



**THE COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

TO: 2024 Climate Act Stakeholders

FROM: Joan Foster Evans, EFSB General Counsel

DATE: April 3, 2026

RE: 2024 Climate Act – 980 CMR 17.00 - Constructive Approval

I. Background

On September 12, 2025, the Energy Facilities Siting Board (“Siting Board”) issued a decision opening a rulemaking to implement the provisions of the 2024 Climate Act, St. 2024, c. 239. EFSB 25-10. Attached to the Siting Board’s final decision was a package of proposed regulations, including 980 CMR 17.00, Constructive Approval. The Constructive Approval provision of the 2024 Climate Act provided that in the event that the Siting Board did not issue a final decision on a Clean Energy Infrastructure Facility (“CEIF”) Application by the statutory deadline, a consolidated permit would issue by operation of law. Proposed regulation 980 CMR 17.00 defined the procedures for how the Constructive Approval would be issued.

The Siting Board received comments during the public comment period on the proposed regulations. In response to comments received, Siting Board Staff (“Staff”) revised the proposed regulations, including 980 CMR 17.00, and issued the revisions to the public in January 2026. At a meeting of the Siting Board on January 7, 2026, staff presented proposed revisions to the regulations issued in September, and heard public comment on the revisions, including the Constructive Approval regulation. The Board also received additional written comments on the proposed revisions.

In light of the public comments received, and discussion at the Board meeting, Staff concluded that the Constructive Approval proposed regulation needed additional revisions and public comment. The Constructive Approval regulation was not included in the package of regulations that were promulgated as final regulations on February 27, 2026. At a meeting of the Siting Board on February 26, 2026, Staff presented additional thoughts regarding Constructive Approval, received public comment, and heard considerations from Siting Board members. In addition, Staff recommended next steps, including a further round of public comments and promulgating final regulations for 980 CMR 17.00 this spring.

What the 2024 Climate Act RequiresDeadlines:

- G.L. c. 164, § 69T requires “in no instance shall the board take more than 15 months from the determination of application completeness to render a final decision on an application.”
- G.L. c. 164, § 69U requires “in no instance shall the board take more than 12 months from the determination of application completeness to render a final decision on an application.”
- G.L. c. 164, § 69V requires “The board shall not take more than 12 months from the determination of application completeness to render a final decision on an application.”

Establishing Permit Conditions: G.L. c. 164, § 69T(b)(vi) requires the Board to establish: “standard permit conditions and requirements for a single permit consolidating all necessary local, regional and state approvals to be issued to different types of large clean energy infrastructure facilities in the event that constructive approval is triggered through the non-issuance of a permit by the board pursuant to subsection (i).”¹

Constructive Approval: G.L. c. 164, § 69T(i) provides: “If no final decision is issued within the deadline established by the board for the type of large clean energy infrastructure facility, the board shall issue a permit granting approval to construct that includes the common conditions and requirements established by the board through regulations for the type of large clean energy infrastructure facility under review, which shall be deemed a final decision of the board.” G.L. c. 164, §§ 69U, 69V have substantially similar constructive approval provisions.²

The Act requires that the Siting Board issue Final Decisions within a specific time frame, and the Siting Board intends to meet those deadlines. The Siting Board understands that the both the intent and directives of the Act are that final decisions by the Siting Board, within prescribed timeframes, are required, and that Constructive Approval is intended as an extraordinary measure

¹ The 2024 Climate Act uses the term “standard permit conditions and requirements” for the provision requiring the Siting Board to establish such conditions in G.L. c. 164, § 69T, and the term “common conditions and requirements” in the provision mandating the conditions that apply in a constructive approval – in the same section of the Act. The Siting Board treats this terminology as referring to the same conditions and requirements. The Siting Board will use the term “common conditions and requirements” for purposes of these regulations.

² The Siting Board notes that while G.L. c. 164, § 69W includes a statutory deadline for proceedings under that section, it does not include a constructive approval provision. Likewise, G.L. c. 164, §§ 69J and 69J¼ governing legacy (i.e., fossil fuel) facilities contain a statutory deadline but do not have a constructive approval provision.

to ensure this outcome – and not a desired outcome for consolidated permits issued by the Siting Board. Nevertheless, the Siting Board is required to plan for and develop the necessary regulations for the possibility of a Constructive Approval.

II. Constructive Approval Implementation Challenges

The key issues that have surfaced to date for the Siting Board in crafting Constructive Approval regulations are as follows:

- (1) developing a means of including the design, construction, and operational details for the proposed CEIF project that receives Constructive Approval, given that those details may have evolved significantly during the course of the adjudicatory proceeding.
- (2) defining the proper use of the Board's Common Conditions. Generic Common Conditions will likely be insufficiently detailed for the Board to meet its obligation in the Act to follow applicable legal and substantive regulatory requirements of the permits it issues as part of a Constructive Approval. For example, a Common Condition for a wetlands order of conditions will be general in scope and inherently lack specific provisions (such as the actual wetlands delineation of the site) that are legally required under the Wetlands Protection Act. In addition, there may be inconsistencies between the generic Common Conditions and the Common Conditions as applied by the Applicant in its Application.

III. January 2026 Proposed Regulation

In response to comments received on the proposed regulations, Staff proposed in January 2026 a number of revisions to the proposed Constructive Approval regulation issued in September 2025:

- Presiding Officer issues Recommended Permit Conditions and Requirements after the Conditions Conference, which occurs after the evidentiary hearing toward the end of the proceeding (note: this process is included in the Final Regulation for 980 CMR 13.07(6)(b));
- Presiding Officer issues a draft Constructive Approval, which includes the Presiding Officer Recommended Permit Conditions and Requirements;
- Following a comment period, Presiding Officer issues a revision of the draft Constructive Approval; and
- The Board votes on the Presiding Officer Recommended Permit Conditions and Requirements for use in the Constructive Approval, on a consent agenda.

The Siting Board heard significant response to Staff's January proposal:

Developers - (Eversource and National Grid; Clean Energy Developers) argued that Constructive Approval should approve the Application as filed, plus Common Conditions in

existence at the time of the filing of the Application. They also argued that the Act does not contemplate project-specific conditions for Constructive Approval.

Agencies - Permit enforcement agencies (“PEAs”) advocated for the inclusion of project-specific conditions to ensure that their statutory mandates (and regulations) are fulfilled. As noted above, Common Conditions are inherently generic, and would be insufficient to address legally mandated requirements that involve site-specific conditions.

IV. Development of Conditions During the Consolidated Permit Process

There are several provisions in the Consolidated Permit process (as now approved) where mitigation conditions may be established as part of the normal adjudicatory process (see 980 CMR 13.00).

- Common Conditions – The Siting Board establishes Common Conditions which pertain to the design, construction, operation, maintenance, and decommissioning phases of a CEIF; some are applicable to all CEIF, while others are technology-specific conditions. The Common Conditions are organized by permit type and also specify the PEAs whose normal jurisdiction relates most directly to the subject matter of the condition. See 980 CMR 13.00 Application Guidance, Attachment 1: Common Conditions for EFSB Consolidated Permits
- Pre-filing – Applicants will include proposed conditions discussed during pre-filing consultation with agencies and community representatives during pre-filing engagement in their Applications (980 CMR 16.00). Applicants are required to share draft permit applications and draft permits during required consultations with the Massachusetts Environmental Policy Act (“MEPA”) Office and other state and local permitting agencies. 980 CMR 16.06(1)(a)(3) & (4). Applicants are also required to submit draft permit applications and draft permits at the time of the Pre-Filing Notice. 980 CMR 16.10(2). Both the draft permit applications and the draft permits should reflect Applicant-proposed conditions, including its use/adaptation of Common Conditions.
- Application at the Completeness Determination – The Application that could be constructively approved is the “Complete Application.” The Presiding Officer determination that the Application “substantially and materially complies with the Board’s Application requirements” ensures that the Application includes all requirements for adjudication (980 CMR 13.00). Similar to pre-filing, this regulation also requires the submission of Applicant-proposed draft permits, inclusive of Common Conditions, as may be modified or supplemented by the Applicant. 980 CMR 13.05(1). PEAs are provided with a 21-day period after the Application is filed to offer comment on whether the Application has deficiencies that are substantial and material. 980 CMR 13.06(3)(c).

- Statements of Recommended Permit Conditions by Parties and PEAs – no less than three weeks before the initial evidentiary hearing, Parties and PEAs will have an opportunity to submit their recommended permit conditions.
- Conditions Conference – After the evidentiary record is complete, the Presiding Officer shall provide each Party with a draft of proposed conditions for the CEIF Project, prior to a Conditions Conference. Conditions may include Common Conditions the Presiding Officer deems appropriate, any recommended Permit conditions submitted by a Party or PEA, the conditions proposed by the Applicant in its Application, and other proposed conditions. The Presiding Officer shall explain the reasons to accept or reject each condition proposed. After the Conditions Conference, the Presiding Officer shall provide the Parties and PEAs with a list of Consolidated Permit Conditions and requirements recommended by the Presiding Officer (Presiding Officer Recommended Permit Conditions and Requirements). This process results in a Presiding Officer’s Recommended Permit Conditions and Requirements. 980 CMR 13.07(6).

V. Proposed Options

After the February 26, 2026, Siting Board meeting, Staff revised the draft proposed Constructive Approval regulations. On March 12, 2026, Eversource and National Grid (the “Companies”) filed joint comments proposing an alternative approach to the Constructive Approval regulations. The Companies propose a similar approach to Staff’s January 2026 proposal but vary the provision on draft Constructive Approval. In the Companies’ proposal, the Applicant would prepare the draft Constructive Approval, instead of the Presiding Officer. The Companies’ proposal states that the Applicant’s draft Constructive Approval “shall be based on: (i) the Application in a manner that is consistent with the Completeness Determination made by the Presiding Officer pursuant to 980 CMR 13.06; (ii) applicable Common Conditions, as set forth in 980 CMR 17.04(1)(c); and (iii) all Recommended Permit Conditions and Requirements pursuant to 980 CMR 17.02(b) that the Applicant deems acceptable.” The Companies’ proposal provides for a comment period for the Applicant’s draft Constructive Approval, and allows the Applicant to update the draft Constructive Approval. The Companies’ proposal provides a limited review role for the Presiding Officer: “the Presiding Officer may modify the updated draft Constructive Approval prepared by the Applicant if and to the extent that the draft Constructive Approval is inconsistent with: (i) the record evidence in the proceeding; (ii) the Board’s statutory authority, or (iii) the Board’s applicable rules and regulations.”

Staff present two options for the Consolidated Approval regulations, 980 CMR 17.00, shown in a redline version compared to the one issued by the Siting Board in September 2025. In Option A, Staff incorporates many of the elements from the Companies’ proposal, with some procedural variations. Option A provides that the Applicant will prepare the draft Constructive Approval, which will include all Presiding Officer Recommended Permit Conditions and Requirements, except in limited circumstances. Option A also includes a provision to allow the Applicant to

propose modifications to the Presiding Officer Recommended Permit Conditions and Requirements.

Staff added a provision, applicable to Option A or B, allowing the Presiding Officer to schedule a Conditions Conference and issue Recommended Permit Conditions and Requirements, if a Constructive Approval deadline were likely to occur before evidentiary hearings are complete, which is an extremely remote possibility.

The revised proposed regulation also includes the Companies' proposal, as it was submitted, shown as Option B.

VI. Request for Comments

Please comment on the merits of Option A and Option B. In addition, the Siting Board seeks comments on the following questions.

1. Should a Constructive Approval include only the Applicant's Application at the time of the Completeness Determination, plus Common Conditions in existence at the time of the Completeness Determination? Or, would you find Option A or B a better option?
2. Should the Constructive Approval include revisions to the Project that are developed during the course of the adjudicatory proceeding and reflected in the evidentiary record? How should the regulation define the Project details (design, construction, operational) that are constructively approved? Do Options A or B adequately address this issue?
3. Which conditions should apply to the Project as constructively approved? How can the Siting Board ensure that Constructive Approval conditions address project-specific impacts and the legal requirements of each permit granted? Do Option A or B adequately address this issue?
4. In Option B, the Companies proposed that the draft Constructive Approval should include the Presiding Officer Recommended Permit Conditions and Requirements, as well as the Board's Common Conditions. Since applicable Common Conditions as tailored to the project would be included in the Presiding Officer Recommended Permit Conditions and Requirements, should the reference to the (generic) Common Conditions be deleted if the Board were to adopt Option B?

Please provide your comments on Constructive Approval, and any draft regulatory language as appropriate, by **Friday, April 17, 2026**, with the Siting Board, at dpu.efiling@mass.gov. Also attached to this package are proposed Common Conditions and Baseline Standards, for which we welcome public comments by **April 17, 2026**. Please reference docket number EFSB 25-10.