

400 CMR: EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT

43E EXPEDITED STATE PERMITTING

400 CMR 3.00 EXPEDITED STATE PERMITTING

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3.01: Purpose

400 CMR 3.00 *et. seq.* establishes rules, standards and procedures for the Expedited State Permitting Program (the “Program”) created under M.G.L. c. 43E. The Executive Office of Housing and Economic Development is the regulatory agency for the Program and is authorized by M.G.L. c. 43E, § 8, to promulgate regulations, with the approval of the Secretary of the Executive Office of Energy and Environmental Affairs, to implement its operation.

3.02: Program Overview

The Expedited State Permitting Program (“Program”) promotes the expedited state permitting of commercial, industrial, and mixed-use projects on sites designated as a “Priority Development Site” under M.G.L. c. 43D and “Growth District” by the Executive Office of Housing and Economic Development, subject to certain requirements and exclusions specified herein. The Program requires all state agencies, commissions, departments, and other state entities responsible for issuing permits, as defined herein, for projects proposed on such sites to review and take final action on a complete permit application within 180 calendar days, or 210 calendar days for permit review processes requiring a public comment period. State issuing authorities are encouraged to work together for each project, wherever possible, and may provide for pre-application conferences to streamline the permit review process. Doing so will ensure that sites throughout the Commonwealth previously identified as appropriate locations for significant new growth are highly attractive for development.

### 3.03: Definitions

As used in 400 CMR 3.00 *et. seq.*, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

Agency:

- (a) Any agency, department, board, commission, or authority of the Commonwealth.
- (b) Agency shall not include a Federal, municipal, or regional agency, department, board, commission or authority, unless it is:
  - (1) a municipal redevelopment agency created or acting in accordance with M.G.L. c. 121A or c. 121B; or
  - (2) any other authority of any political subdivision of the Commonwealth that is created or acting specifically as an authority in accordance with applicable statutes.

Business Day: a weekday (Monday through Friday), excluding state and federal holidays, on which the offices of the Commonwealth are open for regular business.

Expedited State Permitting Program (the “Program”): the expedited state permitting process created under M.G.L. c. 43E and its regulation, 400 CMR 3.00 *et. seq.*

Final Action on a Complete Permit Application: the formal approval or denial of a permit application deemed complete under 400 CMR 3.06, excluding any additional time periods for appeals.

Growth District: a district designated from time to time by the Secretary of Housing and Economic Development, with the approval of the Secretary of Energy and Environmental Affairs, to participate in the “Growth District Initiative.”

Growth District Initiative: a program established by the Executive Office of Housing and Economic Development and section 2C of chapter 303 of the acts of 2008 to provide for commercial and residential transportation and infrastructure development, improvements and various capital investment projects.

Interagency Permitting Board: the board, as described in M.G.L. c. 23A, § 62, established to review and approve or deny municipal priority development site proposals.

Issuing Authority: a state agency, commission, department, or other state entity that is responsible for issuing permits, granting approvals or otherwise involved in land use development including redevelopment of existing buildings and structures.

MEPA Office: the Secretary of Energy and Environmental Affairs' staff that carries out the day-to-day administration of the Massachusetts Environmental Protection Act (M.G.L. c. 30, §§ 61-62I) and 301 CMR 11.00 *et. seq.*

Mixed-Use: a mix of some or all of commercial, industrial, or residential uses on a parcel or adjoining parcels of real property.

Parties to the Proceedings: any person who provided testimony or submitted written comments on the record during a public hearing or public comment period for the project.

Permit: a permit, formal determination, order of conditions, license, certificate, authorization, registration or other approval or determination with respect to the use, development, or redevelopment of land, buildings or structures required by an issuing authority. "Permit" shall not include the decision of an agency to dispose of property under its management or control or permits granted by the Massachusetts Water Resources Authority or permits or approvals issued by the Department of Public Utilities or the Energy Facilities Siting Board under M.G.L. c. 40A and M.G.L. c. 164, or requests for variances or waivers from state laws or regulations.

Permit Ombudsman: an individual appointed by the Governor pursuant to M.G.L. c. 23A, § 3H to chair the Interagency Permitting Board and direct the Board to conduct state permit evaluations and streamline and expedite state permitting procedures. The Permit Ombudsman shall facilitate communication between municipalities and state issuing authorities on permitting issues.

Permit Review Period: the cumulative number of calendar days (180 or 210, whichever applies) for an issuing authority to review a permit application deemed complete under 400 CMR 3.06. The permit review period shall not include the days, if any, during which the period has been tolled under one of the provisions of 400 CMR 3.00 *et. seq.*

Person: any individual, corporation, partnership, trust, association, or other business or non-profit organization, or any Federal, municipal, or regional governmental, intergovernmental or other entity that is not an issuing authority.

Priority Development Site: as defined by M.G.L. c. 43D, § 2, it is a privately or publicly owned property that is: (1) commercially or industrially zoned; (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building of at least 50,000 square feet of gross floor area in new or existing buildings or structures; and (3) designated as a priority development site by the Interagency Permitting Board. Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites should be located adjacent to areas of existing development or in underutilized buildings or facilities, or close to appropriate transit services.

Project: work, project, or activity directly undertaken by an agency or person, which seeks the provision of financial assistance by an agency, or requires the issuance of a permit by an issuing authority, but shall not include a grant of aid for medical services or personal support, such as welfare or unemployment funds, to an individual or a third party on behalf of an individual.

Receipt of a Permit Application: when the application is delivered to the issuing authority's office and the issuing authority acknowledges receiving the application in one of the following manners:

- (1) If the permit application is hand delivered, the applicant shall obtain from the issuing authority a time stamp on the application or a written notice, in any form, acknowledging the day on which the issuing authority received the application.
- (2) If the permit application is sent by mail, the applicant shall select return receipt service so as to establish the day on which the issuing authority received the application.
- (3) If the permit application is submitted by electronic mail, the applicant shall request a read receipt so as to establish the day on which the issuing authority received the application.

Site: a privately or publicly owned property that is zoned for commercial, industrial, or mixed-use development.

Secretary: the Secretary of the Executive Office of Housing and Economic Development.

### 3.04: Permit Application Eligibility

- (1) A project proponent who submits a permit application to an issuing authority shall satisfy all of the following requirements for the application to be eligible for the Program:
  - (a) The project shall be located entirely within a site designated as a "Priority Development Site" under M.G.L. c. 43D;
  - (b) The project shall be located entirely within a site designated as a "Growth District" by the Executive Office of Housing and Economic Development;
  - (c) Neither the project nor any portion of the project shall be in a wetland as defined by M.G.L. c. 131, § 40, tideland as defined by M.G.L. c. 91, § 1, priority habitat as delineated by the Division of Fisheries and Wildlife under M.G.L. c. 131A, or an area of critical environmental concern as designated by the Secretary of Energy and Environmental Affairs; and
  - (d) The MEPA review process under M.G.L. c. 30, §§ 61 to 62I, inclusive, and its regulation, 301 CMR 11.00 *et. seq.*, shall be complete for the project and the project proponent shall have received a certificate from the Secretary of Energy and Environmental Affairs acknowledging that the MEPA review process is complete for the project. *(Note: a project proponent may submit a permit application to an issuing authority before the MEPA review process is*

*complete and the proponent is encouraged to notify the issuing authority that the application is being submitted under the Program, but the application will not be eligible for the Program until the proponent has received a certificate from the Secretary of Energy and Environmental Affairs)*

(2) Determination of eligibility

- (a) A project proponent shall demonstrate that it has satisfied the requirements listed under 400 CMR 3.04(1) each time the project proponent submits a permit application to an issuing authority.
- (b) In determining whether a project is eligible under 400 CMR 3.04(1)(c), an issuing authority may rely on findings made by the Secretary of Energy and Environmental Affairs in a certificate issued under MEPA.
- (c) An issuing authority's determination that a permit application it has received is eligible for the Program shall apply to that issuing authority only and shall not prevent other issuing authorities from making independent determinations about a project's eligibility when they receive a permit application.

3.05: Permit Application Materials

(1) A project proponent shall include all of the following materials with a permit application before an issuing authority may deem the application complete:

- (a) A locus map and a resource area map at the appropriate scale as verified by the applicable authority or an alternative site specific determination by that authority that establishes the following:
  - 1. The project parcel is located entirely within a "Priority Development Site" as defined by M.G.L. c. 43D;
  - 2. The project parcel is located entirely within a "Growth District" as defined by the Executive Office of Housing and Economic Development; and
  - 3. The project parcel is not in a wetland as defined by M.G.L. c. 131, § 40, tideland as defined by M.G.L. c. 91, § 1, priority habitat as delineated by the Division of Fisheries and Wildlife under M.G.L. c. 131A, or an area of critical environmental concern as designated by the Secretary of Energy and Environmental Affairs.
- (b) A certificate issued by the Secretary of Energy and Environmental Affairs indicating that the MEPA review process, as required under M.G.L. c. 30, §§ 61 to 62I, inclusive, and its regulation, 301 CMR 11.00 *et. seq.*, is complete for the project.
- (c) Written notice shall be provided to each issuing authority that the permit application is being submitted under the Program. *(Note: Project proponents are strongly encouraged to notify all issuing authorities at the beginning of the MEPA review process that the permit applications associated with the project will be submitted under the Program. If a project includes the disposition of state real property, the applicant is also strongly encouraged to notify the Division of Capital Asset Management of the project's eligibility for the Program at the beginning of the MEPA review process.)*

- (d) The name, mailing addresses, e-mail address, and telephone number of the person who will serve as the applicant's official point of contact for the Program.
  - (e) Any other materials that the issuing authority requires to be included with a permit application.
- (2) Issuing authorities are encouraged to work together, wherever possible, and may provide for pre-application conferences to notify the proponent about all permits required for the project and the materials to be submitted with each permit application. The Interagency Permitting Board or the Permit Ombudsman may also establish procedures to provide for such conferences.

### 3.06: Permit Application Completeness Review

- (1) Upon receipt of a permit application eligible for the Program, the issuing authority has 20 business days, beginning on the day after receipt of the application, to determine whether the application is complete or incomplete.
- (a) If the permit application is complete, the issuing authority shall immediately notify the applicant in writing by mail or electronic mail. The notice shall indicate whether the permit review period is for 180 or 210 calendar days and shall specify the day on which the permit review period will begin.
  - (b) If the issuing authority determines that the application is incomplete, the issuing authority shall immediately notify the applicant in writing by mail or electronic mail. The notice shall explain why the application is incomplete and request the information necessary to complete the application.
- (2) Where an applicant receives notice of incompleteness, the applicant shall timely submit the additional information requested. Upon receipt of the supplemental information, the issuing authority has 30 business days, beginning on the day after receipt of the information, to determine whether the application is complete or incomplete.
- (a) If the issuing authority determines that the permit application is complete, the issuing authority shall immediately notify the applicant in writing by mail or electronic mail. The notice shall indicate whether the permit review period is for 180 or 210 calendar days and shall specify the day on which the permit review period will begin.
  - (b) If the issuing authority determines that the permit application is incomplete, the issuing authority shall immediately notify the applicant in writing by mail or electronic mail. The notice shall explain why the application is incomplete and request the information necessary to complete the application. The procedures outlined in 400 CMR 3.06(2) shall be repeated each time an issuing authority gives a permit applicant an opportunity to complete the application.
- (3) Where an issuing authority intends to deny a permit application rather than give the applicant an opportunity to complete the application, the issuing authority shall first notify the Permit Ombudsman of its intent to do so.

- (4) If the issuing authority fails to notify the applicant about whether the application is complete or incomplete within the original 20 business-days-review-period, or within a subsequent 30 business-days-review-period under 400 CMR 3.06(2), then the application shall be deemed complete for purposes of the commencement of the permit review period. In such a case, the permit review period shall commence on the following calendar day.

### 3.07: Permit Application Review Process

- (1) Issuing authorities shall review and take final action on a complete permit application based on the 180 calendar day permit review period, or the 210 calendar day permit review period for permit processes requiring a public comment period, subject to an extension or waiver granted under 400 CMR 3.08. The permit review period shall begin on the calendar day following the day the issuing authority sends written notice by mail or electronic mail that the application is complete or following the day when the application review period expired under 400 CMR 3.06(4).
- (2) Where an issuing authority's rules, regulations, or established procedures provide for a multi-stage permit review process whereby the permit applicant submits its application in multiple stages throughout the process to allow the issuing authority to review and comment on each submission and so that the applicant may amend the application, if necessary, in between each submission, the permit review period shall toll on the day the issuing authority notifies the applicant that it has completed reviewing a submission and shall begin again on the day the applicant makes the next submission in the permit review process. With each new submission, the permit review period shall last only the number of days that remained when the period was last tolled. Where an issuing authority's rules or regulations provide for such a multi-stage process, the issuing authority shall work with the permit applicant before the permit review period begins to create a timeline that the applicant shall follow to ensure that the permit review period plus any time during which the period is tolled under 400 CMR 3.07(2), will not equal more than 180 or 210 calendar days.
- (3) The provisions of M.G.L. c. 43E and 400 CMR 3.00 *et. seq.* are not intended to replace the rules, regulations, or procedures ordinarily used by issuing authorities while reviewing permit applications unless they are in direct conflict with the Program. Therefore, where an issuing authority ordinarily reviews and takes final action on a complete permit application within a time period shorter than that provided by the Program, the issuing authority's shorter review period, and any consequences for failing to take final action within such shorter review period, shall remain in effect. In no case, however, shall a permit be automatically granted within a time period shorter than the 180 or 210 calendar day permit review period established under the Program unless the rules, regulations, or procedures of the issuing authority specifically provide for it.
- (4) Failure by an issuing authority to take final action on a complete permit application within the permit review period or extended time shall be considered an automatic grant of the permit requested. In that event, within 3 business days after the date of expiration of the permit review period, the applicant shall file a notice with the

- issuing authority and the Permit Ombudsman, attaching the application, setting forth the facts giving rise to the grant and stating that notice of the grant has been mailed, by certified mail, to all parties to the proceedings and all persons entitled to notice of hearing in connection with the application. The notice to the issuing authority and Permit Ombudsman shall include the names and contact information of all the parties to the proceedings and persons to whom notice of the grant was mailed.
- (5) The grant of a permit pursuant to the Program shall not occur if the issuing authority:
    - (a) made a timely determination under 400 CMR 3.06 that the application was incomplete in accordance with its requirements, properly notified the applicant and the applicant did not make a timely response to complete the application;
    - (b) determined that the final application contained false or misleading information; or
    - (c) determined that substantial changes to the project affecting the information required to review the permit application have occurred since the permit applicant filed the application.
  - (6) If a permit is not granted for any of the reasons listed in 400 CMR 3.07(5), the issuing authority shall provide written notice to the applicant, the Secretary, and the Permit Ombudsman explaining why the issuing authority will not grant the permit. A refusal to grant a permit for one of these reasons shall apply to that permit application only and shall not prevent the applicant from reapplying for the Program in the future.
  - (7) Each issuing authority retains authority to fulfill its statutory and regulatory obligations in permitting or reviewing a project. Nothing in M.G.L. c. 43E or 400 CMR 3.00 *et. seq.* shall be construed to alter the substantive jurisdictional authority of issuing authorities or modify any requirement of the State Implementation Plan or other requirement of law that is necessary to retain federal delegation to, or assumption by, the Commonwealth of the authority to implement a federal law or program.

### 3.08: Waivers and Extensions

- (1) The 180 or 210 calendar day permit review period may be waived or extended for good cause upon written request of the applicant with the consent of the issuing authority or upon written request of the issuing authority with the consent of the applicant. The request shall include all of the reasons why the extension is sought.
  - (a) The party who receives the request shall agree to or deny the extension within 10 business days by notifying the requesting party of its decision. Notification shall be sent by mail or electronic mail.
  - (b) The permit review period shall be tolled for the 10 business days a party has to agree to or deny the extension. The permit review period shall begin again on the day the party agrees to or denies the extension or on the day the 10 business days expire, whichever occurs sooner.
    1. In the event the extension request is agreed to, the number of days remaining in the permit review period at the time the period was tolled shall be added to the number of days

included in the agreed upon extension to create a new review time period.

2. In the event the extension request is denied, the permit review period shall last only the number of days that remained at the time the period was tolled.
  - (c) Failure to notify the requesting party of a decision within 10 business days shall be considered an automatic grant of the extension requested.
  - (d) The applicant and issuing authority may agree in writing as to the length of the extension, but in no case shall an extension for good cause last longer than 60 calendar days without the concurrence of the Permit Ombudsman.
- (2) The permit review period shall be extended without consent of the permit applicant if the issuing authority determines:
  - (a) action by another federal, state or municipal government agency is required before the issuing authority may act;
  - (b) judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application; or
  - (c) enforcement proceedings that could result in revocation of an existing permit for that project facility or activity and denial of the application have been commenced.
- (3) Where the permit review period is extended without consent of the permit applicant under 400 CMR 3.08(2), the issuing authority shall provide written notice to the applicant, the Secretary, and the Permit Ombudsman. Such notice shall toll the permit review period until the reason for the extension is no longer applicable. Upon receiving notice that the reason for the extension is no longer applicable, the issuing authority shall provide written notice to the applicant, the Secretary, and the Permit Ombudsman within 5 business days. The permit review period shall resume on the calendar day following the day on which the issuing authority provides such notice and shall last only the number of days that remained when the permit review period was tolled, except as provided for in 400 CMR 3.08(1). An issuing authority shall not deny a permit exclusively due to a lack of time for review if the applicant has provided a complete application and met all other obligations under M.G.L. c. 43E and 400 CMR 3.00 *et. seq.*

### 3.09: Permit Application Modifications

Where an applicant seeks to modify a permit application after the permit review period has commenced under 400 CMR 3.07, the filing of the permit application modification shall toll the permit review period. Issuing authorities shall make every reasonable effort to review modification requests within as short a period as is feasible to maintain the integrity of the Program. An issuing authority shall notify the applicant in writing by mail or electronic mail within 20 business days of receipt of a request for a modification whether the modified application can be reviewed within the time remaining in the permit review period, cannot be reviewed within the time remaining in the permit review period, or needs additional information for the issuing authority to render a decision.

- (a) If the modified application can be reviewed within the time remaining in the permit review period, the issuing authority shall notify the applicant and the permit review period shall resume on the calendar day following the day on which the issuing authority sends notice to the applicant.
- (b) If the modified application cannot be reviewed within the time remaining in the permit review period, the issuing authority shall notify the applicant and both parties shall mutually agree upon a new time period for reviewing the modified application. Where the parties cannot agree upon a new time period, notice shall be given to the Permit Ombudsman. In no case may the new time period be greater than the time period set forth in 400 CMR 3.07(1). Once the new time period has been established, the applicant may:
  - 1. agree to the new time period and continue the Program with the modified permit application;
  - 2. revoke the request to modify the permit application and continue the Program with the original permit application; or
  - 3. withdraw the permit application altogether and terminate participation in the Program.
- (c) If additional information is required for the issuing authority to render a decision about the modification, the issuing authority shall notify the applicant and request the additional information necessary to review the modification. After receiving the additional information, the issuing authority shall have 20 business days to review the additional information and make a determination about the modification.

If an issuing authority determines during the 20 business days it has to review the modification request that the permit will be denied as a result of the proposed modification, the issuing authority shall notify the applicant and the applicant may:

- (a) submit a revised modification request after consultation with the issuing authority;
- (b) withdraw the modified permit application and continue the Program with the original permit application; or
- (c) withdraw the permit application altogether and terminate participation in the Program.

### 3.10: Appeals

The commencement of the time period for an administrative or judicial appeal of an automatic grant of a permit pursuant to 400 CMR 3.07 shall be the date the applicant files notice of the automatic grant with the issuing authority and Permit Ombudsman.

The 180 or 210 calendar day timeline shall not apply to an administrative appeal following the issuance of a permit. The procedure for appealing an issuing authority's approval or denial of a permit shall be controlled by the rules and regulations of that issuing authority.

3.11: Regulatory Authority

400 CMR 3.00: M.G.L. c. 43E