

Comments on Pre-Filing Consultation And Engagement Straw Poll

<https://www.mass.gov/doc/2024-ca-prefiling-proposal-english/download>

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This and other comments can be found at CommunityInputOnEnergy.com

A Preface

I'd like to provide some current, reality-based context for what happens now regarding community engagement and the underlying approach of developers. While this is a specific example, it is likely repeated in various ways throughout the Commonwealth.

I want to share the recent/current experience regarding community engagement between a solar developer, and the the town and residents of Shutesbury, a rural town of 1,700 north of Amherst, boarding the west side of the Quabbin Reservoir. Amp Energy (later bought by Pure Sky Energy) of Canada expressed interest in developing five large industrial scale solar sites in Shutesbury, well beyond the size of those allowed by the town solar bylaw. After speaking with the Town Administrator informally, the developer was eventually asked to make a presentation to the Select Board; this took place on March 1, 2021. At this Select Board meeting (via Zoom), the developer made a presentation and answered questions posed by town officials; only one resident got to make a comment during the two hour meeting. Following this, the developer tried to expedite the permitting process by taking advantage of the SMART 2.0 "public entity" loophole which would have allowed them to receive the subsidy prior to getting approved local permits. When this failed because the town would not agree (following a clarifying call with DOER), the developer eventually sued Shutesbury in 2024 over its 2021 and 2023 solar bylaws. The Town remains in a legal situation. Important for this topic of community engagement, at no time did the developer come before the Planning Board, as the Permit Granting Authority, to share information or ask for input on their designs. No did it offer to hold a public meeting to directly inform residents and ask questions. If there was, the developers would have been told that 92% of the land mass in town is forested, most in BioMap. This would not have prohibited development but it surely would have required a smart, more locally-informed approach that fit within the realities of the town. While this is one example in one town, I believe it paints a picture of what a developer does if not required to clearly engage with town officials and resident stakeholders.

I would also like to state at the outset that while this Straw Poll seems to suggest that an adopted model may be used by both the EFSB (large projects) and DOER (small projects), my responses are primarily oriented to EFSB. I believe that since municipalities will retain the regulatory oversight for small projects, the public engagement will be different since many activities will be based locally. Certainly some underlying values that carry over from large to

small should be codified by state regulations by DOER but this is a situation where the different scale and locus of regulatory proceedings should require different regulatory approaches.

An Alternative Phasing Approach

Before answering the various questions related to the proposed Phase 1 and Phase 2, I would like to offer an alternative approach from the one in the straw poll. Reviewing the straw poll and especially the timing and phases, I think the approach being offered, while clearly well intentioned, doesn't work for public engagement. The questions the straw poll asks is an indicator that this is a construct that does not reflect the organic processes experienced with regards to community engagement. More specifically, some of the questions regarding Phase 1 and Phase 2 indicate a lack of clarity, perhaps arbitrariness about what happens when. I would suggest a "funnel" approach where more engagement and feedback is sought at the beginning of the process, with narrowing occurring as the project moves closer to an official submission.

I would suggest that there be four phases and that these phases be linked to the status of a project from conceptualization to development, rather than thresholds associated with administrative activities. These are:

Exploratory Phase:

This starts the very, very beginning of a public presence regarding the inklings of a project. All it does is opens the door to the pre-filing activities and establishes the beginning of a project being known publicly. Officially, this status grants nothing more from EFSB than allowing the applicant to have web space on the EFSB online platform to post and collect pre-filing information about the project.

Preliminary Phase:

This is the official beginning of the public engagement process, which includes broad and interactive engagement with stakeholders. Most notably, it requires a public hearing within or near the municipality where the project will be sited. It also requires formal meeting with key municipal leadership and committee/departments charged with development responsibilities, even if for large projects they no longer provide permitting (executive, Planning Board, Conservation Commission, Board of Health). Notably, this is when the most alternative options for siting locations or routes should be presented to the community. The expectation should be that subsequent narrowing should occur based on this feedback from stakeholders.

Proposal Phase:

This can be thought of as the state when the most likely version of a project is publicly presented. It may include alternatives and an applicant should certainly present questions it has but this should be the stage where significant details, scope and documentation are available to stakeholders for review and comment. This stage would also require a public hearing and key municipal and/or community stakeholders.

Presentation Phase:

This is the phase of the project where all the feedback has been incorporated, the details have been developed, and the investment in the development of most documentation has occurred. The expectation is that changes made to the project at this point are tweaks and minor adjustments. This is a presentation of information to the community and municipality rather than an opportunity to solicit input (what was sought in the Preliminary and Proposal Phase). It is an important step whereby the community is informed about what it can expect in the official filing with EFSB.

PLEASE NOTE THE FOLLOWING ANSWERS ARE BASED ON THE CONSTRUCT PRESENTED IN THE STRAW POLL (I am not making the assumption here, although I encourage it, that EFSB will adopt my 4 Phase Model rather than the proposed 2 Phase model)

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?

Based on my experience and from 2nd hand reporting from other communities, developers usually consider alternative siting internally rather than publicly as they construct their business plan, basic engineering, and designs. These alternatives rarely are presented to Town officials or the public. As a result, what is presented by an applicant is often a version that is close to the version that will be officially submitted; applicants claiming they have done their due diligence in regards to the design and changes cannot be made. This is why early and broad community engagement is essential (see my suggested Proposal Phase).

Relatedly, I think it is imperative that EFSB (and DOER) require, at the earlier phase possible, that the developer present arguments to the community (and in its submission) for why the project is needed at all and why the siting is needed as presented. Fundamentally, beyond creating more clean energy and generating revenue, why must an applicant must be required in its public presentations to answer the question, *“Why does the project need to be built on the proposed location and why is it needed at all?”*.

2. What additional suggestions do you have to involve stakeholders, especially during Phase 1 outreach, to inform the selection of site/route options?

EFSB makes a basic mistake in designing Phase 1 and Phase 2; allowing targeted outreach and more limited engagement at the earliest stages with stakeholders, and then opening up engagement to broader public when “a narrower set of potential project routes or sites [are] under consideration”. This is why I suggest the “funnel approach” and the 4 Phase model. EFSB presumes that the limited stakeholders that are engaged in Phase 1 will have better insights or can adequately represent community concerns. The broader public, especially beyond abutters for large projects, will be impacted by these projects and should be engaged early since they will have opinions, suggestions, and observations which can be important to the design and deployment. So if my 4 Phase model is not adopted I would strongly suggest that Phase 1 casts

a broad net to make sure that narrowing of options doesn't occur without adequate input from the community. It is important for EFSB to recognize that local knowledge obtained at the earliest stage, can contribute to the improvement of design and siting of projects.

Additionally, I did not see this in the straw poll but I repeatedly made the following recommendations to the legislature in my testimony in 2024. I would strongly recommend that a public hearing be required within the boundaries of the municipality where the project will be sited. This is important because the applicant needs to be accessible to the community, the community needs to easily participate offline (since the quality of participation is different), and for the EFSB representatives involved in the review and decision need to understand from experience where these projects are sited and what they are physically like. If the municipality does not have adequate capacity (large enough in-person space or adequate broadband infrastructure), the accommodation should be for a public hearing to be held no more than a 30 minute drive from the center of the municipality. Additionally, the straw poll suggests "reasonable times" in its Phase 2 comments - this is too vague and will not hold developers accountable to meaningful engagement. I would suggest that the public hearing be held at a time agreed to by municipal leaders (executive like the mayor or Select Board), not at the choosing of the applicant. While no time is ever good for everyone, the municipal leadership have the best understanding of when the most and/or the most needed for input can participate.

It is an antiquated idea that physical mailings should only go to abutters and key stakeholders. For for large projects, entire neighborhoods or municipalities and neighboring municipalities will be impacted. Consistent with the idea that more people should be aware and engaged earlier in the process, I would suggest that physical mailings and other outreach methods that are currently identified for Phase 2 should be required in Phase 1. By casting a broader net earlier in the process will avoid problems later on. Also, while email is easier and cheaper, given the onslaught of junk email, this is not an effective approach to notifying people. It can and should be used but as a secondary, "and/both" method. The cost of mailings can be costly but they are an important way of notifying people.

For large clean energy projects, it is my understanding from statute that there will no longer be any local permitting. However, committees like Conservation Commissions, Planning Boards, Boards of Health, still have important local knowledge and regulatory sensibility, so I would make it explicit that these entities are named in Phase 1. The proposed suggestion for "elected and/or appointed municipal officials" is insufficient. Without specificity, it is easy for a developer to cherry pick or seek the easiest and narrowest path of engagement and then claim municipal outreach was achieved. What EFSB should be requiring from municipal input is meaningful engagement by those accountable or most informed.

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.

From an applicant's perspective, I would assume they would want to know if there were things they needed to know to avoid problems with the project deployment, so knowing sooner than later is important in the design development process. This is no different from wanting to get the same type of insight from the community based on local knowledge. So I would strongly suggest that MEPA and state agencies be engaged very early in the process (my suggested Proposal Phase). This would not preclude circling back to those agencies once the provided information is incorporated into the design.

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?

As noted, I believe EFSB's thinking on this is backwards in terms of engagement. Broad engagement should occur first, targeted engagement would follow, as appropriate.

That said, the transition from Phase 1 to Phase 2 should be when the project is narrowed down from more options (if provided) to few options; when the developer can provide more project details regarding the design with associated maps, specifications, etc. While these narrowed projects are not a commitment yet to EFSB about the design, there should be an expectation that the project is moving from the possible to the likely stage. It is for this reason that I suggest that broader engagement is necessary in EFSB's proposed Phase 1. Once a project becomes "likely", there are developer costs that have been incurred, contracts have been developed, and plans solidified, making it less likely that stakeholder input will do much beyond tweaking a design.

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?

I think given the balance between advancing projects on a reasonable timeline and providing for meaningful community engagement, 9 and 6 months might be sufficient to start. However, once the outreach has begun, the unknowns kick in since feedback and information that the applicant was previously unaware of may change the timing and trajectory of a project. I think therefore that the end date will by necessity need to be flexible.

In the EFSB's model, the timeline requires a second public hearing in Phase 2 to begin 45 days prior to the filing of an application. This feels very short. There is no way that a developer will come before a group and ask for input if they have the expectation that in 6 weeks a costly, multiple document application is going to be submitted. The developer will be massively resistant to any changes. This is why the 4 Phase Model makes more sense. In keeping with EFSB's model, the expectation for public meetings in Phase 1 and Phase 2 should be to solicit feedback. A final public meeting that is not currently in the EFSB model would be to present

what will be submitted, with the understanding some tweaking can occur. Stakeholders will want and will need to know what is actually being put forth for regulatory consideration.

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?

Importantly, the idea of a Self Attestation by the applicant that it has fulfilled its pre-filing requirements is fundamentally flawed. There is no quality control and no real accountability. Every applicant, no matter how poor a job it does, will claim it met the requirement. This is an meaningful document to ensure the values and intent of EFSB's engagement process has been achieved so this needs to be rock solid and believable, rather than questionable. Otherwise EFSB's commitment to the entire process will be questioned for every project it reviews. Instead, I think EFSB should task the applicant with getting sign offs from key stakeholders, similar to how the small consolidated permit might be designed. For example, the applicant should, at minimum, be required to get a signature at the end of Phase 1 and Phase 2 from the municipal executive (mayor or Select Board) that the required stakeholder engagement (clearly articulated) was achieved. For large clean energy projects, this might also involve sign offs from key state agencies where consultation was required.

I applaud the EFSB for requiring meetings notes that include concerns, suggestions and site alternative/modifications but the challenge will be that, in all likelihood, the note-taker will be the applicant or someone working for the applicant. So getting comments that are accurate, not whitewashed or diminished, is challenging. Just like a regulatory body can require a third party reviewer to conduct due diligence on its behalf during a regulatory review, I would suggest that the EFSB empower itself to select a third party notetaker at the applicants expense, with notes being directly submitted to the EFSB. This knowledge will give much greater confidence to those reviewing the feedback and presumably can help the regulatory review. Related to this, I similarly applaud the EFSB for requiring hybrid public meetings. Similar to the prior comment, I would suggest that these meetings be recorded and submitted to EFSB along with other documentation of engagement to be uploaded to the EFSB's project website. This will avoid the plausible situation where the notes from the meetings accuracy are debated.

7. Should the type or amount of applicant's outreach to the community vary depending on project type, scale, or location?

On the face of it, one would expect that a larger project would have a larger footprint and therefore could impact more of the community or neighboring communities. However, even small clean energy projects can affect a broad range of stakeholders; in fact an entire community given natural systems. Natural elements like aquifers can impact drinking wells or public water systems far beyond the abutters of a project. Similarly, shared vulnerability caused by the siting batteries in the forest, or the clearcutting acres which could cause erosion and flooding near the site can cause community-wide or cross-municipality issues. Finally, the financial impact and potential drain of public safety services (road maintenance, emergency

services, lawsuits for damaged private property), will impact an entire community. Given this, I would suggest that an applicant's outreach for any industrial scale energy project - defined as small or large - should require outreach in the entire community. At a minimum this would be all residents and public officials within the municipality. Since, as notes above, possible effects can cross borders, might include neighboring communities since water systems, forests, roads, flooding, etc. do not recognize municipal lines. This is why currently, special permit applications are currently required to be shared with regulatory bodies in adjacent communities.

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?

I would again suggest the frame of “possible” versus “likely” and suggest my 4 Phase Model. While it is unlikely an applicant will offer many options at the beginning of a project, Phase 1 would reasonably be when a project can be more easily modified. I would suggest that the “likely” design be shared with as many stakeholders as possible early on. This would mean that a “preferred design” with possible alternative elements would be presented later, also for feedback. Practically, I do not think applicants, unless required, will offer projects with options and are disinclined to significant siting changes at any time, but the sooner the engagement, the more likely.

To reiterate, this type of question belies the fact that the proposed 2 Phase Model is too vague and backwards in its approach. Regardless of whether EFSB adopts my 4 Phase model, the underlying goal is to create a funnel approach where more engagement and more changes are possible earlier in the process.

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?

I would suggest that if the EFSB accepts my suggestion about broader input at the earlier stages of project development, with narrowing of engagement over time. If this was accepted, then it would be best to review this period with that dynamic in mind.

Using the EFSB model, I think the submission of a pre-filing notice should occur after a project is considered to be “likely” and has received input from stakeholders.

I would avoid creating a window of 90-120 days because that could artificially pressure the applicant to prematurely conclude its design work, unintentionally forcing consideration of stakeholder input to be shut down sooner than advisable. If a developer needed 150 days to get it right, the EFSB should encourage and welcome that.

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?

As mentioned earlier, I support physical mailings to a broad range of stakeholders. There should be some guidance from EFSB in terms of branding and language, especially on the envelope, to help ensure that mailings are not perceived as junk mail. To reduce cost and the likelihood of being read, postcards might be the best approach. I do think that emails can reach people but again, this needs to be directed by EFSB so that email communication is not perceived as junk nor simply ending up on a spam or promotions folder otherwise this would allow the applicant to state they did the outreach but practically people were not notified. In sum, physical and email should be an “and/both” requirement if the goal is to actually inform people rather than to check off a box that the activity was achieved.

In terms of social media, this might be effective but what channels should be used is a challenge especially since technology changes and regulations do not keep up. Is it up to the applicant and what are the parameters. For example, Facebook is still used by older folks, X by some people including the government and media, and Blue Sky is growing platform. Instagram and Tik Tok would hit other, presumably younger populations. As a state regulatory body, I would suggest that the EFSB not require particular channels but rather require a minimum of 2 or 3 social media channels with a statement of why certain ones were selected. I also would suggest that to make this less volatile, social media, contrary to its primary design, should be used with comments set to off, so it is one way announcement. The public comment channel should be preserved for official mechanisms.

I think phone calls and door knocking are ineffective, costly and possibly intrusive. People don’t pick up their phones any more and junk texts are becoming frequent. Knocking on someone’s door doesn’t do much since this will probably be a contracted person doing the outreach and who is at home is hit or miss. I would suggest that for municipalities with automated call systems, that representatives of town government could let people know when public meetings are occurring; this underscores the idea of using trusted messengers to get people’s attention. In terms of TV, not every municipality has cable - small towns like Shutesbury do not. So local TV isn’t an option. Local radio however, might be a reasonable channel for communicating.

Physical flyers are still an effective mechanism. These can be posted in official locations but also where people go - libraries, etc. Backpack delivery via schools is a tried and true approach for families with school aged kids.

Finally, it is important to talk about the EFSB’s assumptions with a website. The straw poll seems to indicate that the applicant will maintain its own project website prior to officially applying to the EFSB. I think this will result in mixed quality of effort and lack of awareness of digital documentation at the important early stages when community engagement is most sought. Rather, per my 4 Phase Model, I would suggest that EFSB create an “exploratory” status that an applicant can apply for, the only benefit being that EFSB will create a place on its state operated website for gathering and promoting pre-filing information. This would still enable applicants to post the documentation directly, thereby not requiring EFSB staff to do so. Notably,

some of the information gathered during the exploratory, community engagement, pre-filing period will be important later in the process if a project proceeds to an application stage so having this information uploaded earlier to the EFSB platform avoids the need to transfer it from an applicant site at a later date (also removes the question of whether all the pre-filing data was transferred). In terms of stakeholder engagement, it means that everyone in the Commonwealth facing a large clean energy project will know that the repository for all project related information will be the EFSB website regardless of the stage of the project - exploratory through approved status.

11. Should EFSB require that every project proponent discuss community benefit agreements with municipal representatives?

YES!.

Before providing why I support this, it is worth noting that based on my understanding, statute only mentions community benefit plans two times and these are not defined. Defining these is essential and I would hope that the Office of Environmental Justice, which is charged with this task, will engage the public on this topic soon.

Having worked on marijuana bylaws for the Planning Board, which allows for host community agreements, with health care in a professional capacity where hospital community benefits are well established in Massachusetts, and having lived through solar negotiations and mediation when on the Select Board, I have thought about this a great deal. I would suggest that community benefits should be flexible. Fundamentally they should allow for municipalities or communities (populations or people or residents) to benefit as the host community in ways it self identifies. . At its core, clean energy projects involve private land developers coming to a community, usually accessing private land for projects that generate private wealth and revenue. Despite the risks and burdens to a community and to a municipality, there is no currently allowable benefit to the host community whether proactive or defensive. While it is true that we are all globally benefiting from the decarbonization transition, at the local level this model is fundamentally extractive, bringing no financial or social benefit to the community, not even the usual promise of jobs or the misinformation spin of local green energy (it all goes to the grid). So EFSB has the opportunity to fundamentally change the dynamic so that local communities and municipalities benefit and come along for the ride - either by being able to protect themselves better if bad things happen with the project or to engage in proactive and beneficial activities that address the needs of the locale and its people.

It is important to recognize that the usual argument that municipalities benefit from PILOT is weak. PILOT is assumed to be larger and more substantial than it actually is. The Dept of Revenue has very specific requirements about what is reasonable for PILOT; the range of what is possible is regulatorily narrow. As important to note is that only the hardware and physical assets of a project can serve as the basis for PILOT valuation; the potential revenue generated by the project cannot be considered. So in my opinion, having been on Select Board when we approved a PILOT, I think a PILOT is a necessary but insufficient payment to a community.

In terms of local risk and burden, there are many impacts of an industrial scale development that a municipality will have to deal with but for which it is not reimbursed. For example, in Shutesbury where 50% of the roads are dirt, semi tractors destroy the roads, making them impassable at times and requiring the town to fix them at its own expense. Similarly, given the technical training and equipment needs for fire response associated with lithium ion batteries, towns would need to have appropriate training and gear - things they cannot afford. On a larger scale, where ESS is being placed in forests or in communities completely or largely reliant on private drink wells or where public water supplies may be compromised, bonds should be required. This could be an EFSB requirement but if not, it should be an allowed negotiated item through a Community Benefit Agreement.

Finally, because we are all supposed to be rowing in the same direction with decarbonization, municipalities are interested in deploying clean energy at the local level but often do not have the means for these capital expenditures. This could be for a solar or wind generation project, battery storage (preferably Iron Phosphate composition and well-sited), EV charging stations, EV municipal fleets or conversion of heating to ground or air source heat pumps. While DOER has some programs to fund these, mostly municipalities cannot afford these and they are competitive grants (many smaller municipalities are not competitive). I firmly believe that municipalities should be allowed to negotiate for direct payments to a designated clean energy fund as part of a community agreement to further the Commonwealth's conversion to clean energy at the PUBLIC local level.

12. Should the pre-filing process timelines be differentiated by technology type? If so, please explain how.

I do not think this is necessary. The projects, either large or small, are all complex and fundamentally industrial installations. The most important thing is to ensure that there are enough appropriate engagement mechanisms and that there is enough time. So far I think the EFSB is approaching this with good intention; hopefully my previous comments might help with making engagement more practical.

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?

Yes. I think that apples should be apples and be considered in the same manner. As I understand it, it will not be the applicant that elects to move a small clean energy project from municipal regulation to the EFSB; the only two scenarios where small clean energy projects will be reviewed by the EFSB are an appeal or a municipal request due to lack of capacity. In these instances, the EFSB is essentially serving as a stand-in for the municipal level regulatory bodies. Given that, the small clean energy projects that the EFSB reviews should follow the same rules as a municipal regulatory body, they should be held to the same standards and procedures.