Mass Audubon

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Via Electronic Mail: sitingboard.filing@mass.gov

Secretary Rebecca Tepper, Executive Office of Energy and Environmental Affairs
Commissioner Staci Rubin, Department of Public Utilities
Undersecretary Maria Belén Power, Executive Office of Energy and Environmental Affairs
Undersecretary Michael Judge, Executive Office of Energy and Environmental Affairs
c/o Executive Office of Energy and Environmental Affairs
One Cambridge Street
Boston, MA 02114

RE: Comments on Site Suitability and Cumulative Impact Analysis

Dear Commissioner Rubin, Undersecretary Belén Power, and Undersecretary Judge,

Mass Audubon is the largest nature-based conservation organization in New England. Founded in 1896 by two women who fought for the protection of birds, Mass Audubon carries on their legacy by focusing on the greatest challenges facing the environment today: the loss of biodiversity, inequitable access to nature, and climate change.

With the help of our 160,000 members and supporters, we protect wildlife, conserve and restore resilient land, advocate for impactful environmental policies, offer nationally recognized education programs for adults and children, and provide endless opportunities to experience the outdoors at our wildlife sanctuaries

As a participating stakeholder on Governor Healey's *Commission on Energy Infrastructure Siting and Permitting* (CEISP), we endorsed the CEISP's final recommendations to the legislature. These recommendations included the need to establish uniform statewide standards, guidance, and site suitability criteria that would significantly reduce losses of natural and working lands from clean energy development, while also accelerating timelines for project permitting and deployment without undermining legal durability and thorough reviews. We also strongly supported the need for analyses to better understand the potential for additional impacts from

new projects to communities which have already experienced disproportionate energy and fossil fuel infrastructure and exposure to toxic pollutants. Finally, we also strongly endorsed expanding the Energy Facility Siting Board (EFSB) to include representatives from the Department of Fish and Game (DFG) and statewide associations (e.g., MARPA) representing the interests and perspectives of towns, cities, and regions.

We offer the following comments on the straw proposals for implementing this new law, with a focus on ensuring that these key provisions are fully and effectively implemented.

Background Context – Aligning Clean Energy, Land, Biodiversity, and Resilience Goals:

Mass Audubon fully supports the Commonwealth's ambitious climate mitigation and clean energy goals required by the landmark 2021 *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* law, as expressed in the *Clean Energy and Climate Plans for 2025/2030* and *2050*. We also are proud of Massachusetts' place as a national leader in rooftop solar as well as incentives for locating solar on landfills and brownfields. However, along with our members and advocacy partners, we have watched with growing concern over the last decade as an intensive, unmanaged build-out of large ground-mount solar systems took place, resulting in significant and in some cases irreversible losses to high-value natural and working lands, biodiversity, and climate resilience. The location of these projects matters as much as the acreage they cover.

As such, we are pleased to endorse the state's high-level approach to significantly reducing losses to natural and working lands, ensuring that cities and towns are full partners in reviewing and permitting clean energy projects, and understanding that in some cases, cumulative historical impacts should limit new project development in certain locations. We also applaud the high level of collaboration across agencies and experts within state government, including consultation of experts from DFG, the Executive Office of Energy and Environmental Affairs (EEA), the Department of Energy Resources (DOER), and the Office of Environmental Justice and Equity (OEJE) in the development of these proposals.

Summary and Comment Outline

Conceptually, the state's straw proposal on site suitability and the mitigation framework looks strong. Ultimately, the outcomes for the natural landscape and communities will depend on the myriad details which have yet to be decided: the criteria used in scoring sites, scores and weights assigned to these criteria at different levels, clear guidance to municipalities for applying the mitigation framework, and ensuring that towns and cities are sufficiently resourced and supported to execute on their permitting role and make decisions that are right for their communities are all crucial to the success or failure of this approach.

Mass Audubon plans to work with our conservation and municipal partners in the coming months on a joint mapping effort. Based on the state's straw proposal concept for site suitability and mitigation, we plan to use this mapping effort to refine our recommendations for: (1) low-impact areas preferable for clean energy development; (2) other eligible areas where the mitigation framework (i.e., 'avoid/minimize/mitigate') should apply; and 3) areas that should be *ineligible* for energy development. Upon completion of the mapping exercise, we will share our data layers and outputs. We need to conduct this mapping analysis to better understand how the straw proposal could work in practice, so we are not yet able to recommend specific *values* for criteria scores, relative weights, or mitigation fees, but hope to include these in our mapping products.

Below we provide some high-level recommendations for the proposal and the stakeholder process over the next few months. Next, we describe our high-level recommendations for the intervenor grant program, standard conditions, site suitability methodology and mitigation approach, and cumulative impact analysis.

High-level Recommendations

- **Host in-depth stakeholder sessions.** We request that EEA conduct additional engagement with conservation and municipal advocates this summer, in advance of drafting regulations. In particular, it would be very helpful to host a session with us once we complete our mapping exercise (described above). Engagement sessions should be conducted across the state including in regions that have already experienced disproportionate land conversion for solar projects. Coordination with regional planning agencies may assist with effective community engagement. We also recommend that EEA develop case studies and examples that demonstrate to stakeholders the following:
    - How the proposed approach to weighing and scoring of parcels/sites, development and application of mitigation fees, and a mitigation fund would work in practice
    - The process and mechanics of how, during the permitting process for small clean energy projects, towns and cities would apply guidance and project scoring information to request changes to project proposals, or deny project permits, in order to avoid, minimize, and mitigate impacts

- **Conduct outreach to and provide trainings for municipalities and energy developers.** As you well know, the role of cities and towns is instrumental to effective implementation of regulations for siting and permitting. Given the importance of municipal-level review and permitting to the success or failure of this new paradigm for siting and permitting of clean energy projects, we highly recommend investing in in-

depth trainings once regulations are finalized. Additionally, we encourage trainings for developers on how to apply data layers that map environmental and social criteria, use tools for scoring sites and parcels against suitability criteria, and apply this work to estimation of mitigation fees. Mass Audubon and our partners can help with outreach and dissemination of trainings via our members, supporters, and networks across the state.

- **Conduct separate scoring of environmental and social impacts in order to support more appropriate applications of the mitigation framework.** We fully endorse the establishment of a Mitigation Trust Fund by EEA to assess, collect, and disburse fees based on suitability scoring of project impacts to natural resource elements. We also endorse deploying these fees to EEA agencies and towns for investments in nature conservation, biodiversity, and nature-based climate resilience.[1] However, the approach to project suitability scoring shouldn't conflate or blend impacts to natural resources and ecosystem services, which are losses to public goods 'owned' by all residents of the Commonwealth, and social impacts, which are typically experienced at the local level, and are best remediated accordingly through local measures. As such, we recommend developing separate scores for environmental and social impacts, and addressing mitigation of social impacts separately (*e.g.*, by within-project strategies and community benefit agreements). The approach to evaluating social and environmental benefits and burden **together** in the scoring of site suitability may result in highly undesirable trade-offs. Furthermore, there should be a distinction among and prioritization of on-site mitigation through project design, setting aside of sensitive areas and buffers, and payments into the mitigation fund for unavoidable impacts that cannot be mitigated on-site.

- **Add performance tracking of indicators for environmental and municipal criteria.** The proposed EFSB Permitting Dashboard metrics are primarily focused on reflecting how quickly large energy infrastructure projects are permitted, as required by the 2024 Climate Law. Additional indicators of progress are needed to measure the program's effectiveness in meeting the goals of the law**.** Ensuring that the proposed site suitability methodology, guidance and scoring criteria, and mitigation framework deliver on objectives to reduce impacts and increase protection of high conservation-value natural and working lands will require tracking of new indicators and metrics specific to these objectives. In addition, there should be indicators for tracking performance of both

[1] It should be noted that some towns do not have many or any additional parcels that are appropriate for permanent protection.

municipal and EFSB permitting outcomes, including the percentage of projects receiving constructive approvals and mitigation measures. New criteria and indicators should be proposed and added to the state's dashboard for tracking performance against these objectives over time.

Recommendations for Intervenor Grant Program

We strongly support the intervenor grant program, which rightfully intends to 'level the playing field' by providing resources to under-resourced towns and community groups for meaningful interventions in highly technical Department of Public Utilities (DPU) and EFSB proceedings. We also support outreach and educational resources to encourage more diverse and increased participation in these proceedings. However, we are concerned that resources for this grant program may not be commensurate with the demand from groups with legitimate concerns about their viewpoints and interests being adequately considered in decisions on project siting and permitting. The grant application process itself could be too onerous for many groups.

- **Set guardrails or other expectations to ensure intervenor support is equitably distributed.** The proposal indicates that a total of $3.5M annually will initially be available from the Intervenor Support Fund, with a limit of $150,000 for each party per proceeding and $500,000 maximum for each proceeding. It should be made clear what criteria will be used to decide how resources will be distributed across applicants and allocated across proceedings.
- **Under-resourced municipalities and community groups need support for developing grant applications and an application that requires minimal resources to complete.** As proposed, the grant application is quite complex and requires expertise and capacity that many potential grantees lack. For example, a town may need to develop an RFP or solicit competitive quotes from consultants and attorneys to provide an itemized cost estimate and expert qualifications statement. This takes both time and money, which could undermine its ability to participate in the proceeding, especially if the applicant is not successful in receiving the grant.
- **Metrics should also track applicants denied grants.** In addition to tracking applicants who are awarded grants, the DPU annual report should also track and report the total number of grant applications for each proceeding and how many were rejected, and summarize the rationale for the denial. Where appropriate, DPU should prioritize grant outreach and training to applicants who fell short to help them become stronger applicants in a future round.

Recommendations for Standard Project Conditions

Standard Conditions need to incorporate typical local conditions and should include water resources. The straw proposal is quite brief and limited. Standard conditions should include provisions for the protection of important natural resources such as water supplies, floodplains, stormwater, and erosion and sedimentation controls as well as conditions requiring adherences to operations and maintenance plans and for setting aside funding for decommissioning.

- The proposal notes that projects must comply with "all applicable federal, state, and local laws, regulations, and ordinances from which the Company has not received an exemption. The Company shall be responsible for ensuring such compliance by its contractors, subcontractors, or other agents." The state will need to monitor and enforce compliance, in cooperation with local and federal agencies, as appropriate.
- Further, projects should be explicitly directed to comply with all local floodplain, wetlands, stormwater management, and water supply protection bylaws, including provisions that are more stringent than state rules.
- The straw proposal for standard conditions is focused on the EFSB conditions for approvals. DOER is also charged with developing common conditions and requirements for small projects approved through the local consolidated permitting process. The draft standard conditions for local consolidated permits should include typical conditions found in local board approvals (e.g. Special Permits and Orders of Conditions) in addition to requisite state approvals (EFSB decisions and MEPA S.61 mitigation commitments). Constructive approval provisions on floodplains should also require compliance with both local and state floodplain rules[2].
- Constructive approval conditions currently include wetlands mitigation as a 1:1 replacement or as otherwise required in the WPA regs. This effort provides an opportunity to elevate this standard to better align with the science that shows that more than a 1:1 replacement is required to compensate for lost functions.[3]
- Vegetation maintenance should require best practices for ecological and water resources, including provision of habitat for pollinators and birds on vegetated portions of the project (e.g. under and around solar arrays, any vegetated perimeter of battery storage systems, and on transmission and distribution (T&D) corridors), but avoiding

[2] The draft standard conditions for constructive approval, require reporting to EFSB every 5 years on flood mitigation measures to protect the facility from flooding. This is too weak and contradictory to the proposed siting standards which would make siting in high-risk flood zones ineligible (with waivers for T&D).

[3] https://www.nae.usace.army.mil/Portals/74/Compensatory_Mitigation_SOP_May2024.pdf

areas that could be an attractant to parts of the development that could cause potential harm[4].

- If less sensitive portions of a property will be developed and areas of high resource value on the site avoided, conditions should include permanent protection and clear delineation of the avoided areas to prevent further disturbance or development of the site in the future, when appropriate. When feasible, a project developer leasing land should include the entire site including provisions for permanent protection of sensitive resources and buffer areas adjacent to the immediate project footprint.

Recommendations for Energy Siting Criteria and Cumulative Impact Analysis

We strongly support the stated objectives and the general approach for the site suitability methodology and guidance. The Commonwealth must lead through policy and action to drive forward the concept that community health and natural resources protection can, and must, coexist with responsible and much-needed clean energy deployment. We also recommend that the scope of cumulative impact analysis include communities which have a preponderance of small clean energy projects, as well as those hosting larger energy infrastructure.

- **Site suitability criteria must consider the limited areal extent and irreversibility of impacts on areas that can neither be reconstructed nor replaced, and should therefore be avoided.**
    - Utilities seeking waivers for transmission or distribution projects to be located in ineligible areas must provide robust alternatives analyses for those projects. They also need to provide transparent, publicly accessible, non-technical explanations and evidence of the need for infrastructure in specific locations.
    - Habitat fragmentation impacts must be considered, not just the immediate project footprint. Fragmentation of forest blocks and disruption of existing wildlife corridors should be avoided and minimized.

- **The Commonwealth should encourage solar energy production, storage, and clean energy distribution infrastructure on sites with low or no impacts to nature.** State funding, especially the SMART and net metering incentives for solar, should:
    - Strongly encourage projects located on rooftops, parking lot canopies, sites for ground-mount solar, and other projects that use already-developed lands;
    - Weigh projects located closer to existing and anticipated load more favorably;

[4] For example, the utilities' vegetation management practices do not currently avoid mowing or tree cutting during bird breeding season.

- Reduce 'soft costs' of distributed rooftop solar and other Division of Ecological Restoration projects by addressing barriers to deployment. For example, the state could promote the use of SolarApp+ or other technologies proven and currently in use by other jurisdictions to streamline municipal permitting of rooftop and small ground-mount solar.

- **When ground-mount solar projects may be required to meet energy demands that cannot be met with rooftop/canopy and smaller distributed projects alone, public and ratepayer dollars should *not* support conversion of the state's highest conservation-value forests, farms, and ecosystems for the benefit of private developers.**
  - These systems are instrumental, and irreplaceable, to fighting the climate and biodiversity crises, while providing other 'ecosystem services' – including:
    - Protecting drinking water and aquatic habitat;
    - Providing habitat for at-risk species;
    - Capturing and storing atmospheric carbon;
    - Mitigating impacts of severe weather events (flood storage);
    - Reducing extreme heat effects; and
    - Providing access to nature and open spaces for communities who do not have access to it now.
  - These services, though not valued explicitly by markets (aside from some carbon sequestration markets), nonetheless carry immense community and natural value. The public health, safety, and environmental services of these areas are largely irreplaceable, especially when considering the cost savings they provide as compared to hard infrastructure or rebuilding habitats elsewhere.
  - The avoid-minimize-mitigate analysis of design alternatives should be consistently applied to maximize protection of natural resources.
    - Fragmentation impacts must be avoided and minimized in the site selection and project design process, including:
      - Maintaining the ecological integrity of habitats (e.g. Critical Natural Landscapes, buffers to wetlands and waterways).
      - Maintaining functional connectivity, not blocking wildlife movements or public access to trails with fences or other obstacles.

- **Siting criteria should designate as *ineligible* for clean energy infrastructure development those parcels and locations which host the highest-value natural resources.** The state's own analyses and mapping efforts identify areas and parcels with very high and irreplaceable levels of public health and environmental attributes and

features – these should be the basis for designating *ineligible* areas. Such factors or location types should include:

- High levels of carbon storage and removal by forests, saltmarshes, and other terrestrial landscapes;
- Habitats that host high levels of biological diversity or MESA-protected species, as defined by BioMap;
- Natural features that provide current or future (*e.g.,* areas where marsh migration and other habitat migration may occur due to climate change) climate resilience and reduce hazards to public health and safety, including natural floodplains and wetlands;
- Prime and other highly productive lands identified in the Farmland Action Plan, which notes that additional conversion of acreages currently used to grow food will reduce the Commonwealth's food security; and
- Primary protection areas for water supplies.

- **Ineligible lands need to be defined carefully.** To avoid providing an incentive for landowners to alter natural landscapes, however, EEA will need to establish criteria for site suitability for eligible projects such as a look-back period, e.g., 8 years within which there was no major land use change on a high conservation value parcel before a project application. Otherwise, landowners may seek to clear forests or uproot productive cropland in order to make parcels eligible for clean energy development.

- **EEA should clarify the frequency of periodic updates to site suitability criteria and methods.** Given the pace of land use change during the last decade of rapid clean energy build-out, we recommend starting with a program review every three years.

- **The state should require energy developers to pay mitigation fees for all new energy projects located in eligible areas as defined by site suitability criteria.** The state should set a *standardized mitigation fee* that applies universally across projects and locations, rather than allowing towns to establish their own fees on a voluntary basis. A consistent, transparent, statewide fee is needed to compensate the public for losses of our shared natural resources (i.e., ecosystem and climate services provided by forests, farms and other natural and working lands). A town-by-town approach to mitigation fees will not adequately compensate the broader public for the loss of the Commonwealth's public resources. Moreover, a mitigation fee program that varies across towns will create distortions in the market for eligible sites, will encourage gaming by developers, and will likely result in unintended outcomes for both communities and natural resources.

- **We recommend that EEA assign a portion of mitigation fees for impacts of ground-mount solar, storage, and other onshore clean energy generation/dispatch to the transmission or distribution project which connects them to the grid.** Because proximity to distribution and transmission sites is a strong factor determining costs of interconnecting clean energy projects to the grid,[5] the location of new distribution capacity will strongly influence where new projects are built and will, in turn, determine the scale of impacts to natural and working lands located close to new hosting capacity. This pattern is evident from the close clustering of ground-mount solar projects – many of which were cleared forests and farms – to available hosting capacity over the last decade. In the current approach to grid decision-making and utility compensation, publicly traded electric distribution companies (EDCs) face strong incentives to build more T&D infrastructure but few to no strong incentives to avoid and minimize impacts to natural resources in the siting and management of sites hosting new or expanded T&D infrastructure.

  We do not endorse the use of 'affordability' as a factor that EDCs can use to argue against mitigation. The scale of a one-time mitigation fee to compensate for environmental impacts will in virtually all cases be a *small fraction of total costs* borne by ratepayers for the recovery by EDCs of the costs of new or upgraded T&D infrastructure through returns on equity.[6] To address affordability, EDCs need to face stronger incentives to reduce the need for and impacts of new and expanded T&D infrastructure projects, including fees for impacts to nature from generation projects that use new T&D to tie into the grid.

- **EEA should establish a Mitigation Trust Fund for collecting and distributing mitigation fees assessed and collected based on site suitability criteria and scoring.** Both EFSB and DOER should establish uniform statewide site suitability criteria and scores that have internal consistency for avoiding, minimizing, and mitigating impacts for application to the full range of large and small energy infrastructure projects. We also agree that individual projects should pay a single mitigation fee rather than separate fees (*e.g.*, solar projects funded by the SMART program).

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[5] For the energy modeling used in our 2023 *Growing Solar, Protecting Nature* analysis, our energy consultants Evolved Energy estimated the cost of tie-in lines from ground-mount solar projects to the grid to be $1M per linear mile, based on ISO-NE and industry data.

[6] Rocky Mountain Institute (RMI), 2025. Rebalancing Return on Equity. https://rmi.org/rebalancing-return-on-equity-to-accelerate-an-affordable-clean-energy future/#:~:text=As%20background%2C%20evidence%20suggests%20that,transition%20due%20to%20affordability%20considerations.

- **Community benefit agreements (CBA) should not be interchangeable with or connected to requirements to mitigate natural resource impacts.** CBAs and mitigation fees serve different purposes: the former help to make towns and cities whole from the very local impacts and effects on towns from energy projects, whereas mitigation is intended to compensate for losses of public resources to all residents of the Commonwealth. As such, requirements for CBAs and mitigation of impacts should be kept separate and distinct.

- **Require that Cumulative Impact Analyses (CIA) include small clean energy infrastructure during the initial screening level.** Applying the CIA framework only to large energy infrastructure projects within EFSB's jurisdiction could miss significant cumulative impacts resulting from groups of smaller projects, particularly ground-mount solar projects which cluster close to interconnection nodes. Our 2023 *Growing Solar, Protecting Nature* analysis shows that, as of 2021, over 70 percent of large ground-mount solar projects were sited in just three counties: Bristol, Plymouth, and Worcester, and within these counties, certain towns host a preponderance of solar projects. CIAs should include and measure against a criterium for hosting clean energy projects (e.g., solar projects covering >X% of town's open space, relationship of total clean energy capacity/generation relative to town's load). The impacts of adding more clean energy projects – even if small – in towns that already have many should be more intently scrutinized.

Recommendations for State and Municipal Roles

The success of this new siting and permitting framework rests on effective collaboration and partnership between the state and cities and towns in its implementation. This includes providing support for under-resourced communities not only during the permitting process, but we recommend extensive outreach and communication in advance of and during the initial implementation phase.

- **EEA and DOER need to provide adequate technical capacity and other support for low-resource communities who are required to permit small energy infrastructure projects.**
    - This capacity can take the form of trainings, a hotline number, direct staff support provided by EEA and DOER, and/or services on retainer by trusted, independent, third-party experts in energy development, natural resources management and mitigation, or other applicable technical topics.

- **DOER must provide clear standards and guidance for cities and towns to make permitting decisions,** in particular, how to apply standards to request significant changes to or reconfiguration of project designs or as the basis for denial of a permit.
    - DOER and other state agencies should do external validation of project developers' scoring of their own projects. Given the incentives for developers to score their own projects favorably, towns should be supported in interpreting these scores in the permitting process.
    - DOER should either provide best practices or specific requirements that guide process questions, like where an application is submitted with the municipality (to each applicable board/committee? To the town clerk), who is responsible for certifying application completeness, and what specific action starts the review clock.
    - DOER also needs to set additional transparency expectations, including where and how a town must submit a determination so the project proponent, intervenors, and others can track its progress. The regulations will also need to specify who determines when all local reviews are complete, and formally issues the Consolidated Permit. The straw proposal is ambiguous on this and other important procedural requirements.

- **Local Permit Approvals and Conditions are separate from mitigation for unavoidable impacts.** Once a site is selected and an application submitted to the municipality, the review process by the local boards typically includes further layout and design refinements to avoid, minimize, and mitigate impacts on the site. This often includes permit conditions such as limits of work, permanent protection of wetland buffers, site maintenance, operations and decommissioning, etc. These are forms of mitigation and are separate from mitigation fees for any unavoidable impacts to high value natural resources, which should be administered by the state.

Recommendations for Energy System and Grid Modernization

- **Investments in end-use energy efficiency (*e.g.*, weatherization, efficient appliances) and grid system efficiency (*e.g.*, reducing line losses) must be sustained at high levels to minimize impacts of grid build-out and electrification to ratepayers.**

- Because of the need for (and high costs of) interconnecting new energy projects to the power grid, impacts from siting new distributed energy are naturally a function of other decisions that happen upstream of the siting and permitting process. Specifically, **utility**

proposals for grid modernization and DPU decision-making to approve new transmission and distribution infrastructure need significantly more transparency.

- **We recommend that the state's grid modernization public process and decision-making be explicitly linked to the siting and permitting processes.** As such, standard conditions and applications for siting new transmission and distribution projects, as well as significant T&D upgrades, should include:
    - Alternatives analysis to make clear the need for new projects (or project upgrades that expand or alter corridors and project footprints) versus non-wires alternatives;
    - Evidence that substantiates the need for specific geographic locations, particularly in areas otherwise deemed ineligible based on environmental criteria;
    - Public communications around grid infrastructure decisions must be much more transparent, easily accessible, and understandable by non-technical audiences.

We very much appreciate the opportunity to comment on these ambitious straw proposals, and look forward to engaging on the next phase of development.

Sincerely,

Michelle Manion

VP of Policy and Advocacy, Mass Audubon