

Comments on EFSB Regulations

Submitted by Michael DeChiara, July 31, 2025

SECTION 16: PRE-FILING CONSULTATION AND ENGAGEMENT

16.02

Definitions: Community – while I think the intent of the 1-mile minimum distance is reasonable, it might have the unintended consequence of minimizing or officially excluding residents in an impacted municipality or the broader/abutting communities that bring expertise, personal experience, or who are notably impacted. Since the Community is used in the context of Community Meetings I think the definition should be broader for engagement purposes. A particular concern is in the context of public comments – if the Community is defined as only those people within a 1-mile radius of the project, this would likely invalidate or diminish comments submitted by people living beyond the 1 mile limit. The 1-mile distance might be more appropriate for limiting the required list of people needing to be notified.

16.03 (1) Waiver. A written waiver should be made publicly available in a very timely manner since this process, more than anything else in these regulations, directly involves the public. The waiver should be made on the project and EFSB websites with notice made accordingly per other sections of the regulations.

16.04

(1a-2) I would suggest that discussion during the Agency Consultation should be based on a written document that is submitted to the Agency and publicly available. This may be what is intended in 16.06 but it is not clear. A written document will require the applicant to document the various elements required in this section to ensure comprehensive approach and can serve as the roadmap for discussion by the agency. This should be a public document to ensure accountability; made available after the consultation. Making it ultimately public will likely prompt more completeness in the applicant's approach to this work. This would be similar to what is required in 16.05 regarding consultations with OEJE and DPP.

(1a-3) this is good.

(1a-4) In my initial comments I suggested that notetaking be done by a third party to ensure accuracy and objectivity; expecting the applicant to report on feedback that is counter to their self-interest is likely not realistic. If EFSB is not willing to require this, at minimum, the notes provided to the Agency must be publicly posted on the project website to ensure accountability and hopefully steer reporting towards more truthful and transparent information. Ideally, there should be a mechanism for Key Stakeholders to indicate their review of these notes, similar to how draft minutes are reviewed by public bodies, and discrepancies communicated to EFSB.

(1a-6) Excellent. This page should be included in all noticing and the link should be available on the EFSB website.

(1b) If DPP or OEJE has feedback or suggestions/requirements based on the applicant's proposed outreach plan, what is the expectation that the applicant heed these?

*MISSING: Since there is an important step between 1b and 1c – the identification of Key Stakeholders – I would suggest that at the DPP and OEJE meetings, the applicant produce a proposed list of named or positional Key Stakeholders that DPP and OEJE can review and possibly amend. The reason being is that if the Key Stakeholders are a key group to “inform, provide input and provide feedback”, EFSB will want to make sure this group is broad and representative enough to make the process in 1c meaningful and authentic.

(1c) Excellent. See comments above to ensure that who is considered a Key Stakeholder is sufficient.

*MISSING SECTION – I believe there needs to be a new Section 1d inserted for Community Meetings, to date. In the Pre-Filing Engagement Status Checklist (current 1d), the applicant is required to summarize comments received, in part, from Community Meetings held to date. Therefore, it seems while Section 16.04 outlines the requirements, Community Meetings should be mentioned here, even if subsequent guidance is provided elsewhere in Section 16.

(1d). This is very good. As above, I think the Checklist should be posted on the project website for public access.

(1e). Similar to consultations with OEJE and DPP, what is the expectation of the applicant for responding to MEPA recommendations or requirements?

(1g). This is really strong and greatly appreciated. One small suggestion which may not be for regulations but EFSB practice: I would recommend that a member of the Agency, DPP and OEJE is expected to be physically present at each Community Meeting to serve as an observer. The additional information gathered from being present at these meetings will likely be helpful to the process going forward.

(1h) Also strong and appropriate.

(1i-1c) In addition to the identified documents, the submission should include attendance sheets for the Community and Stakeholder meetings including a person's name, affiliation (if any), and attendee-optional contact information for viewing and use only by EFSB if it chooses to conduct follow-up on a particular issue. Contact information would not be publicly available.

(1i-2). I would suggest that the table also include a reason why modifications were not made to comments. This will provide important insights into the application and the applicant's approach. This would be in addition to when modifications are made.

16.06 MEPA/Agency consultation

Generally, this is good.

(6) Maps that are shared with MEPA should vary to show (1) site specific detail (arrays, ESS, perimeter fencing, driveways, wetlands, etc) AND (2) location in the context of the community and nearby area (within 1 mile?).

16.07. Key Stakeholder and Public Community Meetings

This is good.

(1a-1). Maps should vary to show (1) site specific detail (arrays, ESS, perimeter fencing, driveways, wetlands, etc) AND (2) location in the context of the community and nearby area (within 1 mile?). This is especially important for Outreach Materials.

(1a –6). It might be appropriate and/or helpful for the Applicant to provide a liaison contact for follow-up questions or comments that do not rise to the level of official comments, as is required for the website 16.09 1a-11.

*MISSING: There is no requirement in this section to include discussion of possible Community Benefits Agreements or Community Benefit Plans. This is a huge omission. If this is not discussed with Key Stakeholders or at Public Community Meetings, how will these parties even know it is an option. This discussion should include sharing a written, official document from EFSB or DPP so that the information shared about these Agreement or Plans is accurately presented.

16.08. Outreach Requirements for Public Community Meetings

(1a-1). Excellent!

(4). Outreach materials should also be available on the project website in an accessible format (pdf for example rather than proprietary formats), as required in 16.09.

(1b). Good. I would also include a statement that the goal is to collect local input and perspective and that there is no requirement that comments be limited to the traditional 3 minutes. The intent is to gather information. Similarly, sessions should be long enough to allow for meaningful input from those who want to share.

*MISSING: Should include that a stated goal would be to gather input on what might be worthwhile considering in regards to a Community Benefits Agreement or Community Benefit Plan. Outreach materials should include distribution of an official EFSB/DPP description of these options.

16.09 Website

(3). Maps should vary to show (1) site specific detail (arrays, ESS, perimeter fencing, driveways, wetlands, etc) AND (2) location in the context of the community and nearby area (within 1 mile?)

(4) Good. If anything from the site suitability and cumulative impact analysis did not change the project site/route or design, this should be noted.

(5) Good

(6) Good

(10) Good

ADD (18) Informational statement about how to provide feedback or a link to provide feedback regarding a person's perceived accuracy of notes or summaries regarding Key Stakeholder or Community Meetings. To be submitted in good faith to ensure the correct reporting of proceedings and accuracy for the public record. This link could go to Applicant but preferably to EFSB contact.

16.10 Pre-Filing Notice of Intent to File

(3). Very nice requirement and use of DPP in this process.

SECTION 16: CHECKLIST

Part 2:

General Observation

While I like this checklist, I have concerns that this will be considered proforma by an applicant, who understands they must check all the boxes to proceed with the process. Even just breaking out the various components might force reflection on each step in the process and allow for closer scrutiny of each element, which is important on its own. For example,

Rather than:

☐ Consulted site suitability criteria, cumulative impacts analysis guidance and cumulative impact analysis tool, and communicated during the Pre-filing Outreach Period how it informed the alternatives analysis in the selection of the preferred site/route

Instead:

- ☐ Consulted site suitability criteria
- ☐ Consulted cumulative impacts analysis guidance

- ☐ Consulted cumulative impact analysis tool,
- ☐ Communicated during the Pre-filing Outreach Period how each of the above informed the alternatives analysis in the selection of the preferred site/route

In regards, the need to report on the status of Community Benefit Plans or Community Benefit Agreements, underscores the need to require discussion of these as part of the Pre-Filing Engagement Process.

Part 3:

As noted earlier, the Table Summary of Comments: Should also include why modifications were not made given comments made in the Pre-filing Outreach Period.