



October 17, 2025

Mr. Rick Collins  
Director, Division of Clean Energy Siting and Permitting  
Department of Energy Resources (DOER)  
100 Cambridge Street, 9th Floor  
Boston, MA 02114

Via Email: [DOER.Siting.Permitting@mass.gov](mailto:DOER.Siting.Permitting@mass.gov)

**Re: S&P Follow-On Rulemaking Comments**

Dear Mr. Collins and DOER Siting and Permitting Team:

Mass Audubon appreciates the opportunity to offer comments on DOER's proposed regulations for small clean energy infrastructure (CEI) facility siting and permitting (225 CMR 29.00).

We sincerely appreciate that real progress is being made towards better alignment of the state's ambitious goals to accelerate clean energy and storage deployment – which are mission critical for rapidly replacing fossil fuels with low-carbon electricity – with the state's broad suite of goals to protect and restore the invaluable and irreplaceable services provided by natural and working lands. These services include climate resilience, carbon removal, biodiversity and wildlife habitat, provision of clean drinking water, local food production, and recreation, among others, and are expressed with specificity across various state plans and commitments: the Clean Energy and Climate Plan for 2030 and 2050, a commitment to protect 30 percent of state lands and waters by 2030 (and 40 percent by 2050), Governor Healey's groundbreaking plan to protect and restore biodiversity, and the ResilientMass Plan.

As our 2023 *Growing Solar, Protecting Nature* analysis found, repeating the last decade's pattern of siting clean energy projects – i.e., utilities, energy developers, and private landowners choosing sites with little or no consideration of outcomes to natural and working lands, and often lacking meaningful community engagement, input, or review – would result in significant additional land use change, loss of critical ecosystem services, and further erosion of the public's trust and acceptance of these projects.<sup>1</sup> Further conversion of natural lands at that pace would put the Commonwealth's goals for carbon removal, wildlife habitat and biodiversity, local food

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<sup>1</sup>Manion, M., Jonathan R. Thompson, Katie Pickrell, Lucy Lee, Heidi Ricci, Jeff Collins, Joshua Plisinski, Ryan Jones, Gabe Kwok, Drew Powell, & Will Rhatigan (2023). *Growing Solar, Protecting Nature*. Mass Audubon and Harvard Forest. DOI:10.5281/zenodo.8403839 Available at: <https://storymaps.arcgis.com/stories/932be293f1af43c8b776fdad24d9f071>

production, clean water, and restoration to increase resilience to climate impacts completely out of reach. Moreover, under status quo laws and regulations, communities have little ability to review and shape CEI projects and therefore often litigate against them, increasing the time and expense for approval of much-needed new clean generation capacity.

These trends have not set a tenable path to cleaning our electricity grid, meeting our climate and biodiversity goals, or addressing community concerns about equitable impacts. We applaud the leadership demonstrated by Governor Healey – in establishing the *Commission on Clean Energy Infrastructure Siting and Permitting* (CEISP) in 2023, she brought together key stakeholders with the charge of finding workable solutions to eliminate redundancies and accelerate permitting timelines, improve the balance between clean energy deployment and state goals to maintain natural and working land values, and address needs of communities to play a meaningful role in project siting.

Mass Audubon was proud to serve on the CEISP alongside other statewide environmental organizations, utilities, energy developers, municipalities, and labor representatives. We and other CEISP members endorsed a set of recommendations for consideration by the legislature that, if enacted effectively in statute and regulation, could both accelerate clean energy deployment while also fundamentally shifting siting decisions to better protect natural resource and ecosystem values while adding an explicit role for meaningful community engagement and input.

We also endorsed the general approach set forth in *An Act Promoting a Clean Energy Grid, Advancing Equity, and Protecting Ratepayers* (the “Climate Act,” passed in Nov. 2024). For the first time, the Climate Act required promulgation of regulations such that both large and small clean energy infrastructure projects must avoid, minimize, and mitigate “negative impacts of siting on the environment, people and the commonwealth’s goals and objectives for climate mitigation, resilience, biodiversity and protection of natural and working lands, to the extent practicable.”<sup>2</sup>

Reforming energy system permitting and siting decisions and outcomes is a highly ambitious endeavor. In many aspects, DOER’s regulations for small clean energy infrastructure (CEI) projects are an impressive first draft of a major reform of a highly complex system that must meet multiple public interest goals: delivering clean, reliable, and affordable electricity to consumers; protecting natural and working lands; and providing communities with an explicit and meaningful role in decision-making to permit and host projects.

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<sup>2</sup> For small clean energy projects, the 2024 Climate Act requires: “...a mitigation hierarchy to be applied during the permitting process to avoid or minimize or, if impacts cannot be avoided or minimized, mitigate negative impacts of siting on the environment, people and the commonwealth’s goals and objectives for climate mitigation, resilience, biodiversity and protection of natural and working lands, to the extent practicable;”

For large clean energy projects, the Climate Act’s language is slightly different: “...if impacts cannot be avoided or minimized, mitigate impacts of siting on the environment, people and goals and objectives of the commonwealth for climate mitigation, carbon storage and sequestration, resilience, biodiversity and protection of natural and working lands to the extent practicable;”

We would also like to acknowledge that these regulations have been drafted in a very short time period to meet aggressive statutory deadlines. We especially commend the dedication and hard work by staff from DOER, EEA, DPU/EFSB, and other state agencies who have collected multiple rounds of stakeholder feedback on earlier concepts to develop draft regulations and associated guidelines under intense time pressure.

In particular, we applaud the inclusion of the following improvements to the status quo framework for siting and permitting of small and large clean energy projects:

- Potential for faster, more cost-effective clean energy deployment by consolidating and coordinating local review under a common set of standards from DOER.
- New requirements for meaningful and early community engagement (i.e., well in advance of filings by developers).
- New science-based methods for objective evaluation of site suitability, based on critical environmental values including terrestrial carbon storage and sequestration, protections for biodiversity, wildlife habitat, and ecosystem integrity, resilience to climate change, and agricultural productivity.
- New requirements to minimize and mitigate impacts on natural and working lands, using best statewide datasets describing natural resource services listed above.
- Creative use of *flexible guidance* to complement regulations, which can be updated accordingly as technology, economic conditions, and best management practices change, and as new or updated data and science become available.
- Requirements for validation by qualified third parties, e.g. for site scoring evaluations.
- Assurance for communities that compliance with these regulations will be consistent with the solar and battery zoning exemption at MGL Ch.40A S.3, improving certainty and reducing litigation risks for all concerned.

Despite these notable improvements, Mass Audubon has major concerns that **the proposed DOER regulations for small CEI projects fall short of the mandate set forth in the 2024 Climate Act to avoid, minimize, and mitigate impacts on natural and working lands, and that municipalities are assigned a larger role in mitigation and implementation than is feasible or advisable.** DOER's regulations should work in close concert with EFSB regulations for large CEIF and site suitability guidance to set clear, strong, and consistent incentives for utilities and developers to shift siting choices for new project locations. Specifically, these regulations should shift clean energy development towards sites with lower impacts on natural and working lands, and set strong enough disincentives – through the clear statutory mandate to avoid, minimize, and mitigate impacts – to prevent further development on the most ecologically valuable lands. **The fact that these regulations exempt key small transmission and distribution projects from site suitability requirements means that not only sites for those projects but natural lands surrounding them are at risk of unchecked conversion and losses.**

**Moreover, we believe that the Climate Act of 2024 clearly assigns responsibility to state agencies, and not to municipalities, for establishing and implementing the mitigation**

**hierarchy.** We believe it is much more appropriate for the state to establish a system for compensatory mitigation, including fee collection and distribution towards protection and restoration of state-level priority lands. In our view, a town-led approach to compensatory mitigation could result in highly inconsistent outcomes, clearly incentivizes utilities and developers to target smaller under-resourced towns, and would likely fall short of adequately compensating the public for losses of public goods. Finally, the requirement for towns to establish compensatory mitigation programs and apply and collect mitigation fees is simply beyond the capacity and capabilities of many rural towns in particular.

**Mass Audubon strongly recommends additional changes to these and EFSB regulations in order to close loopholes and strengthen incentives for both utilities and energy developers to avoid and minimize siting on our highest-value natural and working lands.** Otherwise, it is entirely possible that impacts of future CEI projects on natural systems and communities will not materially improve upon recent trends.

### **High-level Recommendations**

In this section we provide our recommendations for high-level changes to regulations for small CEI project siting and permitting. We believe these are highly consistent with statutory language in the 2024 Climate Act and the spirit of recommendations from the CEISP.

Note that some of our comments touch on aspects of the EFSB’s proposed regulations for siting and permitting of large CEI facilities. Given that small and large CEI projects are closely interconnected within a single electricity grid system, it is difficult to parse out in a single set of comments how the potential impacts of these projects on nature and communities should be addressed according solely to differences in project size and agency jurisdiction and oversight.

We will submit separate comments on both EFSB’s draft regulations for large CEI projects and EEA’s guidance documents on site suitability and minimization and mitigation. However, we believe that these regulations must work in concert by setting consistent incentives (and disincentives) to utilities and energy developers to limit land use change and community impacts to acceptable levels for all types of projects – clean generation, energy storage, and transmission and distribution, regardless of whether they are ‘small’ or ‘large’.

- **A requirement for ‘avoid’ should be added to the regulatory requirements.** Our most valuable natural and working lands provide our communities and residents with services – removal of carbon emissions, local food production, critical habitat for wildlife, filtering drinking water – that are simply irreplaceable. To be consistent with statutory requirements, the state’s proposed regulations and site suitability scores for small CEI projects should clearly establish that some areas should be avoided and completely off-limits to new CEI project development (note: we believe other forms of development – not just energy - should also be required to avoid highest value natural and working lands).

- **Small transmission and distribution projects should not be categorically exempt from site suitability requirements. Utilities should also be required to pay compensatory mitigation for grid enhancement projects which enable nearby siting of ground-mount solar or other generation and storage projects that cause significant losses to natural and working lands.** We absolutely need to enhance the electric grid's capacity to deliver more clean, affordable energy. In the proposed framework, however, electric utilities' choices of sites for new or expanded electricity transmission and distribution projects are currently exempt from site suitability guidance and requirements to avoid, minimize, or mitigate impacts.

These regulations, as well as those applying to large CEI projects, should hold utilities – not just energy developers – accountable for avoiding, minimizing, and mitigating the impacts not only from their transmission and distribution project sites, but also for impacts to nearby natural and working lands where generation and storage projects must locate to secure cost-effective interconnections. Our analysis of 14 National Grid and Eversource substation expansion projects (known as Capital Improvement Projects, or CIPs) approved under the DPU's provisional planning process show that nearly 25,000 acres of high-value natural and working lands which are technically viable for ground-mount solar development are within 2 miles of one of these CIPs, and thus are at risk of conversion and loss of ecosystem services.<sup>3</sup> Developers of ground-mount solar projects have few degrees of freedom in choosing sites – they must locate as close to CIPs as is feasible. Since utilities make decisions about CIP sites (and associated expansion of hosting capacity), their CEI projects should be subject to the mitigation hierarchy and utilities should be required to pay at least half of any compensatory mitigation fees based on site suitability scores for enabled projects, with energy developers paying the other half. Moreover, these fees are operating expenses and thus should not be added to the utilities' rate base, nor should they be passed on to ratepayers.

- **Capacity demands on many municipalities for siting and permitting small CEI projects -- especially in applying mitigation requirements -- are too high.** We support

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<sup>3</sup> D.P.U. 23-09 – Massachusetts Electric Company and Nantucket Electric Company, each d/b/a, *National Grid Barre-Athol Capital Investment Project Proposal* (Massachusetts Department of Public Utilities, January, 31, 2023);

D.P.U. 23-06 – Massachusetts Electric Company and Nantucket Electric Company, each d/b/a, *National Grid Gardner-Winchendon Capital Investment Project Proposal* (Massachusetts Department of Public Utilities, January, 12, 2023);

D.P.U. 23-12 – Massachusetts Electric Company and Nantucket Electric Company, each d/b/a, *National Grid Spencer-Rutland Capital Investment Project Proposal* (Massachusetts Department of Public Utilities, February, 1, 2023);

NSTAR Electric Company d/b/a Eversource Energy-D.P.U. 22-47, *Marion-Fairhaven Capital Investment Project Proposal* (Massachusetts Department of Public Utilities, April 15, 2022).

the effort to provide an explicit role for municipalities in decisions to site and permit smaller CEI projects located in their communities. However, many of the rural and under-resourced towns where many of the projects are proposed lack sufficient capacity and expertise to establish a new mitigation program, collect compensatory mitigation fees, or implement other aspects of this program. Moreover, we think a town-led approach to compensatory mitigation of impacts to the state's common trust could result in highly inconsistent outcomes, incentivize utilities and developers to deliberately target smaller, under-resourced towns, and could fall short in adequate compensation of Massachusetts' citizens for impacts to irreplaceable state-level public goods. We are also concerned about the overall administrative burden for cities and towns, which increases the possibility of constructive project approvals. We recommend that EEA take on the role of establishing a new compensatory mitigation program, and a statewide trust fund (or leverage an existing trust fund) to deploy these funds for protection and restoration of priority lands.

- **Need for land use change look-back provisions:** Site suitability project evaluation should include a multi-year (e.g. 5-year) look-back period for forest carbon, BioMap habitat, the Index of Ecological Integrity, and other criteria to ensure there has not been manipulation of the land to affect the site suitability scoring. This avoids the possibility of a perverse incentive to remove trees or degrade habitat in order to score more favorably under site suitability.
- **Program Tracking and Adjustment.** Performance tracking and reporting of small CEI projects should be required and include indicators and metrics describing new environmental criteria, based on the results of a periodic assessment, to ensure they are functioning as intended.

### Specific Comments

Below we provide comments on and recommendations for specific elements within the regulations for small CEI projects (225 CMR 29.00).

#### 29.02 Definitions

- **Add definition for “avoid”** – The 2024 Climate Act's statutory language clearly states that the full mitigation hierarchy requires developers to ‘avoid, minimize, and mitigate impacts,’ so *avoid* should be added to regulations and definitions governing small CEI projects. Suggested language: “The process, as part of siting and permitting, of not including a location as part of any evaluation of siting a Clean Energy Infrastructure Facility due to impacts from the development, maintenance, or operation of that facility.”
- **Key Stakeholders** – It is not clear why the regulations establish a one-mile radius around a small CEI project as a geographic limitation for defining key stakeholders. These projects can have impacts on statewide public goods and resources such as carbon

removal capacity which affect citizens well beyond this very narrow geography. We recommend dropping any geographic limitation in the definition of key stakeholders.

- **Definition of Local Government Representative** – This definition should be clarified to indicate that the representative is on a local board or department with authority to issue permitting decisions.

#### ***29.06 Public Health, Safety and Environmental Standards***

- Criteria listed should also include wetland resources and Priority Habitat used to implement the MA Endangered Species Act, which are regulated under current Massachusetts statutes.

#### ***29.07: Application of Site Suitability Guidance***

- The minimization and mitigation measures do not clearly identify whether/when a project can be denied due to high unsuitability.
- Provisions for Compensatory Environmental Mitigation rely on the *Minimization and Mitigation Measures Guideline*, which needs substantial improvements. We will provide comments on that guidance later.

##### **(1) Exemptions:**

- Small transmission and distribution projects should **not** be exempt from the application of site suitability guidance even if not in a newly established public right-of-way. The vast majority of these projects will *not* be sited in these areas, and will be located on private or leased lands.

##### **(3) Site Suitability Report:**

- The report should also include and assess measures and metrics to avoid impacts identified as part of any assessment of Criteria-specific Suitability Scores, pursuant to 225 CMR 29.07(5) through (7).

##### **(4) Request for Score Review:**

- We support independent Score Review by third-party validators and the opportunity for municipalities and key stakeholders to dispute scores.

##### **(6) and (7) Compensatory Environmental Mitigation and Local Fees:**

- Add requirement that all practicable measures to avoid/minimize impacts must be done first.
- As noted earlier, we believe the state should administer funds raised through the application of compensatory mitigation fees.

- This section needs language to establish “look-back” provisions to ensure land conditions have not changed recently, e.g. forest cutting, in an effort to game the site suitability scoring.

#### ***29.08 Pre-Filing Requirements***

- **Pre-filing requirements.** We support extensive pre-filing consultation. Any wetland boundaries should be required to be approved via an Order of Resource Area Delineation (ORAD) issued by the conservation commission or a negative Determination of Applicability (DOA) certifying none, prior to application submission.

#### ***29.10 Consolidated Local Permit Application Review Process***

- **Determination of complete application.** We recommend that failure to determine or issue notification of deficiency within 30 days should only result in an application’s being deemed complete, not constructive approval of the project.

We also support provisions requiring prompt response to requests for additional necessary information. This will prevent delays by applicants while also ensuring reasonableness of requests to cure deficiencies.

#### ***29.14 Enforcement***

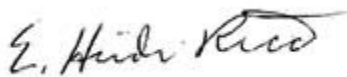
- **Enforcement.** Add language to clarify that local boards and departments retain the authority to enforce parts of the permit under their jurisdictions.
- **Successor in interest.** This language applies to the sale of a project, but needs additional clarification i.e., to cover a project that is leased or otherwise under different underlying fee owner.
- **Decommissioning.** In addition to allowing decommissioning provisions to be included in a local permit, the regulations should also specify what forms of surety should/may be provided.

We sincerely appreciate the opportunity to weigh in on DOER’s proposed regulations for small clean energy infrastructure projects. Please do not hesitate to reach out with any questions regarding these comments.

Respectfully submitted,



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Heidi Ricci, Director of Policy and Advocacy



**cc:**

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