



April 12, 2024

Rep. Jeffrey N. Roy, House Chair
Joint Committee on Telecommunications, Utilities & Energy
State House, Room 43
Boston, MA 02133

Re: Support for certain recommendations of the Commission on Energy Infrastructure Siting and Permitting (CEISP) to be included in climate legislation; Comment on other climate and energy provisions before the House Ways & Means Committee

Dear Chair Roy:

We are a group of organizations collectively advocating for the protection and enhancement of natural resources in Massachusetts, including air, water, biodiversity, the protection of natural and working lands, and ambitious and equitable solutions to climate change.

We write today in strong support of the clean energy and climate legislation reported favorably from your Committee to the House in February. You have, in H.4501, *An Act to expedite permitting for electric decarbonization infrastructure projects* and H.4503, *An Act relative to clean energy generation*, assembled an impressive set of sweeping and impactful changes aimed at keeping our state on a strong course towards net-zero GHG emissions by 2050.

The primary scope of this letter is H.4501, which focuses on permitting clean energy infrastructure. You've been a leader on this topic this session, and we want to thank you for your engagement with the Commission on Energy Infrastructure Siting and Permitting (CEISP). We hope that the legislative recommendations contained in the CEISP final report are featured in climate legislation on the move this spring. We also provide our views on key related aspects of H. 4503.

Our top priorities for energy legislation in this session are as follows:

- Promote rapid deployment of renewable energy and the associated infrastructure that is carried out responsibly, for example, where impacts to our natural resources, and rural and environmental justice communities which have already borne disproportionate impacts from energy infrastructure, are avoided and minimized to the extent feasible. We also advocate for binding requirements for mitigation of those impacts which cannot be avoided; this would put

solar and other clean energy development on equal footing with the states' mitigation requirements for offshore wind development.¹

- Ensure that permitting reforms eliminate unnecessary barriers and delays to responsibly sited, smaller-scale distributed energy projects, especially those in the built environment. Developers of solar on rooftops and canopies on parking lots, along with smaller scale ground-mount solar projects, repeatedly cite Massachusetts as having more much more onerous permitting requirements for distributed solar than other states. Canopies over parking lots, for example, are considered to be new buildings within permitting standards. Requirements such as these slow permitting and add unnecessary costs.
- Provide cities and towns – who are critical to a successful rapid deployment of energy infrastructure – with sufficient opportunity for *meaningful* input (i.e., input that materially shapes outcomes on the ground) which must happen early in the development cycle, i.e., before all major project parameters are finalized. Moreover, under-resourced communities should be supported with resources needed for meaningful engagement.
- Recognize the need for clear policy direction and strong guidance on what constitutes equitable sharing of new energy infrastructure across communities. We know that in order to reach our decarbonization goals, all 351 communities in the Commonwealth will need to support and host their fair share of new projects and upgrades to existing energy infrastructure. The state needs to establish a standard for equitable hosting of energy infrastructure, and such a standard must recognize and account for the fact that many cities and towns already host significant energy and/or industrial infrastructure. New projects and major upgrades proposed in these areas should thus be evaluated on the basis of their contribution to cumulative impacts on public health and the environment.

Below we highlight a number of provisions of H.4501 and H.4503 that would support these goals, and we would be thrilled to provide full-throated support for any legislation containing tangible provisions in furtherance of them. We stand ready to work with you, your staff, and the rest of House leadership to ensure that support is fully realized.

H.4501 and CEISP Recommendations

Accelerated permitting processes; state and local jurisdictions

We need an acceleration from the current pace of clean energy deployment if we are to achieve the clean energy goals expressed in the Clean Energy and Climate Plan for 2050. For one, the rate of solar deployment in Massachusetts needs to more than double in order to reach 10 GW of capacity by 2030. Conceptually, we support the CEISP's recommendations to eliminate redundancies and reduce timelines by consolidating permitting processes and making them concurrent where they are now carried out sequentially. However, it's critical that any consolidation of permitting steps done in the spirit

¹ In MA's most recent procurements for offshore wind resources, wind developers are required to fund mitigation of impacts to wildlife and commercial fishing activities that cannot be avoided or minimized, at a level of at least \$5K per installed MW for fisheries. Other states such as NY and NJ require higher levels of mitigation funding for impacts on habitats and commercial activities relative to installed capacity.

of accelerating clean energy deployment not compromise existing protections for the environment, public health, and environmental justice communities.

We generally support the CEISP recommendation to create an enhanced Energy Facility Siting Board and to staff it accordingly. This ‘EFSB 2.0,’ as proposed and described by the proposal from DPU Commissioner Rubin, appears to have similar responsibilities as the office of electric decarbonization Infrastructure Permitting Office proposed in H 4501. We believe that the CEISP recommendation to increase the EFSB funding and resources to accommodate new responsibilities and workloads for consolidated permitting will be the most efficient approach to achieve accelerated permitting while ensuring appropriate vetting from state agencies and transparency on decision-making.

We do note that H.4501 (unlike previous versions) appears to wrap up all renewable generation in the new permitting office’s jurisdiction, eschewing the capacity-only based classification embraced by the CEISP in favor of a paradigm where permit conditions vary based on system type, site characteristics, and potential for community and environmental impacts. We strongly prefer your formulation because it recognizes that impacts correlate to many project characteristics – notably location – in addition to size/capacity.²

Finally, we support language that could provide additional guidance for the further streamlining, or total elimination of certain permitting requirements in situations where the characteristics of a site and project are such that consideration of environmental or community impacts is not additive, or relevant, such as larger rooftops, low-impact ground mounted systems, and parking lot canopies. These project types and sites can be categorically less impactful, and in the built environment in particular, can provide grid benefits and reduce system costs. Suggested language could be added to section 4(c) of H.4501, as a charge to the board:

- (xii) establish a class of electric decarbonization infrastructure projects based on common features of the infrastructure that are minimally impactful, and characteristics of a site that make development appropriate in all circumstances, and promulgate regulations for the waiver of some standard or special conditions for such class of projects.

Below, we provide comment on provisions of H.4503 that would incentivize parking lot canopies and establish statewide goals for certain types of solar, and these types of projects should be considered, as well, in that context.

Maintain Existing Protections and Address Cumulative Impacts

Existing environmental protections codified by federal, state and local laws and regulations include protection of wetlands, air and water quality, drinking water wellheads, and habitat and species protections. Because clean energy is a very spatially distributed resource, it has the potential to result in broad impacts on lands and habitats that can compromise ecosystem services, such as the provision drinking water, that affect wildlife and human health. As such, we strongly endorse the inclusion of the Department of Fish and Game and the Department of Conservation and Recreation in all interagency consultations on permitting issues, in addition to staff from DPU/EFSB, DEP, and EEA.

² We do suggest clarifying that jurisdictional aspect of the office, as the definition of “electric decarbonization infrastructure project” doesn’t specifically call out RPS-eligible resources as qualifying.

We are happy to see a few changes contained in H.4501 from previous versions of the bill. In particular, the establishment of an environmental justice community advocate (section 14) and the exemption for lands subject to the wetlands protection act (section 4(g)) are strong additions to the bill. We support language to that effect in the legislation that moves forward to the House floor.

While the CEISP proposal leaves much to be determined by the EFSB and/or other regulatory bodies, legislative mandates in support of natural resources and vulnerable communities are warranted. Please keep these welcome changes in mind as you consider further versions of H.4501.

An additional new element of H.4501 is a requirement for, and attendant definition of, cumulative impact analysis. We strongly support the inclusion of such an analysis in any framework for permitting of new energy infrastructure.³

It is well-established by data and evidence that historically, communities with more residents of color and/or lower incomes have hosted a disproportionate amount of the fossil fuel-based energy infrastructure, and thereby have experienced inequitable exposures to air and water pollutants, noise, decreased property values, and other disamenities that affect health and quality of life.

Moreover, the first two decades of the clean energy transition have resulted in geographic clustering of clean energy projects – especially ground-mount solar – in certain communities due to proximity to interconnection points and availability of land. Because of the nodal nature of hosting capacity for distributed generation resources, the development of standard conditions should include guardrails around excessive clustering of projects in communities where hosting capacity exists. Importantly, the siting of *new* interconnection capacity should also be done with standard conditions that evaluate and consider impacts on the surrounding close-in areas, which are typically the most cost-effective project locations in terms of interconnection costs.

However, we are concerned that, under the proposed legislation, project proponents (“applicants”) are the sole party responsible for demonstrating cumulative impacts. We believe that these studies should be commissioned by the EFSB or office and conducted by independent experts rather than project applicants.

Language from H4501, with proposed amendments:

“Cumulative impact analysis”, a written report that assesses whether the proposed facility is necessary to meet ~~local~~ energy use needs and that such need cannot be accomplished through less harmful or more cost-effective means and considers the potential for harmful exposure, public health or environmental risk, or other effect occurring in a specific geographical area, including from any electric decarbonization infrastructure project or environmental pollution emitted or released routinely, accidentally, or otherwise, from any source, and assessed based on the combined past, present, and reasonably foreseeable electric decarbonization infrastructure project emissions and discharges affecting the geographical area;

³ The CEISP recommendations cited the need for such an analysis for infrastructure that is not associated with clean energy but failed to find a role for such analysis in the newly-designed EFSB permitting process for clean energy infrastructure. As many commissioners stated in their comments (included in Appendix A), this is a crucial piece of any siting and permitting process.

Section 4(c)(iii)(line 220): The board shall...promulgate regulations which... codify a process for an independent expert applicants to conduct and submit cumulative impact analysis and environmental impact reports for all qualifying projects; provided, that such process include opportunity for community input; and provided, further, that the independent expert is commissioned and compensated by the office;

New clause for section 4(c): ...(xii) establish a process for municipalities that do not contain identified environmental justice populations to request an environmental impact report and cumulative impact analysis pursuant to section 4l(iii) of this chapter based on considerations of previous undue or disproportionate impacts of transmission, distribution, distributed renewables, and electric decarbonization infrastructure.

Section 8(a)(viii) (line 369): Applications shall include, at a minimum the following information...: an environmental impact report and cumulative impact analysis for all projects located in host communities with identified environmental justice populations and for all projects located in host communities determined by the board to have been unduly or disproportionately impacted pursuant to section 4(c)(xii) of this chapter;

Section (8)(i) (line 431): If an environmental impact report and cumulative impact assessment are required, the office shall only issue permits for projects where the environmental impact report demonstrates a finding of environmental and energy benefits to the impacted environmental justice populations and communities currently hosting significant energy infrastructure without significant environmental or energy burdens and the cumulative impact assessment demonstrates that there these is no adverse public health, environmental, or climate impact to the impacted communities.

Siting of Clean Energy Infrastructure

As for the CEISP recommendations, we are very pleased with the articulation of the need for site suitability standards for electric decarbonization infrastructure projects, including renewable generation less than 25 MW, storage facilities under 100 MWh, and certain distribution-level projects.⁴

We are willing to work to ensure site suitability standards are a central piece of siting and permitting of future solar deployment, in or outside of EFSB/state-level jurisdiction.

To that end, regardless of how future versions of H.4501 answer jurisdictional questions of state-level consolidated permitting, it's crucial that it include language requiring EEA to undergo a process to produce suitability standards for use in siting renewable generation. We suggest:

The executive office of energy and environmental affairs shall create site suitability methodology for electric decarbonization infrastructure projects, to be integrated into municipal and state-level siting, and incentives and programs. Such methodology shall employ geospatial data and analysis that accounts for the social and environmental impacts of development, and seeks to avoid, minimize, and mitigate those impacts in furtherance of the Commonwealth's goals and plans, including, but not limited to, those

⁴ See Section B on page 24 of the final report, which reads "The Commission proposes that EEA coordinate and convene a stakeholder process for the creation of a site suitability methodology for renewable generation and storage facilities to help reconcile competing land use interests by aligning the Commonwealth's land use, environmental justice, climate, and energy goals." No CEISP members disagreed with that proposal.

contained in the Clean Energy and Climate Plan for 2030 and 2050, the Forests as Climate Solutions Plan, the Resilient Lands Initiative, the Healthy Soils Action Plan, Executive Order 618 for Biodiversity Conservation, the Massachusetts Climate Assessment, ResilientMass Plan, Resilience Design and Standards Mapping Tool, and the Environmental Justice Strategy. In developing such methodology, the executive office of energy and environmental affairs shall consult with experts in environmental justice, clean energy, land conservation, wetlands protection, agriculture, biodiversity and wildlife, municipal affairs, tribal affairs, water quality, and climate resilience and hazard mitigation.

We very much appreciate the inclusion of the requirements for standard and special conditions that require the avoidance and minimization of impacts to the extent feasible.

In addition, we especially commend the inclusion of an in-lieu fee mitigation requirement in H 4501. The CEISP recommendations stopped short of requiring mitigation of impacts, but it is essential to retain the irreplaceable carbon removal services provided by our highest-value natural and working lands (a level which currently equals 10 percent of annual GHG emissions) in order to reach net-zero by 2050. Our most efficient policy tool to avoid losing carbon removal and other critical ecosystem services is a price signal that discourages conversion of high-value natural and working lands for energy development (and conversely, we need solar incentives sufficient to make locating new energy development in preferred siting areas, including the built environment, attractive to developers). We would recommend additional language as follows:

(in line 238):

(vii) establish an in lieu fee program for compensatory mitigation to ensure consistency with state plans and goals for natural carbon removal, biodiversity, land conservation, and resilience to climate impacts;

Support for Municipalities

We support the CEISP's recommendations that recognize both the importance of, and the challenges to, municipalities in terms of their essential role in lifting the clean energy transition. Virtually all communities will need some additional support in order to sustain the increased scale and pace needed to reach fast-approaching clean energy goals for 2030 and beyond.

Smaller, less-resourced communities, many in rural areas with lower-cost lands, are experiencing levels of deployment that challenge their capacities and lack appropriate levels of input from residents. These towns will need direct support. While no community should have the right to block clean energy infrastructure, the risk of a serious erosion of a 'social license' for scaling clean energy resources is real unless resources are available to support planning and deployment at the local level.

We support in principle the following concepts from the CEISP recommendations to support municipalities, which also had wide agreement from Commission members:

- A management study to assess the likely additional burdens, resources, and support needed for municipalities to support the development of advisory opinions and consolidated permitting processes, including workforce requirements and capacity needs.
- An office of community engagement focused on assisting communities and project applicants in navigating pre-filing engagement, filing requirements, opportunities to intervene, and facilitating

dialogue. An ombudsman would be located in this office to coordinate across cross-government (state, regional, local) officials involved in the pre-filing engagement and permitting processes.

- Regional coordinators (or other region-level capacity) within EFSB and/or DOER to provide direct technical assistance at the town level for community engagement processes, environmental justice issues, and legal expertise in zoning, siting and permitting.

Finally, the CEISP did not come to agreement on the role of community benefit agreements (CBAs) for communities hosting clean energy and electric decarbonization infrastructure. We believe that CBAs can and should play an important role in building public support for projects from host communities, many of which need economic development opportunities. We strongly recommend that: 1) funding to enact CBAs should be borne by the developer (and should not be rate-based); and 2) compensatory mitigation requirements be separate and distinct, and not part of CBAs. This is because impacts to the environment or public health diminish a public good that is owned by all of the Commonwealth's residents, so mitigation should be designed to compensate all residents for losses of public goods, not only residents of a host community.

Provisions in the “Clean Power” bill (H.4503) to accelerate solar deployment

We are strongly supportive of the CEISP's recommendation to DOER to create an incentive program or carve-out, for the development of solar canopies over parking lots. While DOER could adopt this measure under its existing authority to establish a solar incentive program under Chapter 75 of the Acts of 2016, we believe that the legislature requiring such a provision is both precedented and appropriate.

In Mass Audubon's recent analysis with Harvard Forest called *Growing Solar, Protecting Nature*, we found that the Commonwealth has 55,000 acres of parking lots. Assuming a conservative setback of 50 feet on these sites, this means that approximately 35,000 acres are strong candidates for evaluation for up to 10 GW of canopy solar. In comparison, DOER's 2023 estimate is that the technical potential for canopy solar in the Commonwealth is up to 14 GW⁵.

Because of this, we strongly support the inclusion of section 1 of H.4503 in any climate legislation that moves forward this session.

Section 30 of H.4503 is related to this topic.

The intent of this provision of H.4501 – build more solar – is commendable. Furthermore, as we've stated in this letter, it is the prerogative of the legislature to make statements and mandates on the specifics of deployment where appropriate. To this end, we think requiring goals for solar of various types sets an important market signal that conveys the state's priorities about the balance of solar on the built environment, which can help reduce transmission and distribution costs, and ground-mount solar, which can be less expensive on a narrow energy basis but these energy cost savings can be outweighed by costs of these systems to the public. DOER's *Technical Potential of Solar* study provides a reasonable starting point for statewide goals for rooftop solar, canopy systems on parking lots, and responsibly sited ground-mount solar.

⁵ Knight, Pat, Olivia Griot, Ellen Carlson, Jackie Litynski, Angela Zeng, Jack Smith, Shelley Kwok, Jen Stevenson Zepeda, and Sophie Kelly. (2023). “Massachusetts Technical Potential of Solar.” Synapse Energy Economics, Inc for Massachusetts Department of Energy Resources (DOER). <https://www.mass.gov/doc/technical-potential-of-solar-in-massachusetts-report/download>.

Moreover, we strongly support adjustments to SMART that reflect policy goals for responsible solar siting, such that incentives more clearly reward developers for locating solar on sites with lowest impact to the environment and communities. We also strongly encourage the state to explore approaches to streamlining permitting and reducing ‘soft costs’ (e.g., marketing) associated with smaller distributed solar projects including rooftop systems, as these have higher installed costs (i.e., \$ per installed MW) in the US compared to most other countries with high levels of renewable deployment (e.g., Australia, Germany), which have done a better job reducing soft costs.

We believe that the development of criteria for preferential areas for siting combined with standard or special conditions for permits for ground-mount and other low-impact solar projects, as described above, will provide a system-wide guide to the suitability of all parcels for new solar projects. There should be a social license for projects that are low-impact and provide other types of benefits if they are done well. Let’s make sure our goals and incentives for these projects align with our objectives for permit streamlining.

Finally, we oppose the categorical inclusion of a legislative prohibition on the use of critical and natural landscapes layer of BioMap by DOER in the promulgation of SMART standards. This isn’t necessary if we develop a systemic site suitability framework to encompass all land parcels, not only BioMap lands.

Other provisions in the “Clean Power” bill

The “Clean Power” bill has many other exciting and laudable provisions in it. As a general matter, we are supportive of efforts to add or retain as much non-emitting, baseload generation, at reasonable cost to the state and to ratepayers, especially if those resources already exist, or have minimal additional natural resource impacts.

- Section 33 of H.4503 requires DOER to review the effectiveness of solicitations pursuant to the 2016 clean energy law. We support this review, but request the scope be expanded so that the reporting is not limited simply to effectiveness at reaching our emissions reductions goals set out by the Roadmap Law and Clean Energy and Climate Plan for 2050. Under your leadership, the 2022 climate law included many provisions to support the wind industry and manage and/or capitalize on the impacts and implications of its expanded presence in Massachusetts, including important provisions to monitor the impacts on wildlife and fisheries. Thanks to that law, the most recent 83C RFP included a requirement that bidders fund wildlife monitoring and research. It’s an exciting development, and the work has begun in earnest. However, concerns remain over the efficacy of those resources, in particular whether there’s sufficient funds available for the mitigation of direct impacts, and we would invite investigation and oversight to ensure they are being put to good use. Wildlife loss mitigation is just one area in which we would hope DOER could establish best practices when it comes to allocating wind-related state resources.
- We support section 9, which requires the procurement of 4,500 MW of energy storage capacity of varying durations. A Form Energy report published in September 2023 modeled the power of just 23 MW of multiday storage coming online by 2050, and showed that it could help New England avoid nearly 150 MW of solar overbuild, reducing land impacts by 300,000 acres and avoiding future portfolio costs by up to 33%.⁶ A report commissioned by DOER, MassCEC, and

⁶ Wilson, Rachel, Raman Kailash, and Scott Burger. “Clean, Reliable, Affordable: The Value of Multi-Day Storage in New England.” Form Energy, September 2023. <https://formenergy.com/wp-content/uploads/2023/09/Form-ISO-New-England->

E3 cites the need for long-term contracts for wholesale market revenue streams as removing a major barrier to financing storage at grid scale, which required procurements would address.⁷

- In section 8, we do not support the eligibility of alternative energy credits for large-scale biomass-based thermal energy project(s). We believe that sustainably sourced local biomass has a role in small-scale, high efficiency thermal systems for commercial and residential applications and select combined heat and power systems, but this carve-out is neither cost-effective nor in the public interest. While we agree that electrostatic precipitators (ESP) are best available control technology for control of particulate matter from thermal combustion units, ESPs have extremely high capital costs. Moreover, a long and extensive scientific debate has addressed whether and why biomass (and other biogenic feedstocks) should not be categorically defined as a fuel with a zero carbon emission factor. There are lower cost ways to provide low-carbon heat to consumers with less threat to public health, consumer costs, and the environment.

Thank you for your leadership, and for your consideration. We look forward to working with you, your colleagues, and your staff on climate legislation over the coming months.

Appreciatively,

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whitepaper-09.27.23.pdf. <https://formenergy.com/wp-content/uploads/2023/09/Form-ISO-New-England-whitepaper-09.27.23.pdf>

⁷ Mettetal, Liz, Andrew DeBenedictis, Nate Grady, Li Ruoshui, Pedro De Vasconcellos Oporto, Sophia Greszczuk, Charlie Gulian, and Kush Patel. "Charging Forward: Energy Storage in a Net Zero Commonwealth." Energy and Environmental Economics for Massachusetts Department of Energy Resources (DOER) and Massachusetts Clean Energy Center, December 2023. <https://www.masscec.com/sites/default/files/documents/Charging%20Forward%20%282023%29.pdf>.