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**Re: Comments Re: Small Clean Energy Infrastructure Facility Siting & Permitting**

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**From** Andrews, Adele R (EEA) <Adele.R.Andrews@mass.gov>

**Date** Fri 2/13/2026 10:59 AM

**To** Carol Walker <carwalker58@gmail.com>; EnergyPermitting (EEA) <EnergyPermitting@mass.gov>

**Cc** Andrews, Adele R (EEA) <Adele.R.Andrews@mass.gov>

Good morning Carol,

Thank you for submitting comments. I noticed that you said, "Please see my attached comments to EEA in Appendix B," but I'm only seeing an Appendix A. Since I am compiling comments for EEA to review, I am reaching out to make sure that there is not anything missing. I'll make sure this gets forwarded to EFSB and DOER as well.

Regards,  
Adele

**Adele Andrews**

Executive Assistant

*to Undersecretary Michael Judge, Undersecretary María Belén Power, and Deputy Secretary Weezie Nuara*

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**From:** Carol Walker <carwalker58@gmail.com>

**Sent:** Thursday, February 12, 2026 6:03 PM

**To:** EnergyPermitting (EEA) <EnergyPermitting@mass.gov>

**Subject:** Comments Re: Small Clean Energy Infrastructure Facility Siting & Permitting

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**PUBLIC COMMENTS REGARDING  
SMALL CLEAN ENERGY INFRASTRUCTURE FACILITY SITING & PERMITTING  
(225 CMR 29.00)**

**Draft Guideline:** Public Health, Safety, Environmental and Other Standards

Comments By: Carol Walker

Winthrop, MA 02152  
Feb. 12, 2026  
My phone: 617-529-0644: [carwalker58@gmail.com](mailto:carwalker58@gmail.com)

**Background and Purpose**

Recognizing and applying the Baseline Standards throughout the life of a project - design, construction, operation, maintenance, and decommissioning – is good and important for substance and consistency.

I appreciate the statement that “Baseline Standards below do not constitute an exhaustive listing of all relevant health, safety, environmental and other standards that could be applicable to a SCEIF. Rather, the Baseline Standards reflect the key provisions that the Department is highlighting.” However, this should be followed up with an explicit statement that other standards established by Local Governments are acceptable and these additional standards identified by municipalities shall be understood to be in compliance with both 225 CMR 29.00 and explicitly in compliance with the Dover Amendment - MGL Ch40A Section 3 paragraph 9,.. This will allow locally established standards that complement or augment DOER’s Baseline Standards to be used without risk of the inevitable legal challenges.

## 1. Standards that Apply to All Small Clean Energy Infrastructure Facilities

Air Pollution. While I do not have deep knowledge of 310 CMR 7.00, I think the following statement is very important “SCEIFs shall prevent the occurrence of conditions of air pollution, including, but not limited to noise where such do not exist”. I also appreciate the statement that SCEIF’s will “facilitate the abatement of conditions of air pollution where and when such occur” although it is not clear to me how this can happen with a clean energy facility. But please keep this in the final version since it establishes an important goal for air quality.

Archeological Resources. Requiring project to comply with 950 CMR 70.00 “the Antiquities Act” is wholly insufficient. These regulations do not adequately address indigenous historical or cultural sites. Further the Mass. Historical Commission has an established track record of not recognizing Indigenous history and culture but rather prioritizing western, post-Columbian history. Given that Indigenous people inhabited New England prior to colonialization as well as after, their history and cultural sites need to be adequately recognized and protected. The Antiquities Act does not do this. Please refer to my comments submitted to DOER and attached here as Attachment A for further reference.

Areas of Critical Environmental Concern. The definition of an ACEC in 301 CMR 12.00 is as follows “ACECs are those areas within the Commonwealth where unique clusters of natural and human resource values exist and which are worthy of a high level of concern and protection...The purpose of the designation process is to determine if the nominated area is of regional, state, or national importance or contains significant ecological systems with critical interrelationships among a number of components. After designation, the aim is to preserve and restore these areas and all EOEEA agencies are directed to take actions with this in mind”

Given the state designated importance of these areas and the seeming rigorous process to achieve this designation, it is a disservice for DOER to allow development in these areas. I seem to remember that DOER mentioned some locations in the Commonwealth where municipalities wanted development in an ACEC. This would seem to conflict with the fundamental reason for establishing an ACEC. I would strongly suggest that DOER prohibit SCEIFs in an ACEC. If not outright prohibition, I would suggest that DOER allow a municipality to deny a permit to any SCEIF in an ACEC simply on the basis of this designation and that these municipalities be held harmless from appeal, legal action or De Novo review.

### Article 97 Land Disposition

The Commonwealth’s website states the following about Article 97 land: “Article 97 of the Amendments to the Massachusetts Constitution (Art. 97) establishes a right to a clean environment including its natural, scenic, historical, and aesthetic qualities for the citizens of the Commonwealth. Art. 97 also declares the conservation of natural resources a public purpose and provides that land or easements subject to Art. 97 shall not be used for other purposes or disposed of without a two-thirds roll call vote of the Legislature”. The Law did not directly provide the opportunity for a specific vote to allow an Article 97 parcel to be used for “other purposes”. In fact the Clean Energy Law states that “No land, rights of way or other easements therein in any public way, public park, reservation or other land subject to Article 97 of the Amendments to the Constitution of the Commonwealth shall be taken by eminent domain under this section except in accordance with said Article 97”.

Given this, for the Administration to allow development on Article 97 seems to run counter to the Mass. Constitution and the Clean Energy Law. I would strongly suggest that Article 97 land be prohibited from clean energy development unless there is such a specific legislative vote on a parcel or more specific legislation.

### Chapter 91 (Trust Lands)

According to the Commonwealth’s website, Chapter 91 protections predate the nation and are based on “the Colonial Ordinances codified the “public trust doctrine,” a legal principle that dates back nearly 2000 years, which holds that the air, the sea and the shore belong not to any one person, but rather to the public at large.” Given this, any ability to develop clean energy facilities on Chapter 91 land must be above and beyond the usual process since these lands are designated as requiring the “public trust”. This must be more than agency approvals. The website clarifies Chapter 91 is, “the oldest program of its kind in the nation, Chapter 91 regulates activities on both coastal and inland waterways, including construction, dredging and filling in tidelands, great ponds and certain rivers and streams.” Again, this land must be rigorously protected if any development is considered.

Decommissioning/Abandonment. Requiring payment of a surety prior to construction is good. However, DOER should require a time period for this to occur. A reasonable time period would be 30 days.

I also appreciate and think it is important that the surety amount be increased based on annual inflation, although it would be better to tie this to a state or federal measure of actual or anticipated inflation. As someone who lived through the 1970s, inflation can be much higher than 2.5%, in fact in 2026 it is currently 3.5%. Without this rate being tied to actual inflation, host municipalities will possibly need to pay significant sums to decommission a facility that should otherwise be paid by the developer; this is antithetical to the intent of a surety.

Reviewing and updating the surety amount after 10 years, and then 5 years subsequently is good and important to make sure the host municipality is not left holding the financial burden at the time of decommissioning.

The definition of an abandoned facility – not operating for 12 months as intended to operate – is a good thing to include.

While I appreciate the list of what is included in decommissioning, it must be said that returning agricultural fields to predevelopment conditions is dubious. Similarly, while reseeding disturbed earth is necessary, it will in no way return the land, especially forested land, to its predevelopment state. The damage to these lands will be done in the short and medium term.

Emergency Response Plan. It is essential that these facilities be required to create an Emergency Response Plan (ERP). Thank you for including this. It is similarly crucial that they be developed in consultation with local public safety officials and in close coordination with first responders, however as noted later, public safety officials should be required to approve these plans for them to be locally appropriate and therefore meaningful and effective. While DOER suggests the ERP be approved by the Local Government, the guidelines would be improved by also explicitly requiring the approval by local public safety officials. While perhaps implied, this creates a direct link to those local experts and makes the local approval process very clear since public safety officials are not part of the permitting process.

What is required in an ERP is good. In particular, the requirement for “a firefighting plan with suggested response procedures for various emergency conditions” and the identification of tasks that will be undertaken by the facility operator – so that it is clear what they are accountable for and that the burden does not fall to the host municipality.

Herbicides Use in Rights-of-Way. I appreciate the statement that SCEIFs should “*minimize the uses of, and potential impacts from herbicides in rights-of-way on human health and the environment*”.

Herbicide/Pesticide Application. Since MDAR is the entity in the Commonwealth that regulates herbicides and pesticides, this is important to state clearly both for awareness by a developer and the host municipality, and more importantly for accountability and compliance.

#### Historic Places

As noted earlier under Archeological Resources, 950 CMR 17.00 is insufficient for protecting Indigenous historical and cultural sites. Please see my additional comments above and in Appendix A.

Lighting. This standard leaves the door open to excessive or lighting that creates a disturbance and may contradict local lighting bylaws. Lighting for “*security, emergencies and operational purposes*” are important but the practical default for commercial and industrial installations is often more lighting than some communities or abutters want. I would suggest requiring either adherence to Dark Sky guidance (as mentioned elsewhere in these regulations) or allowing for local lighting bylaws/ordinances to be used in the regulation of lighting. For example, “off siting lighting” may not address unnecessary bright skies over an installation since it could be argued that the air rights means the lighting does not cross the property line.

Massachusetts Endangered Species Act. This statement is helpful in protecting animals and plants. However, while it is helpful from a regulatory perspective to reference existing state law, these laws are not necessarily written for all circumstances, such as clean energy development.

For example, the penalties for not complying with MESA may be seen as the cost of doing business and therefore not a deterrent. Additionally, since the “responsible parties” to enforce MESA are state agencies, DOER needs to explain the process by which permitting review will coordinate around MESA, especially given the 12-month Constructive Approval process.

Noise. I’m very thankful to DOER for allowing local noise bylaws, regulations or ordinances to be used to regulate SCEIFs. Where these are in place, they are there for a reason and should be respected. This statement should be maintained. The underlying value of respecting local regulations should be upheld throughout these regulations.

Paving Restoration. This points to an inadequacy of urban-based policies. While municipal street surfaces should be restored following excavations, this points out the fact that industrial scale clean energy development can reasonably, if not often, occur in rural areas with unpaved roads. This element is not addressed in these guidelines. Either it should be or local regulations regarding unpaved road integrity and repair should be explicitly allowed; again to allow for protection from legal action based on the Dover Amendment.

Pollinator Friendly Practices. This statement is good. “*Facilities shall limit clearing of natural vegetation, including mowing, to what is necessary for the construction, operation, and maintenance of the SCEIF. Any vegetative cover on the SCEIF’s site shall be maintained to prevent soil erosion and plantings shall be native species appropriate to the geographical area*”

#### SCEIF – All Facilities

##### Site Suitability Guidance.

While I recognize that both DOER and EFSB are referring to EEA’s Site Suitability guidelines, as I have commented elsewhere, even the January 30, 2026 Site Suitability Guidelines are insufficient and incomplete in terms of determining the environmental suitability of siting clean energy projects. Most importantly, the Siting Suitability only addresses a limited scope of siting related issues. While DOER addresses more issues in detail in this and other regulations, the importance of a Site Suitability Score in determining allowable minimization and mitigation cannot be overstated. Local Governments must have the ability to place conditions on issues that impact site suitability that are being the EEA Site Suitability scope. Please see my attached comments to EEA in Appendix B.

Stormwater Management. The statement that “*SCEIFs shall be constructed to minimize runoff*” and must comply with various state regulations is important to avoid damage from flooding and erosion. Notably, this seems to leave it to the local permitting authorities to determine what is minimal in reference to the state regulations.

Surface Water Quality Standards. From my review of 314 CMR 4.00, the focus on that regulation is about pollution of water. While this is important. I am not sure if this would cover emergency-related pollution such as a battery fire. In places that rely on drinking water wells, reservoirs or aquifers located near a facility with a lithium-ion battery, emergency-related pollution is a concern. DOER should address this more specifically.

Landscaping. This provision is good.

Wellhead Protection. The prohibition of siting SCEIFs in Zone 1 areas is good. For SCEIFs in Zone II or Zone A, the requirement that SCEIFs “*must comply with local wellhead and surface water protection and non-zoning controls*” is good and important. I would expand this to require all SCEIFs to comply with local water regulations since none of these Zones address communities with private drinking water wells, which is equally important but frequently overlooked, especially in DEP regulations. Local regulations would be appropriately protective, aligning with the intent of this provision.

Wetlands Protection. Thank you for explicitly allowing Local Government to regulate SCEIFs using local wetland protection bylaws. These exist throughout the Commonwealth and are more protective and locally oriented than the Wetlands Protection Act. As noted elsewhere; by explicitly allowing this, it grants municipalities more appropriate regulatory oversight and protects them from legal action in regards to the Dover Amendment.

Operations and Maintenance Plan. The requirement for a facility to submit an Operations and Maintenance Plan prior to commercial operation is good to ensure that management and operations are appropriate and comprehensive. This provision falls short in terms of the timing of the submission of the plan; this should be included with the application materials not prior to commercial operation.

## **2. Additional Standards that Apply to Small Clean Energy Infrastructure Facilities**

Slope. This is a huge issue that is important for siting. Thank you for adopting 15% slope as the upper limit; I believe this is a reasonable and commonly applied standard. This will prevent unnecessary erosion, protect against poor stormwater management, and in some cases, avoid catastrophic results like in Williamsburg, MA. It will result in reasonable siting.

## **3. Additional Standards that Apply Only to Small Clean Energy Storage Facilities**

Electrical. I support this provision. In particular, I support the requirement to “clearly display disconnect and other emergency shutdown information”

Fire Safety. The updated NFPA 855 is the best code available, so requiring compliance with these standards makes sense. It should be made clear that facilities should comply with successive versions of NFPA 855 or Massachusetts based fire regulations, if more stringent. I appreciate and support the specific identification for the need for Energy Storage Facilities to adhere to the NFPA 855 and Mass State Fire Code in regards to “*emergency operations plan and emergency training for facility staff, smoke detection systems, fire control and suppression system, explosion control and spill response measures*”. These are all crucially important elements for regulators to review.

While I appreciate the requirement for facilities to “be designed to meet UL 9540A fire testing and thermal runaway propagation risk test methods for cell level, module level, unit level, and installation level” and I think this is a good attempt to address the risks, thermal runaway is the greatest problem with energy storage. It should be noted that even with testing, thermal runaway cannot be fully avoided since it is episodic and could occur randomly due to equipment failure. Testing does not mean no risk of occurrence.

Most important in this section is the following statement “*NFPA 855 requires an adequate water supply and firewater containment strategies for both manual and automatic fire suppression using water as the cooling agent*”. This is essential since DOER is not prohibiting SCEIFs in forested areas or in locations without adequate infrastructure. This statement makes clear that if a host municipality does not have water infrastructure or capacity, even via mutual aid, to provide an adequate water supply and for firewater containment strategies, that siting in these locations is risky and inappropriate. I would suggest that a Local Government should be given explicit ability to deny a permit for this reason, if it sees fit for purposes of public safety.

Setbacks. Requiring setbacks from “*from other structures, tree lines, and other combustible materials*” is crucial as a precaution for energy storage facilities. Unfortunately, the NFPA setback distance seems too minimal. It should be up to the Local Government to set these setbacks given the local risks inherent in a battery fire. Further, since energy storage is often placed at the perimeter of a solar facility for access purposes, the project setbacks should allow for adequate safety-related buffer.

Signage. This provision is good. I especially appreciate and think signage with “*the type of suppression system installed in the area of BESS, and 24-hour emergency contact information, including reach-back phone number*.” Fire responders, especially in volunteer fire departments may not be familiar with suppression details and needing 24-hour emergency contact information is essential.

Emergency Response. This provision is good. Of particular importance and something I think is essential is #7 “*Other procedures as determined necessary by the Local Government to provide for the safety of occupants, neighboring properties, and emergency responders*”. I appreciate DOER enabling local authorities to ensure the protection of people and property based on their local knowledge and conditions. Again, explicitly allowing this local regulation will enable better public safety and will not risk legal action because of the Dover Amendment.

While #8 “*Training for local first responders on the contents of the plan, and protocols and schedules for conducting drills of the above procedures*” is important to include in Emergency Response Plans for energy storage facilities, DOER must allow Local Governments to insist on this training being provided at the Owner/Operator’s expense. Otherwise, it is like saying “this is what you should do, go find a way to pay for it”. The Applicant is creating a new public safety risk that municipalities likely don’t have the capacity for, so having the Applicant pay for the training should be allowable.

## **4. Additional Standards that Apply Only to Small Ground-Mounted Solar Facilities**

Glare. This is a good provision. It highlights the importance of landscaping, setbacks and visibility, as well as the design and placement of the arrays.

Setbacks. These setbacks are too small. I strongly recommend that setbacks be able to be set by local regulations and guidelines. Since by definition, all Massachusetts zoning must be reasonable, I would argue that setbacks and similar elements of a SCEIF should be regulated in a manner that is consistent with local zoning. This will create equity among local uses within a

municipality's zoning and will therefore be appropriate to the community. If a SCEIF is able to have a significantly smaller setback based on it being a particular use, it is inconsistent, and fundamentally inequitable; perhaps not even reasonable. Allowing Local Government to regulate setbacks and other usual zoning characteristics, does not hinder the deployment of clean energy facilities and does provide local consistency.

## **6. Additional Standards that Apply Only to Land-Based Small Clean Energy Wind Generation Facilities**

### **Land-Based Small Clean Energy Wind Generation**

Flicker and Shadowing. I support this provision.

Siting. From a safety perspective, these siting dimensions and limitations are reasonable.

## **APPENDIX A:**

### **Background on Indigenous Stone Landscapes and Cultural Sites**

#### **PUBLIC COMMENTS ON**

#### **Ceremonial Stone Landscapes and Traditional Cultural Landscapes In Regards to Clean Energy Facility Siting**

Comments submitted by  
Carol Walker  
Winthrop, MA 02152  
February, 2026

I am submitting this standalone public comment because it is cross-cutting for all three agencies' regulations and guidance and could easily be overlooked if not highlighted. It is in regards to respecting Indigenous rights and culture in the permitting process. The various regulations and guidelines being developed by the Commonwealth are, by definition, based on a western civilization mindset and understanding. This is to be expected.

#### **BACKGROUND**

##### **What: Indigenous Sites Need Recognition and Protection in Permitting**

Indigenous communities have sites that are of cultural or religious importance to them. These include Ceremonial Stone Landscapes and Traditional Cultural Landscapes. Definitions are at bottom of this email.

##### **Who: Tribal Historical Preservation Officers**

The person who is trained and recognized by the tribes and who the federal government to recognizes are called Tribal Historic Preservation Officers (THPOs). A THPO is responsible for the administration of any or all of the functions of a State Historic Preservation Officer (SHPO) with respect to tribal land. Western experts like archeologists are likely not THPOs.

#### **ISSUES**

##### **One-Mile Limit**

Tribes that were historically located in the state are not always present or represented in the region where cultural sites are located. For example, the western Mass. Nipmuc people are represented by Mashpee Wampanoag Tribe in SE Mass. Additionally, tribes that were forced to leave Massachusetts by threat of force or treaty, now are located in other states. In both instances, defining Key Stakeholders as being within 1 mile of a clean energy facility, does massive injustice to the Indigenous communities that lived in Mass. and have cultural or spiritual relevant landscapes on potential project sites here. This may be an inconvenient truth but a truth nonetheless.

##### **Mass. Historical Commission Not the "Decider"**

From what I understand, the Massachusetts Historical Commission has had a long-standing position that there are no Indigenous stone structures in the Commonwealth. Based on the attached document which deeply researched this issue, MHC's position has been that all stone structures are post-Contact. For example, as recently as 2021 (might still be there) the MHC's official website includes this statement:

*"Piles or continuous walls of fieldstones are common in rural Massachusetts wherever there are rocky soils. When historians and archaeologists have conducted thorough, professional research into such stone piles, they have invariably shown that these features are not associated with the Native American settlement of Massachusetts."*

So while state agencies like EEA, DOER and EFSB will be tempted to make the MHC the "go-to" for determining Indigenous sites, I believe this would be a mistake. If one acknowledges that a non-western understanding is required to recognize these Indigenous sites, then it is inappropriate to have a state government agency with no expertise in this perspective be the entity making decisions on whether they exist or how they should be assessed. Rather, it should be up to the tribes to determine, as the federal government has long recognized. .

#### **DEFINITIONS**

##### **Ceremonial Stone Landscapes (CSLs)**

A Traditional Cultural Property (TCP) is any physical property or place of significance to a culture, e.g., a district, site, building, structure, or object. A Traditional Cultural Property can be a place, a human-made structure, or a natural landscape or region. A TCP may be eligible for inclusion in the National Register of Historic Places (NRHP) based on its level of significance, as determined by its culture and community. Significance is often determined by (but not limited to): associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community. TCPs are rooted in a traditional community's history and are important in

maintaining the community's continuing cultural identity. The National Historic Preservation Act and the accompanying 36 CFR 800 regulations refer to "properties of traditional religious and cultural significance"

#### Traditional Cultural Landscape

A Traditional Cultural Landscape is a spatial area or resource area associated with a traditional community's cultural practices, beliefs, or identity. An example of a Traditional Cultural Landscape, which links human-made features to the natural environment, could be a complex of Ceremonial Stone Landscapes built around and close to water sources and wetlands. Understanding Traditional Cultural Landscapes often requires a holistic examination of the larger landscape within which a site is situated.