The Clean Energy Industry Partners include New Leaf Energy and BlueWave Energy, members of the Massachusetts Commission on Energy Infrastructure Siting and Permitting:

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Via E-mail to sitingboard.filing@mass.gov

The Executive Office of Energy and Environmental Affairs;
The Office of Environmental Justice and Equity;
The Energy Facilities Siting Board ("EFSB");
The Department of Public Utilities ("DPU"); and
The Department of Energy Resources ("DOER")

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Re: Comments on Draft Regulations and Guidance Presented July 2025

Dear Climate Act Implementing Agencies:

The Clean Energy Industry Partners (the "Industry Partners")[1] thank the Climate Act Implementing Agencies[2] and their staff for their efforts to implement the 2024 Climate Act (An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers, St. 2024, c. 239) (the "Climate Act"). In particular, the Industry Partners appreciate the Implementing Agencies' efforts to share draft regulatory language prior to the filing of

[1] Solar Energy Industries Association (SEIA), The Alliance for Climate Transition (ACT), The Coalition for Community Solar Access, New Leaf Energy, BlueWave Energy.
[2] As used in this letter, the "Climate Act Implementing Agencies" or "Implementing Agencies" refers to: the Executive Office of Energy and Environmental Affairs ("EEA"), the Office of Environmental Justice and Equity ("OEJE"), the Energy Facilities Siting Board ("EFSB" or "Board"), the Department of Public Utilities ("DPU"), and the Department of Energy Resources ("DOER").

formal draft regulations. Providing draft regulatory language enhances the ability of stakeholders to meaningfully engage and participate.

The Industry Partners also recognize and appreciate that the Implementing Agencies have refined and improved their proposals since prior stakeholder sessions, including on issues for which regulatory language has not yet been provided. Frameworks for the yet-to-be-released site suitability assessments and cumulative impact assessments appear to incorporate stakeholder feedback and to be significantly improved.

Specifically, we appreciate the following changes, which together represent a marked improvement over the initial straw proposals and a responsiveness to stakeholder feedback:

- Removing rigid timelines from the prefiling engagement requirements. By removing the requirement to conduct 12 months of prefiling engagement, the Draft Regulations allow project proponents to operate on a schedule that works for the project and the community. This is a significant improvement that will streamline the process.
- Clarifying that clean generation and storage projects do not need to provide alternative site analyses. We greatly appreciate the recognition that clean energy generation and energy storage projects do not have other routes/sites that are alternatives in a meaningful sense and should be judged on the merits of the chosen site.
- Creating an opportunity to request a review of a site suitability score.
- Removing the outright prohibition on siting within BioMap Core Habitat. We appreciate the recognition that every project will have unique circumstances that need to be balanced. Taking into account Core Habitat impacts while not prohibiting development strikes the appropriate balance.
- Calculating mitigation scores based on percentage overlap of the project area with the relevant land category.
- Allowing a project's site suitability score to be lowered for providing environmental benefits and for positive siting characteristics including canopies, brownfields, landfills, locating on previously developed land, and locating in CIP areas. It is important to include additional areas where hosting capacity is created through the ESMP process, as well as existing CIP areas. Accounting for project benefits in the site suitability score is a significant improvement that will recognize clean energy's contributions to improving land use.
- Allowing projects that do not impact Unfairly Burdened Areas to avoid preparing a full Cumulative Impact Analysis.
- Clarifying the attendees of site visits.

The Industry Partners previously filed comments on these regulatory efforts in May and June 2025, following stakeholder sessions. The comments provided here are not intended to replace those more detailed comments. Rather, these comments are intended to highlight some areas of additional or particular concern and specific opportunities for improvement. Industry Participants first provide focused comments on the regulatory language that has been shared, and then provide comments on more general issues presented on July 21, 2025 by referencing the slides from that presentation.

The Industry Partners recognize that there will be future opportunities to engage on these issues and look forward to working with stakeholders to advance an effective implementation of the Climate Act.

COMMENTS ON SPECIFIC REGULATORY LANGUAGE

980 CMR 1.00 (Adjudicatory Procedures)

- 980 CMR 1.01(4) defines a Solar Facility as a "ground mounted" facility. It would be helpful for the regulations to clarify what "ground mounted" means in this context, for instance, whether solar facilities that are not typically considered to be ground mounted, such as a floating solar facility, for example, would be included. Further, it can be inferred but is not entirely clear that "ground mounted" would encompass canopy or dual-use agricultural solar facilities; more clarity on these points would be helpful. In addition, while a building-mounted solar-only facility may be able to apply for a building permit only (i.e. would not need to go through the newly established consolidated permit process), it would seem that building-mounted solar plus storage facilities may need to go through the full permitting process due to the inclusion of storage. Clarity on how the regulations will apply to such facilities will be important.

- 980 CMR 1.02(3) is proposed to introduce a new authority to review Projects for potential Segmentation, a concept that is not included in the Climate Act and has not been vetted with stakeholders. The proposed language constitutes a different, and potentially stricter, standard than what DOER has implemented for solar facilities in the recent SMART Emergency Regulations, which allows multiple projects on a single site in a variety of circumstances. Furthermore, it is inappropriate to review a Project based on speculation about potential future expansion. We recommend further stakeholder consultation on this topic.

- 980 CMR 1.04(3)(c) is proposed to require notice by "publication in at least two newspapers in the vicinity of the proposed facility ***and*** as otherwise ordered by the Presiding Officer" (emphasis added). Industry Partners recommend changing "and" to "or" so that the Presiding Officer has flexibility to, for instance, reduce the number of

newspapers required and instead require publication by a method that may be more effective for a particular community.

- 980 CMR 1.04(3)(f) proposes that Applicants be required to notice all property owners and residents within a certain radius depending upon the project type. It is not clear why clean generation and storage facilities have the same radius as gas storage facilities, traditional power plants, and gas compressor stations. Nor is it clear why clean generation (likely solar) and energy storage should have a larger radius than other project types. The proposed radius of one half mile for clean generation and storage facilities is much larger than the requirement such projects are typically subject to today in local permitting processes, which is often 300 feet. A requirement of 300 feet, or at most one quarter mile, would be more appropriate.

- The proposed change to 980 CMR 1.05(1)(i), which would allow non-attorneys to represent other individuals or entities in adjudicatory proceedings, should not be adopted. Allowing, for instance, an informal group of neighbors to be represented in an adjudicatory proceeding by one of its members who is not an attorney would be a significant change from current practice and would have negative consequences. This change would lead to non-attorneys representing the interests of other individuals in adjudicatory proceedings that will affect their legal rights without any of the obligations, ethical rules, or standards of conduct that apply to attorneys. This change would lead to situations where the ability of the individual to legally represent the position of other individuals is questionable, and could lead to conflict about the representative's responsibilities and obligations to other group members. For instance, what if some of the neighbors being represented have different positions or interests and what is the obligation of a group's representative to advise group members of developments? Industry Partners also urge the Implementing Agencies to consider whether this approach would result in non-attorneys engaging in the practice of law.
- Industry Partners support allowing the Board and Board staff to visit proposed sites (980 CMR 1.09(10)), however we request clarification that these visits will be coordinated in advance with the Proponent. For clean energy generation and storage facilities, the Proponent may require permission and coordination with a third-party landowner for these visits.
- The proposed 980 CMR 1.10 is out of place. Requirements for decommissioning specific to certain applications should be included in regulations governing the content of those applications, not the general adjudicatory procedures. Further, the Industry Partners urge caution in setting new decommissioning requirements by regulation that are not required by the Climate Act. Any regulations relating to decommissioning requirements should be flexible and not overly prescriptive so that the EFSB is positioned to balance relevant considerations consistent with its statutory mandates.

Decommissioning as envisioned by the proposed language may not be applicable to all facilities. We recommend further stakeholder consultation on this topic.

980 CMR 2.00 (Board Procedures)

- 980 CMR 2.02(3) is proposed to include specific mention of Applicants' efforts to engage with municipalities and stakeholders "regarding a community benefit plan or community benefit agreement." Unlike other items included in this section ("Scope of Review"), this provision does not appear to have a direct connection to specific statutory standards and, as a result, could be confusing in practice. A more general reference to compliance with required pre-filing requirements, including stakeholder outreach, would be preferable.

980 CMR 14.00 (De Novo Review)

- The definition of "Final Decision of Local Government" in 980 CMR 14.01 includes only approvals: an issued or constructively approved "Consolidated Local Permit." This term should also include **denial** of a consolidated local permit application because denial of an application is a basis for request for a de novo adjudication (see 980 CMR 14.02(2)).

- 980 CMR 14.02(3)(a) omits an important item that should be included for petitions for a de novo adjudication made by someone other than the local government or the project proponent. For any other party requesting a de novo adjudication, their petition should include a description of the manner in which they are specifically and substantially affected by the proposed project.

- 980 CMR 14.02(3)(b) is confusing with respect to the roles of a project proponent and the local government (see also the comment on Section 14.03(3) below). As drafted, Section 14.02(3)(b) gives the impression that the project proponent is responsible for demonstrating that a local government lacks the resources to conduct a review (see 980 CMR 14.02(3)(b)(5)). This cannot be right: it should net be a project proponent's responsibility to explain why the local government is declining to review its project. In fact, all of the items in 980 CMR 14.02(3)(b) would seem better suited to be the obligation of the local government requesting review. Shifting burdens relating to providing the basis for a request for review from the local government seeking that review of the project proponent is confusing and problematic.

- 980 CMR 14.03(3) is confusing and potentially problematic; including what appears to be incomplete cross-references. When a Local Government requests a de novo adjudication, it should be the Local Government's obligation to convey to the Director

the relevant materials within the set time frame, and the project proponent should have an opportunity to correct such filings as needed. In no situation should the Local Government's failure to submit a complete record result in a rejection detrimental to project proponent, as that could create perverse incentives for Local Governments to deliberately cause incomplete filings.

- 980 CMR 14.05(1)(b)(2) would provide 12 months for a de novo review requested by a Local Government. This is not consistent with G.L. c. 25A, § 21(g) and G.L. c. 164, § 69W, which require a six-month review.

- Further, the regulations should address how the timing of a decision by the Director will be affected if a local government requests a de novo adjudication after significant time has passed in a proceeding at the local level, which could occur pursuant to 980 CMR 14.02(2)(b). A reasonable place for this information would be at 980 CMR 14.05(1)(b)(2), The Director's decision should not take more than the statutory six months, but, if a substantial amount of time has already passed at the local level, the time for the Director's review should be shortened to the extent possible.

980 CMR 17.00 (Constructive Approval)

- 980 CMR 17.01(3) states that certain other regulatory sections "apply to 980 CMR 17.00." The intent of this statement is not clear but may be that those sections apply to *constructive approvals* unless inconsistent with 980 CMR 17.00 – for example, see the language used in the proposed 980 CMR 13.01(2).

- The Climate Act describes a constructive approval as including "the common conditions and requirements established by the board" (*see* G.L. c. 164, §§ 69T, 69U, 69V); it does not describe a constructive approval as including complete individual permits, as proposed for 980 CMR 17.03(1)(b). While it may be necessary to identify the required permits to identify the appropriate standard conditions, it is not necessary to include complete permits in a constructive approval. Doing so would have negative effects: it would increase the burden of preparing and finalizing a constructive approval, a process which should be as streamlined as possible to avoid distracting from the otherwise applicable review; it requires submission of draft permits and approvals as part of an application, which could be burdensome; and it significantly increases the length and complexity of approvals, which increases the chance of mistakes, disputes, or internal inconsistencies, especially when the approval is generated through an accelerated process.

- 980 CMR 17.00 does not currently address what happens if, for whatever reason, a Constructive Approval Permit is not finalized prior to the applicable deadline. Clarity on this point would reduce the potential for disputes.

- A constructive approval under the Climate Act is intended to occur automatically when the Board fails to issue a timely decision. Expanding a constructive approval to include conditions specific to a project that are subject to deliberation by the Board would likely render the resulting approval a final decision of the Board rather than a constructive approval. *See, e.g.,* Slide 49 from the July 21, 2025 Presentation.

980 CMR 13.00 (Consolidated Permit Process)

- Industry Partners appreciate the thoughtfulness and effort that went into the preparation of this early draft of 980 CMR 13.00. Industry Participants urge ongoing efforts to streamline and simplify these regulations, which may be unnecessarily prescriptive and complex in some respects.

- Due to the volume and complexity of the draft guidance released for 980 CMR 13.00, Industry Partners have not been able to fully review that information as of the date of this letter. Industry Partners urge caution in adopting overly detailed and prescriptive requirements at this time and look forward to future engagement around this draft guidance. Industry Partners recommend advancing this guidance only with substantial opportunities for input from all stakeholders and note that the guidelines do not need to be advanced on the same schedule as the regulations. For instance, detailed requirements relating to sound could have broad impact, are highly technical, and may be subject to jurisdiction of other agencies and/or being reviewed through other ongoing efforts.

- The defined terms "Consolidated Local Permit Application Form" and "Consolidated Local Permit Form" do not appear to be used anywhere but within the definitions for those terms in 980 CMR 13.01.

- The defined term "Construction" in 980 CMR 13.01 should be limited to construction of the proposed facility. It should also exclude work necessary to advance permitting and approvals, such as to obtain information necessary to include in an application to the Board.

- 980 CMR 13.02(1) would be better stated by deleting "all requirements of" or otherwise acknowledging that not all requirements in the full 980 CMR 13.00 will apply to all applications.

- 980 CMR 13.03(11)(iii) and (12)(i) should be revised. Industry Partners' understanding of the Implementing Agencies' current intent is that the "SSC" will be a standardized scoring mechanism that evaluates locations using weighted scoring for specified

variables. Given the nature of the SSC, it is not clear what would be "consistent" or "inconsistent" with such an approach unless bright-line cutoffs are established, which Industry Partners believe would be a problematic policy. Rather the SSC would provide a numerical indicator to assist in evaluations. Accordingly, these provisions should require applicants to provide and explain the SSC results rather than demonstrate "consistency" with the SSC.

- 980 CMR 13.03(11) and (12) require SSC for all applicants, and 980 CMR 13.03(13) requires a CIA for all applicants. However, the presentation on July 21, 2025 (slide 17) stated that applications required to include a CIA would not be required to also complete a SSC, and slide 77 states that a SSC would not be required if an "unfairly burdened area" is within the "specified geographical area" for a proposed project.

- There appear to be typographical errors in 980 CMR 13.03(12)(ii) that make its intent unclear. Industry Partners believe that "sited in a location that reliable, resilient and clean supply of energy" may be an inadvertent insertion.

- The intent of 980 CMR 13.03(15) is unclear. This section should be revised to clarify how it differs from consideration of environmental impacts in the previous paragraph and whether the intent is to focus on a proposed facility's impacts on climate change or climate changes' potential impacts on a proposed facility.

- Decommissioning and site restoration are likely to be project-specific. The Board should avoid overly prescriptive requirements, especially in applications. To the extent the Board determines it is necessary to include information on decommissioning and restoration in applications, Industry Partners recommend requesting "plans for decommissioning and site restoration," or "a description of intended decommissioning and restoration approaches and plans" rather than requiring a specific "decommissioning and site restoration plan." Regardless, it would be more appropriate to include regulations on this point in 980 CMR 13.00 than in 980 CMR 1.00.

- Industry Participants believe that the intent of the Climate Act was that zoning exemptions and other zoning relief needed to construct jurisdictional facilities would be included with a consolidated permit and that a separate application under G.L. c. 40A, § 3 would be unnecessary. Accordingly, 980 CMR 13.04 could be deleted and the content of 980 CMR 13.04(1)(c) could be added to the items listed in 980 CMR 13.03.

- Industry Partners are concerned that the requirements for applications described in 980 CMR 13.03 and 13.05 may, collectively, be unduly burdensome.

- Under 980 CMR 13.03 applicants would be required to provide extensive information broken into nearly 20 different categories.
- Under 980 CMR 13.05, applicants would be required to provide not only a completed application for each otherwise applicable permit, but also additional information on each applicable permitting process (including agency requirements and standard conditions) and a draft permit or approval for each applicable permit.
- In addition, under 980 CMR 13.05(2), the applicant would be required to review all of this information and identify duplicative information (which is likely to be extensive).
- As a result, this submission would appear to be ***more*** burdensome than current application processes. That is, the application envisioned would require preparation of more documentation and analysis than pursuing Board approval and each individual approval separately under current law. This is not consistent with the intent behind the Climate Act, which was intended to remove redundancies and streamline permitting processes.
- Industry Partners recommend carefully considering whether all of the identified information is truly necessary for an application. For instance, Industry Partners recommend:
    - removing requirements that applicants subjectively describe or summarize permitting programs. For instance, in 980 CMR 13.05(1)(a-c), subsection (4) should be removed as it is duplicative with subsections (1-3) and subsection (5) should not require applicants to identify Board standard conditions (which should be known to the Board) or standard conditions on a State Permit (which may not be clearly stated or defined in available materials and would be better offered by the relevant agency).
    - making inclusion of draft permits optional (here and in 980 CMR 13.06(1)(b);
    - making it explicit that individual permit applications can reference relevant sections, figures, or other content in the application prepared in compliance with 980 CMR 13.03 (e.g. the project description) rather than be completed in full in each case; and
    - striving to develop application forms that consolidate the necessary information from commonly applicable permits into a single application form.

- Industry Partners encourage 980 CMR 13.00 to be crafted to function without detailed guidance being in place. "13.00: Guidance" is referenced frequently in these draft regulations. However, the regulations themselves already provide substantial detail regarding relevant requirements. *See, e.g.*, 980 CMR 13.03. Additional detail is likely

unnecessary and could be harmful if it is overly prescriptive given the variety of projects that are likely to come before the Board. Moreover, guidance may be better developed over time as more experience with the Climate Act is accumulated.

- "Regional Permits" in 980 CMR 13.05(1)(b) are not defined.

- Industry Participants are concerned that the significance of a distinction between a PEA and PAA is unclear and that it adds to the complexity of the regulations.

- Industry Participants recommend removing 980 CMR 13.05(2) except for provisions requiring identification of conflicting permit requirements and documentation that notice was provided to permit issuing agencies and Local Governments, which could be incorporated into 980 CMR 130.05(1). The remaining provisions appear to significantly overlap with 980 CMR 13.05(1) and to create additional burden for applicants without generating additional useful information.

- 980 CMR 13.06(3) includes more detail than is necessary to include in this regulation, which could unduly restrain a Presiding Officer from crafting an effective procedural schedule on a case-by-case basis. This level of detail may be more appropriate for non-binding guidance on "typical" or "standard" schedules and timeframes. In some cases, provisions that remain might be better phrased as "may" rather than "shall." For example, it may be helpful to provide, in non-binding guidance, a typical schedule in the format of a timeline graphic.

- If detailed timelines are provided in the final regulation, 980 CMR 13.06(3)(a) is unclear as to whether a Public Hearing date shall be provided within 45 days of a Notice of Completeness, or the Public Hearing date itself shall fall within 45 days of a Notice of Completeness. We recommend the latter, in service of the expediency of the overall proceeding.

- Industry Partners see merit in the Conditions Conference process set out in 980 CMR 13.06(5-6). However, it is not clear when the "Recommendation on Conditions" would be issued or how that statement will interact with evidentiary hearings or briefing.

- Industry Partners caution that setting "Baseline Standards" under 980 CMR 13.07 could have significant consequences because of their broad applicability. Accordingly, such a significant step may be more appropriate for future regulatory action than for guidance. Stakeholder process will be critical to ensure avoidance of unintended consequences, and it will be important to avoid significant sudden or unexpected changes in permitting requirements that would have such broad effect.

- In some instances, the "Standard Conditions" referenced in 980 CMR 13.08, may conflict or be inconsistent with each other, particularly with regard to PEA standard conditions, over which the Board will not have direct control. In other instances, the Board may determine that departures from standard conditions are warranted in a specific case. Accordingly, the Board should craft this section to leave itself discretion to amend or modify standard conditions on a case-by-case basis rather than stating that it "shall" include the listed standard conditions in all cases. In general, "Standard Conditions" should, as much as possible, be restricted to conditions that will be applicable to all projects without modification. The Board will have the ability to craft specific additional conditions for a project, but the structure of the regulations make it more complicated to revise or remove standard conditions that would not or should not apply.

- It is not clear to Industry Participants why 980 CMR 13.09(1)(c), which would appear to allow some but not all parties to have undisclosed communications with the Presiding Officer in connection with completeness determination, is necessary or appropriate. The *ex parte* rules already apply only to communications regarding "the merits" and specifically exclude "scheduling and other procedural matters." 980 CMR 1.03(7). The completeness determination will be of great significance to applicants and should not be affected by communications from other parties regarding the merits to which the applicant has no ability to respond and of which the applicant may never be aware. It is also not clear what is meant by "substantive" in this context, which would make the provision difficult to implement fairly.

- It is critical that 980 CMR 13.09 specify that a determination that an application is not complete will be accompanied by an explanation of the reason for that determination. Unless the basis for a determination is provided with specificity, the Climate Act's specific inclusion of a 30-day cure period will not be effective. *See* G.L. c. 164, § 69T(f). Moreover, both 980 CMR 13.09(4) and 980 CMR 13.09(6) assume that an Applicant will have a detailed statement of deficiencies to which it can respond. The provision of that detailed statement of deficiencies should be added to the regulations. Industry Partners emphasize the discussion from the July 21st Board Hearing that the Completeness Determination be as efficient and targeted a process as possible, such that it does not become an inadvertent extension of the statutory review timeline.

- A determination that a change to a project after a positive completeness determination renders the application incomplete, as provided in 980 CMR 13.09(3)(b), is not something contemplated by the Climate Act. This threat could have unintended consequences, causing Applicants not to propose improvements during review due to risk that they would be subject to a new application and possibly more than a year of additional process. Because adjudication may result in new information becoming

available during the review process, including proposals from stakeholders for potential project improvements, this could be unfortunate. Moreover, when adjudication takes more than a year, circumstances may change for reasons outside of an Applicant's control. Industry Partners encourage adding guardrails to this provision, including a requirement that a change would prejudice another party or prevent the full consideration of relevant impacts within the otherwise applicable time for review before it would result in a mid-stream determination of incompleteness. Extensions of the time for review that extend the review period by the minimum amount necessary to ensure adequate review should be favored over starting a new review timeline, and in all instances, the Board should adopt the approach that minimizes review time consistent with conducting the statutorily required review. A mechanism that allows broad discretion to restart the clock for project changes of a scope that do not need to significantly delay the review process is directly at odds with two fundamental purposes of the Climate Act. One purpose of the Climate Act was to provide certainty around approval timelines, that purpose is undermined if timelines can be extended indefinitely based on the type of minor change that frequently occurs during project review. A second purpose was to enable stakeholders to provide meaningful input into project design that could be implemented by project proponents. But, if a project proponent will need to start more than a year of additional process if it amends its project to incorporate stakeholder input, that threat will operate as a strong and unnecessary disincentive to working with stakeholders in this way.

- 980 CMR 13.09(4) should not be worded to *require* an applicant to cure its application in response to a notice of an incomplete application. It should be up to the applicant whether to cure.

- The prohibitions on refiling within three months in 980 CMR 13.09(6)(a) and within six months in 980 CMR 13.09(6)(b) are unnecessary and potentially harmful. Applicants may determine that they cannot reasonably cure within 30 days, but that they could submit a complete and compliant application within a few months. It is unclear why it would be necessary to prohibit a refiling in this circumstance under Section 13.09(6)(a). Similarly, with no prior experience implementing the Climate Act, applicants will have no context with which to assess their likelihood of succeeding on cure attempts and no experience to draw on to understand the nuance of what will be required. Punishing an applicant who makes three timely attempts to cure but is found not to be successful by imposing an arbitrary six-month delay on the proposed facility is punitive and unnecessary. Applicants will be extremely motivated not to file unsuccessful applications: punitive actions on unsuccessful attempts are not required.

- 980 CMR 13.11 should include an option for the holder of a Consolidated Permit to request clarification or guidance from the Board regarding a condition or permitting

requirement analogous to the option provided to PEAs and Local Governments under 980 CMR 13.11(2)(a).

980 CMR 16.00 (Pre-filing Engagement, including Checklists)

- 980 CMR 16.01(3) is confusing, in part because of its reliance on the term "Facility" which is defined to mean a specific type of facility and because "facility" is also used as a general term in these regulations. Revised wording or definitions could make the intent of this provision clearer. The statement regarding "applicants who have previously engaged in outreach requirements for a Facility . . ." is confusing in that it is unclear whether this refers to facilities that engaged in this outreach prior to the regulations taking effect (e.g. is intended to create a carve out from otherwise applicable requirements for specific facilities) or becomes applicable when any applicant begins outreach activities. It is also unclear whether the final sentence of this subsection is intended to be limited to the subject matter of the subsection or is of broader general applicability.

- Industry Partners recommend that explicit provisions be added to these regulations that address projects that begin pre-filing engagement before these regulations are finalized, but file a petition after July 1, 2026 (*see* 980 CMR 16.01(5)). Because prefiling engagement processes may take many months, some projects may be well into engagement efforts before the final engagement requirements will be known with certainty. Such projects could be significantly delayed if they are required to reinitiate outreach efforts to comply with the new requirements. A broad delay of all facilities requiring Board approval would affect important and time-sensitive energy investments in the Commonwealth.

- Industry Partners are concerned that the structure of the pre-filing engagement includes unnecessarily duplicative filings, for example a "Status Checklist" (*see* 980 CMR 16.04(d)), a "Completion Checklist" (980 CMR 16.04(1)(h-i)), and a "Pre-filing Notice" (*see* 980 CMR 16.04(1)(h); 980 CMR 16.10), in addition to the same information being required with an Application (*see* 980 CMR 16.11). It would be preferable to reduce burdens on all stakeholders by consolidating the required submissions as much as possible. This is especially true if there is no mechanism for feedback from DPP or other relevant authorities that allows for "righting the course" prior to getting to the end of the process. If the interim submissions do not allow for such feedback or enable course corrections, and compliance will be ultimately assessed at the final submission regardless, then there is little or no benefit to requiring multiple interim submissions to be prepared and reviewed.

- 980 CMR 16.04(1)(a)(1) should be amended to state that an applicant shall "Review and implement *applicable* site suitability criteria . . . ." Because not all Applicants will be subject to all listed requirements. In addition, the words "alternatives analysis" should be removed from this section because, while all Applicants will engage in "the selection of [a] preferred site/route" not all Applicants will conduct an "alternatives analysis."

- Similarly, 980 CMR 16.04(1)(a)(2) should be amended by striking "alternatives analysis for the same reason (not all Applicants will conduct such an analysis): "Outreach shall include a discussion of how the selection of the preferred site/route option avoids or minimizes the potential for disproportionate adverse impacts."

- In 980 CMR 16.04(1)(a)(3), "all" should be removed. Applicants will be incentivized to document their engagement efforts; it is not reasonable or necessary to require documentation of every single activity that might constitute such engagement.

- In 980 CMR 16.04(1)(c), is the intent that an Applicant would add a Key Stakeholder to an email distribution list upon request from the Key Stakeholder, or that the Applicant would add Key Stakeholders to an email distribution list based on its own judgment and publicly available contact information? Industry Partners recommend that participation in such an email distribution list be voluntary on the part of the Key Stakeholder (i.e. that the obligation to send emails only attach to Key Stakeholders who request such emails and provide their contact information) to avoid potentially unwanted communications. Further, Industry Stakeholders recommend removing the requirement that updates be sent to a distribution list "quarterly." It may be helpful to provide updates more or less frequently depending on whether and when significant developments occur.

- The reference to a pre-filing comment period in 980 CMR 16.04(1)(g)(4) is not clear because that period is not defined or explained. If an Applicant is required to provide a comment period that meets specific requirements, those requirements should be specifically stated. Formal comment periods are more frequently associated with the regulatory process after a filing than with pre-filing engagement activities.

- 980 CMR 16.04(h) would benefit from more precision. It appears that the second sentence would be better structured to state that an Applicant "may" resubmit a Pre-filing Notice since the prior sentence already requires that such a notice be timely. Further, the DPP process for review is not clear from this subsection. Is there a required DPP consultation? What will the DPP review to make this determination? Must the Applicant make some sort of request or filing with the DPP to enable this review?

- In 980 CMR 16.05, it would be helpful to provide additional context regarding the relevant meeting. Specifically, it appears that the requirement to share information may be intended to apply to a "first" or "initial" meeting, and, if so specifying that intent would aid clarity.

- 980 CMR 16.06(1)(a)(2) should be re-worded, since most Applicants will not need to "obtain" local, state or regional permits by virtue of the consolidated permit process.

- In 980 CMR 16.06(1)(a)(6), the "and the alternatives analysis" should be deleted because such facilities may not conduct such an analysis.

- In 980 CMR 16.07(1)(a)(1), "its need" should be removed or qualified, because not all projects will require a showing of need.

- In 980 CMR 16.07(1)(a)(4), "the alternative locations considered" should be deleted because such projects are not all required to consider alternative locations; "the alternatives analysis used in selecting the preferred option" should be deleted because not all such facilities will use an alternatives analysis; and "preferred alternative" should be replaced with "proposed facility" or something similar because not all applications will present alternative projects or locations.

- For 980 CMR 16.06, 16.07, and 16.08, the regulations should be clear that these are requirements for meetings to count towards the minimum number of such meetings under 980 CMR 16.04(1)(e-g) but are not required of *all* such meetings. Currently, project proponents frequently engage in abundant and varied outreach, some of which may be narrowly tailored or may not have a predetermined agenda. Project proponents might, for instance, have "open houses" where the public can come and ask questions about the project. All of the specific requirements listed in 980 CMR 16.07 and 16.08 may not be addressed in such meetings. In fact, necessitating that all those requirements to be met would make it impossible to hold such open houses or conduct similarly informal outreach. Similarly, a project proponent might hold a meeting for the public or for certain stakeholders that focuses only on specific issues, e.g. a single type of potential impact. This type of meeting might also be impossible if all the requirements identified in these sections were required to be addressed at every such meeting. Another common example would be a project proponent wants to schedule a call or meeting with an agency to address a narrow specific issue of interest to that agency. Requiring that all the elements of Section 16.06 to apply to such a call or meeting would make it infeasible to engage in such outreach, which is unlikely to be the intent of these provisions.

- 980 CMR 16.09(1)(a)(4) should read "A summary of the how site suitability criteria and**/or** cumulative impacts analysis requirements have been incorporated into the

selection of the preferred project site/route and project design" to recognize that projects may not need to perform both analyses.

- In 980 CMR 16.09(1)(a)(5), "and the alternatives analysis used in selecting the preferred option" should be deleted because not all such projects will require an alternatives analysis.

- The items referenced in 980 CMR 16.09(1)(a)(7-8) should be qualified to be "Relevant materials . . . of general interest." Without more clarity, these provisions could be read to require posting of any materials shared in any meeting with any individual, which would be neither feasible nor appropriate.

- In 980 CMR 16.09(1)(a)(10), the requirement that email updates be provided "quarterly" is unnecessary and should be removed.

- In 980 CMR 16.10(1), Industry Partners recommend requiring email of the Pre-filing Notice to individuals who have requested to be on the project's email distribution list. The current wording implies an obligation to email the Pre-filing Notice to anyone the Applicant "met during pre-filing consultation and engagement," which would be an impossible standard to achieve (among other reasons because not everyone the Applicant meets will provide email contact information) and would likely require unwanted distribution. Further, some of the required recipients listed are otherwise vague and subject to misinterpretation/unnecessary dispute. For instance, it is not clear what it means to email "host communities."

- Part 2 of the "Prefiling Engagement Completion Checklist, second box, should not include "the alternatives analysis in" because this language will not be applicable to all projects using this form.

- Part 2 of the "Prefiling Engagement Completion Checklist, third box: this item should be deleted because it is subjective and will not provide helpful information. The checklist should be limited to objective items, such as whether required meetings occurred and required information was conveyed.

- Part 3 of the "Prefiling Engagement Completion Checklist, third box: "detailed" should be deleted because it is subjective and potentially burdensome.

- In the "Prefiling Engagement Completion Checklist," it is not necessary or appropriate to require an individual to make a sworn statement of the type included in this draft. This would require an individual to swear as to personal conduct when efforts are almost certain to have been carried out by a team. Moreover, the content is subjective. Such a sworn statement would not be useful in any event. Nor is it appropriate to

require an individual to agree to provide "additional information or documentation"; there will be discovery processes in the Board's proceeding and such an "agreement" is not needed. To the extent any sworn statement is required, it should be that the submitted information is complete and accurate to the best of the individual's knowledge.

- In the "Prefiling Engagement Status Checklist," second check box, the "alternatives analysis" should be removed and this item should refer to informing site selection because not all projects will conduct an alternatives analysis.

- The third checkbox for the "Prefiling Engagement Status Checklist," should be deleted. This is subjective and will not provide useful information. The checklist should avoid subjective statements.

- The sixth checkbox for the "Prefiling Engagement Status Checklist," need not include "quarterly."

COMMENTS ON ISSUES RAISED IN THE JULY 21, 2025 MEETING SLIDES

In addition to the draft regulation, the Implementing Agencies presented slides on July 21, 2025 that provided additional information. Industry Partners provide the following comments on the slides from that presentation and look forward to ongoing engagement on these issues.

- Regarding Site Suitability Assessments (see slides 10-18):

  Industry Partners submitted detailed comments on earlier straw proposals on May 27, 2025. As further explained in those comments, it is critical that Site Suitability Assessments be used as a tool for summarizing information in a standard format to facilitate application of otherwise applicable standards and requirements, not as a mechanism to impose new substantive requirements not founded in existing law. Site Suitability Assessments should be a tool to provide additional information, but that information should be reviewed by decisionmakers with all relevant context and applied consistent with and within the scope of existing substantive requirements.

  The Climate Act's siting and permitting reforms were not intended to provide limitless ability to craft new ***substantive*** requirements for proposed facilities; they were intended to streamline and improve the ***procedural aspects*** of siting and permitting. To be clear, statements, such as that on slide 18 of the July 21, 2025 presentation that "level and type of mitigation measures required should be based on the Criteria-Specific Site Suitability score" are potentially misleading. Those scores should be used to inform appropriate mitigation, but mitigation requirements must be consistent with

and supported by the standards and requirements applicable pursuant to the underlying laws that require the project to obtain approval in the first place. This is particularly important because the nature of standardized scoring approaches ensures that scoring will not always be accurate or meaningful for a specific project. Sometimes well-sited projects will score poorly and sometimes poorly-sited projects will score well. Further, these decisions may be subject to legal challenge. Implementing Agencies should be wary of adopting frameworks from the SMART Program, which makes certain incentive payments available to eligible solar facilities, into the context of siting and permitting requirements, which generally go to whether a particular facility is allowed to be constructed and for which decisions are far more likely to be subject to litigation.

- Regarding cumulative impact assessments:

  Industry Partners submitted detailed comments on earlier straw proposals relating to cumulative impact assessments on May 27, 2025. Industry Partners continue to believe that positive impacts to communities from a project should be taken into consideration (see slides 28-30, which do not appear to account for the possibility that a project may have community benefits, however we understand from the hearing that the intent is to include benefits as well). In addition, as described in Industry Partners' previous comments, it is unreasonable to require applicants to account for potential future projects that may be advanced by other parties when preparing a CIA (*see* Slides 28, 74, and 83). Industry Partners are concerned CIA guidance and straw proposals so far have lacked the detail necessary to be implemented and have referenced numerous and dispersed potential data sources. *See, e.g.* slides 81-88. Requirements should be clear, but should provide flexibility for applicants to advance reasonable and supportable approaches within clear parameters. Overly prescriptive requirements may prove unworkable, unhelpful, or unduly burdensome.

  Industry Partners are intrigued by the potential of a MassEnviroScreen tool (see slide 26) but cautious about its potential to be in place and functioning effectively within the timeframe for implementation of the Climate Act.

- Regarding standard conditions:

  Industry Partners submitted detailed comments on earlier straw proposals relating to standard conditions on May 19, 2025 and provided comments above on draft regulatory language. Industry Partners strongly encourage ongoing dialogue and discussion around Standard Conditions, which will be significant because of their broad applicability and should not represent sharp or sudden departures from preexisting requirements. Slides 57 and 58 state that EFSB may delineate baseline and/or

standard conditions for "topics that do not overlap with other agencies' permits, such as: electric and magnetic fields, reliability, project need, project alternatives/non-wire alternatives, route alternatives, physical and cybersecurity; and project cost." In the interest of serving the intent of the CEISP and the Climate Act, which was to streamline and facilitate permitting of clean energy infrastructure, conditions imposed should be limited to those covered by the agency permits that are incorporated in the Consolidated Permit, and any additional types of conditions enumerated by the Climate Act.

- Regarding prefiling engagement:

  Industry Partners submitted detailed comments on pre-filing engagement on May 19, 2025. As explained in Industry Partners' prior comments, it is critical to understand that not all facilities are developed with an "alternatives analysis" as such. *See* slides 67-68, 72. Developers of generation and storage facilities are not targeting a specific need that could be addressed in alternative ways, only one of which will be advanced. While it is reasonable to require explanations of how applicants of generation and storage facilities determined that a location was appropriate for development (*see* Slide 71 "describe how site suitability criteria [and] CIA tool were incorporated into the selection of the preferred site/route"), comparisons to other locations are not likely to be helpful or meaningful for such projects.

  A "Prefiling Notice" (see slides 65 and 70-71) does not seem necessary and could add burden to both applicants and agencies. The information in this submission could be included in the Application – indeed they are proposed to be required in the Application (see 980 CMR 13.03(6)). To the extent it is not eliminated, duplication with other submissions should be eliminated and the filing should be streamlined as much as possible. It is also puzzling why "decommissioning and site restoration plans" would be included in a pre-filing notice (slide 70). There seems to be no particular reason for treating this information differently than other substantively relevant information.

CONCLUSION

The Industry Partners thank the Implementing Agencies and their staff for their work on implementing the Climate Act.

Please do not hesitate to reach out with any questions or to discuss these comments further.

Sincerely,

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