

980 CMR Energy Facilities Site Board

Michael DeChiara Comments – July 2025

Section 2. Board Procedures

2.06 (3) I like the following statement in this section.

(b) *“due consideration has been given to the findings and recommendations of local governments”*. This is especially appreciated since it is not required.

(e) *“due consideration has been given to any cumulative burdens on host communities and efforts that must be taken to avoid or minimize or, if impacts cannot be avoided or minimized, efforts to mitigate such burdens.”*

(f) *“reasonably foreseeable climate change impacts, including additional greenhouse gas or other pollutant emissions known to have negative health impacts, predicted sea level rise, flooding, and any other disproportionate adverse effects on a specific geographical area.”*

2.10 Permitting Dashboard

As I mentioned in my previous comments, aggregate data has limited utility for municipalities, communities or other stakeholders trying to learn or monitor a particular project. So while the dashboard is statutorily required and therefore necessary, it remains insufficient. At the very least I would suggest/request two upgrades:

1. That the term “comprehensive data” be clarified. Is this comprehensive aggregate data from the dashboard that will be publicly available (which is a minimum expectation) or is it comprehensive project data (which would be preferable?)
2. Change the second sentence to read *“The Board shall collect and report data, including but not limited to, aggregate data on ...”* This codifies the option to go beyond the aggregate if and when EFSB is ready.

Section 14: De Novo Adjudications

14:01 Scope and Construction

(5) Definitions

De Novo Adjudication. I like that the language says the review “may” include information submitted to the local government. My preference would be “shall” but this at least provides the opportunity to consider the previous information. I would strongly recommend also allowing submission of information/research generated by the local permitting body as part of its due diligence since this isn’t necessarily covered under “information submitted to the local government as part of the application” yet is vitally important data from third parties, especially consultants hired by the permitting body.

14:02

1(b) It seems very important that the definitions or at least a description be provided regarding “an entity that is substantially and specifically effected by a final decision of a local government”. The reason this is important is that the ability to have standing to initiate a request seems very important to guide all parties at the outset of the permitting process. I do not see this elsewhere.

2(a). This language seems to imply that it is primarily the owner or proponent of a project that can be substantially or specifically affected. How about abutters? Seems like community members will not have standing as “substantially or specifically affected”?

14.03. Notice and Parties

(1) This seems to be poorly organized – public comments should not be included in this section about noticing. Substantively, the ability to leave it to the Director to determine who is noticed seems very weak and inadequate; there is no guidance. Even though there are two distinct scenarios for a Request for De Novo Review, the regulations should at a minimum include value-based guidance about noticing, even if named categories are not included. As written, this could allow minimal and insufficient noticing meaning public or municipal comment may not occur due to a lack of awareness.

Similar to my comments elsewhere, there needs to be clarity regarding the timeframe for noticing – I would referencing Section 1 for the reader.

There should be a separate section regarding public comment! I like that the Director shall allow for written comments – this is important. I think it is imperative and needs to be required that a public hearing on the adjudication be held – these are big public projects and a decision should not be made simply based on administrative review of paperwork.

14.03

(2) Parties – I realize that this is addressed in Section 1 but there some substantive guidance or criteria for being considered as “substantially and specifically affected”. For example, is it financially affected, public safety and welfare affected or otherwise affected?” This may be included in Section 1.05 but this has not be posted yet.

14.04

(1) Evidence. As mentioned earlier, this language should be clarified to include not only documents produced by the applicant as part of the local permit process, but documentation generated at the request or by the permitting body.

(2) Since it seems to me (a non lawyer) that an evidentiary is crucial component of fact finding, this should not be held virtually but rather should be consistent with Section 1.4 (5) whereby the public hearing must be held in one or more of the affected municipalities. Otherwise, in both instances, the locally affected public has less access and the parties have less accountability.

14.05

(2). If the EFSB Director's decision supersedes that of the local government, there needs to be specific requirements as to the content of that decision. It must be comprehensive in identifying the areas of disagreement, the rationale, etc. Without written requirement (similar to have the requests have certain required information), this could be a simple "one liner" decision which would be woefully inadequate if a local body is over-ruled.

Section 17. Constructive Approval

17.02

(2) Notice of Likelihood of Constructive Approval:

- What are the permit enforcement agencies – This should be defined in 17.01 (4) or reference made to where in the regulation the definition can be found. I do not see it in Section 1 either.
- There is no mechanism for public notice – not even to the host municipality unless it is a party
- While (1) states that the Presiding Officer has 60-90 days to make a determination, there is no such timeline provided for making Notice. One can assume this would be the same timeframe but Noticing should have specific timeframe articulated.

(3) Issuance of Draft Constructive Approval

- Same as above - what are the permit enforcement agencies – This should be defined in 17.01 (4) or reference made to where in the regulation the definition can be found.
- Regarding Limited Participants there should be reference made to Section 1
- There is no mechanism for public notice – not even to the host municipality unless it is a party

(4) 7 days from the issuance of the draft Constructive Approval Permit is too quick a turnaround for any substantive response from a public body, especially if it needs to comply with Open Meeting Law, or from other noticed stakeholders. At minimum this should be 14 days as is required in noticing in Section 1.

17.05:

Both in the Constructive Approval permit language itself and in this section, it should be made clear that the Applicant is required to comply with all normal local procedures associated with a permit even if the permit was granted constructively. The following language as written suggests otherwise:

"No state, regional, or local agency shall impose or enforce any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action, other than reasonably enforcing the conditions and requirements of the Constructive Approval Permit, that would delay or prevent construction, operation, or maintenance of the Project".

While I understand that the intent is not to allow local delays that end run Constructive Approval and delay a project, this language could currently enable the applicant to claim the right to ~~b=~~not comply with local laws, ordinances, bylaws, rules or regulations simply because to comply would require actions that on their face delay or prevent construction, operation or maintenance.

The Constructive Approval Permit should require the Applicant to comply with all existing and appropriate requirements.