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CAPE COD  
COMMISSION

## **Via Email**

May 28, 2025

Executive Office of Energy and Environmental Affairs, Office of Environmental Justice & Equity  
Energy Facilities Siting Board  
Department of Public Utilities  
Department of Energy Resources

Thank you for the opportunity to attend stakeholder sessions and provide comments on upcoming regulations implementing an Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers (2024 Climate Act). Cape Cod Commission staff reviewed the presentations and straw proposals and offer the following comments for consideration as the agencies begin drafting regulations.

### **Background:**

The Cape Cod Commission, as the regional planning and land use agency for Barnstable County, has authority to review and regulate Developments of Regional Impact (DRIs). The Cape Cod Commission Act (c. 716 of the Acts of 1989) and the Commission's enabling regulations include thresholds and criteria for determining when a proposed development constitutes a DRI based on the magnitude of its impact on the natural or built environment and effects across multiple municipalities within the region. The Commission has reviewed, as DRIs, numerous projects that would meet the definition for clean energy infrastructure facility contained in the 2024 Climate Act. Moving forward, the Commission will continue to participate in the permitting process for such facilities in its capacity as a Local Government pursuant to G.L. c. 25A § 21(a). The following comments are primarily geared toward ensuring the regulations and guidance developed by EFSB and other agencies provide clarity for regional and local governments which may recommend conditions for EFSB-jurisdictional projects and issue consolidated permits for small clean energy infrastructure facilities.

### **Procedural Regulations:**

As noted in the straw proposal, the proposed regulations at 980 CMR 14.00 will provide that a local government can request a de novo adjudication from the Siting Board Director on an application for a small clean energy infrastructure facility upon a showing that its resources, capacity, and staffing do not allow for review of the application in the 12 month timeframe (G.L. c. 164 § 69W; G.L. c. 25A § 21(g)). Per statute, “local government” encompasses municipalities and regional planning agencies, including the Cape Cod Commission. The draft regulations regarding de novo adjudication requests should provide additional guidance to address the following:

- How will a local government establish that it lacks sufficient resources, capacity, and staffing to review an application? The regulations should identify what types of documentation a local government needs to provide to demonstrate lack of capacity. EFSB may want to consider factors such as the relative population of the municipality, the number of full-time staff, the presence of certain professional expertise within the staff, costs associated with hiring third party reviewers, and/or the volume of applications filed or pending before a given local government.
- In cases where a small clean energy infrastructure facility requires permits from more than one local government (e.g. municipal permits as well as regional government permits), which body can request de novo adjudication? Within Barnstable County, projects may require a DRI from the Cape Cod Commission as well as municipal permits. The regulations should specify if a de novo adjudication would be properly granted as long as at least one of the local governments has established a lack of capacity, or if all local governments must do so.

DOER’s Division of Clean Energy Siting & Permitting should also address projects requiring permits from more than one local government in its regulations for small clean energy infrastructure facilities. The 2024 Climate Act requires a local government that has received a consolidated permit application to determine whether that permit application is complete within 30 days of receipt (G.L. c. 25A § (c)). The statute further provides that local government authorities, boards, commissions, offices, or other entities may conduct reviews separately and concurrently, but a single final decision must be issued by one local government (G.L. c. 25A § (d)(1)). The regulations should specify which entity within the local government is responsible for determining application completeness and issuing the final decision on the consolidated application. If a project requires a decision from a municipal government and a regional government, DOER should also specify which of those local governments is responsible for determining completeness and issuing the final decision. For context, projects that require a DRI decision from the Cape Cod Commission currently go through separate, consecutive regional and municipal permitting processes. The DRI decision must generally be obtained prior to municipal permits and is appealable pursuant to provisions of the Cape Cod Commission Act.

The straw proposal requested comments on the timeline for decision on a de novo adjudication, specifically, whether the Siting Board should be limited to the 12 month timeframe otherwise

applicable to a small clean energy infrastructure facility. This timeframe seems appropriate, consistent with the intent of the legislation, and will ensure that projects of similar scale are subject to the same decision timeline whether that decision comes from the local government(s) or the Siting Board.

### **Site Suitability:**

The EEA straw proposal methodology will include a total site suitability score and criteria-specific suitability scores for the following criteria: 1. Development potential, 2. Climate Change Resilience, 3. Carbon storage and sequestration, 4. Biodiversity, 5. Social/Enviro burdens, 6. Social/Enviro benefits, and 7. Agricultural production potential. It also proposes to designate certain ineligible areas (BioMap habitats, Art. 97 lands, top 20% forests for carbon storage statewide, wetland resource areas, State Register properties). In ineligible areas, transmission and distribution facilities could apply for a waiver if no other suitable route or location exists, while generation and storage facilities are not allowed a waiver.

The site suitability scoring will be a prefiling requirement for applications for consolidated local permits for small clean energy infrastructure facilities. DOER should provide additional guidance in its regulations for local governments on how to weigh the total and criteria-specific site suitability scores. If the designated ineligible areas are included in EEA methodology with the possibility of a waiver, DOER and/or EEA should clarify the standards for weighing a waiver request, including required findings and burdens. Local governments would benefit from more specific language on how an applicant can demonstrate that “no other suitable route or location exists”, which might include analysis and dismissal of potential alternative sites.

The straw proposal requested comments on how the site suitability guidance should be applied to unique types of infrastructure such as undersea transmission cables, as well as the proposal to use riverine and sea level rise exposure as metrics for scoring climate resiliency. For the portions of transmission infrastructure located undersea, susceptibility to sea level rise and flooding would presumably not be relevant or detract from the project’s climate resiliency score. However, undersea transmission cables must connect to land-based infrastructure and some portions of the project will almost certainly pass through a floodplain or other areas vulnerable to coastal flooding. The ResilientMass Climate Resilience Design Standards and Guidance assigns a higher score if a portion of the project is located within such areas. Provided that appropriate waterproofing and protective measures are included, the site suitability tool should not penalize transmission cable infrastructure for passing through areas vulnerable to intermittent flooding when other portions of the same infrastructure are permanently submerged. More generally, when the site suitability scoring methodology uses a geographic location as a proxy for particular risks, it should provide flexibility when the type of infrastructure or its design eliminates actual vulnerability.

Cape Cod Commission staff look forward to participating in future stakeholder sessions and providing feedback on draft regulations when available. Please do not hesitate to contact Commission staff with any questions about these comments.

Sincerely,

A handwritten signature in blue ink that reads "Kristy Senatori". The signature is written in a cursive, flowing style.

Kristy Senatori  
Executive Director