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CAPE COD
COMMISSION

Via Email

August 1, 2025

Energy Facilities Siting Board
One South Station, 3rd Floor
Boston, MA 02110

Thank you for the opportunity to provide comments on draft regulations and guidance implementing an Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers ("2024 Climate Act"; St. 2024, c. 239). Cape Cod Commission Staff attended the 7/21/2025 EFSB meeting, reviewed the draft documents and offer the following comments for consideration as the agencies prepare for formal rulemaking.

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 (St. 1989, c. 716) 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 of 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 M.G.L. c. 25A § 21(a), by recommending conditions for EFSB-jurisdictional projects and issuing consolidated permits for small clean energy infrastructure facilities ("SCEIF").

980 CMR 13.00 Consolidated Permit Regulations/ Appendix-1 Application Guidance:

The proposed regulations allow for Local Governments to submit statements of recommended permit conditions for EFSB-jurisdictional projects. Commission Staff suggest the following revision to the draft regulations:

13.06 (5) Statement of Recommended Permit Conditions. Each PEA and Local Government Representative ~~may~~^{shall} submit a Statement of Recommended Permit Conditions regarding the subject matter for which the PEA or Local Government Representative would otherwise issue a permit, regardless of intervention status.

The 2024 Climate Act provides, in relevant part, “All municipal, regional and state agencies, authorities, boards, commissions, offices or other entities that would otherwise be required to issue at least 1 permit to the facility *shall be afforded an opportunity to submit* statements of recommended permit conditions to the board relative to the respective permits that each agency, authority, board, commission, office or other entity would otherwise be responsible for issuing.” (St. 2024, c. 239, § 74, *emphasis added*). Replacing “shall” with “may” in the regulations will ensure that Local Governments have the opportunity to make recommendations, consistent with the 2024 Climate Act, while retaining the flexibility to decide when and whether to offer such recommendations.

Per the draft documents, the Uniform Baseline Health, Environmental, Safety, and Other Standards referenced at 980 CMR 13.07 and in the Application Guidance will largely incorporate existing regulatory standards established by state agencies, except for some EFSB-specific issues. The Application Guidance also notes that DOER is collaborating with EFSB to develop a consistent set of baseline standards for use by Local Governments reviewing SCEIFs. Commission Staff suggest both agencies continue to engage with municipal and regional governments while developing these baseline standards. The Cape Cod Commission provides a variety of environmental and other standards in its Regional Policy Plan, Technical Guidance, model bylaws, and other planning initiatives that may be useful to EFSB and DOER.

980 CMR 14.00 De Novo Adjudications

The proposed regulations at 980 CMR 14.00 provide guidance on how a Local Government can request a de novo adjudication from the Siting Board Director on an application for an SCEIF upon a showing that its resources, capacity, and staffing do not allow for review of the application in the 12 month timeframe (M.G.L. c. 164 § 69W; M.G.L. c. 25A § 21(g)). Commission Staff appreciate that the draft regulations adopted a 12 month decision timeframe for de novo adjudications by the Siting Board Director (980 CMR 14.05 (1)(b) 2), consistent with our comment letter on the straw proposal.

Commission Staff previously suggested that EFSB consider whether a request for 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 (in circumstances where a project requires both municipal and regional permits). The regulations, as drafted, appear to resolve this question, by providing that “The Director will proceed with a de novo adjudication upon petition of *one or more* of the following entities: ... (c) A local government ...” (980 CMR 14.02 (1)). Allowing a de novo adjudication request so long as at least one Local Government lacks

capacity will ensure that municipalities on Cape Cod and Martha's Vineyard are not treated differently than others across the Commonwealth simply because they have separate regional permitting agencies.

Cape Cod Commission Staff look forward to participating in future meetings and providing additional feedback on draft regulations. 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