Mass Audubon

November 11, 2025

Secretary Rebecca Tepper
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, 9th Floor
Boston, MA 02114

Chairman Jeremy McDiarmid
Department of Public Utilities
One South Station
Boston, MA 02111

Submitted via email:
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Re: Docket #s EFSB 25-10, DOER regulations 225 CMR 29.00, and guidance documents including Draft Guidance on Site Suitability Assessments for Clean Energy Infrastructure and Cumulative Impact Assessment (CIA)

Dear Secretary Tepper and Chair McDiarmid:

Mass Audubon appreciates the opportunity to offer comments on the Energy Facilities Siting Board (EFSB) draft regulations 980 CMR 1.00 – 17.00 and associated guidance documents. This letter also supplements comments previously submitted on the Department of Energy Resources (DOER) draft regulations at 225 CMR 29.00 and associated guidelines for permitting small clean energy infrastructure facilities. These comments focus primarily on the Site Suitability Guidance and how it is applied in both the DOER and the EFSB permitting regulations. Please also note the comment at the end of this letter regarding 980 CMR 14.00 on de novo review of small clean energy projects that receive approval in a local consolidated permit but are nonetheless appealed by the applicant to the EFSB.

The proposed regulations and guidance documents represent a critical component of the ongoing reform of the existing siting and permitting system for clean energy infrastructure (CEI). Mass Audubon strongly endorsed the state's goals for energy siting and permitting reform, i.e., to quickly and efficiently scale up the generation and delivery of electric power that is clean, affordable, and reliable. Critically, we believe these goals be achieved while also preserving for

current and future generations the irreplaceable benefits to climate, biodiversity, public health, local food production, and equitable access to nature that result from protecting and restoring the Commonwealth's natural and working lands. Moreoever, we believe that this reform effort is most likely to succeed and endure when assessments of social and environmental impacts of siting projects are timely, rigorous, and transparent; and when communities are engaged early and often with meaningful opportunities to participate in decisions about clean energy investments sited within their borders.

We're proud to see that the draft Site Suitability Guidance acknowledges and gives standing to the natural resource, ecosystem, and social values and factors which should be evaluated in the permitting of specific sites for new or upgraded energy infrastructure. We also appreciate the Cumulative Impact Analysis (CIA) process for evaluating project impacts in communities which have experienced historical environmental and social burdens. However, these two types of assessment – Site Suitability and CIA – address different categories of impacts from CEI development and are not mutually exclusive. **All projects should be required to undergo Site Suitability Assessment and associated avoidance, minimization, and mitigation of environmental impacts, regardless of whether or not a CIA is also required.**

We understand that reconciling the many goals of the new approach to siting and permitting energy is a tall order given recent political and economic changes which have occurred since the Climate Law of 2024. The Commonwealth and other New England states have an urgent imperative to build new electric generation capacity and necessary grid upgrades and enhancements needed to reliably deliver affordable power to customers and businesses. Solar will be a preferred clean energy generation technology for the foreseeable future, and when paired with storage, solar has proven to reduce the very high costs and emissions associated with meeting peak electric demand. As such, we strongly support legislative and regulatory proposals to reduce the 'soft costs' of permitting for residential rooftop and other small distributed solar systems using best available technologies (e.g. US DOE's SolarAPP+). We also encourage the Commonwealth to set a goal of 15 GW of small distributed solar, which both our and DOER's recent analyses of the technical solar potential demonstrate are achievable. [1]

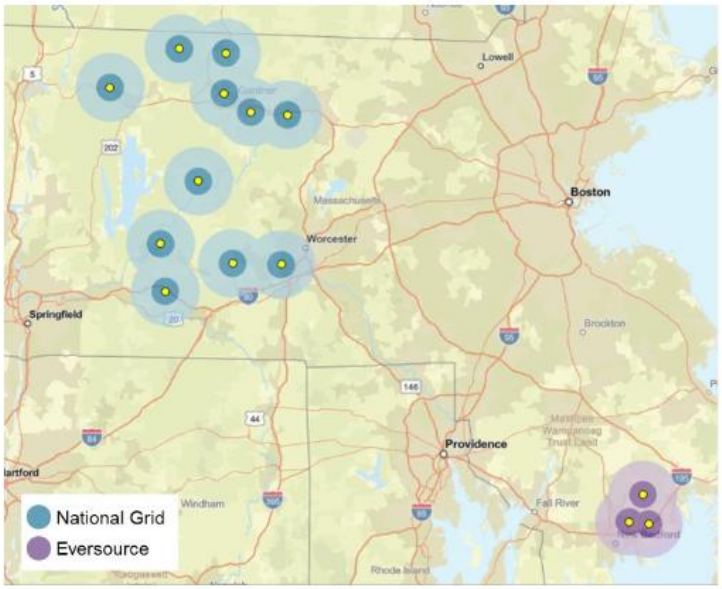
In spite of many positive individual elements of the draft regulations and guidance documents, however, **we find the combined package has serious shortcomings, and have doubts whether it provides financial incentives that are strong enough to change status quo pattern of siting choices away from natural lands of highest conservation value, which often have the lowest leasing costs, and towards lands with lower impacts on natural resources, which are often closer to where electric load demand is highest.**

Projects to upgrade, expand, or add new transmission and distribution (T&D) capacity are currently being decided by collaboration between utilities and energy developers during the

[1] Available at: www.massaudubon.org/growingsolar
www.mass.gov/info-details/technical-potential-of-solar-study

state's 'provisional planning process.' This process, intended to address the interconnection backlog stalling the deployment of additional distributed energy resource (DER) projects, is directing utility investments in T&D upgrades and expansions to locations where energy developers have made agreements with private landowners to host projects. And because the process of proposing T&D upgrades for approval by DPU happens in advance of the siting and permitting process, this means that siting choices are not being influenced by the proposed siting regulations, site suitability criteria, or requirements to minimize and mitigate site impacts. **Figure 1** below shows results of our preliminary analysis of 14 substation upgrades and expansions already approved by DPU in the provisional planning process. Our mapping finds that up to 26,000 acres of lands with relatively high conservation value within 2 miles of these substations, which is the most cost-effective distance for interconnection, are potentially at risk of development for ground-mount solar projects. Another roughly 119,000 acres of high conservation value lands are located within 5 miles of these interconnection points, indicating that a subset of these lands will also be attractive for development. However, under the proposed siting and permitting framework and guidance, the utilities are exempt from mitigation requirements that create some financial disincentive for enabling development of DERs on high conservation value lands.

Figure 1. Potential Impacts to Natural and Working Lands from Approved Provisional Planning Projects



Acres Feasible for Ground-Mount Solar within Approved Substation CIP Buffers

Scenario	2 mile	5 mile
Technical Potential	27,430	127,330
Protecting Nature	1,753	8,008

Source: Mass Audubon and Harvard Forest analysis (2025). Note: Technical potential refers to land parcels identified as viable for hosting ground-mount solar projects. 'Protecting Nature' acres are sites with low impacts on natural resource and ecosystem functionality. High conservation value acres are the difference between acres in the technical potential and Protecting Nature scenario.

Ultimately, the state needs to change the overall approach to grid expansion by formally linking up and integrating siting and permitting with long-term system planning – the latter involves approving a set of siting choices for T&D investments which in turn determine outcomes on

natural and working lands located close enough to these grid infrastructure projects to cost-effectively interconnect. Unless proposals for major T&D investments are evaluated for their impacts to project sites and nearby surrounding lands contemporaneously, site suitability requirements applied after the DPU approves projects are not likely to reduce impacts to natural resources and ecosystem services.

Overall Approach -- Avoid, Minimize, Mitigate: The proposed Site Suitability Guidance includes criteria on climate resilience, carbon storage, biodiversity, and agricultural resources as well as social and community burdens that identify and rank sites in a consistent and quantifiable way. However, the use of these scores should be clarified within the framework of avoiding, minimizing, and mitigating impacts.[2] The guidance only suggests that the scores be used in relation to minimization and mitigation. Both the guidance and the regulations should more clearly identify how high scores will be used to avoid highly significant impacts through selection of alternative sites or routes that avoid the highest conservation value resources. Also, the proposed use of CIA by the EFSB for projects in Burdened Areas is not appropriate because the types of impacts associated with Site Suitability are very different than the CIA factors. Both are important and not mutually exclusive.

Location Near a CIP Not an Appropriate Criterion: As described above, a key gap in the overall framework of this new regulatory system is the relationship between T&D system upgrades and the choices for location of new solar and battery systems. The provisional planning process for the utilities' Capital Investment Projects (CIPs) overseen by the DPU does not include site suitability screening. The impacts of those CIPs extend well beyond the siting of the T&D infrastructure, as these provide capacity for interconnections, thereby incentivizing the development of solar and battery systems nearby. It is inappropriate to include in the Site Suitability Guidance subtraction of score impact points for projects located close to the CIPs. **We strongly recommend that the score modifier for "Development Potential" be deleted from the final guidance.**

Promote Distributed Projects within Developed Areas: The new system should be designed to promote and support siting of distributed energy systems within developed and previously altered lands as much as possible. This has system efficiency and reliability benefits as well as minimization of impacts to land and water resources. Projects that are located on a Brownfield, Landfill, or Previously Developed Lands should automatically receive an overall low score except

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[2]

For small clean energy projects, the 2024 Climate Act requires: "…a mitigation hierarchy to be applied during the permitting process to avoid or minimize or, if impacts cannot be avoided or minimized, mitigate negative impacts of siting on the environment, people and the commonwealth's goals and objectives for climate mitigation, resilience, biodiversity and protection of natural and working lands, to the extent practicable;"

For large clean energy projects, the Climate Act's language is slightly different: "…if impacts cannot be avoided or minimized, mitigate impacts of siting on the environment, people and goals and objectives of the commonwealth for climate mitigation, carbon storage and sequestration, resilience, biodiversity and protection of natural and working lands to the extent practicable;"

for the need to evaluate potential climate resilience concerns such as location in a floodplain. We also support the exemption from this analysis for solar facilities less than 25kW or behind-the-meter systems under 250kW.

Avoid Protected Open Space: Conversely, protected open space should be avoided to the maximum extent possible except for small projects on developed portions of those lands such as parking lots and rooftops. The guidance proposes automatic high ranking for projects within protected open space. Those provisions need to be strengthened to align with requirements of Article 97 of the State Constitution and the Public Lands Protection Act. Mass Audubon opposes any waiver of site suitability review for T&D projects crossing protected open space.

General Comments on Site Suitability Guidance

The proposed criteria are based in science, with readily available mapping tools available for conducting the assessment. Wetlands and water resources related considerations are listed under "Other Considerations" and instead should be primary criteria, similar to the SMART regulations where solar projects are ineligible for siting in wetlands.

The guidance utilizes a similar scoring process to SMART but the two systems differ in significant ways. The final Site Suitability Guidance should align more closely with the SMART criteria. The SMART regulations also provide alternative compliance for mitigation through the small clean energy siting and permitting regulations. This is only workable if the permitting regulations and Site Suitability Guidance are equally or more rigorous than the SMART provisions.

All small and large clean energy facilities, whether permitted locally or by the EFSB, should be subject to rigorous, quantifiable site suitability assessment that avoids, minimizes and mitigates impacts to high conservation value resources. The draft guidance includes several broad exemptions from use of the site suitability assessment, including large and small T&D projects not in a new public right-of-way and large or small facilities that are required to perform a CIA under the EFSB regulations. The draft EFSB regulations at 980 CMR 15.00 propose exempting projects that undergo a CIA from the site suitability assessment. The site suitability assessment and CIA address different types of impacts, all of which are important. These two analyses should not be mutually exclusive.

The guidance document should more clearly identify how the site suitability scores will be applied, particularly individual and cumulative score thresholds for determining when an impact is so excessive that alternative sites should be pursued instead. The guidance should also recognize that some criteria are often likely to be exclusive, e.g. actively cropped farmlands are generally not also high carbon forest (though some parcels will have both).

Greater clarity is also needed regarding the use of the scores in minimization and mitigation. Both in this guidance and the draft Guideline on Minimization and Mitigation, more clarity and

consistency is needed in applying the avoid, minimize, and mitigate framework. The examples given are not particularly helpful or relevant, e.g. erosion and sedimentation controls are mentioned as a minimization measure but that is more of a standard best practice condition for all projects, and planting trees is not an acceptable mitigation method for removal of mature forest because it does not fully offset the loss of function. A formula should be provided for compensatory mitigation fees and a trust fund, similar to the SMART mitigation requirements.

Mitigation payments funding off-site land conservation or restoration projects can be a useful tool. The new permitting systems need to include clear mechanisms for placement of mitigation payments into dedicated funds that will be utilized to compensate for the types of unavoidable impacts incurred. Payments to local communities pose administrative, scaling, and temporal challenges that may be better addressed through state funds managed to address regional impacts. At the same time, we recognize the need to minimize and compensate for any significant impacts to locally important resources.

Specific Comments

The following comments are on specific sections of the draft guidance.

Purpose and Applicability

The draft guidance indicates it is intended to be used for determining site suitability both for small and large projects under the local consolidated permitting pursuant to the DOER regulations and permits issued by the EFSB. The draft EFSB regulations at 980 CMR 15.00 proposed that the Site Suitability criteria and assessment will not apply to projects in burdened areas where a CIA is required. Regardless of the size or type of facility, suitability assessment to avoid, minimize, and mitigate impacts to high value natural resources is essential to achieve the intent of the 2024 Climate Act.

SMART v. Site Suitability Guidance

Both the new SMART regulations and this Site Suitability Guidance establish criteria and a point system to assess site suitability. The details are different. While SMART applies only to a limited subset of clean energy facilities, the environmental sensitivity factors on the ground across the natural and working lands are the same. The methodologies should align as much as possible, not only to provide fair and even protection of natural resources but also to avoid duplicative yet different methodologies for project proponents and agencies to evaluate projects.

SMART is clear and includes measurable standards for avoidance through ineligibility and for calculating mitigation payments. The Site Suitability Guidance, the Minimization and Mitigation draft Guideline, and the associated DOER regulations are less definitive, lacking clear thresholds for determining when a site is so unsuitable that a project should not be located there.

The SMART regulations deem sites within wetlands generally ineligible, and the same should apply to permitting for solar, battery, and substation projects. Exceptions may be needed for accessways and for T&D projects where no alternative exists. Other local, state, and federal permitting requirements for wetlands protection should be fully upheld.

Mitigation requirements are also not clearly and consistently defined. Moreover, the SMART regulations at 225 CMR 28.09(6) allow projects to avoid paying mitigation if alternative compliance is provided through the local consolidated permitting process under 225 CMR 29.00. This is unacceptable as drafted. **The local permitting process should include clear criteria for denying projects based on site unsuitability and clear, measurable mitigation similar to the formula in the SMART regulations.**

The SMART program is a financial incentive program funded with public dollars provided by ratepayers. Mitigation for impacts to highly sensitive sites under that program should not be substituted for less rigorous potential mitigation.

Definitions

Applicable Facility: As noted above, it is not appropriate to exempt projects in Burdened Areas subject to a CIA from site suitability assessment. The criteria and types of impacts involved are different for these two types of assessment. On the other hand, we suggest broadening the exemption from detailed site suitability assessment for small solar and battery systems located entirely on Previously Developed Land with no impacts to wetlands, floodplains, or water supply areas.

Previously Developed Land: Golf courses should be removed from this definition. They typically have intact soils throughout (except for parking lots and clubhouses), and usually have significant natural features interspersed between the fairways (wetlands, wooded patches). While these may or may not fall within any of the high conservation value criteria, that should be determined by the mapping tools and a site-specific assessment, not a broad exemption.

Public Right of Way (ROW): This definition is important because new T&D infrastructure that is not located within a public ROW will not be subject to these requirements. The proposed definition includes ROWs that are on public property even if public access is not permitted. We suggest broadening this to include ROWs owned or controlled by a Public Service Corporation subject to the clean energy siting regulations. Since the 2024 Climate Act amended the statutory definition of Public Services Corporation to include any "entity that owns or operates electricity, storage, transmission or distribution facilities," rights-of-way for T&D should be considered a public facility for purposes of permitting and mitigation even if they are not open to public access.

Route and Site Scoring: This is conducted by the EFSB on non-cumulative environmental and social indicators to rank alternatives and is stated to be distinct from the site suitability

assessment although both will be considered in a final permit decision. Assessment of potential routes for T&D facilities should undergo a rigorous alternatives analysis using the same and possibly additional criteria as those in the Site Suitability Guidance. It is imperative that selection of routes for new or expanded T&D infrastructure avoid, minimize and mitigate impacts to land and water resources to the maximum extent possible. Cost is a factor but must not be the only determinative factor in alternatives analysis.

Scoring and Third-Party Review

Both the local consolidated permitting and EFSB permitting processes should include transparency in the scoring and opportunities for the public to comment before a score is finalized.

Criteria

As noted above, the criteria and methodology for calculating required mitigation should be aligned as much as possible with the SMART provisions, and mitigation requirements under the permitting system should be equal to or greater than the SMART voluntary incentive program.

D. Score Modifiers

ii. Development Potential

A waiver from site suitability assessment is proposed for T&D crossing of protected open space. This is inappropriate and contrary to Article 97 of the State Constitution.

Solar canopies and Previously Developed Lands should be prioritized, perhaps as a first screening step and allowing a waiver from the rest of the analysis and mitigation.

As stated earlier, we also oppose subtracting points/giving preference to sites close to CIPs – project developers already have very strong economic incentives, in the form of high interconnection costs, to locate as close as possible to interconnection points. However, the utilities' choices with respect to where to expand or build new interconnection capacity happen in advance of of the siting and permitting process and thus are not shaped or influenced by the site suitability assessment or mitigation requirements.

iii. Social and Environmental Benefits

This section proposes to subtract up to 5 points from the overall score, up to one point each across a list of items. This lists items that are framed in general conceptual terms that are not tied to any measurable outcomes such as "improves local habitat" or "creates expanded recreational opportunities." This section of the proposed methodology is far too subjective and open-ended. It should be deleted or developed into a much more well-defined methodology with consistent, measurable outcomes.

E. Other Considerations of Note

Drinking water supply and wetlands should be within the Site Suitability assessment criteria, not a mere add-on as "other" deferring to other regulatory programs. These are among the most critical resources that should receive the highest level of scrutiny for avoidance, minimization, and mitigation. Wetlands are ineligible to participate in the SMART program. Although there are likely some instances where wetlands will need to be crossed, e.g. for linear T&D projects, these resources should be deemed generally unsuitable for solar, battery, or substation facility development.

Potential impacts on private wells should also be part of the project site assessment.

V. Use of Methodology for Permitting

The mapping tools are useful for prescreening and for preliminary drafting of site suitability and evaluation of potential alternative sites and routes. Field inspection and validation is also needed for some resources. In particular, **any wetlands should be required to be verified by the local conservation commission** through an Order of Resource Area Delineation or, if none, a Negative Determination of Applicability. This documentation should be required prior to completion of the Site Suitability Assessment and any permit applications. GIS maps from DEP or other sources are not of sufficient accuracy for use in evaluating projects for permitting purposes.

Comment on EFSB Regulations 980 CMR 14.00 - Appeals of Local Consolidated Permits – De Novo Review

The 2024 Climate Act and the draft DOER regulations at 225 CMR 29.10 allow applicants and entities specifically affected by small clean energy projects to appeal to the EFSB for de novo review. Nonetheless, the EFSB regulations at 980 CMR 14.00 should ensure that this de novo review fully considers information from the detailed review that the municipality has already undertaken. In particular, the EFSB should consider any permit conditions included in a local consolidated permit as comments from the municipality during the de novo review process. Where projects have received approval through the local process, specific local conditions should not be automatically set aside simply because the EFSB process is de novo. Those conditions should be taken into account during the de novo review and carried over into the EFSB decision to the maximum extent the EFSB finds them reasonable and practicable. We are concerned that the EFSB de novo review not become an end run around the local consolidated permitting process, especially where that process results in an approval.

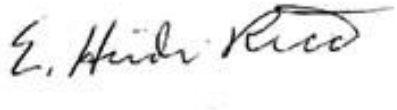
Conclusion

We sincerely appreciate the opportunity to weigh in on the proposed regulations and guidance documents that will govern the state's new approach to clean energy siting and permitting. Before these regulations are finalized, we hope to see improvements to the site suitability guidelines, mitigation requirements, and the way they will be applied as defined by both DOER and EFSB regulations. Over the longer term, we believe that system planning for T&D capacity and siting and permitting processes should be integrated and happen concurrently, rather than sequentially.

Please do not hesitate to reach out with any questions regarding these comments.

Respectfully submitted,

Michelle Manion, Vice-President of Policy and Advocacy



Heidi Ricci, Director of Policy and Advocacy

Mass Audubon

October 17, 2025

Mr. Rick Collins
Director, Division of Clean Energy Siting and Permitting
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100 Cambridge Street, 9th Floor
Boston, MA 02114

Via Email: DOER.Siting.Permitting@mass.gov

Re: S&P Follow-On Rulemaking Comments

Dear Mr. Collins and DOER Siting and Permitting Team:

Mass Audubon appreciates the opportunity to offer comments on DOER's proposed regulations for small clean energy infrastructure (CEI) facility siting and permitting (225 CMR 29.00).

We sincerely appreciate that real progress is being made towards better alignment of the state's ambitious goals to accelerate clean energy and storage deployment – which are mission critical for rapidly replacing fossil fuels with low-carbon electricity – with the state's broad suite of goals to protect and restore the invaluable and irreplaceable services provided by natural and working lands. These services include climate resilience, carbon removal, biodiversity and wildlife habitat, provision of clean drinking water, local food production, and recreation, among others, and are expressed with specificity across various state plans and commitments: the Clean Energy and Climate Plan for 2030 and 2050, a commitment to protect 30 percent of state lands and waters by 2030 (and 40 percent by 2050), Governor Healey's groundbreaking plan to protect and restore biodiversity, and the ResilientMass Plan.

As our 2023 *Growing Solar, Protecting Nature* analysis found, repeating the last decade's pattern of siting clean energy projects – i.e., utilities, energy developers, and private landowners choosing sites with little or no consideration of outcomes to natural and working lands, and often lacking meaningful community engagement, input, or review – would result in significant additional land use change, loss of critical ecosystem services, and further erosion of the public's trust and acceptance of these projects.[1] Further conversion of natural lands at that pace would put the Commonwealth's goals for carbon removal, wildlife habitat and biodiversity, local food

[1]Manion, M., Jonathan R. Thompson, Katie Pickrell, Lucy Lee, Heidi Ricci, Jeff Collins, Joshua Plisinski, Ryan Jones, Gabe Kwok, Drew Powell, & Will Rhatigan (2023). *Growing Solar, Protecting Nature.* Mass Audubon and Harvard Forest. DOI:10.5281/zenodo.8403839 Available at: https://storymaps.arcgis.com/stories/932be293f1af43c8b776fdad24d9f071

production, clean water, and restoration to increase resilience to climate impacts completely out of reach. Moreover, under status quo laws and regulations, communities have little ability to review and shape CEI projects and therefore often litigate against them, increasing the time and expense for approval of much-needed new clean generation capacity.

These trends have not set a tenable path to cleaning our electricity grid, meeting our climate and biodiversity goals, or addressing community concerns about equitable impacts. We applaud the leadership demonstrated by Governor Healey – in establishing the *Commission on Clean Energy Infrastructure Siting and Permitting* (CEISP) in 2023, she brought together key stakeholders with the charge of finding workable solutions to eliminate redundancies and accelerate permitting timelines, improve the balance between clean energy deployment and state goals to maintain natural and working land values, and address needs of communities to play a meaningful role in project siting.

Mass Audubon was proud to serve on the CEISP alongside other statewide environmental organizations, utilities, energy developers, municipalities, and labor representatives. We and other CEISP members endorsed a set of recommendations for consideration by the legislature that, if enacted effectively in statute and regulation, could both accelerate clean energy deployment while also fundamentally shifting siting decisions to better protect natural resource and ecosystem values while adding an explicit role for meaningful community engagement and input.

We also endorsed the general approach set forth in *An Act Promoting a Clean Energy Grid, Advancing Equity, and Protecting Ratepayers* (the "Climate Act," passed in Nov. 2024). For the first time, the Climate Act required promulgation of regulations such that both large and small clean energy infrastructure projects must avoid, minimize, and mitigate "negative impacts of siting on the environment, people and the commonwealth's goals and objectives for climate mitigation, resilience, biodiversity and protection of natural and working lands, to the extent practicable."[2]

Reforming energy system permitting and siting decisions and outcomes is a highly ambitious endeavor. In many aspects, DOER's regulations for small clean energy infrastructure (CEI) projects are an impressive first draft of a major reform of a highly complex system that must meet multiple public interest goals: delivering clean, reliable, and affordable electricity to consumers; protecting natural and working lands; and providing communities with an explicit and meaningful role in decision-making to permit and host projects.

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[2] For small clean energy projects, the 2024 Climate Act requires: "…a mitigation hierarchy to be applied during the permitting process to avoid or minimize or, if impacts cannot be avoided or minimized, mitigate negative impacts of siting on the environment, people and the commonwealth's goals and objectives for climate mitigation, resilience, biodiversity and protection of natural and working lands, to the extent practicable;"

For large clean energy projects, the Climate Act's language is slightly different: "…if impacts cannot be avoided or minimized, mitigate impacts of siting on the environment, people and goals and objectives of the commonwealth for climate mitigation, carbon storage and sequestration, resilience, biodiversity and protection of natural and working lands to the extent practicable;"

We would also like to acknowledge that these regulations have been drafted in a very short time period to meet aggressive statutory deadlines. We especially commend the dedication and hard work by staff from DOER, EEA, DPU/EFSB, and other state agencies who have collected multiple rounds of stakeholder feedback on earlier concepts to develop draft regulations and associated guidelines under intense time pressure.

In particular, we applaud the inclusion of the following improvements to the status quo framework for siting and permitting of small and large clean energy projects:

- Potential for faster, more cost-effective clean energy deployment by consolidating and coordinating local review under a common set of standards from DOER.
- New requirements for meaningful and early community engagement (i.e., well in advance of filings by developers).
- New science-based methods for objective evaluation of site suitability, based on critical environmental values including terrestrial carbon storage and sequestration, protections for biodiversity, wildlife habitat, and ecosystem integrity, resilience to climate change, and agricultural productivity.
- New requirements to minimize and mitigate impacts on natural and working lands, using best statewide datasets describing natural resource services listed above.
- Creative use of *flexible guidance* to complement regulations, which can be updated accordingly as technology, economic conditions, and best management practices change, and as new or updated data and science become available.
- Requirements for validation by qualified third parties, e.g. for site scoring evaluations.
- Assurance for communities that compliance with these regulations will be consistent with the solar and battery zoning exemption at MGL Ch.40A S.3, improving certainty and reducing litigation risks for all concerned.

Despite these notable improvements, Mass Audubon has major concerns that **the proposed DOER regulations for small CEI projects fall short of the mandate set forth in the 2024 Climate Act to *avoid, minimize, and mitigate impacts* on natural and working lands, and that municipalities are assigned a larger role in mitigation and implementation than is feasible or advisable.** DOER's regulations should work in close concert with EFSB regulations for large CEIF and site suitability guidance to set clear, strong, and consistent incentives for utilities and developers to shift siting choices for new project locations. Specifically, these regulations should shift clean energy development towards sites with lower impacts on natural and working lands, and set strong enough disincentives – through the clear statutory mandate to avoid, minimize, and mitigate impacts – to prevent further development on the most ecologically valuable lands. **The fact that these regulations exempt key small transmission and distribution projects from site suitability requirements means that not only sites for those projects but natural lands surrounding them are at risk of unchecked conversion and losses.**

Moreover, we believe that the Climate Act of 2024 clearly assigns responsibility to state agencies, and not to municipalities, for establishing and implementing the mitigation

hierarchy. We believe it is much more appropriate for the state to establish a system for compensatory mitigation, including fee collection and distribution towards protection and restoration of state-level priority lands. In our view, a town-led approach to compensatory mitigation could result in highly inconsistent outcomes, clearly incentivizes utilities and developers to target smaller under-resourced towns, and would likely fall short of adequately compensating the public for losses of public goods. Finally, the requirement for towns to establish compensatory mitigation programs and apply and collect mitigation fees is simply beyond the capacity and capabilities of many rural towns in particular.

Mass Audubon strongly recommends additional changes to these and EFSB regulations in order to close loopholes and strengthen incentives for both utilities and energy developers to avoid and minimize siting on our highest-value natural and working lands. Otherwise, it is entirely possible that impacts of future CEI projects on natural systems and communities will not materially improve upon recent trends.

High-level Recommendations

In this section we provide our recommendations for high-level changes to regulations for small CEI project siting and permitting. We believe these are highly consistent with statutory language in the 2024 Climate Act and the spirit of recommendations from the CEISP.

Note that some of our comments touch on aspects of the EFSB's proposed regulations for siting and permitting of large CEI facilities. Given that small and large CEI projects are closely interconnected within a single electricity grid system, it is difficult to parse out in a single set of comments how the potential impacts of these projects on nature and communities should be addressed according solely to differences in project size and agency jurisdiction and oversight.

We will submit separate comments on both EFSB's draft regulations for large CEI projects and EEA's guidance documents on site suitability and minimization and mitigation. However, we believe that these regulations must work in concert by setting consistent incentives (and disincentives) to utilities and energy developers to limit land use change and community impacts to acceptable levels for all types of projects – clean generation, energy storage, and transmission and distribution, regardless of whether they are 'small' or 'large'.

- **A requirement for 'avoid' should be added to the regulatory requirements.** Our most valuable natural and working lands provide our communities and residents with services – removal of carbon emissions, local food production, critical habitat for wildlife, filtering drinking water – that are simply irreplaceable. To be consistent with statutory requirements, the state's proposed regulations and site suitability scores for small CEI projects should clearly establish that some areas should be avoided and completely off-limits to new CEI project development (note: we believe other forms of development – not just energy - should also be required to avoid highest value natural and working lands).

- **Small transmission and distribution projects should not be categorically exempt from site suitability requirements. Utilities should also be required to pay compensatory mitigation for grid enhancement projects which enable nearby siting of ground-mount solar or other generation and storage projects that cause significant losses to natural and working lands.** We absolutely need to enhance the electric grid's capacity to deliver more clean, affordable energy. In the proposed framework, however, electric utilities' choices of sites for new or expanded electricity transmission and distribution projects are currently exempt from site suitability guidance and requirements to avoid, minimize, or mitigate impacts.

  These regulations, as well as those applying to large CEI projects, should hold utilities – not just energy developers – accountable for avoiding, minimizing, and mitigating the impacts not only from their transmission and distribution project sites, but also for impacts to nearby natural and working lands where generation and storage projects must locate to secure cost-effective interconnections. Our analysis of 14 National Grid and Eversource substation expansion projects (known as Capital Improvement Projects, or CIPs) approved under the DPU's provisional planning process show that nearly 25,000 acres of high-value natural and working lands which are technically viable for ground-mount solar development are within 2 miles of one of these CIPs, and thus are at risk of conversion and loss of ecosystem services.[3] Developers of ground-mount solar projects have few degrees of freedom in choosing sites – they must locate as close to CIPs as is feasible. Since utilities make decisions about CIP sites (and associated expansion of hosting capacity), their CEI projects should be subject to the mitigation hierarchy and utilities should be required to pay at least half of any compensatory mitigation fees based on site suitability scores for enabled projects, with energy developers paying the other half. Moreover, these fees are operating expenses and thus should not be added to the utilities' rate base, nor should they be passed on to ratepayers.

- **Capacity demands on many municipalities for siting and permitting small CEI projects -- especially in applying mitigation requirements -- are too high.** We support

[3] D.P.U. 23-09 – Massachusetts Electric Company and Nantucket Electric Company, each d/b/a, *National Grid Barre-Athol Capital Investment Project Proposal* (Massachusetts Department of Public Utilities, January, 31, 2023);
D.P.U. 23-06 – Massachusetts Electric Company and Nantucket Electric Company, each d/b/a, *National Grid Gardner-Winchendon Capital Investment Project Proposa*l (Massachusetts Department of Public Utilities, January, 12, 2023);

D.P.U. 23-12 – Massachusetts Electric Company and Nantucket Electric Company, each d/b/a, *National Grid Spencer-Rutland Capital Investment Project Proposal* (Massachusetts Department of Public Utilities, February, 1, 2023);

NSTAR Electric Company d/b/a Eversource Energy-D.P.U. 22-47, *Marion-Fairhaven Capital Investment Project Proposal* (Massachusetts Department of Public Utilities, April 15, 2022).

the effort to provide an explicit role for municipalities in decisions to site and permit smaller CEI projects located in their communities. However, many of the rural and under-resourced towns where many of the projects are proposed lack sufficient capacity and expertise to establish a new mitigation program, collect compensatory mitigation fees, or implement other aspects of this program. Moreover, we think a town-led approach to compensatory mitigation of impacts to the state's common trust could result in highly inconsistent outcomes, incentivize utilities and developers to deliberately target smaller, under-resourced towns, and could fall short in adequate compensation of Massachusetts' citizens for impacts to irreplaceable state-level public goods. We are also concerned about the overall administrative burden for cities and towns, which increases the possibility of constructive project approvals. We recommend that EEA take on the role of establishing a new compensatory mitigation program, and a statewide trust fund (or leverage an existing trust fund) to deploy these funds for protection and restoration of priority lands.

- **Need for land use change look-back provisions**: Site suitability project evaluation should include a multi-year (e.g. 5-year) look-back period for forest carbon, BioMap habitat, the Index of Ecological Integrity, and other criteria to ensure there has not been manipulation of the land to affect the site suitability scoring. This avoids the possibility of a perverse incentive to remove trees or degrade habitat in order to score more favorably under site suitability.

- **Program Tracking and Adjustment**. Performance tracking and reporting of small CEI projects should be required and include indicators and metrics describing new environmental criteria, based on the results of a periodic assessment, to ensure they are functioning as intended.

Specific Comments

Below we provide comments on and recommendations for specific elements within the regulations for small CEI projects (225 CMR 29.00).

29.02 Definitions

- **Add definition for "avoid"** – The 2024 Climate Act's statutory language clearly states that the full mitigation hierarchy requires developers to 'avoid, minimize, and mitigate impacts,' so *avoid* should be added to regulations and definitions governing small CEI projects. Suggested language: "The process, as part of siting and permitting, of not including a location as part of any evaluation of siting a Clean Energy Infrastructure Facility due to impacts from the development, maintenance, or operation of that facility."

- **Key Stakeholders** – It is not clear why the regulations establish a one-mile radius around a small CEI project as a geographic limitation for defining key stakeholders. These projects can have impacts on statewide public goods and resources such as carbon

removal capacity which affect citizens well beyond this very narrow geography. We recommend dropping any geographic limitation in the definition of key stakeholders.

- **Definition of Local Government Representative** – This definition should be clarified to indicate that the representative is on a local board or department with authority to issue permitting decisions.

29.06 Public Health, Safety and Environmental Standards

- Criteria listed should also include wetland resources and Priority Habitat used to implement the MA Endangered Species Act, which are regulated under current Massachusetts statutes.

29.07: Application of Site Suitability Guidance

- The minimization and mitigation measures do not clearly identify whether/when a project can be denied due to high unsuitability.
- Provisions for Compensatory Environmental Mitigation rely on the *Minimization and Mitigation Measures Guideline*, which needs substantial improvements. We will provide comments on that guidance later.

(1) Exemptions:

- Small transmission and distribution projects should **not** be exempt from the application of site suitability guidance even if not in a newly established public right-of-way. The vast majority of these projects will *not* be sited in these areas, and will be located on private or leased lands.

(3) Site Suitability Report:

- The report should also include and assess measures and metrics to avoid impacts identified as part of any assessment of Criteria-specific Suitability Scores, pursuant to 225 CMR 29.07(5) through (7).

(4) Request for Score Review:

- We support independent Score Review by third-party validators and the opportunity for municipalities and key stakeholders to dispute scores.

(6) and (7) Compensatory Environmental Mitigation and Local Fees:

- Add requirement that all practicable measures to avoid/minimize impacts must be done first.
- As noted earlier, we believe the state should administer funds raised through the application of compensatory mitigation fees.

- This section needs language to establish "look-back" provisions to ensure land conditions have not changed recently, e.g. forest cutting, in an effort to game the site suitability scoring.

29.08 Pre-Filing Requirements

- **Pre-filing requirements.** We support extensive pre-filing consultation. Any wetland boundaries should be required to be approved via an Order of Resource Area Delineation (ORAD) issued by the conservation commission or a negative Determination of Applicability (DOA) certifying none, prior to application submission.

29.10 Consolidated Local Permit Application Review Process

- **Determination of complete application.** We recommend that failure to determine or issue notification of deficiency within 30 days should only result in an application's being deemed complete, not constructive approval of the project.

We also support provisions requiring prompt response to requests for additional necessary information. This will prevent delays by applicants while also ensuring reasonableness of requests to cure deficiencies.

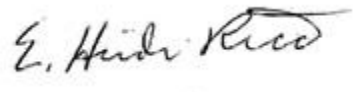
29.14 Enforcement

- **Enforcement.** Add language to clarify that local boards and departments retain the authority to enforce parts of the permit under their jurisdictions.
- **Successor in interest.** This language applies to the sale of a project, but needs additional clarification i.e., to cover a project that is leased or otherwise under different underlying fee owner.
- **Decommissioning.** In addition to allowing decommissioning provisions to be included in a local permit, the regulations should also specify what forms of surety should/may be provided.

We sincerely appreciate the opportunity to weigh in on DOER's proposed regulations for small clean energy infrastructure projects. Please do not hesitate to reach out with any questions regarding these comments.

Respectfully submitted,

Michelle Manion, Vice-President of Policy and Advocacy



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