

225 CMR: DEPARTMENT OF ENERGY RESOURCES

225 CMR 29.00: SMALL CLEAN ENERGY INFRASTRUCTURE FACILITY SITING AND PERMITTING

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29.01: Purpose

The purpose of 225 CMR 29.00 is to establish standard conditions, criteria, requirements, and procedures for the efficient and appropriate siting and permitting of Small Clean Energy Infrastructure Facilities by Local Governments.

29.02: Definitions

Abutter. An owner of land that shares a common boundary or corner with the parcel of land on which a Small Clean Energy Infrastructure Facility is sited or proposed to be sited, including land located directly across a street, road or way. A street, road or way is not an Abutter. Any owner of land whose property line is within 300 feet of a Small Clean Energy Infrastructure Facility's Site Footprint shall be considered an Abutter.

Accessory-use. A use or structure subordinate to a permitted or conditional use or structure and customarily incidental to the permitted or conditional use of the structure

Anaerobic Digestion Facility. A facility that: (i) generates electricity from a biogas produced by the accelerated biodegradation of organic materials under controlled anaerobic conditions; and (ii) has been determined by the Department, in coordination with the Department of Environmental Protection, to qualify under Department regulations as a Class I renewable energy generating source under M.G.L. c. 25A, § 11F.

Applicant. A Person or group of Persons who submits a Consolidated Local Permit Application for a Small Clean Energy Infrastructure Facility to a Local Government under 225 CMR 29.00.

Avoidance. Measures taken intended to prevent negative impacts on values such as climate change resiliency, carbon sequestration and storage, biodiversity, agricultural resources, social and environmental burdens, and recreation.

Behind-the-Meter Small Clean Energy Infrastructure Facility. A Small Clean Energy Generation Facility or Small Clean Energy Storage Facility that serves On-site Load other than parasitic or station load utilized to operate the Small Clean Energy Generation Facility or Small Clean Energy Storage Facility.

Board. The Energy Facilities Siting Board established by M.G.L. c. 164, § 69H.

Chief Administrative Officer. When used in connection with the operation of municipal governments, shall include the mayor of a city and the board of selectmen in a town unless some other local office is designated to be the chief administrative officer under the provisions of a local charter.

Community Benefits Agreement. A legally binding, negotiated agreement between a project applicant and a community, often represented by a coalition of community groups or a local government body, which outlines benefits the communities will receive and is prepared in accordance with the standards and guidelines developed by the Office of Environmental Justice and Equity, pursuant to M.G.L. c. 21A, § 29.

Community Benefits Plan. A non-legally binding document that outlines how a project will engage with and benefit local communities during development and operation of a Small Clean Energy Infrastructure Facility and is developed in accordance with the standards and guidance developed by the Office of Environmental Justice and Equity, pursuant to M.G.L. c. 21A, § 29.

Consolidated Local Permit. A permit issued by a Local Government for a Small Clean Energy Infrastructure Facility that includes all necessary local permits, approvals, or authorizations to construct and operate a Small Clean Energy Infrastructure Facility that the Applicant would otherwise need to obtain individually from the Local Government, with the exception of ministerial permits, including, but not limited to, a street opening permit or electrical permit.

Consolidated Local Permit Application. A single comprehensive application used by Applicants to apply for a Consolidated Local Permit for a Small Clean Energy Infrastructure Facility.

Conservation Commission. A body comprised of members lawfully appointed pursuant to M.G.L. c.40, § 8C. For the purposes of M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection Act*, it shall also mean a mayor or board of selectmen, where no Conservation Commission has been established under M.G.L. c. 40, § 8C.

Constructive Approval. The granting of a Consolidated Local Permit based on the non-issuance of a decision on a Consolidated Local Permit Application by a Local Government within 12 months of receipt of a complete Consolidated Local Permit Application.

Criteria-specific Suitability Scores. The scores for each criterion examined in the Site Suitability Guidance, as assessed following the methods outlined in the Site Suitability Guidance, which represent the suitability of a site for a given Small Clean Energy Infrastructure Facility.

Department. The Massachusetts Department of Energy Resources, established by M.G.L. c. 25A.

De Novo Adjudication. An adjudicatory proceeding where the director of the Board will consider a Consolidated Local Permit Application based on evidence submitted in the proceeding that shall include but is not limited to the information submitted to the Local Government as part of the application for a proposed Small Clean Energy Infrastructure Facility.

Emergency Response Plan. A plan created by the Applicant in consultation with the Local Government's fire, police, and emergency management departments outlining the guidelines and procedures to be taken in response to emergencies.

Guideline. A set of clarifications, interpretations, and procedures, including forms, developed by the Department to assist in compliance with the requirements of 225 CMR 29.00. The Department may issue a new or revised Guideline after providing notice and a minimum of a 21-day public comment period on a draft version. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 29.00.

Host Municipality. The Municipality or Municipalities in which a Site Footprint is located.

Individual Application Components. The materials, disclosures, descriptions, and all other documents an Applicant is required to submit under 225 CMR 29.09(2).

Investment Tax Credits (ITC). A federal tax credit offered pursuant to § 48 of the Internal Revenue Code.

Local Government. A municipality or regional agency, including, but not limited to, the Cape Cod Commission, established by chapter 716 of the acts of 1989, and the Martha's Vineyard Commission, established by chapter 831 of the acts of 1977, that has permitting authority over Small Clean Energy Infrastructure Facilities.

Local Government Representative. For the purposes of 225 CMR 29.00, the Chief Administrative Officer of the Local Government, or their designee(s).

Local Stakeholders. Abutters, community-based organizations, public interest groups, local burdened areas, and federally recognized, state-acknowledged, or state-recognized tribes identified in a stakeholder reference form provided by the Department, elected or appointed municipal officials (e.g., mayor or town/city manager, relevant Council/Select Board members, Chair(s) of the Conservation Commission, Planning Board, Zoning Board, Board of Health, Fire Chief, and Head of the Department of Public Works), and regional planning officials.

MassDEP. The Massachusetts Department of Environmental Protection established by M.G.L. c 23J, § 2.

Minimization. Measures taken to reduce the duration, intensity, and extent of impacts, including direct, indirect, and cumulative impacts, that cannot be completely avoided, to the extent practicable.

Mitigation. Measures taken which include, but are not limited to, the repair, rehabilitation, or restoration of an area affected by an adverse impact of siting.

Municipality. A political subdivision that operates under state law, typically classified as either a city or a town.

On-site Load. Any new or existing electric load located at the site of a Small Clean Energy Infrastructure Facility, including any parasitic load that may result from the installation of the Small Clean Energy Infrastructure Facility, and that is wired to receive a portion of the electrical energy output from the Small Clean Energy Infrastructure Facility before the balance of such output passes through the Small Clean Energy Infrastructure Facility's metered interconnection onto the electric grid.

Person. A natural person, partnership, corporation, association, society, authority, agency, department, or division of the Commonwealth, or any body politic or political subdivision of the Commonwealth including municipal corporations.

Pre-filing Engagement Completion Checklist. The updated self-certification document reflecting the completed pre-filing consultation and engagement requirements identified in 225 CMR 29.08.

Public Right of Way. Any way laid out by public authority that permits public access or that is established on public property and which may or may not already house utility infrastructure.

Significant Change. A material alteration of the Applicant's Consolidated Local Permit Application that has arisen after the Local Government Representative deemed the Consolidated Local Permit Application complete.

Site Footprint. The area of land and water encompassed by a Small Clean Energy Infrastructure Facility's equipment, plus any land significantly impacted by construction of the Small Clean Energy Infrastructure Facility, including, but not limited to, land altered of its natural vegetative composition and structure for clearing, grading, and roadways.

Site Suitability Guidance. Guidance and criteria for the assessment of the suitability of the proposed siting of a Small Clean Energy Infrastructure Facility, as established by the Executive Office of Energy and Environmental Affairs, pursuant to M.G.L. c. 21A, § 30.

Site Suitability Mapping Tool. A web-based mapping tool established and maintained by the Executive Office of Energy and Environmental Affairs, which contains geographic information system data layers used to determine Criteria-specific Suitability Scores. The mapping tool shall have the capability to automatically calculate a Small Clean Energy Infrastructure Facility's Criteria-specific Site Suitability Scores by delineating the Small Clean Energy Infrastructure Facility Site Footprint in the mapping tool.

Site Suitability Score Modifier. Positive or negative adjustments to a Small Clean Energy Infrastructure Facility's Criteria-specific Suitability Scores that are reflective of development potential or social and environmental benefits, as prescribed in the Site Suitability Guidance.

Site Suitability Report. A written report documenting the Applicant's Criteria-specific Site Suitability Scores, any Site Suitability Score Modifiers the Applicant is seeking to apply, and any other required

supporting documentation, in a form and manner established by the Department in consultation with the Executive Office of Energy and Environmental Affairs.

Small Clean Energy Generation Facility. Energy generation infrastructure with a nameplate capacity of less than 25 megawatts that is an Anaerobic Digestion Facility, Solar Facility or Wind Facility, including any ancillary structure that is an integral part of the operation of the Small Clean Energy Generation Facility.

Small Clean Energy Infrastructure Facility. A Small Clean Energy Generation Facility, Small Clean Energy Storage Facility or Small Clean Transmission and Distribution Infrastructure Facility.

Small Clean Energy Storage Facility. An energy storage system as defined in M.G.L. c. 164, § 1 with a rated capacity of less than 100 megawatt hours, including any ancillary structure that is an integral part of the operation of the Small Clean Energy Storage Facility.

Small Clean Transmission and Distribution Infrastructure Facility. Electric transmission and distribution infrastructure and related ancillary infrastructure, including: (i) electric transmission line reconductoring or rebuilding projects; (ii) new or substantially altered electric transmission lines located in an existing transmission corridor that are not more than 10 miles long, including any ancillary structure that is an integral part of the operation of the transmission line; (iii) new or substantially altered electric transmission lines located in a new transmission corridor that are not more than 1 mile long, including any ancillary structure that is an integral part of the operation of the transmission line; (iv) any other electric transmission infrastructure, including standalone transmission substations and upgrades and any ancillary structure that is an integral part of the operation of the transmission line and that does not require zoning exemptions; and (v) electric distribution-level projects that meet a certain threshold, as determined by the Department; provided, however, that the Small Clean Transmission and Distribution Infrastructure Facility shall be: (A) designed, fully or in part, to directly interconnect or otherwise facilitate the interconnection of clean energy infrastructure to the electric grid; (B) designed to ensure electric grid reliability and stability; or (C) designed to help facilitate the electrification of the building and transportation sectors; and provided further, that a Small Clean Transmission and Distribution Infrastructure Facility shall not include new transmission and distribution infrastructure facilities that solely interconnect new or existing generation powered by fossil fuels to the electric grid on or after January 1, 2026.

Solar Canopy. Solar Canopy shall have the same meaning as the definition of Canopy STGU in 225 CMR 28.02 *Definitions*.

Solar Facility. A ground mounted facility that uses sunlight to generate electricity. The nameplate capacity for a Solar Facility shall be calculated in direct current, unless otherwise specified.

Standalone Small Clean Energy Infrastructure Facility. A Small Clean Energy Generation Facility or Small Clean Energy Storage Facility that serves no associated On-site Load other than parasitic or station load utilized to operate a Small Clean Energy Generation Facility or a Small Clean Energy Storage Facility.

Town Clerk. An officer of the Municipality as defined under M.G.L. c. 41, § 15.

Wind Facility. An onshore or offshore facility that uses wind to generate electricity.

29.03: Administration

225 CMR 29.00 shall be administered by the Department.

29.04: Applicability

- (1) 225 CMR 29.00 applies to the local siting and permitting of Small Clean Energy Infrastructure Facilities by Local Governments upon the election of an Applicant to submit a Consolidated Local Permit Application. Nothing in 225 CMR 29.00 shall be construed to disallow an Applicant from seeking local approvals on an individual basis outside of the 225 CMR 29.00 consolidated permitting process, or, in the case of a Small Clean Transmission and Distribution Infrastructure Facility, file an application with the Board pursuant to M.G.L. c. 164 § 69U.
- (2) The standards and requirements in 225 CMR 29.00, including the availability of De Novo Adjudication of a Local Government's decision on a Small Clean Energy Infrastructure Facility before the Board, shall not apply to an Applicant who does not elect to submit a Consolidated Local Permit Application.
- (3) Adding Facility Type to the Definition of Small Clean Energy Generation Facility. Following a rulemaking by the Department in consultation with the Board, the Department may add additional facility types to the definition of a Small Clean Energy Generation Facility, provided that the type of generation facility added produces no greenhouse gas emissions or other pollutant emissions known to have negative health impacts.

29.05: Concurrency and Transition Periods

- (1) Local Governments may, but shall not be required to, accept Consolidated Local Permit Applications pursuant to 225 CMR 29.00 between July 1, 2026 and September 30, 2026.
- (2) Local Governments must accept Consolidated Local Permit Applications pursuant 225 CMR 29.00 no later than October 1, 2026.

29.06: Public Health, Safety, and Environmental Standards

- (1) The Applicant shall conform to all public health, safety, and environmental standards as described in the Department's *Guideline on Public Health, Safety, and Environmental Standards* at the time of the Applicant's submission of a Consolidated Local Permit Application. The Applicant shall maintain conformance with such standards throughout the construction, operation, maintenance, and decommissioning of a Small Clean Energy Infrastructure Facility. The Applicant's Small Clean Energy Infrastructure Facility shall comply with all criteria and standards including but not limited to setback requirements, zoning criteria, compliance monitoring, discharge controls, erosion, sedimentation, and runoff prevention, monitoring impacts on abutting properties, contamination and remediation, encroachments on critical resources, Emergency Response Plan requirements, and measures to address potential harms relating to abandonment of a Small Clean Energy Infrastructure Facility.
- (2) Public health, safety, and environmental standards shall be inclusive of applicable local bylaws, state and federal laws including but not limited to 310 CMR 10.00: *Wetlands Protection Act*, 310 CMR 22.00: *Massachusetts Drinking Water Regulations*, 314 CMR 9.00: *401 Water Quality Certification*, 310 CMR 7.00: *Air Pollution Control*, and 321 CMR10.00: *Massachusetts Endangered Species Act*.

29.07: Application of Site Suitability Guidance

(1) Exemptions. The following types of Small Clean Energy Infrastructure Facilities shall be exempt from the requirements of 225 CMR 29.07:

(a) Exempt Small Clean Energy Infrastructure Generation Facilities:

1. Small Clean Energy Infrastructure Generation Facilities with a Site Footprint of one acre or less;
2. Solar Canopies up to 2 MW in nameplate capacity when sited on a preexisting paved surface with a permitted and functioning stormwater management system;
3. Standalone Solar Facilities with a nameplate capacity of less than or equal to 25 kW, as measured by an alternating current;
4. Small Clean Energy Generation Facilities that are eligible for Investment Tax Credits; and
5. Small Clean Energy Infrastructure Generation Facilities that are designated as an Accessory-use Behind-the-meter Small Clean Energy Infrastructure Facility.

(b) Exempt Small Clean Energy Storage Facilities:

1. Standalone Small Clean Energy Storage Facilities with an aggregate capacity of 250 kWh or less, as measured with an alternating current; and
2. Small Clean Energy Storage Facilities that are designated as an Accessory-use Behind-the-meter Small Clean Energy Infrastructure Facility.

(c) Exempt Small Clean Transmission and Distribution Infrastructure Facilities:

1. Large Clean Transmission and Distribution Infrastructure Facilities and Small Clean Transmission and Distribution Infrastructure Facilities that are proposed to be sited in an existing Public Right of Way;
2. Small Clean Energy Transmission and Distribution Infrastructure Facilities with a nameplate capacity up to 20 kV, as measured by an alternating current.

(2) Determination of Site Suitability and Criteria-Specific Suitability Scores.

(a) Pre-filing Requirements for Applicants. Applicants shall utilize the Site Suitability Mapping Tool, pursuant to any instructions provided in the Site Suitability Guidance, to derive the anticipated Criteria-specific Suitability Scores for the proposed Small Clean Energy Infrastructure Facility prior to submitting a Consolidated Local Permit Application to a Local Government.

(b) Site Suitability Score Application Requirements. Applicants shall submit a Site Suitability Report as part of their Consolidated Local Permit Application to the Local Government. Unless a Request for Score Revision by the Department pursuant to 225 CMR 29.07(2)(c) is requested the Criteria-specific Suitability Scores shall be final.

(c) Request for Score Revision by the Department. If the Applicant, the Local Government, or any other Local Stakeholder believes that one or more Criteria-specific Suitability Scores were calculated based on materially erroneous, incomplete, or otherwise faulty data, they may request a Score Revision from the Department in a form or manner prescribed by the Department. The Department shall review one or more Criteria-specific Suitability Scores subject to the request and shall not grant or deny a Consolidated Local Permit Application on the basis of that review.

1. Parties seeking a Request for Score Revision must identify the specific deficiencies that resulted in one or more erroneous Criteria-specific Suitability Scores. Failure to specify such deficiencies may result in the Department's denial of the request.

2. Requests for Score Revision shall be completed by the Department not more than 30 days after receipt.
 3. Any revised Criteria-specific Suitability Scores issued by the Department shall be final, subject to the application of one or more Site Suitability Score Modifier.
- (d) Social and Environmental Benefit Criteria Score Modifier. The Applicant's Criteria-specific Suitability Scores may be modified by the Local Government when the Applicant agrees to provide certain social or environmental benefits as described in the Site Suitability Guidance. Score modification may only occur upon the mutual written agreement between the Applicant and the Local Government. Such mutual written agreement shall result in binding conditions that shall attach to the Applicant's Consolidated Local Permit.

(3) Avoidance, Minimization and Mitigation

- (a) Application of Site Suitability Scores. The Local Government Representative shall refer to the Applicant's Criteria-specific Site Suitability Scores and Site Suitability Report to determine the appropriate Minimization and Mitigation which the Applicant must perform, if applicable. Minimization and Mitigation shall have a rational nexus to the impacts of the proposed Small Clean Energy Infrastructure Facility's siting on the environment, people, and the Commonwealth's goals and objectives for climate mitigation, resilience, environmental justice, biodiversity, and protection of natural and working lands, to the extent practicable.
- (b) Avoidance. Small Clean Energy Infrastructure Facilities that are considered highly suitable pursuant to the Site Suitability Guidance are presumed to have demonstrated Avoidance.
- (c) Scope and Type of Minimization and Mitigation. The scope and type of Minimization and Mitigation the Local Government Representative may assign shall be based only on the Small Clean Energy Infrastructure Facility's Criteria-specific Suitability Scores, and shall meet the Department's specifications in its *Guideline on Avoidance, Minimization and Mitigation Measures*. After consultation with the Applicant, the Minimization and Mitigation assigned by the Local Government may be included as a condition on the Consolidated Local Permit, or otherwise memorialized.

29.08: Pre-Filing Requirements

- (1) The Applicant shall complete all pre-filing requirements in 225 CMR 29.08 not more than 60 days before submitting a Consolidated Local Permit Application to the Local Government Representative. A Consolidated Local Permit Application submitted before the completion of all pre-filing requirements, or more than 60 days after completion of all pre-filing requirements, shall be automatically denied without prejudice.
- (2) Exemptions. All Small Clean Energy Infrastructure Facilities that qualify for an exemption under 225 CMR 29.07(1) are exempt from the requirements of 225 CMR 29.08.
- (3) Pre-filing Municipal Meeting. The Applicant shall schedule a meeting with members of the Local Government which may include part-time or full-time staff, and the chairpersons of relevant boards, or their designees. The Applicant and Local Government shall mutually agree on the time and place of the meeting. The meeting shall take place within 45 days of the Applicant requesting the meeting and before the pre-filing information session described in 225 CMR 29.08(4). The purpose of the pre-filing municipal meeting is for the Applicant and Local Government to:

- (a) Verify basic project and site information, including zoning information, known areas subject to state or local environmental laws, and any other areas, structures, or buildings of cultural or historical significance that could be impacted by the project;
 - (b) Identify to the best extent possible all needed decisions and permits from the Local Government;
 - (c) Identify, to the best extent possible, any applicable local bylaws and processes;
 - (d) Identify, to the best extent possible, any other potential permitting, design, or engineering obstacles or items of concern that might hinder the Applicant's ability to secure all needed decisions within the 12-month timeframe; and
 - (e) Discuss dates, times, and locations for a public meeting, if applicable.
- (4) Pre-filing Information Session Requirements. The Applicant shall host not less than one pre-filing information session open to the public which shall conform to Department specifications in its *Guideline on Pre-Filing Stakeholder Engagement*. The Applicant shall host the information session in a publicly accessible location, and it shall be held in a hybrid format if feasible.
- (a) Public Notice Requirements. The Applicant shall provide notice of the pre-filing information session not less than 10 days in advance. The Applicant shall provide notice in a manner consistent with the following requirements:
 1. The Applicant shall provide notice to Abutters and Local Stakeholders of the proposed Site Footprint via United States Postal Service First Class Mail®. Determination of ownership and common boundary shall be made with reference to the current local tax assessors' records and maps. Notice shall include but not be limited to the following:
 - i. The proposed Small Clean Energy Infrastructure Facility's site address, a map of the Site Footprint, and the name of the project developer;
 - ii. A description of the size of the proposed Small Clean Energy Infrastructure Facility, which includes the Site Footprint and the project's generation and energy storage capacity, if applicable;
 - iii. Public meeting details, including dates, times, locations, and accessibility information, if applicable; and
 - iv. Information about relevant websites managed by the Local Government, the Department, and the Applicant.
 2. The Applicant shall provide notices to two or more multimedia outlets such as radio, newspapers, or social media. The Applicant shall also provide notices to the Local Government, and post notices on two different public buildings or community facilities within the Host Municipality. If the proposed Small Clean Energy Infrastructure Facility abuts or straddles multiple Municipalities the Applicant shall provide the same notices in all impacted Municipalities
 - (b) Pre-filing Information Session Materials. The Applicant shall make available the following materials during the information session:
 1. A project description including the type and nameplate capacity of the proposed Small Clean Energy Infrastructure Facility, the energy benefits the Small Clean Energy Infrastructure Facility will provide, any impacts the Small Clean Energy Infrastructure Facility may have on the community, the site work required, proposed structures to be constructed at the Small Clean Energy Infrastructure Facility's site, and a description of the Small Clean Energy Infrastructure Facility's alignment with the Commonwealth's energy goals and climate mandates;
 2. Site Footprint locus maps, including an aerial and GIS map, outlining the existing site conditions and any environmental, cultural, and historic features;

3. A draft Emergency Response Plan which shall be included in the Applicant's Consolidated Local Permit Application under 225 CMR 29.09. The Emergency Response Plan shall be approved by the Local Government's fire, police, or emergency management departments during the Consolidated Local Permit Review Process under 225 CMR 29.10; and
 4. All anticipated Criteria-specific Suitability Scores and plans for seeking Site Suitability Score Modifiers, if applicable.
- (5) Pre-Filing Engagement Completion Checklist. Upon completion of the stakeholder engagement activities described in 225 CMR 29.08, the Applicant shall submit a self-attested Pre-Filing Engagement Completion Checklist to the Local Government Representative. The Applicant shall attach the following materials to the Pre-Filing Engagement Completion Checklist:
- (a) Documentation summarizing all meetings and public information sessions held including the date, location, and copies of all meeting materials, if applicable; and
 - (b) Proof of compliance with the notice requirements, if applicable.
- (6) The Local Government Representative shall determine whether the Applicant has completed all pre-filing requirements not more than 10 days after the Applicant's submission of a Pre-filing Engagement Completion Checklist.
- (a) All pre-filing requirements shall be considered complete if the Applicant's Pre-Filing Engagement Checklist reflects compliance with 225 CMR 29.08(3) and (4), or the Applicant is excused from the pre-filing requirements pursuant to 225 CMR 29.08(2).
 - (b) If the Local Government Representative determines the Applicant has not completed all pre-filing requirements, the Local Government Representative shall notify the Applicant, and the Applicant must remedy all identified pre-filing deficiencies not more than 30 days after receiving such notice. If the Applicant fails to remedy all identified pre-filing deficiencies in 30 days, the Local Government Representative may allow the Applicant an additional period of up to 30 days to remedy all remaining deficiencies.
 - (c) The Applicant may contest the Local Government Representative's determination that pre-filing requirements are not complete by requesting an advisory opinion on the Applicant's Pre-Filing Engagement Completion Checklist by the Siting and Permitting Regional Coordinator.
 - (d) In the event that the Local Government Representative determines that all pre-filing requirements have been completed by the Applicant, the Local Government Representative shall sign the Applicant's Pre-filing Engagement Completion Checklist and the Applicant may submit a Consolidated Local Permit Application.

29.09 Consolidated Local Permit Application

- (1) Permit fees shall be assessed at the time the Applicant submits the Consolidated Local Permit Application to the Local Government.
- (2) The Consolidated Local Permit Application shall be submitted by the Applicant to the Local Government in a manner and form to be determined by the Department. The Applicant shall provide the following information:
 - (a) The Applicant's Pre-filing Engagement Completion Checklist signed by the Local Government Representative pursuant to 225 CMR 29.08(6)(d), if applicable;
 - (b) The Applicant's Site Suitability Report, if applicable;

- (c) The Applicant's proposed Mitigation or Minimization for any impacts identified in the Site Suitability Report, if applicable;
- (d) A summary of the project, including an explanation of why the site was chosen, in a form to be specified by the Department in its *Guideline on the Consolidated Local Permit Application*;
- (e) A detailed description of the proposed Small Clean Energy Infrastructure Facility, including the proposed Site Footprint and the surrounding area with relevant maps, figures, drawings, anticipated permits, any proposed Community Benefits Plan if applicable, or other attachments. The description shall meet Department specifications in its *Guideline on the Consolidated Local Permit Application*;
- (f) All materials necessary for site plan review and special permit review, if required by the Local Government, including but not limited to plot plans featuring location maps, dimensions of structures, abutting streets and ways, existing utilities, existing and proposed grading, all required screening, landscaping, lighting, and signage, vehicular circulation, setbacks, zoning, any additional materials required under local bylaw, and all other information required by the Department in its *Guideline on the Consolidated Local Permit Application*;
- (g) All materials necessary to request local permits required under 310 CMR 10.00: *Wetlands Protection Act*, other applicable federal and state laws, regulations, and guidance, and all applicable local bylaws, as well as any proposed remediation, restoration, or replanting activities as required by federal, state, or local law, and all other information required by the Department in its *Guideline on the Consolidated Local Permit Application*;
- (h) All requests for relief from applicable local zoning or land use regulations, bylaws, and ordinances as well as any materials needed to support the requests including, but not limited to, zoning maps and use tables, and any other materials required under the Local Government's bylaws or ordinances and all other information required by the Department in its *Guideline on the Consolidated Local Permit Application*;
- (i) A description of all stormwater, sedimentation, and erosion control measures as required under the Local Government's stormwater permit bylaw or ordinance, and federal or state law, including 310 CMR 10.00: *Wetlands Protection Act*, and MassDEP's *Stormwater Handbook*;
- (j) All materials necessary for any permits or decisions to be issued by local public health and safety authorities, including Emergency Response Plans, other materials required by the state and local public health and safety authorities, and all other information required by the Department in its *Guideline on the Consolidated Local Permit Application*;
- (k) A description of additional local permits or decisions required, but not applicable to a designated section on the Consolidated Local Permit Application, including but not limited to historic districts, designated economic or redevelopment zones, tax incentive zones, shade trees, municipal light departments, or agricultural areas;
- (l) The disclosures, documentation, and statements listed below. If the Applicant is unable to provide responsive documentation or statements, the Applicant must include a brief narrative explanation stating why such documentation or statement is unavailable:
 1. Documentation reflecting the Applicant's demonstrated commitment to workforce or economic development within the Commonwealth;
 2. A statement of intent concerning efforts that the Applicant and its contractors and subcontractors will make to promote workforce or economic development through the project;

3. Documentation reflecting the Applicant's demonstrated commitment to expand workforce diversity, equity, and inclusion in its past projects within the Commonwealth;
 4. Documentation as to whether the Applicant and its contractors and subcontractors participate in a state or federally certified apprenticeship program and the number of apprentices the apprenticeship program has trained to completion for each of the last five (5) years;
 5. A statement of intent concerning how or if the Applicant and its contractors and subcontractors intend to utilize apprentices on the project, including whether each of its contractors and subcontractors on the project participates in a state or federally certified apprenticeship program;
 6. Documentation relative to the Applicant and its contractors and subcontractors regarding their history of compliance with chapters 149, 151, 151A, 151B and 152, 29 U.S.C. section 201, et seq. and applicable federal anti-discrimination laws;
 7. Documentation that the applicant and its contractors and subcontractors are currently, and will remain, in compliance with chapters 149, 151, 151A, 151B, and 152, 29 U.S.C. section 201, et seq. and applicable federal anti-discrimination laws for the duration of the project;
 8. Detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the project, including documentation of the Applicant's history with picketing, work stoppages, boycotts or other economic actions against the applicant and a description or plan of how the Applicant intends to prevent or address such actions; and
 9. Documentation relating to whether the Applicant and its contractors have been found in violation of state or federal safety regulations in the previous ten (10) years;
- (m) A brief narrative description of the Applicant's historic compliance with the provisions of M.G.L. c. 149, §§ 26-27F; and
- (n) A brief narrative description of the Applicant's history of participation with state or federally certified apprenticeship programs.

29.10 Consolidated Local Permit Application Review Process.

- (1) Completeness Determination. The Local Government Representative shall determine whether a Consolidated Local Permit Application is complete not later than 30 days after receipt. The Local Government Representative shall share the Consolidated Local Permit Application with the local Board of Health and other relevant local departments or boards to assist in determining completeness.
- (a) Completeness Standard. A Consolidated Local Permit Application shall be deemed complete by the Local Government Representative if:
1. All permit fees have been paid to the Local Government pursuant to 225 CMR 29.09(1); and
 2. The Applicant has provided all necessary documentation, materials, and disclosures required under 225 CMR 29.09(2).
- (b) If a Consolidated Local Permit Application is deemed incomplete, the Local Government Representative shall notify the Applicant and specify deficiencies. The Applicant shall have 30 days, and any additional time as determined by the Local Government Representative, to cure any deficiencies before the Consolidated Local Permit Application is rejected. The Local Government shall determine whether the revised Consolidated Local Permit Application cures all deficiencies not later than 30 days of receipt.

- (c) If the Local Government Representative determines the Applicant has not cured all deficiencies, it may allow the Applicant an additional 30 days to cure stated deficiencies or deny the Consolidated Local Permit Application without prejudice. An Applicant whose Consolidated Local Permit Application is denied shall be required to repeat all applicable pre-filing requirements described in 225 CMR 29.08.
 - (d) If the Local Government Representative does not determine whether a Consolidated Local Permit Application is completed within 30 days of receipt, the Consolidated Local Permit Application shall be deemed to be complete and eligible for review under 225 CMR 29.10.
- (2) The Applicant shall provide a digital copy of the complete Consolidated Local Permit Application to the Department within 10 days of the completeness determination described 225 CMR 29.12.
- (3) Review. The Local Government shall complete its review and issue a decision on a Consolidated Local Permit Application not more than 12 months after its receipt of a complete Consolidated Local Permit Application, or from the date it is deemed complete pursuant to 225 CMR 29.09. All Local Government boards and departments reviewing the Consolidated Local Permit Application may conduct their reviews concurrently provided that those reviews are complete within 12 months. Local Government boards and departments shall maintain intergovernmental collaboration throughout the application review process.
 - (a) The Local Government's 12-month review period shall begin upon its receipt of the Applicant's Consolidated Local Permit Application and terminate upon the date that the Town Clerk stamps the Consolidated Local Permit.
 - (b) In the case that a Local Government lacks the resources, capacity or staffing to review a Consolidated Local Permit Application within 12 months, it may, not later than 60 days after receipt of such application or at any time thereafter with the consent of the Applicant, request in writing a De Novo Adjudication of such application by the EFSB Director pursuant to 980 CMR 14.02(1)(c) and 14.02(2)(b). If the EFSB Director accepts the Consolidated Local Permit Application for said De Novo Adjudication, any permit fees received by Local Government for its review of the Consolidated Local Permit Application shall be refunded in full to the Applicant within 30 days of the Director's acceptance of the Consolidated Local Permit Application, or as soon as practicable.
- (4) Significant Changes to a proposed Small Clean Energy Infrastructure Facility. If the Applicant identifies a Significant Change to a Small Clean Energy Infrastructure Facility before the Local Government Representative issues its decision on the Consolidated Local Permit Application, the Local Government Representative may determine the Consolidated Local Permit Application incomplete. The Applicant may then submit all necessary supplemental materials to reflect the Significant Change and request a completeness determination from the Local Government Representative. The Local Government shall have 12 months from the date of the Local Government Representative's subsequent completeness determination to issue its decision on the Consolidated Local Permit Application.
- (5) Decision on Individual Application Components. All Local Government boards, offices, commissions, and departments tasked with reviewing the Consolidated Local Permit Application under 225 CMR 29.10 shall issue their respective decisions on Individual Application Components, which grant, grant with conditions, or deny the application, not more than 12 months after the date that a complete Consolidated Local Permit Application is received by the Local Government Representative. Decisions

on Individual Application Components shall be promptly communicated to the Local Government Representative issuing the decision on the Consolidated Local Permit Application. If a Local Government board or department issues a decision on an Individual Application Component denying the Consolidated Local Permit Application before other Local Government boards and departments reach a decision on their respective Individual Application Components, the Local Government boards and departments with pending decisions shall continue their review and issue a decision on their respective Individual Application Components. A decision by a Local Government on an Individual Application Component may not be appealed or reviewed independently.

- (a) Decision on Consolidated Local Permit Decision Application. The Local Government Representative shall issue its decision on the Consolidated Local Permit Application and notify the Applicant, the Department, and the Local Government's Town Clerk of that decision that same day. That decision shall incorporate all decisions on Individual Application Components and include applicable conditions. If one or more Local Government boards and departments issue a decision denying an Individual Application Component, the Consolidated Local Permit Application shall be denied.

Approval. If the Local Government approves the Applicant's Consolidated Local Permit Application, the Local Government shall issue a decision approving the Consolidated Local Permit Application that incorporates all Individual Application Components. An approved Consolidated Local Permit Application may include one or more permits.

1. Denial. If the Local Government denies the Applicant's Consolidated Local Permit Application, the Local Government shall issue a decision on the denied Consolidated Local Permit Application which shall include detailed reasoning for the denial. A Consolidated Local Permit Application shall be presumed to be denied without prejudice.

- (b) Constructive Approval. If the Local Government fails to issue a decision on the Applicant's Consolidated Local Permit Application within the 12-month review period, the Consolidated Local Permit Application shall result in Constructive Approval and be subject to the conditions and requirements of 225 CMR 29.12. The Local Government Representative shall notify the Applicant, Town Clerk, and the Department within 10 days of Constructive Approval.

- (6) The Local Government Representative shall provide a digital copy of the decision on the Consolidated Local Permit Application to the Applicant and the Department within 10 business days. Such digital copy shall include the Town Clerk's stamp.

(7) Information Requests

- (a) The Applicant shall respond to all communications made by the Local Government within five days. The Applicant shall ensure the correct contact information, including email, is listed on the Consolidated Local Permit Application, and updated as needed. The Applicant shall submit any revisions requested in such communication within 10 days, unless an extension has been granted in writing by the Local Government. Such extension may not exceed the 12-month review period as described in 225 CMR 29.10(5). If the Local Government determines that an Applicant's failure to respond in a timely manner or status of incompleteness could impede the Local Government's ability to complete its review and issue a final decision within 12 months, the Local Government may deny the Consolidated Local Permit Application.

1. The Local Government's information requests shall be appropriate in scope. If a Local Government routinely submits requests for information that are not reasonably necessary to facilitate its review of a Consolidated Local Permit Application, or communicates with an Applicant in a manner that is designed to place the Applicant into a state of non-compliance 225 CMR 29.10, the Department may provide an

advisory recommendation on the appropriateness of such information requests and may document its occurrence to the Board in the event that the Small Clean Energy Infrastructure Facility advances to a De Novo Adjudication pursuant to 225 CMR 29.10(8).

(8) De Novo Adjudication of Consolidated Local Permit Decisions.

- (a) Applicants and other individuals or entities substantially and specifically affected by a decision of a Local Government on a Consolidated Local Permit Application may file a written petition to request a De Novo Adjudication of a decision on a Consolidated Local Permit Application by the director of the Board pursuant to 980 CMR 14.00.
- (b) Pursuant to 980 CMR 14.00, a petition for a De Novo Adjudication must be filed within 30 days of the Local Governments Representative's decision on a Consolidated Local Permit Application, or the Constructive Approval of a Consolidated Local Permit Application. A single decision on Individual Application Components is not eligible for an independent De Novo Adjudication or otherwise independently appealed or reviewed.
- (c) The Applicant shall comply with all requests or restrictions, including restrictions on performance of work, while the decision on a Consolidated Local Permit is under De Novo Adjudication pursuant to 225 CMR 29.00 and 980 CMR 14.00.

29.11 Technical Assistance

- (1) The Department shall be available to assist Local Governments and Applicants apply 225 CMR 29.00, applicable sections of M.G.L. c. 25A, and Department Guidelines.
- (2) Upon request, the Department shall answer questions and provide guidance on the Consolidated Local Permit Application and requirements of the relevant regulations and laws, including in disputes between Applicants and Local Governments. The Regional Coordinators' services shall be provided free of charge to Applicants and Local Governments.
- (3) The Department may provide assistance in matters including, but not limited to, determinations of completeness for pre-filing requirements and Consolidated Local Permit Applications, the Consolidated Local Permit Application review process, understanding Site Suitability and Criteria-specific Site Suitability Scores results, requests for information as outlined under 225 CMR 29.08(4)(b), and the development of appropriate Minimization and Mitigation.
- (4) Any guidance, opinion, or other assistance provided by the Department is advisory in nature and shall not be considered a legal opinion, nor shall it be binding on the Applicant or the Local Government.

29.12 Common Conditions and Requirements for Constructive Approval.

- (1) Applicability. This section applies to Consolidated Local Permit Applications which result in Constructive Approval.
- (2) In the case that a Consolidated Local Permit Application meets the criteria to receive Constructive Approval, conditions and requirements as specified in the Department's *Guideline on Common Conditions* shall exclusively apply to the resulting Consolidated Local Permit. Those conditions and requirements shall include but not be limited to:
 - (a) Administrative and legal conditions and requirements addressing compliance, site inspections, changes in ownership, timelines, and project alterations; Conditions and

requirements for construction addressing visual impact, vegetation, earthwork, working hours, chemicals and hazardous materials, and lighting at the site; Conditions and requirements for operation and maintenance addressing facility access stormwater control, emergency response, storage of hazardous materials, and general facility operations; Conditions and requirements for addressing decommissioning including determination of inoperability, performance mods, material disposal, recycling, and abandonment of Small Clean Energy Infrastructure Facilities and any related equipment; and

- (b) Requirement that Small Clean Energy Infrastructure Facilities meet the Performance Standards at 310 CMR 10.00 *Wetlands Protection*, including review under 310 CMR 10.00.

- (3) Enforcement of Common Conditions. In the case of Constructive Approval, the Local Government shall enforce all conditions and requirements.

29.13 Model Small Clean Energy Infrastructure Facility Permitting Bylaw

- (1) The Department shall develop a Model Small Clean Energy Infrastructure Facility Permitting bylaw, which will outline the processes and procedures Local Government boards, departments, and authorities shall follow in response to the Applicant's election to submit a Consolidated Local Permit Application.
- (2) The Department shall be available to provide technical assistance on adoption of the Model Small Clean Energy Infrastructure Bylaw.
- (3) The Local Government may modify the Model Small Clean Energy Infrastructure Facility Permitting Bylaw, provided such modifications do not conflict with the requirements of 225 CMR 29.00 or M.G.L. c. 25A, §§ 2 and 21.

29.14 Successors in Interest

- (1) In the event of the sale of a Small Clean Energy Infrastructure Facility, all permit conditions and requirements, mitigation obligations, and Community Benefits Agreements shall apply to all successors in interest to the permitted Small Clean Energy Infrastructure Facility.
- (2) Successors in interest may petition the Local Government to modify the pre-existing permitting obligations attached to the Small Clean Energy Infrastructure Facility. The Local Government shall not be obligated to grant such petition or otherwise reconsider the successors' obligations as relates to the relevant Small Clean Energy Infrastructure Facility. Successors in interest may petition for modification of pre-existing permit conditions on an individual basis.

29.15: Reporting

The Department shall, on a quarterly basis, determine whether more than 50 percent of Consolidated Local Permit Applications for Small Clean Energy Infrastructure Facilities processed in the preceding 24-month period throughout the Commonwealth have received Constructive Approval. If more than 50 percent of applications have been so approved, the Department, Department of Public Utilities, and the Office of Environmental Justice and Equity shall, within six (6) months of the conclusion of the twenty-four (24) month period, analyze and report on the cause of the high rate of Constructive Approvals by Local Governments and make recommendations to Local Governments, the General Court, and the Governor on how to reduce the number of Constructive Approvals and increase the number of decisions reached by means other than Constructive Approval.

29.16: Severability

If any provision of 225 CMR 29.00 is declared invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

REGULATORY AUTHORITY

225 CMR 29.00: M.G.L. c. 25A, §§ 2, 6, and 21.