



July 25, 2025

Grace Fletcher
Department of Energy Resources
100 Cambridge Street, 9th Floor
Boston, MA 02114.

Via Email: DOER.SMART@mass.gov

Re: **SMART 3.0 Public Comment**

Dear Ms. Fletcher and DOER SMART Team:

Mass Audubon offers the following comments on the proposed regulations for the Solar Massachusetts Renewable Target (SMART) 3.0 program, transitioning from the 225 CMR 20.00 regulations to the new 225 CMR 28.00 regulations. These comments are also supported by the Taunton River Watershed Alliance. We appreciate the progress that is being made toward aligning the SMART solar incentives with the state's broader goals for both clean energy and the important roles of natural and working lands for climate resilience, mitigation, biodiversity, clean water, local food production, and other values. We recommend that the state's broad suite of goals for natural and working lands be explicitly included in the Purpose and Application section of the regulations.

Summary Comments:

DOER articulated in the December, 2024 framework for this program update that it would be prioritizing protection of highest carbon forests, balancing a preference for solar deployment within developed areas with cost considerations, and providing mitigation for unavoidable impacts. These objectives are highly consistent with our recommendations resulting from our [2023 analysis](#), which shows the opportunity for policies and incentives to guide the siting of ground-mount solar systems to lower-impact sites and the built environment to preserve natural systems to the maximum extent feasible. We conservatively estimated at the time that over 30 GW of low-impact ground-mount and built environment solar opportunities are potentially economic for development even without SMART incentives. Most of the sites that we characterized as low-impact for ground-mount solar are under 20 acres in size, therefore we appreciate the efforts to be more inclusive of smaller projects and projects within the built environment. We also know that canopy systems over parking lots and other developed areas need a higher incentive level to be attractive for development.

SMART incentives will be incredibly important in delivering the solar capacity needed to decarbonize our power sector and thereby unlock GHG emission reductions across the economy. This program's importance is further elevated by the fact that federal support for solar has been eliminated in the near-term, and offshore wind faces an increasingly challenging financial and policy environment than just a few years ago.

Meeting our statewide objectives for climate mitigation, resilience, biodiversity, and drinking water, as well as many public health outcomes, require that we retain as much of our natural and working lands as possible, with a particular focus on full protection of our highest-carbon, most resilient parcels.

Conceptually, the new regulations move the program in the right direction within this context. Our detailed comments suggest refinements that would clarify and strengthen the regulations in regards to DOER's stated objectives for the program.

We appreciate the inclusion of provisions for mitigation at 310 CMR 28.09. The actual results of this mitigation program and its adequacy in avoiding, minimizing, and then offsetting unavoidable impacts depend on the specific numeric criteria to be utilized in the mitigation calculation formula. Those important details are still forthcoming in the updated *Guideline Regarding Land Use, Siting, and Project Segmentation*. We look forward to commenting on the draft Guideline soon. In the meantime, we note that proximity to interconnection is more of a cost consideration than a land use impact factor, and in some instances could actually have a negative impact on high value natural resources. Therefore we recommend that factor be excluded from the mitigation formula and instead be evaluated separately.

We remain concerned that the siting and approval of new grid capacity projects -- which enable new distributed energy projects -- is handled under a separate planning process which does not account for the fact that project developers must locate projects as close as possible to this critical hosting infrastructure in order to minimize interconnection costs. As a result, decisions about the siting of new hosting capacity are arguably more determinative of the natural resource impacts from energy projects. As such, we suggest that DOER consider that utilities who site new grid infrastructure in locations surrounded by lands with high scores for natural resource criteria should be allocated some of the mitigation costs for interconnecting energy projects which locate in close proximity.

We would like to note that in conjunction with partners, we are conducting our own mapping analysis to develop recommendations of quantitative weights and scores for key environmental criteria to be used in scoring of individual sites/parcels, as well as mitigation fee values. We hope that the comment period on the draft Guideline will be sufficiently long to allow review of these critical values. We also plan to use results from our analysis as

inputs to the development of siting and permitting regulations which were promulgated under the 2024 Climate Law.

Specific Comments:

Emergency Regulations: These regulations were filed as emergency regulations that went into immediate effect. It makes sense for the state to move as expeditiously as possible to implement the new incentives both because of the improved alignment with land use goals and because federal support for solar projects is rapidly evaporating.

28.01: Purpose and Application

This section of the regulations is vital as it sets the basis for the entire program. It speaks to the importance of supporting the deployment of solar projects to meet energy needs and decarbonize the grid pursuant to the state's clean energy laws. It also acknowledges rapidly changing market conditions.

- This section should also include additional framing to reflect that reducing impacts to natural and working lands was a significant part of the rationale for this program review. DOER's December 2024 straw proposal included the following objectives:
 - Protect Massachusetts' highest value forests contributing to emissions reductions in the Natural and Working Lands sector
 - Balance solar development within the built environment with cost-effective ground-mounted development
 - Create a mechanism to mitigate the impact of solar infrastructure

The detailed provisions of the regulations do indeed address these priorities in several respects. They should be explicitly acknowledged in the Purpose and Application section.

28.02: Definitions

- **Comparable Crops:** This definition focuses on comparison with crops previously grown on the site or by the proposed operator. The soils on the site should also be considered. Soils that are highly productive and can support high value row crops generally should not be incentivized through SMART for lower productivity crops like hay or pasture.
- **Federally designated Environmental Justice (EJ) Area:** The federal government is no longer recognizing EJ communities or supporting programs to support disadvantaged communities. For these regulations, the state's definition and map should be utilized. See the Massachusetts Office of Environmental Justice and Equity (OEJE) for the EJ Population Maps. DOER should also consult with the OEJE

to ensure that these regulations are consistent with the state's EJ Strategy and any recent adjustments related to changes at the federal level.

- Guidelines: These provide important additional details for interpreting and implementing the regulations. The definition allows for updates at any time, provided there is public notice and a minimum 21-day public comment period on the draft. We support this flexibility for updating guidelines provided the public input process is explicitly included as proposed in the draft regulations. We also recommend that DOER provide notice in the Environmental Monitor in addition to on its website.
- Previously developed. This definition mirrors language in the Wetlands Protection Act regulations regarding redevelopment of Riverfront Areas (310 CMR 10.58). It includes areas of impervious surface, or where topsoil is absent as well as junkyards, golf courses, abandoned dumping grounds or other areas determined by DOER. We recommend refinement in relation to golf courses, since those properties often include areas of wetlands or former wetlands as well as patches of forest interspersed between the fairways and greens. The previously developed designation for golf courses should only apply to parts of the property that are uplands dominated by golf course turf (or overgrown turf if the course was abandoned).
- It is also somewhat unclear how areas of managed turf on other properties will be treated under these regulations. We recommend that areas of managed turfgrass e.g. lawns and maintained grass areas on residential, commercial, industrial, institutional or governmental properties be eligible for ground mount systems. A look-back period may be required to avoid incentivizing clearing of patches of wooded areas on such previously developed properties.

28.05 Annual Adjustable Block Rate and Structure

Mass Audubon supports an annual Program Review process that includes assessment in relation to the Commonwealth's goals for both greenhouse gas (GHG) emissions limits and land use and environmental protection as well as other factors including participation (including Low Income), ratepayer and solar costs. An Annual Survey of Solar Development Costs will provide useful information. We recommend that this report also reflect impacts to natural and working lands as part of the cost assessment – although losses of carbon removal and other ecosystem services provided by natural and working lands are not recognized in project financial costs, they are nonetheless costs to the public that should be accounted for. We also support an opportunity for public comment on the draft annual report.

We support a first year Annual Capacity Block of 450 MW and allowing any unused capacity to be rolled into the following year. Assigning set-asides for projects between 250kW and 500 kW, Low Income properties, and community shared solar projects will help ensure that these projects are able to participate in the program. The proposed regulations also allow but do not require set-aside capacity for small (below 25kW) projects and behind-the-meter projects between 25 kW and 250 kW. We support incentivizing such projects as these are likely to fit within developed and low-impact sites.

28.06 Qualification Process for Solar Tariff Generation Units (STGUs)

We support the requirement to show evidence of an executed Interconnection Service Agreement to establish eligibility. As a general rule, we support a faster, consistent statewide approach to permitting smaller solar systems, to reduce the costs associated with individual municipal permitting processes.

28.07 Program Eligibility

(4)(e)Energy Storage Requirement. All STGUs greater than 1,000 kW must be co-located with an Energy Storage System.

- We support the exception for building-mounted STGU systems.
- Exceptions to Energy Storage Requirement for Good Cause.
 - Consider good cause exemptions for smaller canopy systems, brownfield/landfill systems that may not otherwise be suitable for energy storage, and other innovative deployment on previously developed or degraded lands.

(5) Special Eligibility Criteria for STGUs.

28.07(5)(b) Locational Compensation Adders

This section is important because projects that qualify for these adders are provided with exceptions from the rules under 225 CMR 28.08(2) Land Use – Ineligible Land for Ground Mounted STGUs above 250kW. Those larger projects are ineligible in BioMap Core Habitat or land with carbon storage in the top 20%, unless they qualify for one of these locational adders. In addition, projects above 250kW that are not located on Previously Developed Land nor qualify for a Locational Adder are subject to 28.09 Mitigation Fees.

We are developing additional analysis and information to better understand how many and which acres of natural and working lands would be affected by DOER's proposed thresholds. In the interim, we provisionally recommend that Priority Habitat be ineligible as

well, and that DOER consider increasing the threshold for high carbon storage lands not already under permanent protection to 40%.

Locational Adders include Brownfields and Landfills, Canopy, Dual-use Agriculture, and Floating STGUs. We generally support these provisions while noting the ongoing need for more information and refinement of guidelines for Dual-use Agriculture and Floating STGUs as described below.

(b)1. Locational Compensation Rate Adders for Brownfield and Landfill STGUs. We strongly support both the ISA and size exemptions for brownfield and landfill projects

(b)2. Canopy STGUs. We support providing for a broad range of secondary functional uses underneath at least 75 percent of a canopy STGU project. This is an efficient use of land, primarily within other built land uses.

(b)3. Dual-use Agricultural STGUs. The continued agricultural use requirements for dual-use solar photovoltaic should be evaluated for comparable crops – we continue to be concerned about the potential displacement of row crop production for grazing (e.g., sheep) or hay production, at levels which do not serve the Commonwealth’s goals for local food production and security. These should also be evaluated for displacement of future row crop production on lands not currently cultivated for food, but which could support future crop production under a warming climate, which is expected to lengthen the growing season in Massachusetts and across New England. As such, we recommend that the threshold within the required agricultural plan to demonstrate comparable crop production for transitioning farmland acreage be lowered to 5 acres from the proposed 10 acres.

(b)4. Floating STGUs. The Floating provisions should more clearly specify that this is only for artificially created water bodies, and subsection 4.a.i excluding projects on wetland resource areas should cite the Wetlands Protection Act, MGL Ch.131 S.40 in addition to Ch. 91. Rivers and streams should be included as well as ponds and lakes mentioned in the draft. Artificial water bodies created to support agriculture, such as reservoirs and canals on cranberry or other farms, should only qualify for floating solar if the farm remains in operation. When a farm has been abandoned for five years, it no longer qualifies for the agricultural exemption under the Wetlands Protection Act. This program should not incentivize the development of solar projects over water bodies that are highly likely transition back to jurisdictional wetlands. Those waterbodies are often prime opportunities for wetland restoration. The eligibility determination by the Department of Environmental Protection should include an opportunity for review and comment by the local conservation commission.

28.07(5)(c) Eligibility Criteria for Off-taker Based Compensation Rate Adders

1. Community Shared STGUs. In order to qualify as a Community Shared STGU, a STGU must meet the following criteria:

- a. Low Income Customers Requirement. We strongly support a requirement that 40% of generation from these systems support low-income customers, most of whom are already challenged by the front-end costs of solar systems, and/or are renters who are not empowered to make decisions about properties.

28.07(5)(e) Other Special Eligibility Criteria

1. Energy Storage Systems. We strongly support the energy storage requirements for systems larger than 25 kW due to their importance in managing grid dispatch and reducing energy costs, especially during times of peak demand, when rates can run 10X or more the average rate.

28.08: Land Use

(1) Ineligible Land. We support the proposed provisions and propose clarifying and strengthening them as follows:

(a) Wetland Resource Areas. We support the inclusion of all Resource Areas as defined in the Wetlands Protection Act regulations at 310 CMR 10.04. We also support the inclusion of Buffer Zones. However, DOER should understand that Buffer Zones are not Resource Areas under the wetland regulations, rather these are areas where work is subject to review. Nonetheless, we support excluding eligibility in Buffer Zones. Inland and coastal floodplains (Bordering and Isolated Land Subject to Flooding and Land Subject to Coastal Storm Flowage) are Resource Areas and should be excluded to avoid stranding investments in energy systems in locations at high risk of flooding.

(2) Ineligible Land for Ground-Mounted STGUs above 250kW. We support including BioMap Core Habitat and provisionally recommend including Critical Natural Landscape as these areas are also of high biodiversity value and are essential to maintain the functionality and connectivity of ecosystems. We note that some have commented opposing the use of BioMap as it was developed as a planning tool. The SMART program is not a regulatory program, it is an incentive program. It is therefore appropriate for DOER to use a planning tool such as BioMap in determining eligibility for ratepayer-supported financial incentives for clean energy development.

We also provisionally recommend increasing the carbon storage threshold score for ineligibility to 40% rather than 20%.

(4) and (5) Single Parcel and Project Segmentation. We support these provisions that are designed to prevent gaming the system by breaking a large project up into smaller portions or phases.

28.09 Mitigation: The formula and numbers applied to each factor will be published in the Department's *Guideline Regarding Land Use, Siting, and Project Segmentation*. Those numbers will be critical to the adequacy of mitigation and we will be looking closely at that when the draft Guideline is published for public review.

Given that SMART is an incentive program which deploys ratepayer dollars to support private developers' project revenues over a 15- or 20-year period, the mitigation approach and associated fees under SMART must work as intended – i.e., fees must be set high enough to avoid and minimize deployment on higher value lands, and encourage siting on low-impact sites and the built environment to the maximum extent feasible.

The first five criteria for this formula are all based on environmental impacts – forest carbon, ecological integrity, critical natural landscape, agricultural soils, and cumulative impacts. The sixth criterion on grid alignment incorporates both cost and ecological impacts. This needs a different approach.

The current planning process for grid modernization including utility proposals for new substations and upgrades to the distribution system is still too opaque and does not appear to include environmental impact considerations such as forest carbon and ecological or agricultural value. Solar project developers will naturally seek sites where interconnection capacity is available, to speed approval and avoid or minimize their costs associated with grid upgrades the utility may require. This may unintentionally steer solar projects to locations of high environmental sensitivity. The mitigation formula therefore should not include a sixth factor that reduces the overall impact rating based on proximity to interconnection. Moreover, we propose that DOER consider allocating part of the mitigation fees to the appropriate utility, given their outsized role in selecting the sites for additional distribution capacity that will necessarily catalyze new solar projects in close proximity.

Mass Audubon supports DOER's proposal that mitigation fee payments must be done prior to project approval, deposited in a separate EEA account dedicated to land conservation and stewardship. We recommend that the final regulations include a provision for an annual public report on mitigation funds received into the Trust Fund and expenditures from the fund. We also support the Alternative Compliance Pathway allowing compensatory mitigation provided pursuant to the site suitability standards for clean energy siting and permitting. This is appropriate to avoid requiring duplicate mitigation for the same natural resource impacts. DOER will need to further clarify how these two mitigation processes will be coordinated between the SMART program and local consolidated project permitting.

28.13 Compensation Rates

We believe that this revision of SMART goes a long way toward a better balance between solar energy goals and natural lands protections needed to reach other state goals, and more equitable deployment. Ultimately, the compensation rates working in concert with quantitative scores and mitigation values applied to individual sites and projects will determine whether this balance is achieved in reality.

As such, we support the proposal to add or remove a compensation rate adder once during its tariff term. For the reasons stated above, we reserve judgement on the value of individual compensation rate adders until we see how effectively they support greater deployment of SMART projects on the built environment and low-impact sites for ground-mount projects.

Overall, we applaud the efforts of DOER to develop a next-generation solar incentive program that finely calibrates our need to rapidly deploy responsibly sited solar with the state's goals for more equitable clean energy deployment with a much lighter footprint on the natural and working lands so important our goals for climate, biodiversity, and people.

We strongly encourage additional stakeholdering around the development of the draft Guideline and an opportunity for review and comment on this document. We look forward to working with DOER on this critical part of the program.

Respectfully,

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