).
5. The ENF review and decision process will proceed in accordance with the MEPA regulations. A MEPA site visit and public consultation session will be scheduled in accordance with 301 CMR 11.06 to review the project and discuss its alternatives, its potential environmental impacts and mitigation measures. State agencies will be expected to submit comments identifying information they require in the DEIR and in permit applications. Agencies would also be expected to identify at this time major regulatory obstacles to the project, recognizing that an agency is not barred from responding to new information developed through analysis in an EIR. The Secretary will issue a Certificate on the ENF, which will include a Scope for a Draft EIR and identify information needed for permitting.
6. The Proponent will file a DEIR (which should include proposed Section 61 Findings for each state agency permit required). The DEIR review and decision process will proceed in accordance with the MEPA regulations.

During the DEIR public review, there likely would be a second meeting of agency representatives to further discuss design, alternatives, and mitigation. The second meeting may include regional planning associations, municipal officials and

² The ENF guidance to be provided is intended to support inter-agency review and integrated permitting by soliciting more detailed information at an earlier stage in the process; which will facilitate public comment and assist the Secretary in establishing a Scope for the Environmental Impact Report (EIR).

³ For certain projects, Fast-Track permitting agreements with MassDEP or other agencies may be appropriate so that the timelines for agency permitting at the conclusion of MEPA will be known in advance. Such agreements will not alter public review and comment provisions or permit timelines established under existing laws and regulations.

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, recognizing that agencies' official positions will be reflected in comment letters to MEPA.

7. 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 Scope will also require that draft permit applications and proposed Section 61 Findings are included in the FEIR for public review and comment).

8. 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 embodying proposed 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.

9. 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.

10. The FEIR certificate would differ from current practice in that it would not include language deferring significant analysis 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 ensure they comply with the commitments established through MEPA, and considering any issues raised by the public that were not fully evaluated 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, participants in the process, and the public will analyze whether it achieved the goals of generating better and timelier 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.