

**Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
DEPARTMENT OF ENERGY RESOURCES**

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

Guideline on Constructive Approval and Common Conditions

Effective Date: May 22, 2026

Background and Purpose

In accordance with 225 CMR 29.00, the Department of Energy Resources (“Department”) is issuing the following Common Conditions for use with Consolidated Local Permits issued by Constructive Approval pursuant to 225 CMR 29.10(5) (“Common Conditions”). The Common Conditions apply throughout the design, construction, operation, maintenance, and decommissioning of a Constructively Approved Small Clean Energy Infrastructure Facility (“SCEIF”).

This guideline separates the Common Conditions into four categories: Administrative/Legal, Construction, Operations & Maintenance, and Decommissioning. The guideline is further organized by the following tables:

Table 1: Common Conditions Applicable to All SCEIFs

Table 2: Common Conditions Applicable Only to Small Clean Energy Storage Facilities

Table 3: Common Conditions Applicable Only to Small Clean Energy Generation Facilities

Table 4: Common Conditions Applicable Only to Small Clean Transmission and Distribution Infrastructure Facilities

Constructive Approval in Practice

In practice, Constructive Approval is an approval of the Consolidated Local Permit Application as it was submitted to the Local Government. Constructive Approval does not incorporate any findings or conditions developed during the review process. Instead, Applicants who receive Constructive Approval must adhere to the Common Conditions.

To the extent that the Common Conditions are duplicative with one or more requirements of the Applicant’s Consolidated Local Permit Application, and the Applicant has met that requirement, the Applicant is considered to have complied with that Common Condition.

For the purposes of 225 CMR 29.00, only the decision on the Consolidated Local Permit Application can receive Constructive Approved. Constructive Approval may be triggered under the following circumstances:

1. One or more permitting authorities fail to reach a timely decision.
2. All permitting authorities fail to reach timely decisions.
3. All permitting authorities issue decisions; the Local Government Representative fails to issue a timely decision on the Consolidated Local Permit Application within 12 months of its acceptance.

To avoid Constructive Approval, the Department recommends that Local Governments manage Consolidated Local Permit Application review so that the Local Government Representative receives all decisions on Individual Application Components with sufficient time to compile each decision and issue a decision on the Consolidated Local Permit Application within the 12-month timeframe. For example, a Local Government may establish through bylaw or ordinance a requirement that its permitting authorities complete their reviews in no more than 11 months so that the Local Government Representative has one month to prepare and issue the decision on the Consolidated Local Permit Application.

The owner of a SCEIF, or another party substantially and specifically affected by the outcome of Constructive Approval, may request De Novo Adjudication by the Director of the Energy Facilities Siting Board under 980 CMR 14.00.

Table 1: Common Conditions Applicable to All SCEIFs

SCEIF – All Facilities	
Phase: Administrative/Legal	
Compliance with All Laws	Applicants and facility operators must comply with all applicable local, state, and federal bylaws, regulations, laws, and standards.
Project Commencement	SCEIFs that receive a Consolidated Local Permit must commence construction within a timeframe determined by the Local Government, provided that such time frame is not more than five years from the date the Consolidated Local Permit receives Constructive Approval. The Applicant may seek an extension for good cause such as in the case of De Novo Adjudication or judicial appeal. If the project has not commenced construction within the established timeframe, the Local Government may withdraw the Consolidated Local Permit after providing 30 days’ notice to the holder of the Consolidated Local Permit.
Final Plan Submittals	The Applicant shall deliver hard copies and electronic copies of the final plans to the Local Government no less than 10 days prior to the pre-construction meeting. Final plans shall include all relevant final legal addresses, as approved by the Board of Assessors, for the subject lot(s) and all structures on the subject lot.
Project Alterations	The Applicant shall not alter final plans after submission of the final plan without permission from the Local Government. An Applicant or its successors in interest shall notify the Local Government of any changes other than minor variations to construction of the SCEIF so that the Local Government(s) may decide whether to inquire further into a particular issue. Minor variations may include, but are not limited to, shifting rows or moving equipment pads.
Compliance with Public Health, Safety, Environmental and Other Standards	The Applicant or facility operator shall comply with all applicable public health, safety, environmental standards included in 225 CMR 29.06.
Transfer of Ownership	The Applicant shall notify the Local Government by United States Postal Service First Class Mail not more than 30 days after any change of ownership of the SCEIF or property, change of lease holder, or change of plant operating company. Applicants must provide proof to the Local Government of the transfer to a successor.

	Within 30 days of such notice, or at a mutually convenient time, the successor shall meet with the Local Government to review the pre-construction or ongoing construction activities, or if the facility is in operation, the operating conditions of the SCEIF.
State Permits	The Applicant shall provide the Local Government with a copy of all permits issued by the Massachusetts Department of Transportation (MassDOT), Massachusetts Department of Environmental Protection (MassDEP), and other state agencies pertaining to the SCEIF provided that the issuance of any local decisions or permits is not delayed waiting for the receipt of any state permits.
Bond and Fee Payments	Bond and Fee payments shall be submitted to the Local Government on or before the commercial operation date of the SCEIF.
Phase: Construction	
Pre-Construction Meeting	Prior to construction, the Applicant shall hold a pre-construction meeting with the appropriate municipal staff determined by the Local Government. The Applicant shall contact the appropriate Local Government municipal staff and departments to schedule this meeting.
Traffic Management Plan	The Applicant, in consultation with Local Government officials, shall develop and implement a traffic management plan (“TMP”) for the construction of a SCEIF. The TMP shall include, but not be limited to: 1. Signage identifying construction work zones and support areas, worksite access points, and emergency access routes; 2. Use of traffic control techniques, as necessary, such as detour routes for public traffic, traffic control devices like road markings or barricades, and temporary traffic signals or flaggers/police details, and; 3. Alterations to construction work times based on impacts on rush hour traffic; 4. Designated speed limits; 5. Staggered arrival and departure times; 6. Proper vehicle maintenance protocols; 7. Limitations or prohibitions on the use of high beams and loud sound systems; 8. Carpool incentives, and; 9. On-site parking plans or, if the site does not accommodate on-site parking, off-site parking plans that will not impede traffic flow. The Applicant shall submit the final TMP to the Local Government no later than 30 days before construction commencement, and, if applicable, at the time of submittal, shall publish the TMP on the

	Applicant's SCEIF website to ensure availability of traffic-related planning information for the SCEIF area. When practicable, the Applicant shall arrange for off-peak delivery of all SCEIF equipment and materials.
Provide Permit Decision Form to General Contractor	The Applicant shall provide a copy of the Consolidated Local Permit Decision Form, reflecting Constructive Approval and inclusive of all conditions and attachments, to its general contractor no later than 30 days prior to construction commencement.
Third-Party Construction Inspections	All third-party inspections and reviews shall be at the Applicant's expense, including during the construction phase.
Communication Plan for Construction	The Applicant shall, in consultation with the Local Government and other stakeholders, develop a communication plan for SCEIF construction. The communication plan for construction shall use plain, concise language, and shall be translated into other languages, if and as necessary. The communication plan for construction shall specify procedures for providing prior notification to affected residents regarding: 1. The scheduled date, duration, and hours of construction; 2. Construction impacts specific to particular areas; 3. Construction that must occur outside of the hours detailed above (including night hours); and 4. Anticipated street closures or detours. The communication plan for construction shall be made available to the Local Government no later than 30 days prior to construction commencement, and shall list all residents, officials, businesses, and others with whom the Applicant will communicate. The communication plan for construction shall detail communication methods that the Applicant will employ, which shall include, but not be limited to: 1. The SCEIF's website that provides regular construction updates; 2. Email or text message updates sent to the public; and 3. A phone number and email address the public may use to contact the Applicant with construction concerns. The communication plan for construction shall require the Applicant to: 1. Respond to all such concerns within three business days of receipt of call or email, and maintain a log of dates, times, and reasons for each call or email, and the Applicant's response.

	2. Work to rectify construction concerns in a reasonable timeframe and to the reasonable satisfaction of negatively affected parties. The Applicant shall consider using maps and other visual media to disseminate SCEIF information to the public. Such media may include: 1. Schematics, maps, elevations, renderings, or other visual material from the SCEIF's construction documentation; 2. Three-dimensional fly-through simulations, or videos; and 3. Real-time maps, charts, graphs, or other media that track construction progress, display the anticipated progression of future construction, or track construction impacts and disruptions (e.g., physical obstructions, traffic congestion, parking limits, access limits).
Debris Clean-Up	Within 60 days of completing construction, the Applicant shall provide a report to the Local Government confirming that it has completed the clean-up of all construction debris and that any complaints concerning construction debris have been properly addressed.
Construction Work Hours	The Applicant shall limit construction work hours of the Project to 7:00 a.m. to 7:00 p.m., Monday to Friday, and 8:00 a.m. to 6:00 p.m., on Saturdays. Normal construction work hours shall not include Sundays or state or federal holidays. Should the construction work extend beyond the above-noted hours and days, with the exception of emergency circumstances on a given day necessitating extended hours, the Applicant shall seek written permission from the Local Government before commencing such work. The Applicant shall promptly inform the relevant Local Government Representative of any emergency work occurring outside of normal construction work hours. The Applicant shall notify the Local Government in the TMP if anticipated work hours will negatively impact rush-hour traffic conditions. The Applicant may suggest alternative work hours to offset impacts on rush-hour traffic.
Staging and Laydown Plan	The Applicant shall produce a staging and laydown plan to be submitted to the Local Government no later than 60 days before construction commencement. At minimum, the plan shall detail: 1. The SCEIF's staging and laydown site location(s) and, for each site, the timeline for use; 2. The proposed activities and hours of occurrence, use restrictions, mitigation methods to minimize impacts to surrounding areas, and; 3. Post-use restoration plans

Air Impacts from Vehicles and Equipment	The Applicant shall use electric vehicles and equipment when practicable during the SCEIF's construction. The Applicant shall document the use of electric vehicles and equipment. The Applicant shall ensure that all diesel-powered, non-road construction equipment with engine horsepower ratings of 50 and above, and to be used for 30 or more days over the course of SCEIF construction, be certified to the most recent U.S. EPA Tier 4 emissions standards or have U.S. EPA-verified (or equivalent) emissions control devices, such as oxidation catalysts, particulate filters, or other comparable technologies (to the extent that they are commercially available), installed on the exhaust system side of the diesel combustion engine. The Applicant shall use ultra-low diesel fuel for off-road construction equipment and shall limit unnecessary idling of off-road construction vehicles to the standards of 310 CMR 7.11.
Landscaping Plan	The Applicant shall submit a landscaping plan for the SCEIF's site(s) to the Local Government no later than 30 days before construction commencement. At minimum, the plan shall detail existing topography and vegetation, and any proposed: 1. Vegetation removal; 2. Hardscape (e.g., walkways) and softscape (e.g., vegetative buffering) measures; 3. Woodland preservation; 4. Structural screening (e.g., fencing, decorative masonry and sound walls); 5. Site layout measures (e.g., strategic setbacks, orientation, and grading); 6. Integration of materials and designs into the existing landscape (e.g., use of matching palates); 7. Lighting control (e.g., turning off lights when not in use, motion detectors, dimmers, shielded light fixtures, warm-colored bulbs); 8. Irrigation and drainage; 9. Erosion and sediment control; and 10. Maintenance protocols. The plan shall include native, drought-resistant plantings and shall not include any invasive or nuisance plantings listed in the most recent Massachusetts Prohibited Plant list as published by the Massachusetts Department of Agricultural Resources ("MDAR").

Site Visits	Local Government shall have the right to conduct site visits during construction and upon completion of the project for the purpose of verifying compliance with permit conditions and other requirements.
Earth Removal	No earthwork, including grading, soil removal, hauling in of soils, hammering, and blasting, shall take place without first receiving all required permits from the Local Government.
Dust Control	During construction, all disturbed soils and unpaved roads shall be adequately watered to keep soil moist and control dust.
Soil	Except for well-drained, stable gravel, six inches of topsoil shall be applied to areas stripped of topsoil during contouring or other site preparation. Wherever practicable, the Applicant shall re-use on-site topsoil from excavated areas to establish a vegetative cover that blends disturbed areas into the surrounding landscape once the SCEIF is completed. Topsoil shall not be imported unless the Applicant provides information to the relevant Local Government of a demonstrated engineering need, and such imports must be approved by the Local Government prior to any introduction, with particular attention paid to preventing importation of invasive species. No topsoil may be removed from the site, unless it is removed as part of site remediation. Provisions shall be made to stabilize any topsoil banks or berms.
Stormwater Prevention Pollution	During land disturbance and construction activities, Applicants must implement controls as specified in the <i>Massachusetts Construction Period Erosion, Sedimentation and Pollution Prevention Plan (CP4)</i> and <i>Stormwater Pollution Prevention Plan (SWPPP)</i>, as applicable. Please note that Applicants can prepare a single document that satisfies the SWPPP requirements of the Construction General Permit and the CP4 requirements of the Wetlands Protection Act. Applicants shall control sediment movement and stabilize exposed soils to prevent pollutants from moving offsite or entering waters or wetlands. Land disturbance activities include demolition, construction, clearing, excavation, grading, filling, and reconstruction.
Chemicals and Hazardous Materials	All chemicals and hazardous materials shall be handled in accordance with local, state, and federal laws and regulations. All equipment refueling, servicing, or cleaning shall occur in designated areas outside of Wetlands resource areas. A spill kit, including adsorbents, shall be present at the site at all times for all

	equipment. Operators of the SCEIF must be trained to report and respond to and spills, contaminations, or releases. All Safety Data Sheets (“SDS”) for the hazardous materials shall be maintained at the Applicant or facility operator. SDS shall be reviewed with the SCEIF’s employees at the time of their employment and on an annual basis thereafter. SDS shall be made available to all employees upon request.
Horizontal Directional Drilling (HDD): Management of Drilling Fluid Risks	If applicable, the Applicant shall submit a horizontal directional drilling (HDD) contingency report to the Local Government no later than 30 days prior to construction commencement. The plan shall detail any measures that the Applicant will employ to minimize the risk of drilling fluids inadvertently returning to the surface, and any emergency response protocols that the Applicant will implement in the event of said scenario.
Recycling and Reuse	The Applicant shall provide the Local Government with a recycling and reuse plan for SCEIF construction and operations no later than 30 days before construction commencement. The plan shall include: 1. Targets for demolition and construction waste; 2. The anticipated recycling rate for operational waste; and 3. An explanation of how these are consistent with the goals of the Commonwealth. After the first year of the SCEIF’s operation, the Applicant or facility operator shall submit to the Local Government a report on the SCEIF’s recycling rate for construction debris, the percentage of construction waste materials by waste type that was recycled, operational recycling rates for the first year of SCEIF operation, and the percentage of operational waste materials by waste type that was recycled during the first year.
Phase: Operations and Maintenance	
Herbicide/Pesticide Application	The clearing of natural vegetation from the SCEIF’s site shall be limited to what is necessary for the construction, operation, and maintenance of the SCEIF. If applicable, the Applicant shall ensure that any herbicide or pesticide application is approved by MDAR and consistent with all local regulations.
Storage of Chemicals and Hazardous Waste	SCEIFs shall store all hazardous waste pursuant to the requirements of M.G.L. c. 21C and 310 CMR 30.000. Hazardous waste shall be stored in a building with an impervious floor that is not adjacent to any floor drains, to prevent discharge to the outdoor environment.

Access Roads	The Applicant shall be responsible for maintaining the access roads to the SCEIF in a viable condition for emergency vehicles to travel on. If an installation of a SCEIF occurs using an unpaved access road, the Local Government may require mitigation measures such as drainage improvements, dust suppression, widening, or re-surfacing.
Operations and Maintenance Plan	Prior to commercial operation, the Applicant shall submit to the Local Government a plan for the operation and maintenance of the SCEIF concurrently with the submission of the Building Permit application. That plan shall include measures for maintaining safe access to the SCEIF, stormwater management control, and general procedures for operational maintenance of the SCEIF. The Applicant shall maintain the SCEIF in good condition. Maintenance shall also include, but not be limited to, painting structures, structural repairs, and integrity of security measures.
Insurance and Surety	Proof of liability insurance and financial surety shall be submitted to the Local Government concurrently with the submittal of the Final Issuance to Build. Proof of liability insurance and financial surety shall be submitted to the Local Government in a manner and time to be determined by the Local Government.
Maintenance of Existing Recreational Uses	The Applicant shall work with the Local Government to ensure that any existing recreational uses are maintained and publicly accessible. If there is any need to alter existing recreational uses (e.g. relocating a portion of a trail), the Applicant shall work with the Local Government to identify the optimal location(s). To maintain connectivity, construction of any relocated recreational use shall occur during the land clearing stage.
Snow Removal and Storage	Snow shall not be stored at a SCEIF in areas that inhibit vehicular access or sight lines. If snow cannot be stored safely at a SCEIF, then the operator of the SCEIF shall remove and properly dispose of it offsite. Snow piles shall not be stored next to wetlands resources to prevent potential salt contamination. Snow shall be disposed of in accordance with MassDEP's most current Snow Disposal Guidance.
As-Built Plans	After construction is completed, the Applicant shall provide an As-Built plan to the Local Government. Original As-Built plans for the final plan shall be printed on mylar and stamped by a professional land surveyor. The As-Built Plans shall also include a certification stamped by a professional engineer indicating the project was constructed in accordance with the approved plans. An electronic file of the As-Built

	Plan sheets and AutoCAD files of the As-Built Plan for the project shall be submitted concurrently with the hard copies. Elevations on the As-Built Plans shall reference the municipal GIS datum.
Periodic Sea Level Rise Impact Assessment	If the project is vulnerable to coastal flooding, as determined by FEMA flood maps, the Applicant shall submit a report to the Local Government on the necessity, appropriateness, and cost of implementing additional flood mitigation measures to protect the SCEIF from inundation and/or additional flood risk. The report shall also detail the potential for any associated detrimental impacts on areas surrounding the SCEIF, such as increased flood risk. In preparing each report, the Applicant shall consult with agencies including, but not limited to, the Massachusetts Emergency Management Agency (“MEMA”), Office of Coastal Zone Management (“CZM”), and MassDEP. The Local Government shall review each report and determine whether any of the additional flood mitigation measures are necessary and appropriate and shall be implemented.
Phase: Decommissioning	
Decommissioning/ Abandonment	Prior to construction, the SCEIF owner shall provide to the Local Government, in cash, bond, letter of credit, escrow, or another form reasonably acceptable to the Local Government, a surety to cover the cost of removal in the event the Local Government must remove the SCEIF installation and remediate the landscape. The amount of the surety shall be 125% of a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer and labor rates outlined by the Massachusetts Department of Labor Standard’s Prevailing Wage Program and shall account for increased costs due to inflation at a rate of 2.5 percent per year. The Local Government shall reserve the right to have the decommissioning plan reviewed by a third-party engineer at cost to the SCEIF owner. The SCEIF owner shall provide an updated estimate after 10 years of project operation and subsequent updates in five-year intervals after that date, for the remainder of the project’s lifetime. If the updated estimate exceeds the balance of the surety the SCEIF owner shall provide additional surety in the amount of 125% of the most recent estimated cost of decommissioning. This surety will not be required for municipally or state-owned facilities. In the absence of a proposed date of decommissioning or written notice of extenuating circumstances, a SCEIF shall be considered abandoned when it ceases to operate, meaning the SCEIF is not performing the normal functions associated with the SCEIF and its equipment on a continuous and ongoing basis, for more than 12 months, without written consent of the Local Government. The Local Government shall

	provide written notification of abandonment to the SCEIF’s owner and operator. Decommissioning shall include removal of all structures, buildings, cabling, electrical components, security barriers, roads, foundations, pilings, and any other associated components and facilities, so that any agricultural ground encompassed by the Site Footprint is restored to its predevelopment condition. Disturbed earth shall be graded and re-seeded as necessary to minimize erosion unless the landowner requests in writing that the access roads or other land surface areas not be restored. Any restoration should utilize native plant species and restore like-for-like habitats. Hazardous waste from the SCEIF shall be disposed of in accordance with federal, state, and local law. The decommissioning plan shall also utilize best recycling practices to the maximum feasible extent. The application of this standard to Small Clean Transmission and Distribution Infrastructure Facilities shall be determined on a case-by-case basis.
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Table 2: Common Conditions Applicable Only to Small Clean Energy Storage Facilities (“SCESF”)

Storage Facilities Only	
Phase: Administrative and Legal	
Emergency Response Plan (“ERP”)	The Applicant shall develop an ERP that meets the requirements of 225 CMR 29.07 and the Department’s <i>Guideline on Public Health, Safety, and Environmental Standards</i> . The Applicant must provide the Local Government with the ERP no later than 60 days before commencement of the SCESF’s operations.
Phase: Construction	
Chemicals and Hazardous Waste	The Applicant shall certify to the Local Government that non-PFAS fire suppression foams shall be employed to the extent that such products are commercially available and efficacious, and all chemicals and hazardous waste shall be managed by the Applicant in accordance with 310 CMR 30.00.
Storage Containment	Battery storage container installation and operation shall comply with all relevant codes and regulations and shall be reviewed by the Local Government’s Fire Department and Building Department before installation. All liquid hazardous materials and wastes shall be stored in

	a containment area capable of containing 110% of the largest volume stored in the containment area.
Phase: Operation and Maintenance	
Repair, Augmentation, and Repowering	In addition to repairing or replacing Battery Energy Storage System (“BESS”) components required to maintain the system, a BESS may, at any time, be augmented or repowered without the need to submit a new site plan so long as the augmentation or repowering is within the same footprint (e.g., same dedicated use building or on footings/foundations in the same location) as detailed in the SCEIF’s as-built plan and there is no significant change in the battery chemistry (e.g., a change from one lithium-ion battery type, such as Lithium Iron Phosphate, to another, such as Nickel Manganese Cobalt). A proposal to change the SCESF’s Site Footprint shall be considered a new application, subject to the local and state standards at the time of the request. Significant changes to the battery chemistry shall be subject to review by the Fire Chief. If the Fire Chief determines the chemistry change requires alterations to the Site Footprint, the proposal shall be considered a new application.

Table 3: Common Conditions Applicable Only to Small Clean Energy Generation Facilities (“SCEGF”)

Small Clean Energy Generation Facilities Only	
Phase: Administrative and Legal	
Emergency Response Plan (“ERP”)	The Applicant shall create an ERP that shall: 1. Be developed in consultation with local public safety officials; and 2. Require close coordination between the Applicant and first responders to ensure that first responders are fully informed about emergency events and understand how to address such events without assuming unnecessary personal risk. 3. Include equipment types and layouts without compromising Critical Energy/Electric Infrastructure Information (CEII); 4. Include safety data sheets (SDS) for materials used or stored at the SCEGF; 5. Include a plan drafted in collaboration with the Local Government’s Fire Department with suggested response procedures for various emergency conditions; and 6. Include the operator’s responsibilities in response to an emergency at the SCEGF.

Table 4: Additional Common Conditions Applicable Only to Small Clean Transmission and Distribution Infrastructure Facilities (“SCT&D”)

SCEIF – Transmission & Distribution Facilities Only	
Phase: Construction	
Nighttime Construction Mitigation Plan	If applicable, the Applicant must prepare a nighttime construction mitigation plan in consultation with relevant local stakeholders. The Applicant shall submit the plan to the Local Government for approval no later than thirty days before commencement of nighttime construction, which shall be defined as any construction occurring between the hours of 7:00 p.m. and 5:00 a.m. The plan shall detail any potential impacts beyond the SCT&D’s Site Footprint (e.g., illumination spill-over and glare, noise and traffic disruptions).
Nighttime Cable Splicing	The Applicant shall use new, lower-noise-generating equipment for cable splicing. The Applicant shall use portable noise barriers to mitigate noise impacts on residential areas from nighttime cable splicing, as necessary.
Road Damage/Repair	The Applicant shall meet the standards of D.T.E. 98-22 and comply with any repair plans mutually agreed upon between the Applicant and the owner of the road, as applicable.