

Subtask Group Recommendations – Public Engagement and Education for the Final Report May 2024

Subtask Group: Public Engagement, Education and Outreach

(#1) Initial Challenge Identified:

Public meetings are a challenge because they mean something different to each person. The specific challenge that we explored in our workgroup involved expectations about engagement strategies used by the Department. We believe that in many cases members of the public are not well versed in whether or not public meetings will occur, when in the project timeline the meeting will occur, and what the agreed upon purpose of the meeting is (i.e. is it to share more information about the proposed project, to scope an analysis, to share official public comments, etc.). Often times because of these unclear expectations, when public meetings do happen, they can often turn into a perceived vote reading/counting exercise which does not result in new substantive information that benefits the agency completing the analysis, and at times lead to contention and public conflict.

Our subgroup attempted to disaggregate some of the above issues into smaller parts. One of the initial challenges regarding public meetings is the lack of clarity about whether or not there will be a public meeting (of any type) for a proposal. We learned more about the discretion on the part of the agency for when to have a public meeting as well as what the meeting is structured like. There is no clear trigger currently, which we felt helped promote flexibility and adaptability for the agency to tailor facts and circumstances to the needs of the community. However, we felt like the discretion can create confusion and unclear expectations for members of the public in a community where a project is proposed.

Barrier(s):

Lack of clarity and defined expectations: members of the public are not always clear of when or if a public meeting is going to be held in the MEPA process. Further, they do not necessarily understand the different types of public meetings that the agency may hold and what their purpose always is. While we believe that discretion to the agency is a beneficial thing, it is a barrier for mutual understanding and shared expectations. In fact, it can at times lead to a situation where the unintentional first fight about whether or not to have a public meeting.

Recommendation:

DEQ's public guidance should more clearly identify when, what type, and how (structure) public meetings shall occur for proposed projects, regardless of the analysis type. That guidance should be included as a boilerplate statement in every scoping document (may need to be in the public notice because of discretion about whether or not there is scoping for every analysis) for each MEPA process that helps the public better understand what type of public engagement process there will be, how it is determined, who makes those decisions, when it will happen, etc. That language should also be included in the DEQ's MEPA website to provide more global guidance to the public. The goal is to make the public meeting (and engagement broadly) component of the MEPA process more certain and predictable by setting clearly communicated expectations for both project sponsors and members of the public.

Rationale:

Our identified goal for public meetings in the subtask group was to have meetings that increase shared learning, facilitate more substantive comments to the agency, and decrease public debates and fights. It seems like one way to reduce conflict is to remove confusion up front about whether or not there will be a

public meeting, what it will look like, and when it will occur. Providing clear guidance to the public before the MEPA process starts will help set expectations appropriately.

The goal of public engagement is to decrease the escalation of conflict (recognizing that conflict is unavoidable, but that the process should not escalate it through feelings of mistrust) and rather escalate the shared learning about the lay of the land in the area of the proposed project or action and the problems or challenges that should be anticipated. We believe that clearer expectations across the entities involved in the MEPA process up front can help resolve some of the tension.

Key Strategies:

- *Draft language to be included in all scoping/public notice documents, solicit public feedback from key stakeholders.*
- *Post to DEQ's MEPA website.*
- *Include the language in all scoping/public notice documents moving forward.*

Possible Challenges and Outcomes:

- *Conflict is unavoidable*
- *What if the circumstances change and the boilerplate language is too rigid?*
- *Members of the public may not read or understand the language*
- **SAVE SPACE FOR DISSENTING OPINIONS**

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(#2) Initial Challenge Identified:

Originally, the MEPA statute (Title 75, chapter 1, part 3, MCA) created the Environmental Quality Council (EQC) and contemplated that entity as being responsible for tracking MEPA's implementation and providing necessary oversight as well as trainings, public education, and outreach about the law. In the years that have passed, the EQC, whose budget and staffing are managed by the legislature itself through the Legislative Council, has struggled to continue that role given competing priorities and diminishing capacity of its talented, but small, staff. The result has been twofold: (1) that it has largely fallen on public agencies to do their own oversight, training, and education internally, and (2) members of the public and of the legislature are on their own to access previously created training and resource material. From our investigation, it is unclear who is fulfilling the role of tracking implementation.

We believe that there are a few challenges within this bucket that should be acknowledged individually:

- *Uniform training of agency staff in how to implement the law effectively and consistently,*
- *Education of members of the public about the purpose of MEPA and the roles afforded to them in the public process components of the law's implementation,*
- *Education and trainings of members of the legislature about the legislative history of the law, the purported purpose and intent of the statute, role of other permitting statutes, and emerging issues and policy questions, and*
- *General tracking of the implementation of the law.*

Barrier(s):

Capacity: generally, the capacity of both the EQC and agencies is the primary barrier to resolve the above-mentioned challenges more effectively. If the capacity of EQC is the primary challenge (which through the subgroup's investigation seems to be true), there are two recommendations that stem from this challenge, which could be implemented individually or collectively to fill the void in oversight of consistent implementation across the executive and legislative branches, as well as made available to the public. The first is to increase the role of the executive to provide the outreach and education components, which is embodied in this recommendation (#2), and the second is to increase the capacity of the EQC itself, which is in recommendation (#3). These recommendations are not mutually exclusive.

It is important to note a disclaimer that we discovered in our investigation. At the agency level, the current DEQ staff are doing great in their internal training protocols and programs. It can serve as a model to build from to help provide more uniform application of the law across the executive. However, doing more with the current model is not possible without additional staff and resources from the legislature. Likewise, at the EQC the current staff is doing tremendous work given the amount of capacity they have to fulfill the obligations. Neither recommendation is meant to be an indictment to what existing staff and resources are accomplishing.

Recommendation:

DEQ should request the legislature fund one FTE (full time equivalent) and necessary expenses whose primary task is providing MEPA compliance education and training for state employees across the executive. The position should be able to subcontract trainings or education work to eligible entities, including the other agencies, the legislature, nonprofit entities, and trade associations. The specific deliverables for the position including, but not limited to: the development of and offering MEPA 101 and 201 trainings (modeled after what DEQ is currently providing), providing those trainings should be made across the executive branch to any agency who is required to implement MEPA in any of its decision-making, providing trainings to other eligible entities (listed above), development of general MEPA educational materials, and providing a website to be the hub for education and outreach.

Rationale:

One way to resolve the lack of coordinated training and education is to have the executive do it, and it makes most sense for DEQ to do it since it deals with MEPA more than other agencies.

Key Strategies:**Possible Challenges and Outcomes:**

- *Need to find a way to compel other agencies to complete trainings, perhaps include it in their budget (i.e. funding for things only if they have a minimum compliance with the DEQ hosted training).*
- *Should it be DEQ's role to provide this training and outreach? Should other agencies be doing their own efforts?*
- *Would the legislature fund this? Would they continue to fund it over the long term?*
- *What would the source of funding be?*
- **SAVE SPACE FOR DISSENTING OPINIONS**

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(#3) Initial Challenge Identified:

See the initial challenge identified in #2.

Barrier(s):

See the barriers identified in #2.

Recommendation:

The Environmental Quality Council (EQC) should complete an analysis of available resources and staffing within the Legislative Environmental Policy Office (LEPO) and needs associated with MEPA. That analysis and recommendations should then be reported to the Legislative Council for consideration.

The goal is to increase the capacity of the EQC, and thereby the LEPO, by at least one FTE (full time equivalent) who has a primary workplan dedicated to the oversight of implementation, training, and education of MEPA across state government. The deliverables of the position should include trainings, educational materials, a database of current legal challenges and outcomes, technology solutions to MEPA education and outreach, and prioritization of major issues affecting implementation. The person shall report to the EQC and provide additional staffing resources to the body.

Rationale:

If it is the role of the EQC to provide these things (which could be clearer) then give them the resources to do that.

Key Strategies:

- *The EQC would need to complete its own internal assesment and develop recommendations for additional capacity specifically related to MEPA and forward those to the Legislative Council for its review and concurrence or not.*
- *The Legislature would decide about its available resources.*

Possible Challenges and Outcomes:

- *Need to find a way to compel agencies to complete trainings, perhaps include it in their budget (i.e. funding for things only if they have a minimum compliance with the EQC hosted training).*
- *There is a good deal of turnover at the EQC in terms of members.*
- *The Legislative Services Division arguably has a lot of needs, this would be potentially seen as competing with those needs.*
- *This may not be a long term solution.*
- **SAVE SPACE FOR DISSENTING OPINIONS**

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(#4) Initial Challenge Identified:

One of the persistent challenges identified throughout this broader work group, and the subgroup as well, is the lack of general understanding in the public between the differences in the role of the MEPA process and the MEPA produced documents versus the permitting processes, laws, and documents. That has been embodied most simply in the procedural versus substantive paradigm. That is a fair and accurate paradigm, but in the context of our subgroup's work in can create some confusion and lack of clear expectations of the role of the public in the MEPA procedural process. For example, it can create a lack of clear direction to the public about how to engage in the MEPA process what relevant information that the agency is seeking through the MEPA process.

Of particular note to this work group is the tremendous opportunity and role the public has in providing contextual information that substantively benefits the agency and the product of the MEPA analysis. We believe strongly that all members of the public, regardless of their view about an action have something to bring to the MEPA process. It may be a bit simplistic to call MEPA "just" procedural, but it does differ from substantive and conditioning permitting statutes. That is important and we do not mean to challenge the paradigm. However, what is clear through our discussions is that the public generally does not understand what the agency is looking for when it seeks their engagement.

Barrier(s):

Clarity of roles and expectations: the lack of clarity as to what the agency is seeking challenges members of the public for understanding their role in the process and what the agency hopes to get from them being involved. One of those specific challenges is in the lack of a definition of substantive comment, given that it is in the eye of the beholder. Most members of the public are not actively engaged in the world of MEPA so simply asking for "substantive comments" isn't something that is readily understandable to them.

Recommendation:

DEQ should work with a set of key stakeholders to characterize the term "substantive comment" in the agency's internal guidance. The key audience for that characterization are members of the public participating in a MEPA process, with a goal being to better enumerate what types of feedback and comments the agency is seeking. By clearly articulating in guidance what the agency is seeking, it can help clarify and set expectations for the public. That guidance could be included in similar boiler plate language to recommendation #1 that goes out with every public notice/scoping document. It should also be posted to the general MEPA website, similar to recommendation #1.

Collectively, we should stop describing MEPA as "just procedural not substantive" in our language about MEPA. It shuts down the public from participating right at the moment we need their engagement to understand the landscape of a proposed project better and more substantively. By saying it is not substantive, we are setting the expectation that their substantive comments that provide new information are not useful to the agency. No, MEPA cannot condition a permit or deny/modify like the permitting statute can, but it can substantively inform the analysis. Consider continuing to build on internal communication technique of "yes, and..." by saying "Yes, MEPA is a procedural statute, and the information generated from thoughtful participation by project sponsors and the public can enrich the discussion and influence future decisions."

Members of the public may need additional tools to help them understand that while MEPA's procedural role is not to impose conditions on or deny or modify project permits; it is critical to laying the groundwork for those decisions to be made. MEPA plays a highly meaningful role in partnership with

the substantive permitting statutes by providing the broadest understanding of what the impacts of a proposed activities may be. Public input can bring to light information that can make a difference in what issues are evaluated in the project analysis and to what depth. That is further enhanced by their ability to share local knowledge that can benefit the agency's analysis and help avoid unintended consequences from a proposed action.

DEQ should develop fact sheets and examples that illustrate what is commonly considered a "substantive or meaningful" comment that would be useful in evaluating a project. Members of the public are always entitled to voice their opinion, but they may want to play a more useful and informative role in the process if they better understand what information the agency needs and how they can help.

Rationale:

The goal is to attempt to make the participants feel like they were heard and the agency to get actual substantive comments that improve the durability of the decisions made and make the analysis of projects richer and more informed.

Key Strategies:

- *Convene a small group of stakeholders to work with the agency to develop a characterization of substantive comments.*
- *Develop factsheets and materials.*

Possible Challenges and Outcomes:

- *It can be a challenge to provide a clear definition of substantive comment or to accurately characterize what those are in every context.*
- *It can take resources.*
- *Getting out of the informed echo chamber can be a challenge.*
- *We are going to need to adaptively implement this recommendation.*
- **SAVE SPACE FOR DISSENTING OPINIONS**

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(#5) Initial Challenge Identified:

Throughout this process, a common theme is that all participants in the MEPA process come to the table to participate with different levels of knowledge about the MEPA process itself, the law, the roles of participants, as well as the information specifically relevant to the proposed project. As with nearly all state agency websites, it can be further challenging to access the needed documents that are beneficial to understanding both the process and the substance of a proposal. We believe that better is possible to provide the notice of the process and proposal as well as to accessing the documents central to participating in those processes.

Barrier(s):

We are probably somewhat stuck in the website constraints that we have. The agency is doing the best to make the website work in the current iteration. Changes can be complex and costly (and there may not be the money available to do major overhauls).

Recommendation:

DEQ should continue to improve the functionality of its website for hosting all MEPA related trainings, education materials, and a project-by-project search function to unlock all related decision documents for the public to be able to access. It should also provide a better way to be noticed about specific projects and opportunities to participate. An alternative recommendation could be for EQC to do this work and explore technology solutions to these challenges housed by the legislature.

Rationale:

Key Strategies:

Possible Challenges and Outcomes:

- *It will be a costly investment to maintain.*
- *The challenges with websites is that they will always be out of date.*
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- **SAVE SPACE FOR DISSENTING OPINIONS**