

Eastham Conservation Commission

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October 17, 2025

To: Rick Collins
Massachusetts Department of Energy Resources
Attn: 225 CMR 29.00 Public Comment

Re: Public Comment on 225 CMR 29.00 – Small Clean Energy Infrastructure Facility Siting and Permitting Draft Regulation (S&P Follow On Rulemaking Comments)

Dear Department of Energy Resources:

On behalf of the Eastham Conservation Commission, I write to express our deep concern that the proposed regulation 225 CMR 29.00 will significantly undermine the ability of municipalities like ours to apply and enforce local environmental protections. In particular, we are alarmed that Eastham's more stringent wetlands bylaw and local regulations could be excluded from the permitting process entirely. The draft framework appears to sideline both the subject-matter expertise of Conservation Commissions and the Department of Environmental Protection, while removing the ability to defend Home Rule wetlands bylaws through judicial appeal. We are further concerned that rigid timelines and procedural shortcuts—such as constructive approval and de novo review—create opportunities for applicants to bypass local oversight. During de novo review, there is no guarantee that local boards like ours would even have a formal seat at the table. These concerns are detailed below.

Undermining Wetlands Protection and Local Bylaws

Massachusetts has long led the nation in wetlands protection, yet §29.06 of the draft regulation addresses environmental issues only in the broadest terms. It references “public health, safety, and environmental standards” and “encroachments on critical resources,” but provides no connection to the Wetlands Protection Act (M.G.L. c.131 §40), 310 CMR 10.00, or municipal bylaws adopted under Home Rule. By authorizing DOER to define environmental standards

through its own Guideline and by limiting local standards to those that “do not conflict” with DOER’s (§29.06(2)), the regulation effectively subordinates existing wetlands protections to an undefined state framework. This omission risks sidelining decades of local conservation work and undermines the Commonwealth’s integrated system of resource protection.

These omissions, combined with later procedural provisions, could allow projects to sidestep wetlands review entirely:

- The regulation does not affirm the continued authority of local wetlands bylaws or regulations under M.G.L. c.131 §40, leaving room for preemption by future DOER guidance.
- The “Constructive Approval” clause (§29.12) and the de novo adjudication process (§29.10(5)) could allow applicants to bypass Conservation Commissions entirely. The Energy Facilities Siting Board (EFSB), which would assume jurisdiction, lacks an ecological mandate and is not required to apply local or state wetlands standards.
- Under 310 CMR 10.05(6)(c), Conservation Commissions may deny incomplete filings. Yet §29.10(3) allows applicants to treat such denials as a trigger for de novo review—effectively using procedural loopholes to avoid wetlands scrutiny.
- Section 29.10(3) also folds all local determinations into a single consolidated permit, eliminating the ability to pursue independent judicial appeals under local bylaws.

Erosion of Home Rule and Local Oversight

Sections 29.09 and 29.10 consolidate all local permits into a single decision, removing independent appeal paths for wetlands, zoning, and health boards. Section 29.06(2) further limits local standards to those “not in conflict” with DOER rules, weakening the ability of towns to uphold stronger environmental protections.

- The regulation does not grant municipalities standing or intervenor rights in appeals (§29.10(5)), reducing local governments to advisory roles rather than co-equal permitting authorities.
- By requiring applicants—not local boards—to host public meetings (§29.08), the regulation diminishes transparency and community trust in a process that should be led by public officials.
- The 60-day pre-filing period (§29.08) and the short Site Suitability scoring timeline (§29.07) are insufficient for meaningful ecological review, especially in coastal communities where field verification depends on seasonal conditions. These challenges are compounded by the wide disparity in municipal permitting capacity across the Commonwealth—some towns have robust professional staffing, while others rely entirely on volunteers—and by the limited availability of qualified professionals on Cape Cod to perform independent peer review for municipal permitting, as many coastal scientists and professional engineers are committed to research or private consulting work and lack availability within such short timeframes as proposed in the regulations.

Procedural Vulnerabilities and Lack of Expertise

From our collective experience reviewing hundreds of filings, we have seen how some applicants exploit procedural gaps and the limited availability of qualified peer reviewers to delay or divert local review, sometimes by omitting or understating jurisdictional resource areas or failing to address applicable local regulations and performance standards. Under §§29.10(1)–(3) and 29.12, these gaps are amplified by rigid timelines and automatic approval provisions that allow incomplete or insufficient filings to advance to de novo review before the EFSB, bypassing local expertise entirely.

- Incomplete or insufficient filings could be used strategically to obtain a denial and move the case to the EFSB under de novo review (§29.10(5)), removing oversight by local boards with environmental expertise.
- The 12-month constructive approval rule (§29.12) rewards stalling tactics—projects can be approved by default even when boards are waiting for applicants to provide essential data or for peer review results to be completed.
- The EFSB’s focus on infrastructure reliability, rather than ecological integrity, means local expertise in groundwater, floodplain management, and habitat protection may be lost from the process.

Undefined Site Suitability Criteria

The regulation relies on Site Suitability Scores to determine whether projects are exempt from local mitigation requirements. While §29.07 establishes a scoring and reporting process, it does not define the underlying environmental criteria or require public rulemaking for future changes. Instead, these critical standards are deferred to DOER’s “Site Suitability Guidance,” which may be revised administratively without notice or input.

- These guidelines can be changed without public process, leaving municipalities vulnerable to shifting standards.
- Labeling already-cleared land as “highly suitable” (§29.07(5)(c)) risks incentivizing land clearing to qualify for exemptions.
- The regulation does not reference key environmental standards such as 310 CMR 10.00 (Wetlands Protection) or 310 CMR 22.00 (Drinking Water). Without these cross-references, critical groundwater and habitat protections may be weakened.

Recommendations

To safeguard environmental integrity and preserve meaningful Home Rule authority, the Eastham Conservation Commission respectfully recommends the following revisions to 225 CMR 29.00:

1. Explicitly affirm that local wetlands bylaws, Board of Health regulations, and zoning ordinances remain enforceable within the consolidated permit structure.

2. Require that de novo appeals (§29.10(5)) apply all relevant local and state standards and grant municipalities formal intervenor status in any EFSB proceeding.
3. Clarify that incomplete or insufficient filings under 310 CMR 10.05(6)(c) are ineligible for constructive approval or de novo review (§29.12).
4. Restore public meeting leadership to permitting authorities, rather than applicants (§29.08), to maintain transparency and public trust.
5. Extend pre-filing and review timelines (§§29.07–29.10) to accommodate seasonal fieldwork, peer review, and comprehensive ecological evaluation.
6. Define and publish Site Suitability criteria (§29.07) through formal rulemaking, and ensure they are publicly vetted and incorporate groundwater, habitat, and climate resilience metrics.
7. Preserve municipal rights to pursue independent judicial appeals under local wetlands bylaws (§29.10(3)).

Together, these revisions would restore balance between state and local authority, ensuring that efficiency does not come at the expense of ecological integrity or public accountability.

Clean energy expansion should complement—not compromise—Massachusetts’ long-standing environmental protections. Local knowledge and ecological expertise are essential to responsible siting, and any framework that sidelines those perspectives will erode public trust. We urge DOER to revise 225 CMR 29.00 to uphold the Commonwealth’s commitment to environmental stewardship, public safety, and Home Rule.

Sincerely,



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