

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 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.

Abbreviated Notice of Resource Area Delineation. Massachusetts Department of Environmental Protection WPA Form 4A, completed in accordance with 310 CMR 10.00: *Wetlands Protection*.

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.

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.

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 required local permits, approvals, or authorizations that the Applicant would otherwise need to obtain individually from the Local Government.

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.

Compensatory Environmental Mitigation. Mitigation measures which are funded by but not performed by the Applicant and are consistent with the restoration, establishment, enhancement, or preservation of environmental resources comparable to those negatively impacted by the siting of a Small Clean Energy Infrastructure Facility

Compensatory Environmental Mitigation Fees. Fees set by the Local Government and paid by the Applicant to fulfill Compensatory Environmental Mitigation obligations.

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*, 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 twelve (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 may 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 twenty-one-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).

Key Stakeholders. Members of the public including local residents, public interest groups, and organizations within a community located within one mile of a proposed Small Clean Energy Infrastructure Facility that could be affected by that project, or a person or organization representing local residents. Key Stakeholders may include abutting residents (both owners and renters) and businesses, community-based organizations, environmental justice communities, elected or appointed municipal officials (e.g., mayor or town or city manager, relevant Council or Select Board members, Chair(s) of the Conservation Commission, Planning Board, Zoning Board, and Head of the Department of Public Works), regional planning officials, and federally recognized, state-acknowledged, or state-recognized tribes.

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. A decision-making entity within a Local Government.

Minimization. The reduction of impacts to the smallest possible amount or degree.

Mitigation. Measures taken which have been subject to review and input from the general public and include, but are not limited to, the repair, rehabilitation, or restoration of an area affected by an adverse impact of siting a Small Clean Energy Infrastructure Facility.

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

Non-Profit Entity. A corporation organized for a purpose consistent with M.G.L. c. 180, § 4, except for corporations organized prior to March 11, 1831.

Notice of Intent to File Application. The Applicant's pre-filing submission, which meets the requirements identified in 225 CMR 29.08.

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 Certification Checklist. An initial self-certification document, which shall be filed by an Applicant with its Notice of Intent to File Application, that affirms the Applicant's intent to comply with the consultation and engagement requirements identified in 225 CMR 29.08.

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.

Pre-filing Period. A period not more than sixty (60) days before the Applicant's planned submission of a Consolidated Local Permit Application during which the Applicant must complete all pre-filing requirements identified in 225 CMR 29.08.

Regulatory Circuit Rider. An individual appointed by the Department, for the purpose of offering technical, administrative, and regulatory assistance on Small Clean Energy Infrastructure Siting and Permitting topics.

Request for Determination of Applicability. A request by the Applicant to the relevant Conservation Commission to determine the applicability of the M.G.L. c. 40, § 131 to a proposed site.

Site Footprint. The area of land and water encompassed by 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 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 Score Modifier. Positive or negative adjustments to a Small Clean Energy Infrastructure Facility's Total Site Suitability Score that are reflective of development potential or social and environmental benefits, as prescribed in the Site Suitability Guidance.

Site Suitability Score Reviewer. An entity selected by the Executive Office of Energy and Environmental Affairs, in consultation with the Department that will be responsible for calculating Criteria-specific Suitability Scores and Total Site Suitability Scores.

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 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.

Total Site Suitability Score. The sum of all Criteria-Specific Suitability Scores and any Site Suitability Score Modifiers, representing how suitable a site is for a Small Clean Energy Infrastructure Facility, across all criteria measured in the Site Suitability Guidance.

Town Clerk. An officer of the Municipality as defined under M.G.L. c. 41, § 15. For the purposes of these regulations, the Town Clerk shall serve as the default Local Government Representative, unless specified otherwise by bylaw or ordinance.

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 siting and permitting of Small Clean Energy Infrastructure Facilities by Local Governments.
- (2) 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) Applicants and Local Governments may comply with the standards and practices established in 225 CMR 29.00, or the Local Government's existing applicable standards practices through November 30, 2026, but not a mix of both.
- (2) Applicants and Local Governments must comply with the standards and practices established in 225 CMR 29.00 no later than December 1, 2026

29.06: Public Health, Safety, and Environmental Standards

- (1) The Applicant shall conform to all public health, safety, and environmental standards in accordance with Department specifications in its *Guideline on Public Health, Safety, and Environmental 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 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) Local Governments may adopt additional standards, provided such standards are reasonably necessary to protect the public health, safety, or welfare and do not conflict with the standards specified in 225 CMR 29.00 or any associated Department Guideline.

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) A Small Clean Energy Infrastructure Facility with a Site Footprint , of one acre or less;
 - (b) A Small Clean Transmission and Distribution Infrastructure Facility that is not sited in a newly established public right of way, as defined in the Site Suitability Guidance;
 - (c) A Solar Facility with a nameplate capacity, as measured in alternating current, of less than or equal to 25 kW; or
 - (d) A Behind-the-Meter Small Clean Energy Infrastructure Facility, as measured in alternating current, of less than or equal to 250 kW.
- (2) Determination of Total Site Suitability Score and Criteria-specific Suitability Scores.
 - (a) Pre-filing Requirements for Applicants. Applicants shall estimate the Total Site Suitability Score and Criteria-specific Suitability Scores for the proposed Small Clean Energy Infrastructure Facility prior to seeking a Formal Score Determination pursuant to 225 CMR

29.07(2)(b). Applicants shall share these estimated scores with Key Stakeholders in any pre-filing engagements that occur prior to the receipt of a Formal Score Determination.

- (b) Formal Score Determination. Applicants shall submit a site plan, detailed explanation of the design of a Small Clean Energy Infrastructure Facility, and its anticipated Total Site Suitability Score and Criteria-specific Suitability Scores to the Site Suitability Score Reviewer not less than 45 days prior to submitting their Consolidated Local Permit Application to the Local Government. The Site Suitability Score Reviewer shall review the information provided and determine the Small Clean Energy Infrastructure Facility's Total Site Suitability Score and Criteria-Specific Suitability Scores within 30 days of receipt. These scores shall be submitted by the Applicant as part of the Site Suitability Report, pursuant to 225 CMR 29.07(3).

1. Cure Process. If the Site Suitability Score Reviewer has insufficient information to complete its review, it may request information from the Applicant necessary to do so, and the Applicant shall have 30 days to provide this information from the date it is requested. The Site Suitability Score Reviewer shall complete its review of any revised set of information within 30 days of receipt. If the information provided is still insufficient, the Site Suitability Score Reviewer can issue a determination that its review cannot be completed. An Applicant that receives such a determination must wait 30 days before it can resubmit a new request for score determination from the Site Suitability Score Reviewer for the same Small Clean Energy Infrastructure Facility.

- (3) Site Suitability Report. Except in the case of a proposed Small Clean Energy Infrastructure Facility that meets the criteria for an exemption under 225 CMR 29.07(1), all Applicants seeking a Consolidated Local Permit shall be required to provide a Site Suitability Report to the Local Government as part of their Consolidated Local Permit Application, which shall include the following information pertaining to the Small Clean Energy Infrastructure Facility:

- (a) The Total Site Suitability Score;
- (b) All Criteria-specific Suitability Scores;
- (c) An explanation of why the site for the proposed Small Clean Energy Infrastructure Facility was chosen;
- (d) Proposed Minimization and Mitigation Measures for any impacts identified in Criteria-specific Suitability Scores, pursuant to 225 CMR 29.07(5) through (7);
- (e) Documentation to support the applicability of any Site Suitability Score Modifiers;
- (f) Documentation of social and environmental benefits, if applicable; and
- (g) Analysis of social and environmental burdens, if applicable.

The Department may prescribe the manner and form in which the Site Suitability Report shall be submitted to a Local Government via the establishment of a Guideline.

- (4) Request for Score Review. If an Applicant for a Consolidated Local Permit submitted to a Local Government, the Local Government, or any other Key Stakeholder disputes the Total Site Suitability Score or Criteria-specific Suitability Scores submitted as part of the Site Suitability Report, they may submit a request for score review to the Department. Such request shall contain a detailed description of the error(s) that the party asserts were made in the calculation of one or more scores and the Department shall complete its review within 30 days of receipt. The score determination by the Department shall be final and not subject to appeal.

- (5) Minimization and Mitigation Measures.

- (a) Application of Site Suitability Report. A Local Government may use the Site Suitability Report required by 225 CMR 29.07(3) to prescribe different types of Minimization and Mitigation Measures, which 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) Scope and Type of Minimization and Mitigation Measures. The scope and type of Minimization and Mitigation Measures that a Local Government may require shall be based on a Small Clean Energy Infrastructure Facility's Total Site Suitability Score and Criteria-specific Suitability Scores and shall meet the specifications in the Department's *Guideline on Minimization and Mitigation Measures*. If the Total Site Suitability Score or Criteria-Specific Suitability Scores are high enough, as prescribed in the Department's *Guideline on Minimization and Mitigation Measures*, such measures may include Compensatory Environmental Mitigation Measures, as prescribed in 225 CMR 29.07(6).
 - (c) Exemptions for Highly Suitable Facilities. A Local Government may not require Minimization measures for Small Clean Energy Infrastructure Facilities that achieve highly suitable Total Suitability Scores or Criteria-specific Suitability Scores, as prescribed in the Site Suitability Guidance, without the express consent of the Applicant.
- (6) Compensatory Environmental Mitigation. A Local Government may offer Compensatory Environmental Mitigation to an Applicant in situations where a proposed Small Clean Energy Infrastructure Facility has received a highly unsuitable Total Site Suitability Score or Criteria-specific Suitability Score, consistent with the Site Suitability Guidance and the Department's *Guideline on Minimization and Mitigation Measures*, or may be mutually agreed to between the Local Government and the Applicant. Such measures shall have a rational nexus to impacts of the proposed Small Clean Energy Infrastructure Facility's siting on the local environment and people, and be consistent with the Commonwealth's goals and objectives for climate mitigation, resilience, environmental justice, biodiversity, and protection of natural and working lands to the maximum extent practicable. Qualifying Compensatory Environmental Mitigation shall meet the specifications in the Department's *Guideline on Minimization and Mitigation Measures*.
- (7) Compensatory Environmental Mitigation Fees. Local Governments may impose Compensatory Mitigation Environmental Fees to satisfy the Applicant's Minimization and Mitigation requirements. The fees shall be paid by the Applicant in lieu of the Applicant's own performance of Minimization and Mitigation Measures under 225 CMR 29.07(5). Payment of Compensatory Environmental Mitigation Fees under this section shall not excuse an Applicant's additional mitigation requirements required under state or federal law.
- (a) In setting Compensatory Environmental Mitigation Fees, Local Governments shall refer to the Applicant's Site Suitability Report and calculate the fee in accordance with Department specifications in *Guideline on Minimization and Mitigation Measures*.
 - (b) Compensatory Environmental Mitigation Fees established by the Local Government shall be paid by the Applicant in a manner to be established by the Local Government. Payment may be made to either the Local Government or a Non-Profit Entity for the purposes of satisfying the Applicant's Minimization and Mitigation Measure requirements under 225 CMR 29.07(5).
 - 1. In the case that the Applicant pays Compensatory Environmental Mitigation Fees to the Local Government, the Local Government shall hold all monies in a special gifts account and monies shall not be included in the Local Government's general fund.

2. In the case that the Applicant pays Compensatory Environmental Mitigation fees to a Non-Profit Entity:
 - i. The Local Government may require that an Applicant receive its permission before the Applicant elects to pay fees to such Non-Profit Entity; and
 - ii. The Non-Profit Entity shall hold all monies in a manner to be determined by the Department.
- (c) The Applicant shall not pay Compensatory Environmental Mitigation Fees to a Non-Profit Entity of which the Applicant or its successors hold a financial or voting interest, controlling or otherwise.

29.08: Pre-Filing Requirements

- (1) The Applicant shall complete all pre-filing requirements in 225 CMR 29.08 before submitting a Consolidated Local Permit Application to the Local Government. A Consolidated Local Permit Application submitted before the completion of all pre-filing requirements shall be automatically denied without prejudice.
- (2) Notice of Intent to File Application. The Applicant shall submit a Notice of Intent to File Application during the Pre-filing Period. The Pre-filing Period shall be not more than sixty (60) days prior to the planned submission of a Consolidated Local Permit Application. Notices of Intent to File Applications shall be submitted to a Local Government Representative and shall include:
 - (a) A project description including the type and nameplate capacity of the proposed Small Clean Energy Infrastructure Facility, the energy benefits that will be provided by the Small Clean Energy Infrastructure Facility, 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;
 - (b) Site Footprint locus maps, including an aerial and GIS map, outlining the existing site conditions and any environmental, cultural, and historic features;
 - (c) A completed Abbreviated Notice of Resource Area Delineation that includes a wetland evaluation and map of the site, or, if requested by the local Conservation Commission, a Request for Determination of Applicability;
 - (d) A draft Emergency Response Plan to be approved by the Local Government's fire, police, and emergency management departments;
 - (e) The Applicant's self-attested Pre-Filing Engagement Certification Checklist affirming the Applicant will complete the following stakeholder engagement after the submission of a Notice of Intent to File Application. The Applicant's stakeholder engagement plan shall be appropriate for the size and scope of the Small Clean Energy Infrastructure Facility and meet Department specifications in its Guideline on Pre-Filing Stakeholder Engagement.
 - (f) Public Notice Requirements. The Applicant shall meet the following public notice requirements.

1. The Applicant shall host a public meeting open to Key Stakeholders. The Applicant shall provide notice not less than 14 days before the public meeting, which shall be held in a hybrid format and in a publicly accessible location. The meeting shall be recorded and made available to the public within five (5) days of the meeting date. The meeting shall conform to Department specifications in its *Guideline on Pre-Filing Stakeholder Engagement*.
 2. The Applicant shall provide notice to Abutters 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;
 - iii. Public meeting details, including dates, times, locations, and accessibility information; and
 - iv. Information about relevant websites managed by the Local Government, the Department, and the Applicant.
 3. The Applicant shall provide notices to two or more multimedia media outlets such as radio, newspaper, or social media. The Applicant shall also provide notices to the Local Government's website and three 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
- (3) 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.
- (4) The Local Government Representative shall determine within thirty (30) days of the Applicant's submission of a Notice of Intent to File Application whether the Applicant has completed all pre-filing requirements. The Local Government Representative may consult other municipal officials in carrying out the duties required in this section.
- (a) 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 within thirty (30) days of the Local Government's notice.
1. If the Local Government Representative finds that the Applicant failed to resolve all pre-filing application deficiencies within thirty (30) days, the Local Government Representative may again allow the Applicant thirty (30) days to cure the stated deficiencies, or deny the Applicant's Notice of Intent to File Application without prejudice and the Applicant may file a new Notice of Intent to File Application.
- (5) The Applicant may contest the Local Government Representative's determination that pre-filing requirements are not met by requesting review of the Applicant's pre-filing activities by the Regulatory Circuit Rider. If the Regulatory Circuit Rider makes a determination that the Applicant

has completed all pre-filing requirements, the Applicant may submit a Consolidated Local Permit Application for the Small Clean Energy Infrastructure Facility to the Local Government.

- (6) In the event that the Local Government Representative determines that all pre-filing requirements have been met by the Applicant, the Applicant may submit a Consolidated Local Permit Application.

29.09 Consolidated Local Permit Application

- (1) Permit fees shall be assessed at the time of the Consolidated Local Permit Application's submission to the Local Government. Permit fees shall be referenced in the Local Government's Clean Energy Infrastructure Permitting Bylaw and may include a fee structure to cover required technical consultants including but not limited to engineers, architects, wetlands scientists, and attorneys.
- (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 information including but not limited to:
 - (a) A summary of the project in a form to be specified by the Department in its *Guideline on the Consolidated Local Permit Application*;
 - (b) 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, a description of any proposed Payment in Lieu of Taxes (PILOT) payment, or other attachments. The description shall meet Department specifications in its *Guideline on the Consolidated Local Permit Application*;
 - (c) A Site Suitability Report, if applicable, as prescribed by 225 CMR 29.07(2);
 - (d) All materials needed to secure electrical, plumbing, excavation, earth removal, or curb cut permits, or any other permits from the Local Government's Building Department, Public Works Department, or other local authorities having jurisdiction, as applicable, as specified by the Department in its *Guideline on the Consolidated Local Permit Application*;
 - (e) All materials necessary for site plan 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, and all other information required by the Department in its *Guideline on the Consolidated Local Permit Application*;
 - (f) All materials necessary to request local permits required under 310 CMR 10.00: *Wetlands Protection* 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*;
 - (g) All requests for relief from applicable 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*;

- (h) A description of all stormwater and erosion control measures description as required under the Local Government's stormwater permit bylaw or ordinance, and federal or state law;
- (i) All materials necessary for any permits or decisions to be issued by local public health and safety authorities, including any plans addressing nuisances, approved 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*;
- (j) A description of additional local permits or decisions required, but not applicable to a designated section on the application, including, but not limited to, historic districts, designated economic or redevelopment zones, tax incentive zones, shade trees, municipal light departments, or agricultural areas; and
- (k) The following disclosures in a manner to be specified by the Department in its *Guideline on the Consolidated Local Permit Application*:
 - 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.
- (3) The Applicant shall provide a digital copy of the Consolidated Local Permit Application to the Department as directed by the Department.

29.10 Consolidated Local Permit Application Review Process.

- (1) Completeness. The Local Government shall determine whether a Consolidated Local Permit Application is complete not later than thirty (30) days after receipt. If a Consolidated Local Permit Application is deemed incomplete, the Local Government shall notify the Applicant and specify deficiencies. The Applicant shall have thirty (30) days, and any additional time as determined by the Local Government, 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 thirty (30) days of receipt.
 - (a) If the Local Government determines the Applicant has not cured all deficiencies, it may allow the Applicant an additional thirty (30) days to cure stated deficiencies or deny the Consolidated Local Permit Application without prejudice.
 - (b) If the Local Government does not determine whether a Consolidated Local Permit Application is completed within thirty (30) days of receipt, the Consolidated Local Permit Application shall be deemed to be complete and subject to the common conditions and requirements for constructive approval prescribed in 225 CMR 29.12.
 - (c) The Applicant shall within seven (7) days provide a digital copy of the complete Consolidated Local Permit Application as directed by the Department.
 - (d) The Local Government or the Department shall make efforts to make the Consolidated Local Permit Application available to the public.
- (2) Review. The Local Government shall complete its review and issue a decision on a Consolidated Local Permit Application within twelve (12) months of receipt of a complete Consolidated Local Permit Application, or from the date it is deemed complete pursuant to 225 CMR 29.09(1)(b). All Local Government boards and departments reviewing the Consolidated Local Permit Application may conduct their reviews concurrently provided that those reviews are complete within twelve (12) months and the Local Government's bylaws and ordinances do not direct a shorter review period. Local Government boards and departments shall maintain intergovernmental collaboration throughout the application review process.
 - (a) In the case that a Local Government lacks the resources, capacity or staffing to review a Consolidated Local Permit Application within twelve (12) months, it may, not later than sixty (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).

(3) 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, within twelve (12) months of the date that a complete Consolidated Local Permit Application was received by the Local Government. Decisions on Individual Application Components shall be promptly communicated to the Local Government Representative issuing the Decision on the Consolidated Permit Application. If a Local Government board or department issues a decision on Individual Application Components denying the 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 applications 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 to the Applicant and the Local Government's Town Clerk. That decision shall incorporate all decisions on Individual Application Components and include applicable conditions. In the case that one or more Local Government boards and departments issue a decision denying an Individual Application Component, the Consolidated Local Permit Application shall be denied.

1. Approval. In the case that 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.
2. Denial. In the case that 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 and the Applicant may submit a new application.

(4) Information Requests and Process for Denial

(a) An Applicant shall respond to all communications made by the Local Government or the Department within three business days, provided that communications are made in person or using the contact information listed on the Consolidated Local Permit Application. The Applicant shall submit any revisions requested in such communication within seven business days, unless an extension has been granted in writing by the Local Government or the Department.

1. The Local Government or the Department may consider an Applicant's failure to respond to communications as basis for the denial of a Consolidated Local Permit Application without prejudice, or other action deemed appropriate by the Department.

(b) If, as determined by the Department, a Local Government routinely submits requests for information that are superfluous to 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(4)(a), the Department may direct the Local Government to cease such behavior and may document its occurrence to the Board in the event that the Small Clean Energy Infrastructure Facility advances to a De Novo Adjudication.

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

- (a) Applicants and other individuals or entities substantially and specifically affected by a proposed Small Clean Energy Infrastructure Facility 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 14.02(2)(a), a petition for a De Novo Adjudication must be filed within thirty (30) days of the Local Government's decision on a Consolidated Local Permit Application or 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

29.11 Regulatory Circuit Rider

- (1) The Department shall employ one or more Regulatory Circuit Rider or Riders to help Local Governments and Applicants apply 225 CMR 29.00, applicable sections of M.G.L. c. 25A, Department Guidelines, and applicable local bylaws.
- (2) Upon request, the Regulatory Circuit Rider 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 Regulatory Circuit Rider services shall be provided free of charge to Applicants and Local Governments.
- (3) The Regulatory Circuit Rider 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 Total Site Suitability Score and Criteria-specific Site Suitability Score results, requests for information as outlined under 225 CMR 29.08(4)(b), and the development of appropriate Environmental Mitigation measures.

29.12 Common Conditions and Requirements for Constructive Approval.

- (1) Applicability. This section applies to Consolidated Local Permit Applications which result in Constructive Approval.
 - 1. 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 apply to the resulting Consolidated Local Permit. Those conditions and requirements shall include but not be limited to:
 - i. Administrative and legal conditions and requirements addressing compliance, site inspections, changes in ownership, timelines, and project alterations;
 - ii. Conditions and requirements for construction addressing visual impact, vegetation, earthwork, working hours, chemicals and hazardous materials, and lighting at the site;

- iii. Conditions and requirements for operation and maintenance addressing facility access stormwater control, emergency response, storage of hazardous materials, and general facility operations; and
- iv. 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.

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 and departments shall follow pursuant to the Consolidated Local Permit Application review process.
- (2) Local Governments may adopt the Department's Model Small Clean Energy Infrastructure Facility Permitting bylaw, which may:
 - (a) Identify the Local Government Representative responsible for overseeing the pre-filing requirements;
 - (b) Identify the Local Government Representative responsible for overseeing the Consolidated Local Permit Application review process, and compiling all Local Government board and department permits, decisions, mitigation agreements, Community Benefits Plans, and orders of conditions, and issuing the final decision on the Consolidated Local Permit Application;
 - (c) Identify the Local Government Representative responsible for enforcing all permit conditions;
 - (d) Set application and peer review fees;
 - (e) Establish the cadence and deadlines by which the Local Government's boards and departments shall adhere to in their review of Consolidated Local Permit Applications and Individual Application Components;
 - (f) Develop a Consolidated Local Permit Application review process consistent with 225 CMR 29.10 and applicable state law;
 - (g) Identify the process under which relevant Local Government boards and departments will consult with each other and ensure that prior to the issuance of any decision on a Consolidated Local Permit Application, each decision on an Individual Application Component is aligned; and
 - (h) Incorporate the concurrency and transition periods, as described in 225 CMR 29.05, for the effective date of all standards established by the Department in 225 CMR 29.00.
- (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 Enforcement

- (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.

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.