

STAFF STRAW PROPOSAL: PRE-FILING CONSULTATION AND ENGAGEMENT REQUIREMENTS FOR SITING AND PERMITTING

I. INTRODUCTION

In November 2024, Governor Healey signed into law “An Act promoting a clean energy grid, advancing equity and protecting ratepayers” (“2024 Climate Act”) which charges the Energy Facilities Siting Board (“EFSB”) with issuing a single consolidated permit that comprises all state, regional and local permits that a large clean energy infrastructure facility would otherwise be required to obtain to commence construction and operation. The 2024 Climate Act also requires that the Massachusetts Department of Public Utilities (“DPU”), together with EFSB, establish pre-filing requirements with which applicants must comply. See 2024 Climate Act Section 74 (G.L. c. 164, § 69T).¹ The 2024 Climate Act requires applicants to provide EFSB with evidence of outreach conducted prior to filing an application. The 2024 Climate Act also authorizes the newly established DPU Division of Public Participation (“DPP”) to assist stakeholders in navigating pre-filing consultation and engagement requirements in coordination with the Office of Environmental Justice and Equity (“OEJE”) at the Executive Office of Energy and Environmental Affairs (“EEA”).² This staff³ straw proposal describes the proposed pre-filing requirements for EFSB applications.⁴ Formalizing pre-filing requirements marks a change from the current EFSB pre-filing practices, and it now includes the expectation of a robust, defined community engagement process.

The EFSB clean energy infrastructure facility review process would benefit from pre-filing outreach that builds in explicit opportunities for meaningful stakeholder engagement and clearly defines agency expectations for proponents. The pre-filing engagement process should ensure community members are well informed of a project prior to formal EFSB review, allow the proponent to identify concerns early, and possibly modify the proposal to be responsive to

¹ The 2024 Climate Act also requires proponents of legacy “facilities” to comply with pre-filing requirements. See St. 2024, c. 239, Sections 65 (G.L. c. 164, § 69J), and 68 (G.L. c. 164, § 69J½).

² The 2024 Climate Act also establishes the Division of Public Participation in the DPU. For siting and permitting matters under the EFSB, the Division is tasked with assisting stakeholders in navigating pre-filing consultation and engagement requirements, clarifying filing requirements, identifying opportunities to intervene, facilitating dialogue among stakeholders involved in the permitting process, and assisting in coordinating with other state, regional, and local officials, including the EEA OEJE.

³ “EFSB staff” refers to staff of the DPU Siting Division.

⁴ The 2024 Climate Act also requires that Department of Energy Resources (“DOER”), in consultation with DPU, establish a separate pre-filing process for local consolidated permitting of “small clean energy infrastructure facilities” by local governments. G.L. c. 25A, § 21.

community needs. Timely and collaborative pre-filing engagement with local and state agencies would also reduce the chance of incompatibilities occurring between existing and future infrastructure planning. A successful pre-filing outreach and engagement process would provide the opportunity to minimize potential setbacks before critical siting resources are devoted to proposed projects.

II. CONTEXT FOR STRAW PROPOSAL

A. Existing Energy Infrastructure Pre-Filing Practices

Currently, energy infrastructure projects may be reviewed by the EFSB or the DPU. EFSB currently does not have formal pre-filing engagement requirements and projects filed with the EFSB have been subject to varying informal pre-filing activities.⁵ Prior to implementation of the 2024 Climate Act, some siting and permitting review activities have been handled primarily by the DPU, such as for petitions for zoning exemptions and changes to or new construction of shorter transmission lines.⁶ For DPU siting matters filed after August 2024, petitioners are required to engage in pre-filing outreach activities with the public, including municipal officials, community groups, businesses, and residents as part of the DPU pre-filing process.⁷ Examples of petitioner outreach include door-to-door outreach at properties adjacent to routes; hosting open houses and pop-up events with multi-lingual printed materials and simultaneous interpretation services; and outreach through newspaper ads, project websites, e-mails, and circulars. Discussions between project proponents and stakeholders include information about line routes, how to opt in for project notifications, and participation in “open house” meetings hosted by the proponent. Proponents often provide stakeholders with information on the project need, design considerations, and the permitting process and schedule for the project.

Many energy infrastructure facilities reviewed by EFSB must also be reviewed by the Massachusetts Environmental Policy Act (“MEPA”) office, which has established pre-filing requirements for environmental justice populations.⁸ Therefore, there is some measure of pre-filing requirements with which proponents must already comply. The 2024 Climate Act presents

⁵ Prefiling activities have included mailed notices, open houses, door hangers, project websites, email notifications, and municipal consultations.

⁶ The 2024 Climate Act moves DPU siting authority to the EFSB by March 1, 2026, with some elements (such as zoning exemptions, except in Boston) transferred as of February 18, 2025.

⁷ For DPU siting reviews, the DPU’s Tiering and Outreach Policy applies. See D.P.U. 21-50-A available at <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/18651202>.

⁸ <https://www.mass.gov/doc/final-mepa-public-involvement-protocol-for-environmental-justice-populations-effective-date-of-january-1-2022/download>.

an opportunity to refine pre-filing outreach requirements for project proponents that will ensure potentially impacted individuals and state and local agencies obtain project information early and can influence project siting and design.

B. Key resources consulted in developing the proposed pre-filing requirements

To develop this straw proposal, staff consulted DPU pre-filing requirements, MEPA requirements, recommendations of the Commission on Energy Infrastructure Siting and Permitting (“CEISP”), and the pre-filing requirements in New York, California, Maine, Michigan, New Hampshire, Vermont, Ohio, Virginia, North Carolina, and Kentucky. DPU and EFSB staff are also consulting with permitting agencies that would otherwise be issuing permits, to obtain their input on aligning pre-filing activity requirements.

C. Objectives for pre-filing engagement requirements

Project proponent outreach has varied significantly in the past. In particular, project outreach may occur later in the development process when it is harder to make significant changes to a project. Public commenters often state that they only recently learned about a project that had been in development over the course of years. To address these discrepancies, staff developed the following objectives for pre-filing engagement requirements:

1. Establish explicit EFSB pre-filing requirements to ensure consistency in outreach practices across projects and provide opportunities for public participation;
2. Ensure project information reaches relevant persons and entities who may be impacted by project construction or operations as well as state and local agencies;
3. Provide opportunity for key stakeholders to influence project design during critical stages of project development; and
4. Ensure that projects align with long-term state and municipal planning policies and contribute to the Commonwealth’s climate and equity goals.

D. Agency Collaboration

The 2024 Climate Act requires that DOER, in consultation with DPU, establish pre-filing processes for siting and permitting “small clean energy infrastructure facilities” by local governments.⁹ The EFSB and DPU will consult with DOER to ensure consistency between requirements developed by both agencies where appropriate. The EFSB and DPU will also consult with the MEPA Office, which has extensive experience evaluating environmental impacts of projects, land disposition issues, and mitigation measures. While the 2024 Climate Act removes MEPA review as a requirement for all clean energy infrastructure facility reviews

⁹. The 2024 Climate Act adds a requirement “that uniform pre-filing requirements for small clean energy infrastructure facilities, which shall include specific requirements for public meetings and other forms of outreach that must occur in advance of an applicant submitting an application.” G.L. c. 25A, § 21.

(i.e., EFSB consolidated permit review or local consolidated permit review), it explicitly requires pre-filing consultations with other permitting agencies including the MEPA Office.^{10,11}

III. DISCUSSION OF KEY STAFF STRAW PROPOSAL COMPONENTS

This straw proposal considers requirements for when and how potentially affected municipalities, community members, and state agencies are informed about the proposed project, project information communicated, and language access protocols that the proponent would follow to maximize meaningful public engagement, support dialogue, and inform stakeholders about the proposed project. The proposal includes the following sections:

- A. Pre-filing outreach requirements
 - 1. Phase 1 pre-filing outreach requirements
 - 2. Phase 2 pre-filing outreach requirements
- B. Pre-filing notice of intent to file application
- C. Documents to be submitted (filed) along with pre-filing notice

A. Pre-filing Outreach Requirements

This straw proposal outlines pre-filing outreach requirements for large clean energy infrastructure facilities that fall under EFSB jurisdiction and small clean transmission, distribution, generation, or storage infrastructure facilities that elect to seek a consolidated permit from EFSB.¹² The pre-filing outreach requirement would occur in two phases. It would require project proponents to actively consider and integrate stakeholder feedback from the early stages of project planning through the selection of the preferred route or site option, prior to the

¹⁰ The 2024 Climate Act directs the development of “pre-filing requirements commensurate with the scope and scale of the proposed large clean energy infrastructure facility, which shall include specific requirements for pre-filing consultations with permitting agencies and the [MEPA Office], public meetings and other forms of outreach that must occur in advance of an applicant submitting an application...” G.L. c. 164, § 69T(b)(iii).

¹¹ The 2024 Climate Act also requires the EFSB to develop “standards for applying the cumulative impacts analysis standards and guidelines developed by the office of environmental justice and equity pursuant to section 29 of chapter 21A.” G.L. c. 164, § 69T.

¹² G.L. c. 164 § 69U allows proponents of Small Clean Transmission and Distribution Infrastructure Facilities (SCT&D) to elect to seek a consolidated permit from the EFSB that includes all necessary state, local, and regional permits. G.L. c. 164 § 69V allows proponents of Small Clean Energy Generation (SCEG) and Small Clean Energy Storage (SCES) facilities to elect to seek a consolidated state permit from the EFSB that includes all necessary state permits.

proponent filing an application with the EFSB. Pre-filing outreach would also include consultation with state and local permitting agencies with regulatory programs that impact a particular project.

Phase 1 outreach would inform and seek targeted feedback from local stakeholders such as project abutters, municipal officials, state permitting agencies (for large clean energy infrastructure projects), and key community groups who could potentially be impacted by the project. Phase 2 outreach would include dissemination of project information to Phase 1 stakeholders and the wider community using multiple channels. In addition, the project proponent would host two public meetings during Phase 2 to seek input on potential routes and sites under consideration.

Pre-filing outreach requirements are designed to allow key stakeholders and the wider community to influence project design, including route and/or site selection. The project proponent would be required to schedule a pre-filing meeting with DPP and OEJE to discuss the proposed project, clarify information and documentation needs, and confirm outreach that must occur before filing the application with the EFSB.

The table below provides an overview of the timing and duration of Phase 1 and Phase 2 pre-filing outreach requirements for large and small clean energy infrastructure facilities seeking a consolidated permit from EFSB.

Phase	Pre-filing Outreach Requirements for Proponent	Large Clean Energy Infrastructure Facilities		Small Clean Energy Infrastructure Facilities	
		Timing	Duration	Timing	Duration
Phase 1	Meet with DPP & OEJE to confirm outreach & clarify documentation needs	At least 12 months prior to pre-filing notice with EFSB	n/a	At least 9 months prior to pre-filing notice with EFSB	n/a
	Consult MEPA and state & local permitting agencies as appropriate	Begins at least 12 months prior to pre-filing notice with EFSB	At least 3 months	Does not require consultation with MEPA	At least 3 months
	Consider EEA site suitability criteria and cumulative impact analysis guidance			Begins at least 9 months prior to pre-filing notice with EFSB	
	Meet with key stakeholders including municipal officials, potential project abutters, & community group			Signifies end of Phase 1 outreach	
	Submit self-attested Phase 1 outreach completion checklist to DPP & update project webpage with Phase 1 outreach info	Signifies end of Phase 1 outreach		Signifies end of Phase 1 outreach	
Phase 2	Demonstrate efforts to inform, involve & partner with community organizations, state and municipal officials	Throughout Phase 2 outreach	9 months	Throughout Phase 2 outreach	6 months
	Publicize project information using multiple outreach channel				

Phase	Pre-filing Outreach Requirements for Proponent	Large Clean Energy Infrastructure Facilities		Small Clean Energy Infrastructure Facilities	
		Timing	Duration	Timing	Duration
	Maintain up to date-information on the project website				
	Conduct first public meeting	Near the start of Phase 2		Near the start of Phase 2	
	Conduct second consultation with MEPA and state & local permitting agencies	After first public meeting		After first public meeting	
	Submit pre-filing notice to EFSB	No less than 90 days and no more than 120 days before filing project application	3 months	No less than 90 days before filing project application	3 months
	Conduct second public meeting	At least 45 days before filing project application with EFSB		At least 45 days before filing project application with EFSB	
	Open public comment period	From first public meeting until 30 days before pre-filing notice with EFSB		From first public meeting until 30 days before pre-filing notice with EFSB	
	Submit self-attested Phase 2 outreach checklist to DPP	Signifies end of Phase 2 outreach		Signifies end of Phase 2 outreach	

1. Phase 1 Pre-filing Outreach Requirements

Phase 1 outreach would occur early during project planning when multiple potential routes and sites are still under consideration for the proposed project. As part of Phase 1, the project proponent will need to consult with the site suitability criteria and cumulative impact analysis guidance developed by EEA with the goal of identifying routes and sites for clean energy infrastructure projects that avoid or minimize impacts and minimize the potential for disproportionate adverse effects. The proponent would be required to consult with MEPA and all state and local permitting agencies identified by the proponent, to receive feedback on compliance with regulatory requirements and other best practices to avoid or minimize impacts, as well as receive recommendations for scientific studies or analyses that may be needed to inform the agencies' review of the project once it is filed with the EFSB. Based on the nature of the project, MEPA may recommend additional state or federal agencies with which the proponent should consult during Phase 1 outreach. To facilitate pre-filing consultation, the proponent would be required to prepare basic project details to present to MEPA and other agencies, including a description of the proposed work activities; potential routes/sites for the project and project alternatives under consideration; discussion of how the project meets site suitability criteria and cumulative impacts analysis guidance for energy siting; a list of all required local, state, and federal permits; and locus maps/lists showing the anticipated project locations and associated environmental resource constraints (e.g., Article 97 land, wetlands, G.L. c. 91 boundaries, rare species habitat, ACEC, etc.). Any environmental justice ("EJ") populations within one mile of each proposed site location should also be identified. Phase 1 consultation with MEPA is not necessary for small clean energy infrastructure facilities seeking an EFSB consolidated permit.

During Phase 1, the proponent would conduct targeted outreach in the form of separate as well as joint discussions with key stakeholders, including but not limited to, potential project abutting residents (both owners and renters) and businesses, community groups, and elected or appointed municipal officials (e.g., mayor or town/city manager, relevant Council/Select Board members, Chair(s) of the Conservation Commission, Planning Board, Zoning Board, and Head of the Department of Public Works).

In each stakeholder meeting, the project proponent would discuss all potential routes and/or sites under consideration along with the project description, the need for or purpose of the project, general comparison of anticipated impacts from each potential route/site and project alternative, estimated timeline for filing the application with EFSB, and future opportunities for public comment or input on the project. The project proponent would be required to confirm and arrange for interpretation and/or translated materials as requested by participants in Phase 1 meetings. After Phase 1 outreach has concluded, the project proponent would post on its project webpage materials shared during Phase 1 meetings, the list of stakeholders contacted, feedback received and how the proponent considered the feedback on the project, including any modification or deselection of potential routes or sites under consideration. To signify the end of Phase 1 outreach the proponent would submit a self-attested Phase 1 outreach completion checklist to DPP.

2. Phase 2 Pre-filing Outreach Requirements

Phase 2 outreach can commence once focused Phase 1 meetings with key stakeholders are complete and there are likely a narrower set of potential project routes or sites under consideration. By the time of Phase 2 outreach, a tentative preferred route or site should be identified and presented to the public, as well as additional alternatives locations that remain under consideration. The proponent may eliminate routes/sites that face insurmountable buildability challenges, collective concerns that document actual or likely harms or deficiencies regarding a proposed route or site that cannot be avoided, minimized, or mitigated, or do not comply with state and federal regulations¹³ before moving to Phase 2 outreach. During Phase 2 outreach, the proponent should describe how the project meets site suitability and cumulative impacts analysis guidance, present estimates of environmental impacts associated with each alternative, and present clear criteria for dismissing certain alternatives or ranking some alternatives over others.

Phase 2 pre-filing outreach would be characterized by wider community outreach and at least two public meetings hosted by the proponent. At the beginning of Phase 2 outreach, and

¹³ The 2024 Climate Act Section 69T requirements includes “a mitigation hierarchy to be applied during the permitting process to avoid or minimize or, if impacts cannot be avoided or minimized, mitigate impacts of siting on the environment, people and goals and objectives of the Commonwealth for climate mitigation, carbon storage and sequestration, resilience, biodiversity and protection of natural and working lands to the extent practicable.”

after the first public meeting, the project proponent would be required to conduct a second pre-filing consultation with MEPA and all state and local permitting agencies that participated in the Phase 1 consultation (unless specifically declined by any agency) to obtain feedback on the narrower set of sites/routes and project alternatives that are still under consideration. Upon receiving a request to conduct Phase 2 consultation, MEPA and other invited agencies may recommend additional state or federal agencies to include in the Phase 2 consultation. To facilitate this consultation, the proponent should provide the same level of project detail as presented in Phase 1, updated to reflect any design changes that have occurred since the Phase 1 consultation. In addition, for each alternative that remains under consideration, the proponent should provide existing and proposed conditions site plans, if available; a status update and/or results of any scientific studies or analyses that are ongoing or have been completed to inform agency review of the project; quantitative estimates of environmental impacts; and potential mitigation measures. During Phase 2 consultation, the proponent should describe how the project has responded to any prior feedback provided by agencies and the public, including any changes to project design made to address prior feedback.

The project proponent would conduct the first public meeting near the start of Phase 2 when there are a smaller number of potential routes/sites under consideration and the proponent has conducted preliminary engineering design for its preferred project route/site options. The second public meeting would be held at least 45 days before the proponent files the application with EFSB (see Section B) to gather feedback on the proponent's preferred project route/location that has received further engineering design.

The proponent would be required to demonstrate that, throughout Phase 2 outreach, efforts were made to inform, involve, and partner with local municipal and state officials, community organizations, resident and business groups, tribes/Indigenous organizations, and local labor councils. Project proponents could be expected to tailor outreach to the project and characteristics of potentially impacted populations. Outreach channels could include but are not limited to door-knocking, emails, phone calls, social media posts, flyers posted in community gathering spaces, radio spots, and contacting local cable channel(s).

Project proponents would be encouraged to host hybrid public meetings. Both public meetings would be held at reasonable times and in accessible locations that community members routinely use. Each public meeting would include sufficient time for receiving public comments, as well as answering stakeholder questions. Project proponents would be required to communicate the meeting date and time at least 3 weeks prior to meetings through a variety of outreach channels that could include project email distribution lists¹⁴, physical mailings to abutters and key stakeholders, social media posts, paper/online newspapers ads, and flyers posted in spaces that community members regularly use and visit.

¹⁴ Proponent would send project information and regular updates to those signed up to the email distribution list. Each recipient would receive the same information. A proponent's project webpage would include a place to sign up for this list by entering an email address.

In addition to outreach materials distributed at public meetings and to the project email distribution list, the proponent's project webpage would be required to serve as a key source of up-to-date project information as available. The project webpage would include a plain language project summary; detailed project description; location map(s); consideration of site suitability and cumulative impacts; potential health, environmental and safety impacts; potential routes/sites under consideration including those deselected; and any urgent updates. The webpage would also include materials shared during Phase 1 and Phase 2 meetings, meeting feedback received, project proponent's contact information, as well as a place for interested persons to sign up to the project-specific email distribution list and submit comments. During Phase 2 pre-filing outreach, the comment period would remain open from the first public meeting until 30 days prior to submitting the pre-filing notice with EFSB. The project proponent would be required to regularly update the project website and provide the project distribution list with a quarterly update that includes a high-level progress report, reminders of how members of the public can participate, and an estimated timeline for filing the application with EFSB.

Meeting agenda, presentation, and other materials would be translated, and the proponent would provide simultaneous interpretation for the entire length of Phase 2 public meeting in languages identified as per the current EFSB Language Access Plan ("LAP"). Translation and interpretation would be provided in additional languages as requested. Outreach materials and the project webpage would also include information on how to request translation and/or interpretation services. All language access services related to pre-filing outreach would be arranged and paid for by the project proponent.

To signify the completion of Phase 2 outreach, the proponent would submit a self-attested Phase 2 outreach completion checklist to DPP before filing the project application with EFSB.

B. Pre-filing Notice Requirements (Notification of Intent to File Application)

For large clean energy infrastructure facilities, the proponent would be required to submit a pre-filing notice to EFSB no less than 90 days and no more than 120 days prior to filing the application with EFSB. In the case of small clean energy infrastructure facilities, the proponent must submit the pre-filing notice no less than 90 days before filing the application with EFSB. If the proponent fails to file the application by the date included in the pre-filing notice, the proponent must resubmit the pre-filing notice. If the deadline in the second pre-filing notice passes and the application for the proposed project has not yet been filed, the proponent may be required to conduct additional outreach before the pre-filing notice can be submitted to EFSB.

The pre-filing notice would list project details including a plain language project summary, project name, location, map, designated contact person's information, and a link to the project website. In addition, it would include information on the anticipated project filing date, details of public meetings held or planned, duration of public comment period, languages in which translation and interpretation will be provided, and how to request language access services. The pre-filing notice would also be available on the proponent's website along with any translated versions identified as per the current EFSB LAP.

C. Documentation to be submitted (filed) along with pre-filing notice

The project proponent would be required to submit the following documents to EFSB along with the pre-filing notice:

- A self-certification that all requirements of Phase 1 outreach were met, status of Phase 2 outreach efforts, and that the pre-filing meeting between the project proponent, DPP and OEJE staff was held as defined for large and small clean energy infrastructure facilities;
- Report on outreach and public engagement efforts including:
 - Information on outreach materials created, outreach recipients including date and method/s of contact, tools and actions used to involve and encourage input from community-based organizations, tribes/Indigenous organizations, resident groups, and other local entities, and state agency representatives;
 - Agenda for community meetings held, materials distributed, and meeting notes that include any concerns, suggestions, and site alternatives/modifications expressed;
 - An appendix summarizing pre-filing comments received, how the project proponent considered the comments in its project design. Significant project design revisions should be clearly identified;
 - Any partnerships developed with local stakeholders to provide input as an advisory body; and
 - Community benefits proposal developed, or community benefits agreement executed, if applicable; and
- Self-certification from proponent and affected municipalities that all parties have made their best efforts to negotiate regarding core aspects of proposed facility --alternative sites/designs, project impact mitigations or offsetting benefits, public safety service or equipment standards.

IV. REQUEST FOR COMMENTS

1. How many site/route alternatives are typically considered for different project types (e.g., solar, wind, battery storage)? At what stage of the project development cycle are the project site/route options under consideration ready to be shared with stakeholders during Phase 1 outreach?
2. What additional suggestions do you have to involve stakeholders, especially during Phase 1 outreach, to inform the selection of site/route options?
3. [To agencies] Should meetings with MEPA and other state agencies happen during Phase 1 outreach (when there are several potential site/route options) or during Phase 2 when there are fewer options or in both phases? Please specify the agencies that should be consulted during each phase.
4. At what point should pre-filing engagement change from Phase 1 (targeted outreach to key stakeholders) to Phase 2 (broader information sharing with wider community)? Should it be based on the number of routes/sites under consideration or other parameters?

5. This straw proposal suggests that Phase 2 outreach requirements for large clean energy infrastructure facilities should commence at least 9 months before the proponent submits the pre-filing notice to EFSB. For small clean energy infrastructure facilities, this should commence at least 6 months before. Does this timing need to be modified?
6. Are there additional pre-filing requirements that should be considered to improve transparency and ensure that potentially impacted stakeholders have an opportunity to provide input, especially around route/site selection?
7. Should the type or amount of applicant's outreach to the community vary depending on project type, scale, or location?
8. Is there a key stage in the project development cycle when project design is substantive enough for meaningful input, but the route/site option can still be relatively easily modified based on input?
9. Is the proposed timeframe for the project proponent to submit the pre-filing notice to EFSB for large and small clean energy infrastructure facilities adequate?
10. Which outreach channels and engagement practices are most effective and could be used by project proponents to inform the communities impacted by a project?
11. Should EFSB require that every project proponent discuss community benefit agreements with municipal representatives?
12. Should the pre-filing process timelines be differentiated by technology type? If so, please explain how.
13. Should pre-filing process timelines for small clean energy infrastructure facilities that elect to seek a consolidated permit from the EFSB be the same as the pre-filing timelines for small clean energy infrastructure facilities?