

MEMORANDUM OF UNDERSTANDING BETWEEN THE CAPE COD COMMISSION AND THE
SECRETARY OF [ENERGY AND ENVIRONMENTAL AFFAIRS](#)

In accordance with the Massachusetts Environmental Policy Act, M.G.L. c. 30, S61 -62I (MEPA), the Secretary of Energy and Environmental Affairs (the Secretary) has the authority to require environmental impact review of certain development projects receiving state financial assistance or requiring state permits. This review is carried out by the MEPA [Unit Office](#) within the Secretary's office, in accordance with regulations promulgated at 301 CMR 11.00 et seq. In accordance with the Cape Cod Commission Act (the Act), Chapter 716 of the Acts of 1989, as amended, the Cape Cod Commission (Commission) has the authority to review and regulate Developments of Regional Impact (DRIs). This review is carried out by the Commissioners and the Commission staff, in accordance with Administrative and Enabling regulations.

The environmental review processes of the Commission and the MEPA Office are, in some instances, overlapping. For example, the Act states that any proposed development for which the Secretary requires the preparation of an Environmental Impact Report (EIR) shall be deemed a DRI and will therefore be subject to review by the Commission. Any project for which an Environmental Notification Form (ENF) must be filed pursuant to MEPA may be deemed by the Commission to be a DRI and therefore subject to review by the Commission.

The environmental review procedures of the Secretary and the Commission are similar. Both involve notification of proposed projects through publication in a local newspaper, a public meeting or meetings, and opportunities for comment by state and local officials and interested parties.

THEREFORE, given the extensive overlap of the statutory responsibilities of the Commission and the Secretary with respect to development on Cape Cod, and in order to establish a coordinated review process for development projects that are subject to review pursuant to the Act and to MEPA, the Secretary and the Commission hereby affirm this MEMORANDUM OF UNDERSTANDING, [which was entered into on November 25, 1991](#).

1. At the election of the project proponent, projects that are subject to MEPA and deemed to be DRIs pursuant to the Act may be subject to a Joint Review Process (JRP). The JRP is a voluntary process by which the Commission and the MEPA Office will coordinate review of DRIs. Developers will have the option of participating in the JRP when they know or have reason to believe that a project will require review by both agencies.
2. The procedure for the JRP is set forth in Attachment A hereto. It provides for a single initial newspaper notice of environmental review by the Commission and the MEPA Office, use of the ENF with supplemental pages as the Commission application, a joint MEPA ~~scoping session/Commission~~ public hearing, and an environmental review document designed to address the concerns of both agencies. In order to participate in the JRP, the applicant must agree that if an EIR is required by the secretary, it will address issues of concern to both MEPA and the Commission.
3. Participation in the JRP does not guarantee approval of a project by the Cape Cod Commission or certification of an EIR by the Secretary. Through its public hearing process, the Commission may address issues outside of the scope of the EIR. Applicants should also be aware that regularly required state and local approvals will be necessary in addition to commission and MEPA approvals.
4. The Commission and the MEPA Office will, by means of the Environmental Monitor, the REPORTER (the Commission's publication) and other appropriate publications or other mechanisms, publicize the availability of the JRP.

Date

Matthew Beaton, Secretary
Executive Office of Energy and Environmental Affairs

Date

Chair
Cape Cod Commission

Attachment A: Joint Review Process

Attachment B: Addendum to MOU for Municipal Wastewater Planning

Attachment A

Procedure for Joint Review Process (JRP)

The applicant meets informally with the MEPA Office ~~and/or~~ the Commission to discuss the joint review process. If the applicant chooses to participate in the joint review process, the following procedures apply:

1. If an applicant chooses to participate in the joint review process (JRP), it is encouraged to commence the process at the time it prepares to file an ENF with the MEPA Office. However, an applicant may choose to participate and commence the JRP at any stage during MEPA review (e.g. DEIR, FEIR), notwithstanding that an applicant may not have chosen to participate in the JRP at an earlier stage of MEPA review. Once an applicant elects the JRP, its subsequent filings for MEPA review will all be subject to the JRP. The JRP will cover issues of concern to and within jurisdiction of both MEPA and the Commission, including a project's consistency with the Barnstable County Regional Policy Plan, the Cape Cod Ocean Management Plan, the Cape Cod Regional Transportation Plan, and the Cape Cod Area Wide Water Quality Management Plan Update (208 Plan Update).
- ~~1.2.~~ An applicant ~~fills out~~ completes the ENF-MEPA filing and supplemental pages for the Commission, constituting the joint review application, which may be supplemented and amended accordingly at later stages of the JRP. A copy of the joint review application, including any amendment or supplement thereto resulting from comments received at earlier stages of MEPA review, must be submitted to the Commission in electronic and hard copy forms prior to any project publication in the Environmental Monitor, or newspaper publication of notice of the joint MEPA/ Commission public hearing. A copy of the joint review application ~~Copies of the~~ and any amendments or ENF ~~and supplements thereto~~ ~~mental CCC pages~~ will be available for review at both the Commission and the MEPA offices.
- ~~2.3.~~ An applicant consults with MEPA staff and Commission staff and agrees upon a future time for the joint MEPA/Commission ~~scoping session~~/public hearing at the respective stage of joint review. The ~~joint scoping session~~/public hearing must be held within the relevant MEPA comment period for the respective MEPA filing, which period commences upon publication ~~20 days of publication of the ENF~~ in the Environmental Monitor, unless this period is extended upon mutual agreement of the applicant, the Commission and MEPA staff. ~~MEPA staff coordinates with Commission staff regarding publication in a local newspaper of the scoping session/public hearing.~~
- ~~3.4.~~ Joint Commission/MEPA ~~N~~notice of the joint Commission/MEPA hearing is published in a local newspaper, announcing the date of the public hearing/~~scoping session~~, which notice may be made. ~~Notice is published~~ prior to publication of the ENF-MEPA filing in the Environmental

~~Monitor~~Monitor. MEPA staff coordinates with Commission staff regarding publication of the notice in a local newspaper. The hearing notice shall be sent to those on the MEPA distribution list, and also made according to Section 5 of the Cape Cod Commission Act, with the proviso that many MEPA projects propose town-wide infrastructure or other plans, which may not have a specific project parcel site that requires abutter noticing.

- ~~4. Applicant files the ENF with MEPA and the ENF with supplemental pages with the Commission. Date of public hearing/scoping session is indicated on the first page of the ENF, so that it will appear in the Environmental Monitor. Applicant agrees in writing that if an EIR is required, it will cover issues of concern to and within jurisdiction of both MEPA and the Commission.~~
- ~~5. After the relevant MEPA filing ENF is published in the Environmental Monitor, but before the end of the respective MEPA comment period, and after the hearing has been duly noticed, the joint -~~
- ~~6.5. Scoping session/public hearing is held within 20 days of publication of ENF in the Monitor. Scoping session/public hearing is held and may be conducted by a Commission DRI subcommittee or Commission hearing officer, or and MEPA officials, or b. Both, the DRI subcommittee/hearing officer and MEPA officials conduct the hearing. State and local officials and other interested persons are invited to comment on the project.~~
- ~~7.6. DRI subcommittee meets to decide on~~ Prior to the close of the respective MEPA comment period, the Commission develops and submits comments to the MEPA Office, which comments may consist of a Commission project staff report prepared for the joint hearing. As applicable, cComments may include, without either a limitation, a recommendation that no EIR be prepared, or recommend a scope if an EIR is recommended or required.
- ~~8. Commission sends DRI subcommittee recommendation comments to MEPA.~~
- ~~7. Secretary issues certificate on ENF. As applicable, in the case of an ENF, if the Secretary determines that~~ no EIR is required, the state MEPA process and, therefore, the JRP, is over. (Please note that the DRI process may continue even though the MEPA process is over, in the event that the Commission elects to accept an ENF project as a DRI.) In this case, if an EIR is required, the JRP process continues.
- ~~9.8. After the Secretary issues a certificate on a MEPA filing, subsequent stages of the JRP may proceed and continue, which stages will address and incorporate comments provided in prior stages of the JRP.~~
- ~~10. Applicant files Draft Environmental Impact Report (DEIR) with MEPA, the Commission, and requisite other parties.~~
- ~~11. The Commission files comments with MEPA on DEIR.~~
- ~~12. Secretary issues decision on DEIR or Single EIR.~~
- ~~13.:~~

~~14. Applicant files Final Environmental Impact Report (FEIR), or Supplemental DEIR (SDEIR) if required.~~

~~— Commission files comments with MEPA on FEIR (or SDEIR) with MEPA prior to conclusion of the MEPA comment period.~~

~~— Secretary issues decision on FEIR (or SDEIR).~~

~~If the Secretary ultimately finds that the FEIR adequately and properly complies with MEPA, the JRP is over. In the case of review of a SDEIR, if additional review is required MEPA will issue a scope. The Applicant will file an FEIR. The Commission will file comments with MEPA on the FEIR. Upon issuance of the Secretary's Certificate determining that the filing adequately and properly complies with MEPA, the JRP is over, and the~~

~~Commission will openholds a DRI public hearing on the project within 45 days of the Secretary's certification of the FEIR, pursuant to the Commission Act and Regulations, provided, however, that for any plan or project proposed by a public or quasi-public entity for managing wastewater, watersheds, water resources or water quality, the Commission may conduct the DRI public hearing and issue the DRI decision jointly, prior to or concurrent with the issuance of the FEIR certificate by the secretary of energy and environmental affairs. The Commission may hold additional hearings as it deems necessary. (Please note that the DRI Subcommittee or hearing officer may hold public hearings as necessary throughout the review process.~~

~~For such water-related projects that require MEPA review and may or may not require DRI review, an applicant may seek review under the MEPA Special Review Procedure (SRP) established to expedite nutrient management plans and projects located within Barnstable County. An applicant must obtain a 208 Plan Update consistency certification from the Commission in order to be eligible for the MEPA SRP.~~

~~For such water related project that require both the preparation of an EIR and require DRI review, an applicant must elect the JRP if it desires to undertake joint or concurrent DRI and MEPA review, and by such election agrees, on its own request or at the request of MEPA or Commission staff, or both, after consultation with MEPA and Commission staff, to extend the relevant hearing and comment periods, as necessary and reasonable, in order to allow for coordinated and timely review under MEPA and the Commission Act. In this case, JRP would allow a DRI decision to issue jointly, concurrently with, or prior to the Secretary's FEIR certificate, and DRI review could commence and be undertaken during the FEIR stage of MEPA review.~~

Attachment B

Addendum to the Memorandum of Understanding (MOU)
by and between the Cape Cod Commission
and the Secretary of Energy and Environmental Affairs

WHEREAS, the undersigned have agreed to amend the November 25, 1991 MOU between the Cape Cod Commission (Commission) and the Secretary of Energy and Environmental Affairs on behalf of the Massachusetts Environmental Policy Act (MEPA) Office; and,

WHEREAS, the Commonwealth has designated Barnstable Cecounty, acting through the Cape Cod Commission, as the Clean Water Act Section 208 Area Wide Planning Agency, directed the Commission to update the 1978 Cape Cod Area Wide Water Quality Management Plan (the 208 Plan Update), and has provided significant resources for that purpose in recognition of the potential for the county's watershed based approach to improve water quality on Cape Cod more efficiently, with lower costs and with greater community consensus for water quality planning and funding less physical infrastructure, than the typical Comprehensive Wastewater Management Plan (CWMP) process implemented by an individual municipality; and,

WHEREAS, the undersigned agree that municipal wastewater planning, including the development of CWMPs, Targeted Watershed Management Plans (TWMPs), and nutrient reduction projects should be identified, elevated and expedited in the permitting process for the benefit of the environment so long as such plans and projects are deemed by the Commission to be consistent with the 208 Plan Update. may continue during development of the Area Wide Management Plan; provided, however, that identification and evaluation of wastewater needs and wastewater management alternatives are conducted, to the degree feasible and appropriate, with the evolving Area Wide Management Plan.

NOW THEREFORE,

It is in the interest of the Commonwealth and the Cape Cod region to promote water quality improvements to meet Total Maximum Daily Loads in Cape Cod receiving water bodies. Both the MEPA/Commission joint review process and special review procedure for water quality planning and improvement projects are beneficial to the Commonwealth and to Cape Cod.

If a municipality elects to participate in a joint review process for review of a CWMP prior to the completion of the Area Wide Management Plan, MEPA will consider the consistency of the proposed CWMP with approaches identified in the evolving Area Wide Plan. At a minimum, MEPA will require the following:

- The municipality must consult with the Commission and the Massachusetts Department of Environmental Protection (MassDEP) to ensure coordination between active planning efforts and the development of the Area Wide Management Plan and, to the extent possible, establish consistency between the CWMP and the development of the Area Wide Management Plan in respect to the evaluation of wastewater needs, wastewater management alternatives and alternatives analyses. This consultation should occur during development of the CWMP and prior to filing a review document with MEPA.

- ~~During review of the CWMP, MEPA, the Commission and MassDEP will assess the consistency of the identification and analysis of wastewater needs and wastewater management alternatives with the development of the Area Wide Management Plan, to the extent feasible.~~