



Siting and Permitting Reforms

Mass. Municipal Lawyers Association

2024 Climate Act Regulations:

Energy Facilities Siting Board (EFSB)

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Topics for Discussion

- 2024 Climate Act – Changes to Siting and Permitting; Changes to Siting Board
- EFSB Proceedings – How the EFSB makes decisions
- Municipality/Agency – opportunities for participation
- Pre-filing Consultation and Engagement (980 CMR 16.00)
- Consolidated Permits (980 CMR 13.00) and Constructive Approval (980 CMR 17.00)
- De Novo Adjudication (980 CMR 14.00)
- Cumulative Impact Analysis and Site Suitability Reports (980 CMR 15.00)
- DPU – Intervenor Support Grant Program (220 CMR 34.00)



2024 Climate Act

- Reforms the siting and permitting process for clean energy infrastructure facilities (solar, wind, storage/batteries, associated transmission & distribution infrastructure)
- Improves speed & efficiency of permitting process to help achieve the ambitious climate and clean energy goals of the Commonwealth
 - Create a new infrastructure category: Clean Energy Infrastructure Facilities (CEIF)
 - Facilities classified as either small CEIF or large CEIF
 - Consolidated permitting of Clean Energy Infrastructure Facilities (CEIF)
- Provides more meaningful community & stakeholder engagement in pre-filing and review processes
- New Intervenor Grant Support Program created
- New tools created – Cumulative Impact Analysis and Site Suitability tools; guidance for Community Benefits Plans and Agreements
- Expands Siting Board membership; establishes a new mandate, scope of review, and required findings



Changes to the EFSB

- Decision-making body for applications to construct energy facilities; process defined in 980 CMR 2.00
- 2024 Climate Act increases Board membership (11 members), and
- Adds new required considerations, such as:
 - Formal requirement for Board to follow the hierarchy of avoid, minimize, and mitigate project impacts
 - Formalizes additional longstanding policy considerations including: labor, economic & environmental justice and equity, public health, and safety
- Requires consideration of recommended permit conditions by Local Governments and other state agencies
- Cumulative impact analysis for all projects reviewed by the Board
- Site Suitability consideration for many projects
- Reasonably foreseeable climate change impacts considered



How the EFSB Makes Decisions – Adjudicatory Proceedings

- **Pre-filing phase** – pre-planning → pre-filing (agency consultation and community engagement)
- **Notice/public comment hearing phase** – Applicant files Application → Completeness Determination → Notice issued → public comment hearing/comments → intervention
- **Evidentiary phase** – pre-filed testimony → discovery → evidentiary hearings → Conditions Conference → briefing
- **Decision phase** – Staff drafts Tentative Decision → TD issued for comment → Siting Board meeting for deliberation and vote → Final Decision
- **Compliance phase** - appeals to SJC (if any) → compliance filings and enforcement by permitting enforcement agencies



Pro-Forma EFSB Schedules to Meet Statutory Deadlines

EFBS 15-MONTH PROCESS

Applicable to Large Clean Energy Infrastructure Facilities (e.g.):

- New (≥ 69 kV) Transmission Line in New Corridor (≥ 1 mile)
- New (≥ 115 kV) Transmission Line in Existing Corridor (≥ 10 mile)
- Substations Requiring Exemptions from Local Zoning Ordinances
- Interconnection Lines for Offshore Wind Facilities
- Large Energy Storage Facilities (≥ 100 MWh)
- Large Clean Energy Generation Facilities (≥ 25 MW)

EFBS 12-MONTH PROCESS

Applicable to Small Clean Transmission and Distribution Infrastructure Facilities (e.g.):

- Transmission Line Reconductoring and Rebuilding Projects
- New/Substantially Altered Transmission Lines in Existing Corridors (< 10 mile)
- New/Substantially Altered Transmission Lines in New Corridors (< 1 mile)
- Substations Not Requiring Exemptions from Local Zoning Ordinances
- Certain Distribution Level Projects (Threshold to be Determined by DOER)

PROCEDURAL STEPS/MONTHS (M)	PRE-FILING	M0	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15
Pre-filing Engagement Requirements	→																
Project Application Filed and Completeness Determination (Within 1 Month of Application)	→	→	Other Permitting Agencies Can Make Recommendation on Completeness Determination Public Can View Application materials														
Public Notice of Project and Public Comment Hearing (Within 1 Month of Completeness Determination)			→	Other Permitting Agencies Can Petition to Participate in Proceeding as Intervenor Public Can Attend Hearing, Provide Comments, Petition to Participate in Proceeding as Intervenor													
Intervention and Grant Rulings				→													
Preliminary Procedural Conference and Procedural Order					→												
Statement of Recommended Permit Conditions							→										
EFBS Adjudication and Evidentiary Hearings (Including Written Discovery and Briefing) and Conditions Conference								→									
EFBS Tentative Decision and Comments (Including Staff Drafting and Review)									→								
Board Meeting to vote on Final Decision													→				→



Agency/Municipality Participation – Pre-filing

- Applicant meets with individual Permit Enforcement Agencies (“PEAs”) to discuss required permits

- Applicant consults with MEPA Office and PEAs

Hold at least one meeting with the MEPA Office and relevant permitting agencies; schedule other meetings as needed –

Provide basic project details and list of required local, state, and federal permits

Present copies of draft applications for relevant permits and copies of draft permits, if available

- Applicant files Pre-filing Notice of Intent to file Application (60-90 days)

Pre-filing Engagement Completion Checklist – with supporting documentation

Copies of draft application and draft permit with recommended conditions

PEAs may file comments with Division of Public Participation (“DPP”) and Applicant within 30 days. The Applicant may submit a response within 7 days.

- DPP Opinion filed with EFSB

Whether pre-filing requirements are met, insufficient, or incomplete; Will identify any significant concerns raised by Local Government and PEAs, and the Applicant’s response



Agency/Municipality Participation – Adjudication and Enforcement

■ Adjudication

- Applicant includes draft permit applications and draft permits (with recommended conditions) in Application filed with EFSB – PO may communicate with PEA during Completeness Determination
- Intervention – PEAs may provide notice of intervention – participate fully (including ask discover questions, sponsor witnesses, ask cross examination questions, file briefs)
- Statements of Recommended Permit Conditions filed by PEAs
- Conditions Conference – Presiding Officer provides proposed conditions from record; PEA file comments on proposed conditions, Presiding Officer issues Recommended Permit Conditions and Requirements
- Briefs; Comments to the Siting Board (in writing and orally at Board meeting)

■ Compliance and Enforcement – PEAs enforce their permit conditions

- Alleged violations filed through portal; notification to PEA



980 CMR 16.00: Pre-filing Consultation and Engagement Requirements

- 980 CMR 16.00 applies to LCEIF, SCEIF, and “Legacy” (fossil) Facilities
- Establishes pre-filing requirements for Applicants to ensure that Project information reaches those who may be impacted by a Project, and provides stakeholders an opportunity to influence Project design
- Requires Applicant to consult with Key Stakeholders, MEPA Office, and permitting agencies, hold at least two public meetings with the Community, use multiple channels of outreach, and create a project webpage
- Provides Applicants with flexibility to tailor pre-filing schedules to the project and community, does not specify timing or duration for completion of pre-filing requirements
- Balances the goal of providing project information to Key Stakeholders early during project development with the Applicant’s need to do adequate due diligence



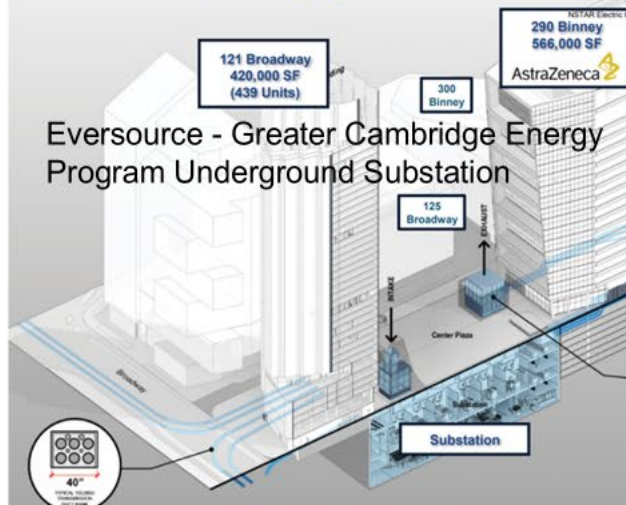
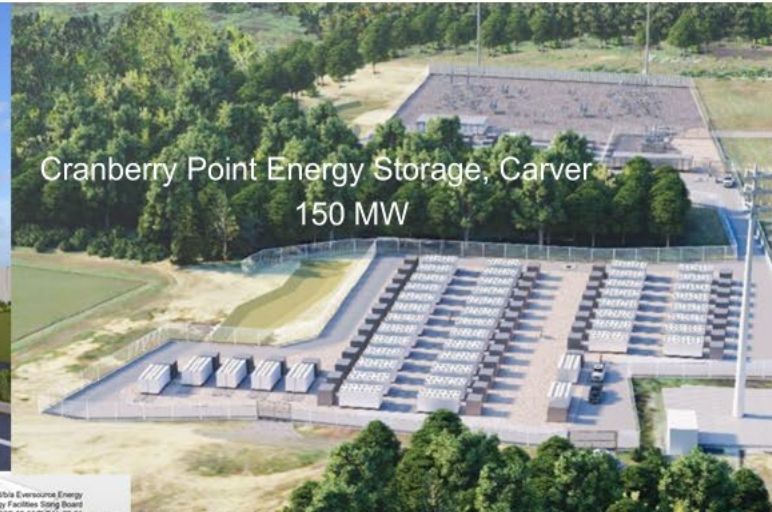
EFSB Consolidated Permit Components

- EFSB Consolidated Permit is an “aggregation” of EFSB-Issued:
 - Individual state permits and approvals using existing state agency application forms, and substantive regulatory requirements
 - Local* permits and approvals (if applicable) with Applicant choice of either:
 - (1) DOER Consolidated Local Permit application form; or
 - (2) Individual Local application forms, for each local permit and municipality
 - EFSB “Construction Permit” – addresses applicable EFSB statutory requirements (e.g., need, minimization of cost and environmental impact, reliability, project/route alternatives, public health and safety, climate change, policies of the Commonwealth, etc.)

* The 2024 Climate Act includes Regional Permit Enforcement Agencies (like the Cape Cod Commission) in the definition of Local Government.



Examples of Large Clean Energy Infrastructure Projects - EFSB Jurisdictional





980 CMR 13.00: EFSB Consolidated Permits for CEIF

- EFSB required to establish a "common standard application" for a: (1) Consolidated Permit (all state and local permits); and (2) Consolidated State Permit (all state permits) (collectively, an "EFSB Consolidated Permit")
 - Large Clean Energy Infrastructure Facilities (§ 69T) (Consolidated Permit)
 - Small Clean Transmission and Distribution Infrastructure Facilities (§ 69U) (Consolidated Permit)
 - Small Clean Generation and Small Clean Storage Facilities (§ 69V) (Consolidated State Permit)
- The De Novo Adjudication process (§ 69W) may result in an EFSB-issued "Consolidated Local Permit" that would normally be issued by Local Government – but not included in definition of an "EFSB Consolidated Permit"
- Baseline Standards: 2024 Climate Act requires the Board to establish a "uniform set of baseline health, safety, environmental and other standards that apply to the issuance of a consolidated permit."



Consolidated Permit Application

- Clear, uniform standards applied throughout permit review process (e.g., evaluation of application completeness)
- Extensive guidance document(s) - well-organized, informative, clear, and consistent submissions
- Compilation of previous permit requirements and informational requirements unique to EFSB decisions
- Uniform set of baseline health, safety, environmental and other standards
- Applicant includes applicable conditions (including “Common Conditions”)
- Completeness determination within 30 days of filing—begins review timeframe (15 months for large and 12 months for small)



Consolidated Permit Approval Conditions

Pre-Filing Stage

- Applicable Common Conditions considered and adapted by Applicant in developing the Project proposal
- Pre-filing consultations by Applicant with PEAs and Key Stakeholders, and wider community
- Pre-filing comments by PEAs on Applicant's draft Applications and draft Permits; and Applicant's response
- Division of Public Participation ("DPP") Opinion on significant concerns raised during Pre-Filing

EFSB Adjudication Stage

- Revisions proposed by Applicant in submission of Application, and proposed permits to EFSB
- Public comments
- Completeness Review comments by PEAs, Applicant responses, deficiencies cited by Presiding Officer
- Statement of Recommended Permit Conditions by PEAs
- Conditions Conference discussions
- Presiding Officer Recommended Permit Conditions and Requirements
- Development of the full evidentiary record
- Staff recommendations in Tentative Decision
- Board deliberation, amendments, and final vote



980 CMR 17.00: Constructive Approval

- If the Siting Board does not issue a final decision on an Application for a Consolidated Permit by the statutory deadline, the Application (including a zoning exemption if requested) is constructively approved
 - 15 months for Large Clean Energy Infrastructure Facilities
 - 12 months for Small Clean Energy Infrastructure Facilities
 - Does not apply to Legacy facilities, or de novo adjudication under Section 69W
- Regulatory framework leverages the Conditions Conference to provide tailored conditions for Constructive Approval, rather than “generic” Common Conditions; provides opportunities for input by parties and PEAs
- Constructive Approval would take effect by law; requires no further action by Board – appealable to the SJC



DOER Consolidated Local Permit Rules

- DOER's regulations acknowledge that Applicants may choose whether to seek either a Consolidated Local Permit, or individual permits at the local level under existing rules.
- EFSB allows for Applicants to submit either: (1) DOER's Consolidated Local Permit Application and a draft of the Consolidated Permit, or (2) the individual local permit applications and draft permits.
- Consolidated State Permit (under § 69V) requires EFSB pre-filing procedures, if Applicant is not seeking a Consolidated Local Permit.
- Applicants that pursue local permits individually will not be eligible for De Novo Adjudication under 980 CMR 14.00.



980 CMR 14.00: De Novo Adjudication of Consolidated Local Permits

- Two types of De Novo Adjudications
 - Objection by Applicant, or other persons “substantially and specifically affected” by a Final Decision of Local Government (or a local Constructive Approval)
 - Transfer of a Consolidated Local Permit Application, at request of Local Government, when it lacks resources, capacity or staffing
- Expedited process (6 months for objections; 12 months for transfer)
- Decision made by the Siting Board Director
- Parties – Applicant and Municipality automatically parties + others who are substantially and specifically affected by the Project



980 CMR 14.00 - De Novo Adjudication

- Standard for Decision. For petitions submitted pursuant to 980 CMR
- 14.02(1)(a) or (b), the Director shall review the Final Decision of the Local Government for:
 - 1. consistency with 225 CMR 29.00, established pursuant to M.G.L. c. 25A, § 21; [*DOER's rules*] and
 - 2. consistency with M.G.L. c. 164, § 69H [*EFSB mandates under the 2024 Climate Act*].
- Appeals directly to the Supreme Judicial Court



980 CMR 15.00: Cumulative Impact Analysis/Site Suitability

- “Cumulative Impact” is the combined effects of past and present private, industrial, commercial, federal, state, or municipal projects, operations, development, and other economic activities, in addition to the effects of the proposed Project on: (1) the environment; (2) public health; and (3) reasonably foreseeable effects of climate change.
- “Burdened Areas” are Census Block Groups that meet one or both of the following criteria:
 - cumulative burden percentile score (i.e, MassEnviroScore) of 75 or greater, OR
 - annual median household income is 65 percent or less of the statewide annual median household income
 - CIA Petition - Regulations allow a group of ten or more residents and businesses in a Census Block Group that intersects the Project’s SGA and is not identified as a Burdened Area to submit a petition to the EFSB to require the Applicant perform a CIA in the Census Block Group for that Project.
 - Guidance and MassEnviroScreen tool developed by OEJE



The CIA Process Overview

- 1 Identify the Specific Geographical Area (“SGA”) of the Project
 - 2 Determine if the SGA overlaps any Burdened Areas
 - 3 Identify Indicator values and any Elevated Indicators of the BA
 - 4 Identify Project Impacts (positive or negative), including Disproportionate Adverse Effects, in the Burdened Area related to Elevated Indicators
 - 5 Propose remedial actions for any Disproportionate Adverse Effects
- Analysis Using
MassEnviroScreen



Board Review of CIA Reports

- The Board assesses whether the CIA Report meets regulatory criteria pursuant to 980 CMR 15.11 (per below).
- The Board shall:
 - Assess the adequacy of the CIA Report and Site Suitability Report, including whether the Applicant, if required to, presented a comprehensive analysis of whether its Project Impacts will result in a Disproportionate Adverse Effect, and make findings based on that review.
 - Make findings as to whether the Applicant has given due consideration to the Cumulative Impact of the Project, and whether the Applicant has adequately undertaken actions to avoid, minimize, or mitigate any Disproportionate Adverse Effects from the Project.
 - Consider an Applicant's use of a Community Benefit Plan or Community Benefit Agreement in accordance with [CBA/CBP Guidance](#) from OEJE.



Site Suitability Report (SSR)

- [Site Suitability Mapping Tool](#): Makes use of publicly available datasets/tools to evaluate sites based on the following criteria: carbon storage/sequestration, biodiversity, agricultural resources, and social & environmental burdens
- Applicants estimate scores during pre-filing and share with stakeholders to allow time for changes to project design or possible use of alternative sites
- Results considered in review/adjudication of Consolidated Permits
- [Guidance for SSR](#) developed by EEA



Site Suitability Report in Siting Board Application Reviews

- Applicants use the Site Suitability Mapping Tool to derive the anticipated Criteria-specific Suitability Scores for a proposed CEIF.
- The Applicant files Site Suitability Report (“SSR”) with its EFSB Consolidated Permit Application.
- Applicant or Key Stakeholder may request a score revision by the Director if Criteria-specific Suitability Scores are based on materially erroneous, incomplete, or otherwise faulty data.
- The Board shall consider the SSR in its route and site scoring analysis, if applicable; Criteria-specific Suitability Scores are used to inform the Board’s decisions on avoidance, minimization, and mitigation of Project Impacts, and its overall decision on whether to grant a Consolidated Permit.



220 CMR 34.00 - Intervenor Support Grant Program (Dept. of Public Utilities)

- Intervenorors have a formal role in influencing decision making in a proceeding
- Intervenor Support Grant Program will:
 - Provide grants to community groups and other eligible entities who are unable to participate in DPU or EFSB proceedings due to financial hardship
 - Enable diverse voices to represent their interests
 - Allow grantees to cover fees for attorneys, expert witnesses, community experts, administrative, and other eligible expenses
- Regulations detail eligibility criteria, grant application process, maximum grant amounts, eligible uses of funding, and reporting requirements



Questions & Comments