EBC Professional Development Program Series:
MEPA for the Ascending Professional
- An Advanced Introduction
Welcome

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MEPA: An Advanced Introduction

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MEPA 101: An Advanced Introduction

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Overview

- Purpose of MEPA
- Review of what triggers MEPA review
  - State Agency Actions
  - MEPA review thresholds
- MEPA Jurisdiction
- Case Studies
- Tips
- Website Resources
What is the Purpose of MEPA?

- MEPA: Massachusetts Environmental Policy Act
  - M.G.L. c.30, ss 61-62I; 301 CMR 11.00
- Applies to State Agencies
- Must study environmental consequences of actions
- Must take all feasible measures to avoid, minimize, or mitigate Damage to the Environment.
- Public study, disclosure of environmental impacts, review of alternatives, and development of mitigation measures.
- Not a permitting process. MEPA does not approve or deny projects.
MEPA Timeline

- Review period begins from publication in the Environmental Monitor
- Schedule site visit 5-7 days prior to close of comment period
- ENF and NPC → 20 day comment period → Certificate issued in 10 days
- EIR → 30 day comment period → Certificate issued in 7 days
- Comment periods can be extended at Proponent’s request, but not for Single and Final EIRs
- Once final Certificate and Record of Decision issued → project can move to State Permitting/State Agencies can act
When is MEPA review required?

- **Project requires a State Agency Action:**
  - Proposed by a State Agency
  - State Permit
  - Financial Assistance
  - Land Transfer

- **Project meets or exceeds a MEPA review threshold:**
  - Land, Rare Species, Wetlands, Water, Wastewater, Transportation, Energy, Air, Solid/Hazardous Waste, Historical/Archaeological Resources

- **Subject matter of at least one review threshold must be within MEPA jurisdiction**
Agency Actions: Proposed by State Agency

- Any agency, department, board, commission, or authority of the Commonwealth
  - MassDOT, DCR, MassDEP, NHESP, DCAMM, etc.

- Municipal redevelopment agencies created or acting in accordance with M.G.L. c.121A or c.121B
  - Boston Redevelopment Authority d/b/a Boston Planning and Development Agency (BPDA), Cambridge Redevelopment Authority, etc.
Agency Actions: State Permit

- Any permit, license, certificate, variance, approval, or other entitlement for use, granted by an Agency for or by reason of a Project.
  - Examples of Permits include but are not limited to:
    - MassDOT → Access Permit
    - MassDEP → c.91 License or Permit; 401 WQC, Air Plan Approvals, Superseding Order of Conditions
    - NHESP → CMP
    - 40B Comprehensive Permit → Housing Appeals Committee (HAC)
    - State Board of Building Appeals → Variance
    - MA Architectural Access Board → Variance
  - Does **not** include Order of Conditions from local Conservation Commission; MHC review process; 40B Comprehensive Permit from ZBA
Agency Actions: Financial Assistance

- Any direct or indirect financial aid to any Person provided by any Agency.

  - Examples of Financial Assistance include but are not limited to:
    - Seaport Economic Council, MassDOT Chapter 90, Massachusetts School Building Authority (MSBA), Dam and Seawall Repair/Removal Funds
    - Does not include: Community Preservation Act (CPA) funds, Tax Increment Financing (TIF) arrangements

  - Always good to double check
Agency Actions: Land Transfer

- Execution and delivery by an Agency of any deed, lease, license or other document that transfers real property or an interest in real property.

  - Examples of Land Transfers include but are not limited to:
    - Direct conveyance of land from state Agency
    - Easements from state Agency
    - Long-term air rights lease from state Agency
    - Transfer of Air Rights from state Agency
MEPA Review Thresholds

- Found at 301 CMR 11.03
- Determines whether review is 1-step or 2-step process:
  - ENF and further review only at Secretary’s discretion; or
  - ENF and Mandatory EIR
- Subject matter of at least one review threshold must be within MEPA jurisdiction
MEPA Jurisdiction

- **Full Scope Jurisdiction:**
  - Projects undertaken by State Agency or utilizing Financial Assistance
    - Any threshold would establish MEPA jurisdiction
  - Subject matter jurisdiction may be functionally equivalent to Broad Scope jurisdiction (c.91 License or Land Transfer of entire project site)

- **Limited Scope Jurisdiction:**
  - Private or Municipal projects that require Permit or Land Transfer
    - Subject matter of review threshold must be conceptually or physically related to the subject matter of one or more Permits to establish MEPA jurisdiction
    - ACEC and Land thresholds considered subject matter of any Permit
Jurisdictional Mismatch

- **Example 1:** A privately proposed and funded mixed-use development project exceeds an ENF trip generation threshold and requires a Groundwater Discharge Permit from MassDEP.
  - No MEPA review required because subject matter of the review threshold (traffic) is not conceptually or physically related to the subject matter of the permit (water/wastewater).

- **Example 2:** A Business Park development exceeds an ENF rare species threshold (over 2 acres of disturbance) and requires a Conservation and Management Permit from NHESP. It also exceeds EIR thresholds for traffic (over 3,000 new adt).
  - MEPA jurisdiction is limited to land and rare species
Project Segmentation

- MEPA regulations include anti-segmentation provisions (301 CMR 11.01(2)(c)) to ensure that a project is not phased or segmented to evade, defer or curtail MEPA review.

  - In determining whether work or activities constitute a single project, the Secretary considers:
    - whether the work or activities constitute a common plan (regardless of whether there is more than one Proponent),
    - timing of work and activities, and
    - whether associated environmental impacts are separable or cumulative.
Case Studies
**Project #1**

- **State Agency Actions:**
  - State Financial Assistance from MSBA

- **EIR Thresholds:**
  - 11.03(1)(a)(2) Creation of ten or more acres of impervious surface

- **Jurisdiction:**
  - Broad in scope

- **Potential segmentation issue identified during pre-filing meeting**
Project #2

• **State Agency Actions:**
  o Vehicular Access Permit and Trench Rider Permit from MassDOT

• **EIR Thresholds:**
  o 11.036(a)(6) - Generation of ≥ 3,000 new average daily vehicle trips

• **Limited jurisdiction:** Alternatives Analysis, Land Alteration, Traffic/Transportation, GHG emissions, Water/Wastewater

• **ENF indicated Proponent is assisting the Town in obtaining Section 8(M) Permit from MWRA required to construct new water main to serve site.**
  o Unclear if work disclosed in filing, potential segmentation concern

• **Timing of land clearing and construction activities**
Project #3

- **State Agency Action:**
  - Proposed by a State Agency (DCR)

- **EIR Threshold:** No wetland Permit, therefore threshold not met/exceeded. MEPA review not required.

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(3) Wetlands, Waterways and Tidelands.

(a) ENF and Mandatory EIR.

1. Provided that a Permit is required:

   a. alteration of one or more acres of salt marsh or bordering vegetating wetlands; or

   b. alteration of ten or more acres of any other wetlands.
Tips

- Productive Pre-filing Meetings
- Filing an ENF
- Filing a NPC
- Filing an EIR
- GHG Policy
- Article 97 Policy
- Resources available on our website
Pre-Filing Meetings

- May be requested via email
  - mepa@state.ma.us
- Request should include:
  - Dates/times you are available
  - Brief project summary
    - Potential Agency Actions
    - Applicable MEPA review thresholds
  - What you are seeking input on
  - Conceptual project plan

Schedule a Pre-filing Meeting

Meet with staff of the MEPA Office to discuss your filing.

Prior to filing with MEPA, a project Proponent may consult with the MEPA Director, Assistant Director or one of the Environmental Analysts to determine any review thresholds the project may meet or exceed and any potential agency action it may require. The MEPA office regularly schedules pre-filing meetings with proponents to support complete filings and in some cases, may help to avoid unnecessary MEPA review.
ENF Form

- Supporting project narrative with detailed description
- Include other data/reports (i.e. stormwater report)
- Provide electronic copy of ENF filing

**Alternatives Analysis**
- Alternative sites, uses, layouts, construction methodologies
- Identify project purpose, criteria for selecting preferred alternative
- Quantify impacts of each alternative
- Include no-build
Notice of Project Change (NPC)

- Distribution list
- Narrative and table that clearly identifies changes in impacts
- Identify whether changes exceed any review thresholds
- Identify state Agency Actions (previously required, issued, outstanding, new)
- Clarify whether changes to mitigation measures are proposed
- Identify changes since last reviewed by MEPA
- Consider executive summary
- Recommend using Scope from Certificate to create outline
- Response to comments
- Present/summarize appended technical data within EIR
- Mitigation measures/draft Section 61 Findings
Greenhouse Gas (GHG) Policy

- Applies only to projects that require an EIR
- GHG analysis that calculates and compares GHG emissions associated with:
  - 1) Base Case minimally compliant with MA Building Code; and
  - 2) a Preferred Alternative that incorporates additional energy saving measures
- Recommend pre-filing meeting with MEPA and DOER.
Article 97 Land Disposition Policy

- MEPA ENF threshold: Section 11.03(2)(b)(3) for conversion of Article 97 Land
- "No net loss" of Article 97 protected open space.
- 6 criteria for determining when "exceptional circumstances" exist such that a disposition of Article 97 land may be appropriate
Redesigned MEPA Website

The “Ready to File” ([https://www.mass.gov/ready-to-file](https://www.mass.gov/ready-to-file)) page provides links to:

- ENF, NPC, and EIR preparation guides
  - Expanded ENF (EENF) with Request for Single EIR
  - EENFs with Waiver Requests
- Relevant Policies and Executive Orders
- Mapping resources
- Forms
- Environmental Monitor
- Database

We are interested in your feedback on how the MEPA website can be more helpful!
Thank you!

Other questions? Feel free to contact us!

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Typical MEPA Timeline

1. **Environmental Notification Form (ENF)**
   - Proponent submits ENF
   - Published in Environmental Monitor
   - 20 day public comment period
   - 10 day MEPA review period
   - If DEIR adequately responds to Scope, Secretary issues Certificate with scope for FEIR

2. **Draft Environmental Impact Report (DEIR)**
   - Proponent prepares DEIR
   - Published in Environmental Monitor
   - 30 day public comment period
   - 7 day MEPA review period
   - Secretary issues Certificate with Scope for DEIR
   - If DEIR is not adequate, Secretary will issue a Scope for a Supplemental DEIR.

3. **Final Environmental Impact Report (FEIR)**
   - Proponent prepares FEIR
   - Published in Environmental Monitor
   - 30 day public comment period
   - 7 day MEPA review period
   - If FEIR is not adequate, Secretary will issue a Scope for a Supplemental FEIR.
   - Secretary issues Certificate determining no EIR is required

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1 The Environmental Monitor is published twice a month and is available at [http://www.mass.gov/eea/agencies/mepa](http://www.mass.gov/eea/agencies/mepa)

2 If the DEIR is not adequate, Secretary will issue a Scope for a Supplemental DEIR.

3 If the FEIR is not adequate, Secretary will issue a Scope for a Supplemental FEIR.

State Agencies can take Agency Action (Permits, Land Transfers, Financial Assistance)
Overview

The purpose of Massachusetts Environmental Policy Act (MEPA) (301 CMR 11.00) is to provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required (including permitting and Financial Assistance decisions), and to assist each Agency in using (in addition to applying any other applicable statutory or regulatory standards and requirements) all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable.

MEPA review is intended to inform the Proponent and each Participating Agency, to maximize consistency between Agency Actions, and to facilitate coordination of all environmental and development review and permitting processes of the Commonwealth. MEPA requires public study, review of alternatives, and development of feasible mitigation measures.

MEPA review is required if a project meets or exceeds one or more MEPA review thresholds, and if a project requires a State Agency Action. State Agency Actions include a project proposed by a State Agency, the granting of State Permits or licenses, provision of Financial Assistance, or transfer of State-owned land. MEPA review is required only if both conditions are satisfied.

MEPA review thresholds are found at 301 CMR 11.03 and include the following categories: land; rare species; wetlands, waterways and tidelands; water; wastewater; transportation; energy; air; solid and hazardous waste; historical and archaeological resources; Areas of Critical Environmental Concern (ACEC’s); and regulations. The review threshold that is met or exceeded specifies whether MEPA review shall consist of an Environmental Notification Form (ENF) and a mandatory Environmental Impact Report (EIR) or of an ENF and other review if the Secretary so requires (e.g. a discretionary EIR).

MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. MEPA establishes jurisdiction over:

- A project undertaken by an Agency;
- Those aspects of a project within the subject matter of any required State Permit;
- A project involving Financial Assistance;
- Those aspects of a project within the area of any Land Transfer.

MEPA jurisdiction is broad (full-scope) and may cover the full range of potential environmental impacts when a project is undertaken by a State Agency or involves Financial Assistance. MEPA jurisdiction is limited to the subject matter of the required permit(s) when there are private or municipal projects that only require State Permits (i.e., there must be a “nexus”). For example, if a privately proposed and funded project meets or exceeds a Transportation review threshold but does not require a Vehicular Access Permit (or other transportation-related permit from a State Agency), then MEPA has no jurisdiction over its traffic impacts, no matter how significant they may be.

However, as further clarification:

- Review thresholds for Land and ACEC’s are considered to be related to the subject matter of any required permit. For example, if a project is located in an ACEC and needs a water supply permit, MEPA review will be required, despite a water-related threshold not being exceeded.
- Subject matter jurisdiction may be functionally equivalent to full scope jurisdiction in the case of a project, for example, requiring a chapter 91 License or involving a Land Transfer of an entire project site.
• Subject matter jurisdiction may be limited to a particular structure, facility or activity and its direct and indirect environmental impacts in the case of a project, for example, requiring a Sewer Connection Permit or involving a Land Transfer of a discrete portion of the project site.

The Secretary’s decision that a review document is adequate or that there has been due compliance with the MEPA regulations means that the Proponent has adequately described and analyzed the project and its alternatives, and assessed its potential environmental impacts and mitigation measures.

For those projects subject to MEPA review, the review process must be completed prior to taking of a State Agency Action. MEPA review occurs before permitting agencies act to ensure that permitting agencies evaluate the environmental consequences of their actions.

State Agencies retain their authority to fulfill their statutory and regulatory obligations in permitting or reviewing a project that is subject to MEPA review. That is, MEPA review is not a permitting process and does not approve or deny a project. It also does not pass judgment on whether a project can or should receive a particular permit, as these decisions are left to the permitting agencies.

**Notice of Project Change (NPC)**

If there is a material change in a project that would increase environmental impacts compared to what was previously reviewed, either during the review process or after review has concluded, but before all State Agency Actions have occurred, the Proponent must file a Notice of Project Change (NPC) (301 CMR 11.10). An NPC undergoes a 30-day review and comment process, at the end of which they Secretary determines whether a Supplemental EIR or other MEPA review is required.

**Request for Advisory Opinion (RAO)**

If Proponents are unsure if MEPA review is required, they can file a Request for Advisory Opinion (301 CMR 11.01(6)) with the Secretary. A determination is generally made within 20 days of receipt of this request. The MEPA office may ask for additional documentation for the Proponent or input from State Agencies during this review process. RAOs regarding a Replacement or Maintenance project must be noticed in the Environmental Monitor and are subject to a 20 day comment period. All other RAOs may be published at the Secretary’s discretion.

**Waiver Requests**

Proponents may also request certain types of waivers from MEPA review for projects subject to a mandatory EIR (301 CMR 11.11). A Phase 1 Waiver allows a project to proceed with the first phase of a project prior to completing the EIR review process, contingent upon the project meeting certain criteria. A Full EIR Waiver allows a project to submit an ENF only and not undergo the EIR review process, again, contingent upon certain criteria. There is a high standard that must be attained to meet the criteria for a Phase 1 or Full EIR Waiver, including making a persuasive argument for hardship per 301 CMR 11.11(1).

A Phase 1 or Full EIR Waiver is requested through the submission of an Expanded ENF, which is subject to a comment and review period similar to an EIR (37 days). An Expanded ENF should include more extensive and detailed information describing and analyzing the project and its alternatives, potential environmental impacts, and mitigation measures (a/k/a/ self-scoping). It should also address the criteria at 301 CMR 11.11. When the Secretary grants a waiver, the terms of the waiver are reviewed as a Draft Record of Decision (DROD) and a Final Record of Decision (FROD), each subject to a comment period of 14 days.

*For additional information on the MEPA process, please visit: [https://www.mass.gov/orgs/massachusetts-environmental-policy-act-office](https://www.mass.gov/orgs/massachusetts-environmental-policy-act-office)*
Moderated Discussion

Moderator: Valerie Moore, *Nutter*

Panelists:

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