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CAPE COD
COMMISSION

Via Email

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Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Thank you for the opportunity to provide comments on draft guidance implementing an Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers ("2024 Climate Act"; St. 2024, c. 239). Cape Cod Commission Staff reviewed EEA's Draft Guidance on *Site Suitability Assessments for Clean Energy Infrastructure* ("Guidance") and offer the following comments for consideration as the draft guidance and associated regulations are finalized.

Background:

The Cape Cod Commission, as the regional planning and land use agency for Barnstable County, is responsible for reviewing and regulating Developments of Regional Impact ("DRIs"). The Cape Cod Commission Act (St. 1989, c. 716) and the Commission's enabling regulations include thresholds and criteria for determining when a proposed development constitutes a DRI based on the magnitude of its impact on the natural or built environment and effects across multiple municipalities within the region. The Commission has reviewed, as DRIs, numerous projects that would meet the definition of clean energy infrastructure facility contained in the 2024 Climate Act. Moving forward, the Commission will continue to participate in the permitting process for such facilities in its capacity as a Local Government pursuant to M.G.L. c. 25A § 21(a), by recommending conditions for EFSB-jurisdictional projects and issuing consolidated permits for small clean energy infrastructure facilities ("SCEIF").

Draft Guidance - Site Suitability Assessments for Clean Energy Infrastructure:

The Department of Energy Resources' ("DOER") Small Clean Energy Infrastructure Facility Siting and Permitting Draft Regulation (225 CMR 29.00) requires Applicants for consolidated permits to submit a Site Suitability Report to a Local Government, consistent with the methodology outlined

in EEA's draft Guidance. The Local Government may prescribe minimization and mitigation measures with a rational nexus to the impacts of an SCEIF, the scope and type of which "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*" (225 CMR 29.07 (5)(b)). The Cape Cod Regional Policy Plan ("RPP") and associated guidance documents include minimization and mitigation measures to address impacts of new developments (including clean energy facilities) on wildlife and plant habitat, open space, water quality, and other sensitive regional resources. Understanding that the 2024 Climate Act aims to expedite and streamline the permitting process for clean energy facilities, the Cape Cod Commission has an interest in ensuring that EEA's Site Suitability Assessment Guidance balances the need for clean energy deployment with adequate protection for natural resources.

Commission staff previously reviewed and provided comments on EEA's Site Suitability straw proposal in May 2025. The Draft Guidance expands on the straw proposal with appropriate references to statewide resource datasets and an objective scoring methodology. The Guidance will be used in conjunction with EFSB and DOER regulations but can be updated more easily than regulations to account for changes in technologies, best practices, and environmental data. Additional comments included below correspond to the headings in the Draft Guidance.

A. Applicable Facilities

ii. Special Infrastructure Types:

Certain facilities are exempt from site suitability assessments under the Guidance, including offshore linear infrastructure and onshore linear infrastructure in existing Public Rights of Way. The exemption for offshore infrastructure seems reasonable and addresses concerns raised in the previous Commission staff comment letter on how the climate resiliency criteria, which penalizes projects susceptible to flood risk, might apply to infrastructure designed for permanent submersion.

Regarding onshore infrastructure, the Guidance would benefit from a clearer description of what constitutes a "newly established Public Right of Way". The definition of Public Right of Way includes "any way laid out by public authority that permits public access or that is established on public property and which may or may not already house utility infrastructure." It is unclear how to determine whether a right of way is "newly established"—does this refer to a right of way which will be established in order to accommodate the proposed onshore infrastructure, one that currently contains no utility infrastructure, or some other definition?

B. Scoring Process:

The Guidance provides that a third-party Site Suitability Score Reviewer will issue a Formal Score Determination including the Total and Criteria-Specific Site Suitability Scores. For SCEIFs applying

for a Consolidated Local Permit, the Formal Score Determination may be further reviewed by DOER in the event of dispute. This process appears well-designed to ensure the Site Suitability Scores are determined and verified by a neutral third party so Local Governments are not reliant on an Applicant's self-determination when reviewing a consolidated permit request and designing minimization or mitigation measures. Commission staff note some inconsistency between the score review provisions in the EEA Draft Guidance and DOER's Draft Regulation (225 CMR 29.00). The Guidance provides that an Applicant, Local Government, or "any other party substantially and specifically affected by an Applicable Facility" may request review, while 225 CMR 29.00 includes an Applicant, Local Government, or "any other Key Stakeholder" as the parties eligible to request review. Key Stakeholder is defined broadly under 225 CMR 29.00. Commission staff suggest that the Guidance and DOER Regulations incorporate the same language to minimize any ambiguity about which parties can request a score review in the event of a dispute.

C. Criteria:

The Guidance and associated mapping include three criteria tied to the existing environmental conditions of a given Site Footprint—carbon storage and sequestration, biodiversity, and agricultural resources. The methodology outlined in this Guidance would yield high scores for projects proposed in the most valuable locations for these resources. Across Cape Cod, most of the areas that score high in carbon, biodiversity, and agriculture indices are within currently protected areas or locations where the Commission would impose significant mitigation requirements under existing regulations and guidance. Commission staff note that projects proposed on undeveloped lands are typically required to offset new land disturbance at a ratio of 2:1 or 3:1 (acres of permanent protection of undeveloped land or in lieu payment: acres of new development impact). EEA's Draft Guidance may yield relatively low scores for some of these undeveloped areas and it is unclear whether existing Commission mitigation requirements would apply to clean energy infrastructure facilities applying for consolidated permits under DOER Regulations/Guidance and EEA Guidance. Staff suggest EEA consider including an on-site assessment as part of the methodology for scoring carbon, biodiversity, and agricultural indices to ensure that mapped environmental resource values are consistent with ground conditions.

E. Other Considerations of Note:

Commission staff suggest this section also include compliance with Massachusetts Endangered Species Act ("MESA"; M.G.L. c. 131A; 321 CMR 10.00) requirements. The Guidance recognizes the importance of Natural Heritage and Endangered Species Program ("NHESP") priority habitat and BioMap as part of the biodiversity-specific criteria, but presence of priority habitat does not automatically disqualify a site from development. The Guidance should note that clean energy infrastructure facilities are required to comply with applicable NHESP requirements to protect state listed species from impacts of development, including takes.

ii. Wetlands:

The Guidance notes that projects located within jurisdictional areas under the Wetlands Protection Act ("WPA"; M.G.L. c. 131; 310 CMR 10.00) or requiring a Section 401 Water Quality Certification will be reviewed by a municipal conservation commission for compliance with applicable regulations. This section also notes that "local jurisdictions may also have wetlands protection bylaws." It is unclear whether local bylaws or regulations must also be complied with. In some cases, these requirements may exceed WPA statewide requirements. This EEA Guidance and/or DOER Guidance should clarify the application of local regulations to clean energy infrastructure facilities requesting a consolidated local permit.

Cape Cod Commission staff look forward to participating in future meetings and providing additional feedback on draft regulations and guidance. Please do not hesitate to reach out with any questions about these comments.

Sincerely,



Kristy Senatori
Executive Director