

**COMMONWEALTH OF MASSACHUSETTS  
ENERGY FACILITIES SITING BOARD**

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Rulemaking Implementing the Requirements of	)	
the 2024 Climate Act, St. 2024, c. 239, to	)	
Establish New Requirements, Revise Existing	)	EFSB 25-10-D
Requirements, and Repeal Unused Requirements	)	
Governing the Energy Facilities Siting Board	)	
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**TENTATIVE DECISION PROMULGATING FINAL REGULATIONS IN  
RULEMAKING ON CONSTRUCTIVE APPROVAL**

May 8, 2026

*The Siting Board translates materials into other languages to assist people with limited English proficiency. The Siting Board has reasonably attempted to provide an accurate translation of the original material, but due to the nuances in translating to a different language, slight differences may exist. While the Siting Board has provided translated versions, the English version is the official version of the Siting Board's decision.*

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The Energy Facilities Siting Board (“Siting Board”) hereby [approves] a Decision adopting final regulations in a rulemaking to implement An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers, St. 2024, c. 239 (“2024 Climate Act” or the “Act”). G.L. c. 30A, §§ 1-7. To implement the 2024 Climate Act, the Siting Board promulgates final regulations regarding the Constructive Approval provision of the 2024 Climate Act, 980 CMR 17.00. St. 2024, c. 239, §§ 74, 132, 139.

## I. INTRODUCTION

On November 20, 2024, Governor Maura Healey signed into law the 2024 Climate Act. The 2024 Climate Act reforms the siting and permitting process for clean energy infrastructure facilities (“CEIF”) and revises the statutory obligations of the Siting Board. A major focus of the 2024 Climate Act is reforming the siting and permitting process for CEIF to help achieve the Commonwealth’s ambitious climate and clean energy goals. Key provisions of the 2024 Climate Act will improve the speed and efficiency of siting and permitting CEIF at state and local levels, ensure that the benefits of the clean energy transition are shared equitably among all residents of the Commonwealth, and enable communities and other stakeholders to have meaningful opportunities for engagement and input in pre-filing and review processes. Specifically, the 2024 Climate Act requires the Siting Board to promulgate regulations to implement changes to G.L. c. 164, §§ 69G to 69J¼, inclusive, §§ 69O and 69P, §§ 69R and 69S, and §§ 69T to 69W, inclusive. The 2024 Climate Act requires the Siting Board to promulgate regulations by March 1, 2026, for Applications filed with the Siting Board on or after July 1, 2026. St. 2024, c. 239, § 132.<sup>1</sup>

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<sup>1</sup> Concurrent with the Siting Board’s development of these regulations, other agencies are also promulgating related regulations to implement the 2024 Climate Act. The Department of Energy Resources (“DOER”) has promulgated regulations and guidance documents to establish a process for Local Governments to issue Consolidated Local Permits. 225 CMR 29.00. The Department of Public Utilities (“Department”) has promulgated regulations to implement the Intervenor Support Grant Program. 220 CMR 34.00. In addition, the Department will promulgate regulations setting revised filing fees for Applications filed with the Siting Board. 220 CMR 32.00.

On September 12, 2025, the Siting Board issued a Decision Opening Rulemaking in EFSB 25-10, including a series of proposed regulations to implement the 2024 Climate Act provisions: revisions to 980 CMR 1.00 and 2.00; new regulations 980 CMR 13.00, 14.00, 16.00 and 17.00;<sup>2,3</sup> and repeals of 980 CMR 4.00, 5.00, 7.00, 8.00, and 11.00.<sup>4</sup> EFSB 25-10. In addition, the Decision Opening Rulemaking identified a public comment process to receive comment on the proposed regulations. The Siting Board completed its rulemaking proceeding for these regulations and issued a Final Decision on February 13, 2026. EFSB 25-10-B. The revised regulations for 980 CMR 1.00 and 2.00, new regulations for 980 CMR 13.00, 14.00, and 16.00, and repeal of 980 CMR 4.00, 5.00, 7.00, 8.00, and 11.00, became effective on February 27, 2026, when they were published in the Massachusetts Register.

On December 19, 2025, the Siting Board opened the rulemaking to issue a proposed regulation, 980 CMR 15.00, Cumulative Impact Analysis and Standards for Applying Site Suitability Criteria (“CIA and SSC Regulations”). EFSB 25-10-A. The Siting Board has completed the rulemaking for 980 CMR 15.00. On April 24, 2026, the Siting Board adopted a final regulation, 980 CMR 15.00 (“Final CIA and SSC Regulations”), which became effective May 8, 2026, when it was published in the Massachusetts Register. EFSB 25-10-C.

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<sup>2</sup> In response to comments, the Siting Board did not issue Final Regulations for 980 CMR 17.00, Constructive Approval, at the same time as the other regulations. The Siting Board promulgates final regulation 980 CMR 17.00 with this Decision.

<sup>3</sup> The Siting Board noted at the time that it planned to also propose a new chapter of regulations (980 CMR 15.00) focused on CIA and site suitability criteria.

<sup>4</sup> In its Proposed Regulations, the Siting Board proposed to also repeal 980 CMR 9.00. The Massachusetts Office of Coastal Zone Management filed comments indicating its recommendation that the Siting Board retain 980 CMR 9.00, as this regulation is the underlying state authority for a provision of the approved Massachusetts Coastal Management Program. The Siting Board retained 980 CMR 9.00 in response to comments from the Office of Coastal Zone Management.

Table 1 provides the status of Siting Board regulations implementing the 2024 Climate Act:

**Table 1. Summary of Final EFSB Regulations.**

<b>Regulation</b>	<b>Status</b>	<b>Regulation Title</b>
980 CMR 1.00	Revised (final)	Rules for the Conduct of Adjudicatory Proceedings
980 CMR 2.00	Revised (final)	General Information and Conduct of Board Business
980 CMR 13.00	New (final)	Consolidated Permits for Clean Energy Infrastructure Facilities
980 CMR 14.00	New (final)	De Novo Adjudications of Consolidated Local Permit Applications
980 CMR 15.00	New (final)	Cumulative Impact Analysis and Standards for Applying Site Suitability Criteria
980 CMR 16.00	New (final)	Pre-filing Consultation and Engagement Requirements
<b>980 CMR 17.00</b>	<b>New (final)</b>	<b>Constructive Approval</b>
980 CMR 4.00	Repealed (final)	Freedom of Information; Protection of Trade Secrets
980 CMR 5.00	Repealed (final)	Environmental Assessment and Environmental Impact
980 CMR 7.00	Repealed (final)	Long-Range Forecasts and Supplements
980 CMR 8.00	Repealed (final)	Notices of Intention to Construct an Oil Facility
980 CMR 11.00	Repealed (final)	Licensing of Hydropower Generating Facilities

The Siting Board has completed the rulemaking for 980 CMR 17.00. In this Decision, the Siting Board adopts a final regulation, 980 CMR 17.00 (“Final Constructive Approval Regulation”). EFSB 25-10-D. Attached to this Decision: final 980 CMR 17.00 (Attachment 1); a revised Glossary of Definitions (Attachment 2); and List of Commenters (for Constructive Approval) (Attachment 3). With the promulgation of 980 CMR 17.00, the Siting Board has completed its rulemakings to implement the 2024 Climate Act.

## II. DESCRIPTION OF THE 2024 CLIMATE ACT

### A. Background on the 2024 Climate Act

The Siting Board’s Decision Opening Rulemaking reviews in detail the siting and permitting provisions of the 2024 Climate Act. See EFSB 25-10. Specifically, the 2024 Climate

Act creates a new Consolidated Permit process<sup>5</sup> by which the Siting Board will issue all necessary local, regional, and state permits and approvals for Large Clean Energy Infrastructure Facilities<sup>6</sup> (“LCEIF”). G.L. c. 164, § 69T. In addition, G.L. c. 164, § 69U allows proponents of Small Clean Transmission and Distribution Infrastructure Facilities (“SCTDIF”) to elect to seek a Consolidated Permit from the Siting Board that includes all necessary state, regional, and local permits. G.L. c. 164, § 69V allows proponents of Small Clean Energy Generation Facilities (“SCEGF”) and Small Clean Energy Storage Facilities (“SCESF”) to elect to seek a Consolidated State Permit from the Siting Board that includes all necessary state permits.<sup>7,8</sup> The 2024 Climate Act establishes mandatory deadlines for the Siting Board to issue these permits; if the Siting Board fails to issue a decision on the permit Application by the deadline, the Application will be constructively approved, meaning that the Applicant will receive a Consolidated Permit with certain pre-determined “common conditions and requirements.” St. 2024, c. 239, § 74.

Additional provisions of the 2024 Climate Act include: G.L. c. 164, § 69W, which allows Local Governments to elect to refer a request for all necessary local permits for a Small Clean Energy Infrastructure Facility (“SCEIF”) to the Siting Board Director for a De Novo Adjudication of a Consolidated Local Permit request initially submitted to local permit officials,<sup>9</sup> and allows Applicants and other substantially and specifically affected individuals and entities to seek

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<sup>5</sup> A Consolidated Permit is a permit issued by the Siting Board to a CEIF Applicant that includes all state, regional, and local permits that the CEIF would otherwise need to obtain individually, except for certain federal permits that are delegated to specific state agencies.

<sup>6</sup> Capitalized terms throughout this Decision refer to terms defined in the Final Regulations.

<sup>7</sup> Local permits for SCEGFs and SCESFs would be issued by Local Government as either a Consolidated Local Permit, pursuant to regulations established by DOER, 225 CMR 29.00, or as individual local permits not subject to 225 CMR 29.00. 225 CMR 29.04(1).

<sup>8</sup> An “EFSB Consolidated Permit” is defined in 980 CMR 1.01(4) as being either a Consolidated Permit or a Consolidated State Permit.

<sup>9</sup> A Consolidated Local Permit is a permit issued by a Local Government for a SCEIF that includes all required local permits, approvals, or authorizations that the Applicant would otherwise need to obtain individually from the Local Government. DOER promulgated 225 CMR 29.00 to implement the Consolidated Local Permit process.

De Novo Adjudication, by the Director, of Consolidated Local Permit decisions made by a Local Government (or issued by Constructive Approval).<sup>10</sup> The 2024 Climate Act establishes a new mandate, scope of review, and required findings for the Siting Board, and expands the membership of the Siting Board. St. 2024, c. 239, § 60. Additionally, the 2024 Climate Act mandates that prior to filing an Application with the Siting Board, Applicants must consult with state, regional, and local agencies regarding their Project, and engage with community members and organizations in the area where a Project is proposed. *Id.* at § 74. The 2024 Climate Act transfers certain siting authority from the Department, including authority to grant zoning exemptions and to grant the right to exercise the power of eminent domain, consolidating that authority in the Siting Board. St. 2024, c. 239, §§ 72, 73, 75, 76, 83.

B. Statutory Requirements for Constructive Approval

The 2024 Climate Act establishes mandatory deadlines for the Siting Board to issue Consolidated Permits; if the Siting Board fails to issue a decision on the permit Application by the deadline, the Application will be constructively approved, meaning that the Applicant will receive a Consolidated Permit by operation of law. St. 2024, c. 239, § 74. The Act includes three provisions relevant to Constructive Approval.<sup>11</sup>

The 2024 Climate Act requires the Siting Board to establish: “standard permit conditions and requirements for a single permit consolidating all necessary local, regional and state approvals to be issued to different types of LCEIF in the event that constructive approval is triggered through

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<sup>10</sup> A Local Government is a municipal or regional authority, board, commission, office, or other entity, as defined in G.L. c. 25A, § 21, that would have had jurisdiction to issue at least one permit for an LCEIF or SCEIF absent a Consolidated Permit.

<sup>11</sup> There is a Constructive Approval provision that applies to decisions by a Local Government on a Consolidated Local Permit application: “[i]f a final decision is not issued within 12 months of the receipt of a complete permit application, a constructive approval permit shall be issued by the local government that includes the common conditions and requirements established by [DOER] for the type of small clean energy infrastructure facility under review.” G.L. c. 25A, § 21(d)(2). See also 225 CMR 29.10(5)(b).

the non-issuance of a permit by the board pursuant to subsection (i).”<sup>12</sup> G.L. c. 164, § 69T(b)(vi). The Siting Board has developed draft Common Conditions and issued them for comment. The Siting Board will issue final Common Conditions at a later date, and update them when necessary.

The Act also establishes deadlines for the Board to act on Applications for a CEIF. For LCEIF, G.L. c. 164, § 69T requires that “in no instance shall the board take more than 15 months from the determination of application completeness to render a final decision on an application.” The timeframe for the Siting Board’s review of smaller projects is shorter. The Act establishes twelve months as the deadline for review of SCTDIF under G.L. c. 164, § 69U (“in no instance shall the board take more than 12 months from the determination of application completeness to render a final decision on an application”), and for SCEGF and SCESF under G.L. c. 164, § 69V (“[t]he board shall not take more than 12 months from the determination of application completeness to render a final decision on an application”). These deadlines that are subject to Constructive Approval apply to CEIF; there is no Constructive Approval provision for filings for De Novo Adjudications pursuant to G.L. c. 164, § 69W, or legacy Facilities reviewed by the Siting Board pursuant to G.L. c. 164, §§ 69J and 69J¼.<sup>13</sup> The clock for the Siting Board to issue a decision starts when an Application is deemed complete. See 980 CMR 13.06.

Finally, the 2024 Climate Act identifies how the Constructive Approval provision applies. G.L. c. 164, § 69T(i) provides: “If no final decision is issued within the deadline established by the board for the type of large clean energy infrastructure facility, the board shall issue a permit granting approval to construct that includes the common conditions and requirements established

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<sup>12</sup> The 2024 Climate Act uses the term “standard permit conditions and requirements” for the provision requiring the Siting Board to establish such conditions in G.L. c. 164, § 69T, and the term “common conditions and requirements” in the provision mandating the conditions that apply in a constructive approval, in the same section of the Act. The Siting Board treats this terminology as referring to the same conditions and requirements. The Siting Board uses the term “common conditions and requirements” for purposes of these regulations and this Decision.

<sup>13</sup> The Siting Board notes that while G.L. c. 164, § 69W includes a statutory deadline for proceedings under that section, it does not include a constructive approval provision. Likewise, G.L. c. 164, §§ 69J and 69J¼ governing fossil fuel (*i.e.*, legacy) Facilities contain a statutory deadline but do not have a constructive approval provision.

by the board through regulations for the type of large clean energy infrastructure facility under review, which shall be deemed a final decision of the board.” G.L. c. 164, §§ 69U, 69V have substantially similar constructive approval provisions.

### III. PROCEDURAL HISTORY

#### A. Background

Governor Healey established the Commission on Energy Infrastructure Siting and Permitting (“Commission”) on September 26, 2023, with the intention to remove barriers to expeditious and responsible CEIF development to meet greenhouse gas emissions limits outlined in the Commonwealth’s Clean Energy and Climate Plan. The mandate of the Commission was to advise the Governor on: (1) accelerating the responsible deployment of clean energy infrastructure through siting and permitting reform in a manner consistent with applicable legal requirements and the Clean Energy and Climate Plan; (2) facilitating community input into the siting and permitting of clean energy infrastructure; and (3) ensuring that the benefits of the clean energy transition are shared equitably among all residents of the Commonwealth. Executive Order No. 620. The Commission issued a final report in March 2024. Many of the recommendations from the Commission’s report were enacted in the 2024 Climate Act in November 2024. St. 2024, c. 239.

#### B. Rulemaking on 980 CMR 1.00, 2.00, 13.00, 14.00, 16.00, 17.00 and repeals of 980 CMR 4.00, 5.00, 7.00, 8.00, 11.00

The Siting Board issued Proposed Regulations for a formal public comment process focusing on all aspects of the 2024 Climate Act implementation with the exception of Cumulative Impact Analysis (“CIA”). The Siting Board issued a Tentative Decision and Proposed Regulations regarding 980 CMR 1.00, 2.00, 13.00, 14.00, 16.00, 17.00 and repeals of 980 CMR 4.00, 5.00, 7.00, 8.00, 11.00 on September 4, 2025. The Siting Board conducted a hybrid Board meeting on September 8, 2025. The Siting Board voted to approve the Tentative Decision, and to issue the Proposed Regulations for comment. On September 12, 2025, the Siting Board issued a Decision Opening Rulemaking in EFSB 25-10. The Proposed Regulations were published in the Massachusetts Register on September 26, 2025.

The Siting Board and Department conducted four hybrid public comment hearings in various locations around the Commonwealth: October 27 in New Bedford, October 29 in Pittsfield, November 3 in Boston, and November 5 in Lynn, and accepted written comments until November 7, 2025. The Siting Board received approximately 540 written comments on the Proposed Regulations (of which approximately 475 were form letters) from a diverse range of stakeholders, including state agencies, local and other officials, utility representatives, clean energy developers, environmental groups, labor representatives, community-based organizations, and many individuals.<sup>14</sup> The Siting Board Staff revised the Proposed Regulations in response to comments received, and issued the draft Final Regulations for public comment on January 6, 2026. On January 7, 2026, the Siting Board conducted a hybrid Board meeting to receive a Staff presentation on the draft Final Regulations and to hear additional public comment. The Siting Board heard comments regarding the Constructive Approval regulations and determined that additional consideration was required before promulgating final regulations for 980 CMR 17.00. The Siting Board decided to exclude the Constructive Approval regulations from the package to be finalized before March 1, 2026.

The Siting Board released the Final Regulations and a Tentative Decision, explaining the changes and noting the exclusion of 980 CMR 17.00, to the public on February 11, 2026. The Siting Board conducted a hybrid Board meeting on February 12, 2026, to hear comment, deliberate, and vote on the Final Regulations. At the Board meeting, the Siting Board discussed an alternative timeline to finalize the Constructive Approval regulations and approved the Tentative Decision and Final Regulations for issuance. The Siting Board issued a Decision Adopting Final Regulations on February 13, 2026. EFSB 25-10-B. The Final Regulations went into effect February 27, 2026, upon publication in the Massachusetts Register, for Applications filed July 1, 2026, and afterwards.

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<sup>14</sup> Some of the comments addressed CIA and Site Suitability, as well as Constructive Approval (see e.g., The Nature Conservancy; Town of Charlton; Joint Comments of Eversource and National Grid). The Siting Board addressed the CIA issues in EFSB 25-10-C and addresses the comments regarding Constructive Approval in this Decision.

C. Rulemaking for CIA and SSC, 980 CMR 15.00

The Siting Board issued draft proposed regulations on CIA and SSC (“Proposed CIA and SSC Regulations”) for discussion purposes on October 31, 2025. Following a virtual webinar on November 6, 2025, conducted by Siting Board and OEJE staff, the Siting Board accepted written comments on the draft Proposed CIA and SSC Regulations, and revised the draft Proposed CIA and SSC Regulation. The Siting Board opened a formal rulemaking on the new Proposed CIA and SSC Regulations in a hybrid Siting Board Meeting on December 15, 2025. The Siting Board voted to approve the Tentative Decision Opening Rulemaking, and to issue the Proposed CIA and SSC Regulations for comment. EFSB 25-10-A, December 19, 2025.

Proposed regulation, 980 CMR 15.00, was published in the Massachusetts Register, January 2, 2026. The Siting Board accepted written comments until February 13, 2026. The Siting Board conducted two public comment hearings on February 2, 2026, one in the afternoon and one in the evening. The Siting Board received comments from a diverse range of stakeholders, including state agencies, local and other officials, utility representatives, clean energy developers, environmental groups, labor representatives, community-based organizations, and many individuals.<sup>15</sup> The Siting Board received approximately 76 written comments from 42 entities on the Proposed CIA and SSC Regulations (in addition to approximately 270 form letters), and comments from 14 different speakers at the public comment hearings and Siting Board meetings (some speakers participating in multiple events).

On February 26, 2026, the Siting Board conducted a hybrid Board meeting to receive a Staff presentation on the draft Final CIA and SSC Regulations and to hear additional public comment from commenters. The Siting Board Staff revised the Proposed CIA and SSC Regulations in response to comments received, and issued the draft Final CIA and SSC Regulations for one further public comment period on March 20, 2026. The Siting Board released the Final CIA and SSC Regulations, and a Tentative Decision explaining the changes to the public on April 15, 2026.

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<sup>15</sup> Some of the comments filed in EFSB 25-10 for the other regulation packages also addressed CIA and Site Suitability, as well as Constructive Approval (see e.g., The Nature Conservancy; Town of Charlton; Joint Comments of Eversource and National Grid).

The Siting Board conducted a hybrid Board meeting on April 21, 2026, to hear comment, deliberate, and vote on the Final CIA and SSC Regulations. At the Board meeting, the Siting Board approved the Tentative Decision and Final CIA and SSC Regulations for issuance. The Siting Board issued a Decision Adopting Final Regulations on April 24, 2026. The Final CIA and SSC Regulations went into effect May 8, 2026, once published in the Massachusetts Register, for Applications filed July 1, 2026, and afterwards.

D. Rulemaking for 980 CMR 17.00, Constructive Approval

As stated above, the Constructive Approval proposed regulation was originally included in the rulemaking commenced on September 12, 2025. At a meeting of the Siting Board on January 7, 2026, Staff presented proposed revisions to the regulations issued in September, and heard public comment on the revisions, including the Constructive Approval proposed regulation. The Board also received ten additional written comments on the proposed revisions.<sup>16</sup> In light of the public comments received, and discussion at the Board meeting, Staff concluded that the Constructive Approval proposed regulation needed additional revisions and public comment. At a meeting of the Siting Board on February 26, 2026, Staff presented additional thoughts regarding Constructive Approval, received public comment, and heard considerations from Siting Board members. In addition, Staff recommended next steps, including a further round of public comments and promulgating final regulations for 980 CMR 17.00 in spring 2026.

After the February 26, 2026, Siting Board meeting, Staff revised the draft proposed Constructive Approval regulations. On March 12, 2026, NSTAR Electric Company d/b/a Eversource Energy and New England Power Company, Massachusetts Electric Company, and Nantucket Electric Company d/b/a National Grid (“Eversource” and “National Grid”, respectively) filed joint comments proposing an alternative approach to the Constructive Approval regulations. The Companies proposed a similar approach to Staff’s January 2026 proposal but vary the

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<sup>16</sup> The comments received by the Siting Board during the public comment period in fall 2025 covered many topics, including Constructive Approval; however Constructive Approval comments were not separate from other comments. EFSB 25-10-B identifies the many comments received during the public comment period and Board meeting in January 2026, and are not repeated here.

provision on draft Constructive Approval. In the Companies' proposal, the Applicant would prepare the draft Constructive Approval, instead of the Presiding Officer. The Companies' proposal states that the Applicant's draft Constructive Approval "shall be based on: (i) the Application in a manner that is consistent with the Completeness Determination made by the Presiding Officer pursuant to 980 CMR 13.06; (ii) applicable Common Conditions, as set forth in 980 CMR 17.04(1)(c); and (iii) all Recommended Permit Conditions and Requirements pursuant to 980 CMR 17.02(b) that the Applicant deems acceptable." The Companies' proposal provides for a comment period for the Applicant's draft Constructive Approval, and allows the Applicant to update the draft Constructive Approval. The Companies' proposal provides a limited review role for the Presiding Officer: "the Presiding Officer may modify the updated draft Constructive Approval prepared by the Applicant if and to the extent that the draft Constructive Approval is inconsistent with: (i) the record evidence in the proceeding; (ii) the Board's statutory authority, or (iii) the Board's applicable rules and regulations."

On April 3, 2026, Staff released for public comment two options for the Constructive Approval regulations, 980 CMR 17.00, shown in a redline version compared to the one issued by the Siting Board in September 2025. In Option A, Staff incorporated many of the elements from the Companies' proposal, with some procedural variations. Option A provided that the Applicant will prepare the draft Constructive Approval, which will include all Presiding Officer Recommended Permit Conditions and Requirements, except in limited circumstances. Option A also includes a provision to allow the Applicant to propose modifications to the Presiding Officer Recommended Permit Conditions and Requirements. Staff added a provision, applicable to Option A or Option B, allowing the Presiding Officer to schedule a Conditions Conference and issue Recommended Permit Conditions and Requirements, if a Constructive Approval deadline were likely to occur before evidentiary hearings are complete, which is an extremely remote possibility. The revised proposed regulation also included the Companies' proposal, as it was submitted, shown as Option B.

Staff received five comments in response to the request for comments issued on April 3, 2026 (in addition to the Companies' proposal filed March 12, 2026, which formed the basis of

Option B, noted above). Staff issued a Tentative Decision adopting the final Constructive Approval Regulation on May 8, 2026.

The Siting Board conducted a hybrid Board meeting on [May 11, 2026], to hear comment, deliberate, and vote on the final Constructive Approval Regulation, 980 CMR 17.00.<sup>17</sup> At the Board meeting, the Siting Board [approved] the Tentative Decision and Final Constructive Approval Regulation for issuance. The Siting Board issued a Decision Adopting Final Regulations on May [XX,] 2026. The Final Constructive Approval Regulation will go into effect [June 5, 2026], once published in the Massachusetts Register, for Applications filed July 1, 2026, and afterwards.

#### IV. FINAL CONSTRUCTIVE APPROVAL REGULATION, 980 CMR 17.00

The Siting Board's 2024 Climate Act regulations package, including the Constructive Approval Regulation, implements a comprehensive program to accelerate the siting of clean energy infrastructure while emphasizing participation by Key Stakeholders and community members in the development and review process. See EFSB 25-10, Decision Opening Rulemaking for a detailed description of the context of Proposed Regulations.

The Act requires that the Siting Board issue Final Decisions within a specific time frame, and the Siting Board intends to meet those deadlines. One of the core tenets of the 2024 Climate Act is that Applicants, state and local permitting agencies, parties to a proceeding, and the local community all deserve the transparency and certainty provided by defined processes with enforceable deadlines. The Siting Board understands that both the intent and directives of the Act are that final decisions by the Siting Board, within prescribed timeframes, are required, and that Constructive Approval is intended as an extraordinary measure to ensure this outcome – and not a desired outcome for consolidated permits issued by the Siting Board. Nevertheless, the Siting Board is required to plan for and develop the necessary regulations for the unlikely possibility of a Constructive Approval.

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<sup>17</sup> The Siting Board provided interpretation in Spanish, Brazilian Portuguese, Haitian Creole, Chinese, Vietnamese, and American Sign Language.

A. Development of the Constructive Approval Regulation

1. Initial Proposed Constructive Approval Regulation (September 2025)

In September 2025, the Siting Board proposed 980 CMR 17.00. The Proposed Constructive Approval Regulation required a Presiding Officer to identify, between 60 and 90 days prior to the statutory deadline for the Siting Board to issue a Decision, that a Construction Approval may be necessary. The Presiding Officer would draft the Constructive Approval Permit, which would include Common Conditions. The Presiding Officer would then allow a comment period of at least seven days. Then the final Constructive Approval Permit would be deemed issued on the applicable deadline.

In response to this September 2025 Staff proposal, the Siting Board received both written comments and oral comments at the public comment hearings. The Siting Board received comments on the regulation's provisions relating to the Likelihood of Constructive Approval. 980 CMR 17.02(2) provides that the Presiding Officer will assess the progress of the proceeding to determine whether there is reasonable assurance that the Board will issue a Consolidated Permit or Consolidated State Permit by the applicable deadline. Some commenters urged the Board to require the Presiding Officer to make an assessment of Project status repeatedly throughout the proceeding (CLF Comments at 6<sup>18</sup>; Environmental League of Massachusetts Comments at 5). The Siting Board did not add a requirement that the Presiding Officer conduct additional assessments of the status of the proceeding and likelihood of Constructive Approval. The Presiding Officer is responsible for managing the procedural schedule throughout the proceeding, and additional requirements could divert the Presiding Officer from conducting necessary work. In addition, some commenters requested that the Notice of Likelihood of Constructive Approval should be more broadly disseminated, including to Key Stakeholders and individuals who attended public meetings or provided comment (ACE Comments at 1, 2). The Siting Board notes that the Presiding Officer is required to disseminate the Notice of Likelihood of Constructive Approval to those active in a proceeding. 980 CMR 17.00 does not provide an additional opportunity for

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<sup>18</sup> CLF provided comments October 17, 2025 and November 17, 2025.

public comment on a draft Constructive Approval. Community participation is built into the Consolidated Permit process regardless of whether Constructive Approval arises.

The Siting Board received several comments on which conditions should be included in a Constructive Approval. Some commenters asserted that a Constructive Approval should incorporate conditions that agencies or communities have already established as part of the permitting process (CLF Comment at 18). Furthermore, the conditions in a Consolidated Permit should be added on a rolling basis to ensure inclusion into a Constructive Approval (ACE Comments at 2; CLF Comments at 6). One commenter maintained that the Presiding Officer should explicitly explain consideration of any public input on any project specific conditions, and the regulation should authorize the Siting Board to update the draft Constructive Approval in response to comments (ACE Comments at 2). One commenter argued that 980 CMR 17.03 should require Constructive Approval to reflect the Board's statutory obligations related to CIA, climate change, community engagement, and other required areas (CLF Comments at 6-7). The Siting Board did not add this consideration as CIA is already addressed elsewhere in the regulations. See 980 CMR 15.00.

## 2. Revised Proposed Constructive Approval Regulation (January 2026)

In response to the fall 2025 comments, Staff proposed in January 2026 a revised Proposed Constructive Approval Regulation. Like the September proposed regulation, the Presiding Officer must identify at least 60 days prior to the statutory deadline that a Construction Approval is likely, and issue a Notice of Likelihood of Constructive Approval. The September proposed regulation relied on Common Conditions to establish conditions for a Constructive Approval. However, the January draft regulation provided a mechanism to incorporate a more tailored version of Common Conditions and other requirements into a Constructive Approval that reflects input from Permit Enforcement Agencies ("PEAs") and updated information about the proposed project.

The January draft regulation relied on the Conditions Conference and Presiding Officer Recommended Permit Conditions and Requirements provision from 980 CMR 13.00 to develop conditions that would apply to a project that is constructively approved. The Presiding Officer would convene a Conditions Conference as specified in 980 CMR 13.07(6) and provide

Recommended Permit Conditions and Requirements to the Applicant and other parties. The Presiding Officer would then prepare and issue a draft Constructive Approval, which includes the Presiding Officer Recommended Permit Conditions and Requirements. Following a comment period, Presiding Officer would issue a revision of the draft Constructive Approval. The Board would vote on the Presiding Officer Recommended Permit Conditions and Requirements for use in the Constructive Approval, on a consent agenda basis (essentially an up or down vote, without modification).

During the January 7, Siting Board meeting, several commenters provided oral comment on the January draft regulation, and there was extended discussion of the January 2026 proposed regulation. See Transcript at 130-136. In addition, the Siting Board received six written comments on the January 2026 proposed regulation.

The Siting Board received written comment on the Notice of Likelihood of Constructive Approval. One commenter recommended that municipalities must receive notice if a Constructive Approval may issue (Town of Blandford Comments at 5). The final regulations do require a Presiding Officer to forward the Notice of Likelihood of Constructive Approval to the Parties, Limited Participants, Permit Enforcement Agencies, and the Board. 980 CMR 17.02(2). If a municipality is a party to a proceeding on a project within its borders, or is a PEA, it would receive a Notice of Likelihood of Constructive Approval under the final regulations.

The Siting Board also received comments on the draft Constructive Approval provision of the Proposed Regulation. The Proposed Regulation required the Presiding Officer, two weeks after the Notice of Likelihood of Constructive Approval, to prepare the draft Constructive Approval and circulate it to the Parties, Limited Participants, Permit Enforcement Agencies, and the Board. 980 CMR 17.02(3). The Proposed Regulation also provided for a seven day period to allow parties to comment on the draft Constructive Approval. 980 CMR 17.02(4). One commenter indicated that this comment period was too short (DeChiara Comments at 9).

The Siting Board received several comments on conditions that should be included in a Constructive Approval. Some commenters advocated that the Act provides that only Common Conditions apply to a Constructive Approval (BlueWave and New Leaf Comments at 2; RENEW Comments at 2-3). Some commenters argued that Constructive Approval should approve the

Application as filed, plus Common Conditions in existence at the time of the filing of the Application (Transcript at 102-103). Commenters also argued that the Act does not contemplate project-specific conditions for Constructive Approval (Eversource and National Grid Comments at 7-8; RENEW Comments at 2-3). PEAs advocated for the inclusion of project-specific conditions to ensure that their statutory mandates (and regulations) are fulfilled, and that as Common Conditions are inherently generic, they would be insufficient to address legally mandated requirements that involve site-specific conditions.

The Siting Board also received comments on the provision in the January 6, 2026 draft regulation that required a Board vote to adopt the Presiding Officer Recommended Permit Conditions and Requirements. Some commenters stated that the Siting Board should review and approve Constructive Approvals (CLF Comments at 3). Other commenters stated that the Siting Board should not approve Constructive Approval, which should issue by operation of law (Eversource and National Grid Comments at 7), or that the Siting Board should fully deliberate on the Constructive Approval before its issuance (DeChiara Comments at 9).

The draft regulations issued on January 6, 2026, recognized the potential problems with a Constructive Approval issuing with only Common Conditions, and sought to provide a path to include more-tailored Common Conditions and other requirements in a Constructive Approval. To address this concern, the revised draft regulation relied on the procedural mechanisms already developed in 980 CMR 13.00, specifically the Conditions Conference and the Presiding Officer Recommended Permit Conditions and Requirements. See 980 CMR 13.07(6). The draft regulations also provided a mechanism to recognize revisions to a project during the course of Siting Board review, and ensure that those revisions in the record are reflected in the Constructive Approval. See 980 CMR 13.07(1)(c). In light of the questions on the January 6, 2026 draft regulations, Staff entertained a joint proposal from Eversource and National Grid, filed in March 2026, and released another draft regulation in April 2026.

### 3. Further Revised Proposed Constructive Approval Regulation (April 2026)

In the April 3, 2026, further revised regulation, the Siting Board again relied on the Conditions Conference and the Presiding Officer Recommended Permit Conditions and

Requirements. However, the April draft regulations provided that, after the Presiding Officer issues a Notice of Likelihood of Constructive Approval, the Applicant then produces the draft Constructive Approval. 980 CMR 17.02(3). The Applicant's draft Constructive Approval is to be based on: (i) the Application at the time of the Completeness Determination, and updates to the Project filed pursuant to 980 CMR 13.07(1)(c); and (ii) the Recommended Permit Conditions and Requirements issued by the Presiding Officer pursuant to 980 CMR 13.07(6), that are consistent with: (i) the record evidence in the proceeding; (ii) the Board's statutory authority; or (iii) the Board's applicable rules, regulations, and other authority as provided in 980 CMR 2.02(3). 980 CMR 17.02(3). The Applicant may modify the Recommended Permit Conditions and Requirements based on the same three criteria noted above in preparing the draft Constructive Approval. 980 CMR 17.02(3). The revised regulations provide for a comment period on the draft Constructive Approval, and prescribe how the draft Constructive Approval may be modified. 980 CMR 17.02(4). The April draft regulations do not include a provision for a Siting Board vote on the draft Constructive Approval, or the Presiding Officer's Recommended Permit Conditions.

The Siting Board received joint comments from Eversource and National Grid on April 17, 2026. In their comments, the Companies indicated they would support adoption of either Option A or Option B (Eversource and National Grid Comments at 3). Staff includes Option A in its final regulations. Eversource and National Grid requested additional language to address a situation where a Presiding Officer fails to act in the required timeframe, and Constructive Approval issues by operation of law (Eversource and National Grid Comments at 3-4). The final regulations adopt this concept, with modifications, in 980 CMR 17.02(6): "If the Presiding Officer fails to act regarding any provision of 980 CMR 17.00 in the timeframe provided, the Presiding Officer will have an additional seven days in which to perform the missed procedural step. If the Presiding Officer does not complete the missed procedural step by the end of the additional seven days, the next procedural step required in 980 CMR 17.00 shall commence regardless."

The Siting Board received written comments from RENEW/Alliance for Climate Transition ("ACT") on April 17, 2026. RENEW/ACT recommends Option B, and argues that the Siting Board should simplify the process in 980 CMR 17.00 and rely on process already developed in 980 CMR 13.00 (RENEW/ACT Comments at 2-3). RENEW/ACT maintains that permits and

conditions included in an Application, as amended during the Siting Board process, simply become the Constructive Approval when the review period ends, and that the Constructive Approval should be self-executing – and issue by operation of law (RENEW/ACT Comments at 4). According to RENEW/ACT, missing conditions would be identified in the Preliminary procedural conference or in the Conditions Conference, and if conditions are still missing, the Siting Board should deny the Application (RENEW/ACT Comments at 3). Modifications to a project identified during the proceeding should be at discretion of the Applicant (RENEW/ACT Comments at 3).

RENEW/ACT supports including zoning exemption in Constructive Approval, and recommends that the Siting Board explicitly characterize a zoning exemption as a “permit, approval, or authorization” (RENEW/ACT Comments at 5). The final regulations revised the definition of Constructive Approval to include zoning exemptions, if an Application included a request for zoning exemptions at the time of an Application Completeness Determination. 980 CMR 17.01(4). RENEW/ACT recommend adding language to allow the Presiding Officer to convene a status conference to identify the state of an Application and record, and status to reach final decision (RENEW/ACT Comments at 6). The final regulation allows the Presiding Officer to conduct a status conference to determine Likelihood of Constructive Approval. 980 CMR 17.02(1).

CLF provided additional comments on April 17, 2026. CLF recommends rejecting Option A and Option B. According to CLF, the Presiding Officer should draft a draft Constructive Approval, and the Presiding Officer’s Recommended Permit Conditions should drive the process, based on the full record of the proceeding (CLF Comments at 2-3). The record should supersede generic conditions or those developed exclusively by the Applicant (CLF Comments at 3). CLF further recommends that the record should include impacts on the community and that Parties and PEAs should be able to comment on a draft Constructive Approval (CLF Comments at 3). CLF asserts that the 7-day comment period is too short to comment on a draft Constructive Approval and the Presiding Officer should respond to public comment on the draft Constructive Approval, and CLF requests a 21-day comment period (including public comment) (CLF Comments at 4). Constructive Approval should include an evaluation of whether a CIA was adequately conducted

and whether conditions adequate to address impacts are included in final Constructive Approval Permit (CLF Comments at 4-5). Finally, CLF argues that the evidentiary standard is weak (not inconsistent with evidence), and that the draft Constructive Approval should be supported by substantial evidence in the record (CLF Comments at 5).

B. Final Constructive Approval Regulation

The Siting Board recognizes the importance of predictable deadlines and intends to adjudicate Applications to avoid projects defaulting to Constructive Approval. The Siting Board appreciates the input from stakeholders in the latest round of review on Constructive Approval, and earlier reviews of prior proposals. The Siting Board sees the process as having yielded an improved result.

If it appears that the Siting Board will not be able to meet the statutory timelines, then the Presiding Officer, Applicant, Parties and PEAs each play a role to define the content of a Constructive Approval. 980 CMR 17.02. If a Presiding Officer determines that a Constructive Approval may be necessary, then they follow the 60-day Constructive Approval process specified in 980 CMR 17.02, which commences with an Applicant drafting the Constructive Approval, an opportunity for parties to file comments, and time for the Applicant and Presiding Officer to modify it. Once finalized and issued by a Presiding Officer, a Constructive Approval will contain: (1) Project and Applicant information; (2) relevant Permits and Approvals; (3) any zoning exemptions requested by the Applicant in the Application that has received a Completeness Determination; (4) clarity regarding the Common Conditions used, if not expressly superseded; and (5) Presiding Officer Recommended Permit Conditions and Requirements that are tailored to the Project. 980 CMR 17.03.

The Final Constructive Approval Regulation establishes a mechanism to identify whether the Siting Board may be required to issue a Constructive Approval. At least 60 days prior to the applicable deadline, the Presiding Officer assesses the progress of the proceeding to determine whether there is reasonable assurance that the Board will issue a Consolidated Permit or Consolidated State Permit by the applicable deadline. The Presiding Officer may conduct a status conference to inform their assessment of progress of the proceeding. 980 CMR 17.02(1). If the

Presiding Officer does not find reasonable assurance that the Board will meet its deadline to issue a Final Decision, at least 60 days before the applicable deadline the Presiding Officer prepares and issues to the Parties, Limited Participants, PEAs, and the Board a Notice of Likelihood of Constructive Approval that states that a Constructive Approval is likely, and describes the reasons for that assessment. 980 CMR 17.02(2).

Once the Presiding Officer issues a Notice of Likelihood of Constructive Approval, the process begins to draft a Constructive Approval, and to allow comment and modifications to that draft Constructive Approval. 980 CMR 17.02(3). The final regulations provide that the Applicant shall draft the Constructive Approval. 980 CMR 17.02(3). The draft Constructive Approval identifies the Project subject to Constructive Approval which consists of the Application at the time of the Completeness Determination, and updates to the Project filed pursuant to 980 CMR 13.07(1)(c). 980 CMR 17.02(3). This ensures that changes to the proposed Project, as reflected in the evidentiary record of the proceeding, are included in the Constructive Approval.<sup>19</sup>

The commenters in this proceeding have presented divergent views on whether the Board is restricted to applying only Common Conditions and Requirements to a Constructive Approval, or is authorized to adapt the basic concept of Common Conditions and include a more tailored version of such conditions and other requirements in a Constructive Approval. As an initial matter, Common Conditions are necessarily generic and do not address specific impacts of a project. In addition, without project specific conditions, it is unlikely that all substantive legal and regulatory requirements of permits issued by the Siting Board would be satisfied, possibly rendering the project unbuildable.<sup>20</sup>

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<sup>19</sup> It is common for proposed projects to be revised and refined during the Siting Board review process. 980 CMR 13.07(3) anticipates such project updates. It is important that these project updates are reflected in the Constructive Approval, such that superseded project design elements are not approved in a Constructive Approval.

<sup>20</sup> For example, under the Massachusetts Wetlands Protection Act, an Order of Conditions requires that the local Conservation Commission first verify and approve the wetlands boundaries as shown on the accompanying project plans. This type of site-specific determination cannot be appropriately made using generic language in Common Conditions, even with issuance of the Order of Conditions by the Siting Board as part of a constructive approval. Similar limitations would apply to many other permits and

Some commenters argue that the project, as an Applicant proposes it in a Consolidated Permit Application, should define the full extent of what is contained in a Constructive Approval. Yet this approach does not reflect the fact that an Application must be complete (as reflected in a Completeness Determination) or account for updates to a project as reflected in the evidentiary record of a proceeding. This approach runs the risk that Constructive Approval results in permits for a superseded project. Furthermore, the Siting Board's approach in the final regulation recognizes that the Applicant prepares the Application (which is subject to a Completeness Determination), and carries that process forward by providing that the Applicant also prepares the draft Constructive Approval (subject to certain requirements). The conditions proposed by an Applicant in an Application and those conditions included in a draft Constructive Approval are in part derivative of the Common Conditions and Requirements established by the Siting Board.

This process is not a substitute for an adjudicated outcome with Siting Board deliberation and vote. The Siting Board's Constructive Approval regulations implement the intent of the 2024 Climate Act, by providing a transparent, adequately conditioned, legally sound, and administratively efficient mechanism for a project to move forward, in the event that the Siting Board is unable to issue a final decision and the project is approved by Constructive Approval.

The draft Constructive Approval also includes conditions for the Project. The 2024 Climate Act requires the Board to establish common conditions and requirements for EFSB Consolidated Permits in the event of Constructive Approval. St. 2024, c. 239, § 74. The Act indicates that Common Conditions may differ by type of CEIF, but the proposed Common Conditions inherently reflect "generic conditions" – some apply to all CEIFs, others only to specific types of CEIF. While Common Conditions represent a generic baseline for identification of the conditions by which a CEIF is constructed and operated, Common Conditions are inadequate to mitigate specific impacts of a project and ensure that the substantive requirements of the permits issued as part of a Constructive Approval are satisfied. The procedures established by

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approvals included in a constructive approval, such as a Conservation Management Permit (normally issued by the Massachusetts Natural Heritage and Endangered Species Program) pursuant to the Massachusetts Endangered Species Act.

the Siting Board as implemented over the course of a proceeding provide critical detail on project impacts and mitigation.

The Siting Board notes that the Common Conditions established by the Board will be adapted by the Applicant, PEAs, and parties to a proceeding to produce tailored and specific conditions that can be applied in a Constructive Approval. The final regulation leverages the Conditions Conference mechanism from the procedural schedule established for all projects to tailor the Common Conditions to project- and location-specific issues and regulatory requirements.

Relatedly, it should be noted that there are several provisions in the Consolidated Permit process (as now approved) where mitigation conditions would routinely be established as part of the standard adjudicatory process (see 980 CMR 13.00).

- Common Conditions – The Siting Board establishes Common Conditions which pertain to the design, construction, operation, maintenance, and decommissioning phases of a CEIF; some are applicable to all CEIF, while others are technology-specific conditions. The Common Conditions are organized by permit type and also specify the PEAs whose normal jurisdiction relates most directly to the subject matter of the condition. See 980 CMR 13.00 Application Guidance, Attachment 1: Common Conditions and Requirements for EFSB Consolidated Permits
- Pre-filing – Applicants will include proposed conditions discussed during pre-filing consultation with agencies and community representatives during pre-filing engagement in their Applications (980 CMR 16.00). Applicants are required to share draft permit applications and draft permits during required consultations with the Massachusetts Environmental Policy Act (“MEPA”) Office and other state and local permitting agencies. 980 CMR 16.06(1)(a)(3) & (4). Applicants are also required to submit draft permit applications and draft permits at the time of the Pre-Filing Notice. 980 CMR 16.10(2). Both the draft permit applications and the draft permits should reflect Applicant-proposed conditions, including its use/adaptation of Common Conditions.
- Application at the Completeness Determination – The Application that forms the core of what could be constructively approved is the “Complete Application.” The

Presiding Officer determination that the Application is in “substantial and material compliance” with the Board’s Application requirements ensures that the Application includes all requirements for adjudication. 980 CMR 13.06(2). Similar to pre-filing, this regulation also requires the submission of Applicant-proposed draft permits, inclusive of Common Conditions, as may be modified or supplemented by the Applicant. 980 CMR 13.05(1). PEAs are provided with a 21-day period after the Application is filed to offer comment on whether the Application has deficiencies that are substantial and material. 980 CMR 13.06(3)(c).

- Statements of Recommended Permit Conditions by Parties and PEAs – No less than three weeks before the initial evidentiary hearing, Parties and PEAs will have an opportunity to submit their recommended permit conditions. 980 CMR 13.07(3).
- Conditions Conference – After the evidentiary record is complete, the Presiding Officer shall provide each Party with a draft of proposed conditions for the CEIF, prior to a Conditions Conference. Conditions may include Common Conditions the Presiding Officer deems appropriate, any recommended Permit conditions submitted by a Party or PEA, the conditions proposed by the Applicant in its Application, and other proposed conditions. 980 CMR 13.07(6). The Presiding Officer shall explain the reasons to accept or reject each condition proposed. 980 CMR 13.07(6). After the Conditions Conference, the Presiding Officer shall provide the Parties and PEAs with a list of Consolidated Permit Conditions and requirements recommended by the Presiding Officer (Presiding Officer Recommended Permit Conditions and Requirements). 980 CMR 13.07(6). This process results in a Presiding Officer’s Recommended Permit Conditions and Requirements. 980 CMR 13.07(6).

Each of these procedural steps incorporate project-specific information and conditions that can be relied upon in the event of a Constructive Approval. See 980 CMR 17.02. The Presiding Officer Recommended Permit Conditions and Requirements is the culmination of months of adjudication and refinement, and represents the best reflection of appropriate conditions for a

project that complies with the intent of the Act, and is within the Siting Board's proper exercise of regulatory judgment and its authority. The Final Constructive Approval Regulation requires the Applicant to include those Presiding Officer Recommended Permit Conditions and Requirements in its draft Constructive Approval, with clearly defined, and limited modifications.

980 CMR 17.02(4)(c).

The Final Constructive Approval Regulation provides a process for comment on the draft Constructive Approval, and modification of conditions. 980 CMR 17.02(3) and (4). The final regulation provides that once the Applicant issues its draft Constructive Approval, there are seven to 14 days for comment on the draft Constructive Approval. 980 CMR 17.02(4). After comments are received, the Applicant may within seven days modify its draft Constructive Approval to include revisions that are consistent with: (i) the record evidence in the proceeding; (ii) the Board's statutory authority, or (iii) the Board's applicable rules, regulations, and other authority as provided in 980 CMR 2.02(3). 980 CMR 17.02(4). The Presiding Officer has another seven days to review the Applicant's revisions and modify those revisions in limited circumstances. 980 CMR 17.02(4).

The final regulation contains two new failsafe provisions: (1) it allows a Presiding Officer to accelerate the Conditions Conference and Recommended Permit Conditions and Requirements if it appears the Board will not meet its deadline before the end of evidentiary hearings; and (2) it provides that in the event the Presiding Officer does not act by required deadlines and does not cure the failure to act within seven days, the Applicant may proceed to the next step of the Constructive Approval process. 980 CMR 17.02(5) and (6).

The final regulation provides the content and form of a Constructive Approval. 980 CMR 17.03. The final regulation provides the process by which a final Constructive Approval is issued by the Siting Board by operation of law and distributed by the Presiding Officer. 980 CMR 17.04. Finally, the final regulation states that a Constructive Approval Permit acts as an approval of all relevant permits and approvals from all state, regional, and local agencies required to construct and operate the Project. 980 CMR 17.05(1). Appeals from a Constructive Approval issued by the Siting Board are governed by the same provisions as govern adjudicated decisions of the Siting Board and proceed directly to the Supreme Judicial Court. 980 CMR 17.05(2) and (3).

The final regulation makes other clarifying edits. The Siting Board finds that the Final Constructive Approval Regulation provides a clear process and expectation for what takes place if the Siting Board is unable to meet statutory deadlines.

V. VOTE AND DECISION

The Siting Board hereby votes to adopt Final Constructive Approval Regulations to implement provisions of the 2024 Climate Act, St. 2024, c. 239. The Siting Board adopts new regulation 980 CMR 17.00: Constructive Approval.

A handwritten signature in black ink, appearing to read "Joan Foster Evans", written over a horizontal line.

Joan Foster Evans, Esq.

Dated this 8th day of May 2026

[APPROVED] by [unanimous] vote of the Energy Facilities Siting Board at its meeting of May 11, 2026, by the members and designees present and voting. Voting for [approval] of the Final Decision: Rebecca L. Tepper, Secretary of Energy and Environmental Affairs and Chair, Energy Facilities Siting Board; Jeremy McDiarmid, Chair, Department of Public Utilities; Elizabeth Mahony, Commissioner, Department of Energy Resources; Bonnie Heiple, Commissioner, Department of Environmental Protection; Douglas Gutro, Director of the Permit Regulatory Office and designee for Eric Paley, Secretary, Executive Office of Economic Development; Dr. Robert Goldstein, Commissioner, Department of Public Health; Thomas O'Shea, Commissioner, Department of Fish and Game; and Joseph C. Bonfiglio, Public Member.

Rebecca L. Tepper, Chair  
Energy Facilities Siting Board

Dated this [X<sup>th</sup>] day of May 2026

**ATTACHMENT 1 – FINAL REGULATIONS 980 CMR 17.00**

## 980 CMR 17.00: ENERGY FACILITIES SITING BOARD

### 980 CMR 17.00: CONSTRUCTIVE APPROVAL

#### Section

- 17.01: Purpose and Scope.
- 17.02: Constructive Approval Procedure.
- 17.03: Contents and Form of a Constructive Approval.
- 17.04: Issuance of a Constructive Approval.
- 17.05: Effect of Decision and Right to Appeal.

#### 17.01: Purpose and Scope.

- (1) Purpose. 980 CMR 17.00 establishes the requirements pertaining to a Constructive Approval, which the Board shall issue if a Final Decision, pursuant to 980 CMR 13.10: *EFSB Consolidated Permit Decisions*, is not issued by the Board, pursuant to 980 CMR 13.02(4)(a): *Review Timeframe*.
- (2) Scope. 980 CMR 17.00 applies to each Application submitted to the Board for a CEIF. M.G.L. c. 164, §§ 69T, 69U, 69V. 980 CMR 17.00 shall not apply to De Novo Adjudications pursuant to 980 CMR 14.00.
- (3) Applicability of Earlier Sections. 980 CMR 1.00, 2.00, 13.00, 15.00, and 16.00 apply to 980 CMR 17.00, unless otherwise noted.
- (4) Definitions. The definitions in 980 CMR 1.00 and 13.00 shall apply to 980 CMR 17.00. For the purpose of 980 CMR 17.00, the following additional definition applies unless the context or subject matter requires a different interpretation:

Constructive Approval means a Consolidated Permit or Consolidated State Permit that is constructively (automatically) approved and issued by operation of law under M.G.L. c. 164, §§ 69T, 69U, or 69V, and 980 CMR 17.05. A Constructive Approval may include zoning exemptions, provided that the Applicant at the time of the Completeness Determination includes a zoning exemption request, and the Applicant includes a Zoning Statement pursuant to 980 CMR 17.03(1)(b)4. The contents and form of Constructive Approvals are defined in 980 CMR 17.03.

#### 17.02: Constructive Approval Procedure.

- (1) Procedural Assessment. At least sixty days before the applicable deadline established by 980 CMR 13.02(4)(a): *Review Timeframe*, the Presiding Officer shall assess the progress of the proceeding to determine whether there is reasonable assurance that the Board will issue a Consolidated Permit or Consolidated State Permit by the applicable deadline. The Presiding Officer may conduct a status conference to inform their assessment of progress of the proceeding.
- (2) Notice of Likelihood of Constructive Approval. If the Presiding Officer does not find reasonable assurance that the Board will meet its deadline to issue a Final Decision, the Presiding Officer shall, at least sixty days before the applicable deadline, prepare and

## 980 CMR 17.00: ENERGY FACILITIES SITING BOARD

issue to the Parties, Limited Participants, Permit Enforcement Agencies, and the Board a Notice of Likelihood of Constructive Approval that references 980 CMR 17.02, states that a Constructive Approval is likely, and describes the reasons for that assessment.

(3) Issuance of Draft Constructive Approval. Within two weeks after the issuance of the Notice of Likelihood of Constructive Approval, the Applicant shall prepare and circulate the draft Constructive Approval to the service list prepared by the Presiding Officer for the proceeding pursuant to 980 CMR 1.03(3): *Service to Board, Parties, and Participants*, and any additional Permit Enforcement Agencies (PEAs) not included on the service list.

(a) Form of Draft Constructive Approval. The draft Constructive Approval shall comply with the requirements of 980 CMR 17.03, except that the document will be titled “draft Constructive Approval” and will be marked “DRAFT” on all pages.

(b) Draft Constructive Approval. The draft Constructive Approval prepared by the Applicant shall consist of: (i) the Application at the time of the Completeness Determination, and updates to the Project filed pursuant to 980 CMR 13.07(1)(c): *Updated Filing*, and (ii) the Recommended Permit Conditions and Requirements issued by the Presiding Officer pursuant to 980 CMR 13.07(6): *Conditions Conference*, that are consistent with: (i) the record evidence in the proceeding; (ii) the Board’s statutory authority, and (iii) the Board’s applicable rules, regulations, and other authority as provided in 980 CMR 2.02(3): *Scope of Review*. The Applicant may include a modification of a condition included in the Recommended Permit Conditions and Requirements issued by the Presiding Officer pursuant to 980 CMR 13.07(6): *Conditions Conference*, in the draft Constructive Approval, provided the modification is consistent with: (i) the record evidence in the proceeding; (ii) the Board’s statutory authority, and (iii) the Board’s applicable rules, regulations, and other authority as provided in 980 CMR 2.02(3): *Scope of Review*.

(4) Comment Period and Opportunity for Revision.

(a) The Presiding Officer shall designate a comment period, extending at least seven days and not more than 14 days, from the issuance of the draft Constructive Approval. During that time, the recipients of the draft Constructive Approval may file written comments regarding the draft to ensure compliance with 980 CMR 17.03.

(b) Within seven days after the conclusion of the comment period, the Applicant shall update the draft Constructive Approval to include revisions that are consistent with: (i) the record evidence in the proceeding; (ii) the Board’s statutory authority, and (iii) the Board’s applicable rules, regulations, and other authority as provided in 980 CMR 2.02(3): *Scope of Review*, and circulate it to the service list.

(c) Within seven days thereafter, the Presiding Officer may modify the updated draft Constructive Approval prepared by the Applicant if and to the extent that the draft Constructive Approval, as modified by the Applicant following the comment period held pursuant to 980 CMR 17.02(4)(a), is

## 980 CMR 17.00: ENERGY FACILITIES SITING BOARD

inconsistent with: (i) the record evidence in the proceeding; (ii) the Board's statutory authority, or (iii) the Board's applicable rules, regulations, and other authority as provided in 980 CMR 2.02(3): *Scope of Review*. The Presiding Officer shall explain any modifications and ensure compliance with 980 CMR 17.03.

(d) The draft Constructive Approval as updated by the Presiding Officer pursuant to 980 CMR 17.02(4) shall be issued as a final Constructive Approval consistent with 980 CMR 17.04.

(5) If the Presiding Officer issues the Notice of Likelihood of Constructive Approval prior to the Conditions Conference and the issuance of the Presiding Officer Recommended Permit Conditions and Requirements, then the Presiding Officer may schedule a Conditions Conference earlier than specified in 980 CMR 13.07(6): *Conditions Conference*. The Presiding Officer shall issue Recommended Permit Conditions and Requirements. The parties shall have an opportunity to comment on the Recommended Permit Conditions and Requirements consistent with 980 CMR 13.07(3): *Adjudicatory Proceeding*. The process for the draft Constructive Approval shall be consistent with 980 CMR 17.02(3) and the Comment Period and Opportunity for Revision shall be consistent with 980 CMR 17.02(4).

(6) If the Presiding Officer fails to act regarding any provision of 980 CMR 17.00 in the timeframe provided, the Presiding Officer will have an additional seven days in which to perform the missed procedural step. If the Presiding Officer does not complete the missed procedural step by the end of the additional seven days, the next procedural step required in 980 CMR 17.00 shall commence regardless.

(7) Continuing Right to Issue a Decision on a Consolidated Permit or Consolidated State Permit. The Presiding Officer Notice of Likelihood of Constructive Approval shall not prohibit the Board from issuing a Final Decision pursuant to 980 CMR 13.10: *EFSB Consolidated Permit Decisions*, on an EFSB Consolidated Permit prior to the applicable statutory review timeframe pursuant to 980 CMR 13.02(4)(a): *Review Timeframe*.

### 17.03: Contents and Form of Constructive Approval.

(1) Contents. A Constructive Approval shall be in writing and shall include the following contents:

(a) Identifying Information.

1. Name of the Applicant, docket number(s), and project name.
2. Name, address, telephone number, and email address of the Applicant representative(s). See 980 CMR 13.01(4): *Definitions* and 13.03(1)(a): *Application Summary Form*.
3. The Applicant's Description of the Project, Site, and Surrounding Area pursuant to 980 CMR 13.03(1)(b): *Description of the Project, Site, and Surrounding Area*, including any updates in the evidentiary record of the proceeding pursuant to 980 CMR 13.07(1)(c): *Updated Filing*.

(b) Required Permits and Approvals.

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1. List. A list of all state, regional, and local permits and approvals listed on the Application pursuant to 980 CMR 13.05: *EFSB Permit Application Requirements*.
2. Agency Permit Requirements. A list of the agency permit requirements based on the latest information provided by the Applicant.
3. Draft Documents. All draft permits and approvals provided by the Applicant pursuant to 980 CMR 13.05(1)(a), (b)(d): *EFSB Consolidated Permit Application Requirements: Required Permits*, as the Applicant may have updated during the proceeding pursuant to 980 CMR 13.07(1)(c): *Updated Filing*.
4. Zoning Statement. A statement of the zoning exemptions that the Applicant has included in its Application at the Completeness Determination.

(c) Common Conditions Applicable Common Conditions pursuant to 980 CMR 13.09(2): *Common Conditions*, as identified in “13.00: EFSB Consolidated Permit Application Guidance,” Attachment 1: Common Conditions and Requirements for EFSB Consolidated Permits, unless expressly superseded by the Presiding Officer Recommended Permit Conditions and Requirements included in the draft Constructive Approval pursuant to 980 CMR 17.02.

(d) Presiding Officer Recommended Permit Conditions and Requirements included in the draft Constructive Approval pursuant to 980 CMR 17.02.

(e) The Applicant shall file an Abbreviated Procedural History that substantially complies with the following text:

The Applicant(s), \_\_\_\_\_[name(s)], filed its/their Application on \_\_\_\_\_[date]. The EFSB docketed the Consolidated Permit proceeding as \_\_\_\_\_. On \_\_\_\_\_[date], pursuant to 980 CMR 13.06: *Completeness Determination*, the Presiding Officer issued a Completeness Determination. The Completeness Determination confirmed that the Applicant substantially and materially complied with each Application filing requirement. The Board was required, pursuant to 980 CMR 13.02(4): *Review Time Frame*, to issue a final decision on a Consolidated Permit or Consolidated State Permit by \_\_\_\_\_[date].

The Board did not issue a Consolidated Permit or Consolidated State Permit by \_\_\_\_\_[date]. Therefore, pursuant to M.G.L. c. 164, § 69T (for a large clean energy infrastructure facility), § 69U (for a small clean transmission and distribution infrastructure facility), or § 69V (for a small clean energy generation facility or small clean energy storage facility) a Constructive Approval of the Project has been issued. The Applicant has obtained Constructive Approval, issued by operation of law under M.G.L. 164, §§ 69T, 69U, or 69V, and 980 CMR 17.04 for all required state, regional,

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and local permits and approvals listed on part b(1) of this Constructive Approval as if the accompanying draft permits had issued in final form. The Applicant is likewise granted all requested zoning exemptions as referenced in part b(3) of this Constructive Approval.

(2) Statement of Decision's Effect and Appeal Rights. The Constructive Approval shall contain the text of 980 CMR 17.05(1) and 17.05(2).

(3) Form. The Board may specify the form of the Constructive Approval and may make available a template for that purpose.

### 17.04: Issuance of a Constructive Approval.

(1) If the Board has not issued a Consolidated Permit or Consolidated State Permit pursuant to 980 CMR 13.10: *EFSB Consolidated Permit Decisions*, within the applicable statutory timeframe under 980 CMR 13.02(4)(a): *Review Timeframe*, the draft Constructive Approval, as developed and modified pursuant to 980 CMR 17.02, shall be deemed issued on the applicable deadline date as a final Constructive Approval.

(2) The Presiding Officer shall distribute the final Constructive Approval to all persons entitled to notice within five business days of the applicable review timeframe under 980 CMR 13.02(4)(a): *Review Timeframe*.

(3) The evidentiary record shall close upon the distribution of the final Constructive Approval.

### 17.05: Effect of Decision and Rights of Appeal.

(1) Effect of Decision. In accordance with M.G.L. c. 164, §§69T(i), 69U(c), 69V(c), a Constructive Approval acts as an approval of all relevant permits and approvals from all state, regional, and local agencies required to construct and operate the Project. *See* 980 CMR 17.03(1).

(a) No state, regional, or local agency may require any other approval, consent, permit, certificate or condition for the construction, operation, or maintenance of the Project.

(b) No state, regional, or local agency may impose or enforce any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action, other than reasonably enforcing the conditions and requirements of the Constructive Approval, that would delay or prevent construction, operation, or maintenance of the Project.

(2) Rights of Appeal. Under M.G.L. c. 164, §§ 69T, 69U, or 69V, a Constructive Approval is deemed a final decision, and is subject to appeal under M.G.L. c. 164, § 69P. The appeal deadline shall be calculated from the date the Presiding Officer distributes the Constructive Approval pursuant to 980 CMR 17.04(2).

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(3) Scope of Review. The scope of such judicial review is governed by M.G.L. c. 164, § 69P. The scope of the appeal shall be limited to whether the Constructive Approval: (i) is in conformity with the Constitution of the Commonwealth and the United States Constitution; (ii) was made in accordance with the procedures established in M.G.L. c. 164, §§ 69H to 69O, inclusive, and §§ 69T to 69W, inclusive, and the rules and regulations of the Board with respect to such provisions; (iii) was supported by substantial evidence of record in the board's proceedings; or (iv) was arbitrary, capricious or an abuse of the Board's discretion under M.G.L. c. 164, §§ 69H to 69O, inclusive, and said sections §§ 69T to 69W, inclusive.

### REGULATORY AUTHORITY

980 CMR 17.00: M.G.L. c. 164, §§69T(i), 69U(c), 69V(c).

**ATTACHMENT 2 – GLOSSARY OF DEFINITIONS**

**ENERGY FACILITIES SITING BOARD****GLOSSARY OF DEFINITIONS**

5/8/26

Agency Consultation means written, oral, and other communications with Local Government and state agencies with an interest in the permitting of a proposed LCEIF, SCEIF, or other Facility. 980 CMR 16.02.

Anaerobic Digestion Facility means a facility that: (i) generates electricity from a biogas produced by the accelerated biodegradation of organic materials under controlled anaerobic conditions; and (ii) has been determined by the department of energy resources, in coordination with the department of environmental protection, to qualify under the department of energy resources regulations as a Class I renewable energy generating source under M.G.L. c. 25A, § 11F. 980 CMR 1.01(4).

Ancillary Structure means new or expanded equipment or structure which is an integral part of the operation of any CEIF or Facility. 980 CMR 1.01(4).

Applicant means a Person who submits to the Board a petition to construct a Facility, an application for a Consolidated Permit for a LCEIF or SCEIF, an application for a Consolidated State Permit for a SCEIF, or a petition for a certificate of environmental impact and public need. An Applicant also means a Person who submits an application for a Consolidated Local Permit with a Local Government pursuant to 225 CMR 29.00. 980 CMR 1.01(4).

Application means a submission to the Board, in such form and detail as prescribed by the Board, by an Applicant for an EFSB Consolidated Permit for the purpose of constructing, owning, or operating a CEIF Project. 980 CMR 13.01(4).

Benefit means a positive effect as it pertains to public health, the environment, or in ameliorating the effects of climate change. Benefits include, but are not limited to, access to: clean natural resources, including air, water resources, and open space; constructed playgrounds, outdoor recreational paths, facilities, and venues; clean renewable energy sources; affordable access to reliable electricity; improved public health from reduced pollution and environmental contaminants; improved socio-economic opportunity from additional jobs, education, training programs, tax revenues; enhanced environmental enforcement; and funding disbursed or administered by EEA. For the Board to consider Benefits as Project-related for CIA purposes, such Benefit must have a geographic, economic, public health, or scientific nexus to areas of overlap between Burdened Area(s) and a Project's SGA. A benefit incorporated into a Community Benefit Agreement need not have a geographic, economic, public health, or scientific nexus to a Project Impact. 980 CMR 15.02(1).

Board means the Energy Facilities Siting Board established under M.G.L. c. 164, § 69H. 980 CMR 1.01(4).

Board Member means any of the eleven individuals set forth in 980 CMR 2.03(1) or any individual named to serve as a designee under the terms of 980 CMR 2.03(3). 980 CMR 1.01(4).

Burden means a negative effect such as destruction, damage or impairment of natural resources that is not insignificant, including but not limited to, climate change, air pollution, water pollution, improper sewage disposal, dumping of solid wastes and other noxious substances, excessive noise, activities that limit access to natural resources and constructed outdoor recreational facilities and venues, inadequate remediation of pollution, reduction of ground water levels, impairment of water quality, increased flooding or stormwater flows, and damage to inland waterways and waterbodies, wetlands, marine shores and waters, forests, open spaces, and playgrounds from private industrial, commercial, or government or private operations or activity that contaminates or alters the quality of the environment and public health. 980 CMR 15.02(1).

Burdened Area means a Census Block Group, which is subject to an existing unfair or inequitable environmental burden or related health consequence. 980 CMR 15.00 identifies Burdened Areas as those areas that have a MassEnviroScreen Score (MES Score) of 75 or greater (i.e., at or above the 75th percentile, statewide), or an annual median household income of 65 percent or less of the statewide annual median household income. 980 CMR 15.02(1).

Census Block Group means a statistical subdivision of a census tract used by the U.S. Census Bureau for data tabulation and presentation. It is a collection of census blocks and is the smallest geographic unit for which the U.S. Census Bureau publishes sample data from its household surveys. 980 CMR 15.02(1).

Chair means the Chair of the Energy Facilities Siting Board. 980 CMR 1.01(4).

Clean Energy Infrastructure Facility (CEIF) means an LCEGF, LCESF, LCTDIF, SCEGF, SCESF, or SCTDIF. A CEIF is not a Facility as defined in M.G.L. c. 164, § 69G. 980 CMR 1.01(4).

Common Condition means a condition or requirement established by the Board for specific types of CEIF as identified in “13.00: EFSB Consolidated Permit Application Guidance,” Attachment 1: *Common Conditions and Requirements for EFSB Consolidated Permits*. 980 CMR 13.01(4).

Community means at a minimum members of the public residing or working within a distance set forth in 980 CMR 15.05 (1)(b) from the Facility Boundary of a proposed facility. 980 CMR 16.02.

Completeness Determination means a ruling by the Presiding Officer indicating whether an Application substantially and materially complies with the Board’s Application requirements. 980 CMR 13.01(4).

Consolidated Permit means a permit issued by the Board for an LCEIF or a SCEIF that includes all municipal, regional, and state permits that the LCEIF or SCEIF would otherwise need to

obtain individually, with the exception of certain federal permits that are delegated to specific state agencies as determined by the Board. 980 CMR 1.01(4).

Consolidated Local Permit means a permit issued by a Local Government for a SCEIF that includes all required local permits, approvals, or authorizations that the Applicant would otherwise need to obtain individually from the Local Government. 980 CMR 1.01(4).

Consolidated Local Permit Application means a submission by an Applicant, in such form and detail as prescribed in 225 CMR 29.00, that would otherwise go to a Local Government for a Consolidated Local Permit, for the purpose of obtaining permission to construct, own, or operate a CEIF Project. An Applicant may elect to submit a Consolidated Local Permit Application and the Board may issue a Consolidated Local Permit as part of an EFSB Consolidated Permit, pursuant to M.G.L. c. 164 §§ 69T and 69U. Alternatively, an Applicant may elect to use extant PEA Application forms, and receive individual local Permits under M.G.L. c. 164 §§ 69T and 69U. 980 CMR 13.01(4).

Consolidated State Permit means a permit issued by the Board for an SCESF or an SCEGF that includes all state permits, approvals, or authorizations that the Applicant would otherwise need to obtain individually from state agencies, authorities, boards, commissions, offices or other entities, with the exception of certain federal permits that are delegated to specific state agencies as determined by the Board. 980 CMR 1.01(4).

Construction means work performed by the Applicant, or on behalf of the Applicant, on the CEIF Project site, or along the Project route, but shall not include contractual obligations to purchase such facilities or equipment, or preliminary work in furtherance of permitting (e.g., soil boring, surveys) that does not impose significant adverse impacts. 980 CMR 13.01(4).

Constructive Approval means a Consolidated Permit or Consolidated State Permit that is constructively (automatically) approved and issued by operation of law under M.G.L. c. 164, §§ 69T, 69U, or 69V, and 980 CMR 17.05. A Constructive Approval may include zoning exemptions, provided that the Applicant at the time of the Completeness Determination includes a zoning exemption request, and the Applicant includes a Zoning Statement pursuant to 980 CMR 17.03(1)(b)4. The contents and form of Constructive Approvals are defined in 980 CMR 17.03.

Criteria-specific Suitability Score means the score for each criterion in the Site Suitability Report, as assessed following the methods outlined in the Site Suitability Guidance, representing the suitability of a site for a given Clean Energy Infrastructure Facility with respect to each criterion. These scores can range from 0.0 (most suitable, lowest impact, and/or greatest benefit) to 5.0 (least suitable, greatest impact, and/or lowest benefit). 980 CMR 15.02(1).

Cumulative Impact means the combined effects of past and present private, industrial, commercial, federal, state, or municipal projects, operations, development, and other economic activities, in addition to the effects of the proposed Project on: (1) the environment; (2) public health; and (3) reasonably foreseeable effects of climate change. For purposes of 980 CMR 15.00, Cumulative Impact is determined for the area where a Project's SGA intersects one or more Burdened Area(s). 980 CMR 15.02(1).

Cumulative Impact Analysis (CIA) means the process by which Applicants and Petitioners shall identify, consider, and address the Cumulative Impact of a Project, as articulated in 980 CMR 15.00. The Board reviews the Applicant's CIA pursuant to 980 CMR 15.00. 980 CMR 15.02(1).

Cumulative Impact Analysis Report (CIA Report) means the written report that an Applicant submits as part of an Application or petition to construct for applicable Projects, pursuant to 980 CMR 15.09: Contents of CIA Report. 980 CMR 15.02(1).

Department means the Massachusetts Department of Public Utilities. 980 CMR 1.01(4).

De Novo Adjudication means an adjudicatory proceeding where the Director will consider an application for a Consolidated Local Permit based on evidence submitted in the proceeding that may include but is not limited to the information submitted to the Local Government as part of the application for a proposed SCEIF. 980 CMR 1.01(4).

Director means the individual appointed by the Chair of the Department of Public Utilities to direct the work of the siting division and to conduct the day-to-day business of the Board as well as to perform any other duty delegated by the Chair. The Director may issue decisions in De Novo Adjudications of local Permit applications pursuant to M.G.L. c. 164, § 69W. 980 CMR 1.01(4).

Disproportionate Adverse Effect means a Project Impact that is likely to materially exacerbate an Elevated Indicator in a Burdened Area intersecting a Project's SGA. As used in M.G.L. c. 164, §§ 69G and 69H, "disproportionate adverse impact" is the equivalent of "Disproportionate Adverse Effect." A Disproportionate Adverse Effect requires consideration of both positive and negative Project Impacts, and results in a net negative impact. 980 CMR 15.02(1).

Distribution means delivery of electricity as defined in M.G.L. c. 164, § 1. 980 CMR 1.01(4).

Division of Public Participation (DPP) means the Division of Public Participation at the Department established under M.G.L. c. 25, § 12T to assist stakeholders with navigating the Department and the Board pre-filing requirements, clarifying filing requirements, and identifying opportunities to intervene. 980 CMR 16.02.

DOER means the Massachusetts Department of Energy Resources. 980 CMR 1.01(4).

DPP Opinion means a written communication from the Director of DPP to the Board assessing whether the Applicant has completed the pre-filing consultation and engagement requirements in 980 CMR 16.00. 980 CMR 16.02.

Elevated Indicator for a Clean Energy Infrastructure Facility ("CEIF") means an Indicator that is above the 50th percentile statewide in Massachusetts, prior to consideration of additional Project Impacts. For Fossil Fuel-Related Energy Infrastructure, each Indicator is treated as an Elevated Indicator. For purposes of 980 CMR 15.00, an Elevated Indicator is identified solely in those areas where a Project's SGA intersects one or more Burdened Areas. 980 CMR 15.02(1).

EFSB Consolidated Permit means a Consolidated Permit or a Consolidated State Permit. 980 CMR 1.01(4).

Facility means any “facility” described in M.G.L. c. 164, §69G including:

- (a) any generating unit designed for or capable of operating at a gross capacity of 25 megawatts or more, including associated buildings, Ancillary Structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities;
- (b) a new electric transmission line having a design rating of 69 kilovolts or more and which is one mile or more in length on a new transmission corridor;
- (c) a new electric transmission line having a design rating of 115 kilovolts or more which is ten miles or more in length on an existing transmission corridor except reconductoring or rebuilding of transmission lines at the same voltage;
- (d) an Ancillary Structure which is an integral part of the operation of any transmission line which is a facility;
- (e) a unit, including multiple tanks and associated buildings and structures, designed for, or capable of, the manufacture or storage of gas, except such units below a minimum threshold size as established by regulation;
  - 1. a unit with a total gas storage capacity of less than 25,000 gallons and also with a manufacturing capability of less than 2,000 MMBtu per day;
  - 2. a unit whose primary purpose is research, development, or demonstration of technology and whose sale of gas, if any, is incidental to that primary purpose; or
  - 3. a landfill or sewage treatment plant.
- (f) a new pipeline for the transmission of gas having a normal operating pressure in excess of 100 lbs. per square inch gauge, which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity; and
- (g) any new unit, including associated buildings and structures, designed for, or capable of, the refining, the storage of more than 500,000 barrels or the transshipment of oil or refined oil products and any new pipeline for the transportation of oil or refined oil products which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity. 980 CMR 1.01(4).

Facility Boundary means the outermost boundary of the Project site (such as a Project building or other structures, or the outermost areas of construction activity or disturbance), or the Project fence line. For linear projects, or project components, such as transmission lines or pipelines, the Facility Boundary shall be the edge of the right-of-way. 980 CMR 15.02(1).

Final Decision of Local Government means a Consolidated Local Permit issued by a Local Government, a denial by a Local Government of an application for a Consolidated Local Permit, or a Constructive Approval of a Consolidated Local Permit Application, pursuant to 225 CMR 29.00. 980 CMR 14.01.

Fossil Fuel-Related Energy Infrastructure means Facilities subject to Board jurisdiction under M.G.L. c. 164, §§ 69J, 69J¼, that are not CEIFs. 980 CMR 15.02(1).

Gas means an energy source which includes natural gas, propane air, synthetic natural gas, liquefied natural gas, renewable natural gas, and hydrogen. 980 CMR 1.01(4).

Generating Facility means any generating unit designed for or capable of operating at a gross capacity of 25 megawatts or more, that is not a LCEGF or SCEGF, including associated buildings, Ancillary Structures, transmission and pipeline interconnections that are not otherwise facilities and fuel storage facilities. 980 CMR 1.01(4).

Hand Delivery means delivery by methods other than pre-paid U.S. mail (e.g., Federal Express or paid courier service). Hand Delivery shall not include delivery by electronic mediums such as facsimile or e-mail unless authorized by the Presiding Officer. 980 CMR 1.01(4).

Indicator means a statistical measure, which is used to evaluate a Census Block Group's environmental exposures, environmental effects, climate effects, sensitive populations, and socioeconomic factors. 980 CMR 15.02(1).

Key Stakeholders means, at a minimum, public interest groups, organizations serving the local community in the vicinity of a proposed Project that could be affected by a proposed Project; abutters of the Project, including residents (both owners and renters) and businesses; community-based organizations, elected or appointed municipal officials (e.g., mayor or town/city manager, relevant Council/Select Board members, Chair(s) of the Conservation Commission, Planning Board, Zoning Board, and Head of the Department of Public Works), regional planning officials, representatives of labor groups (e.g., union locals, building trades councils, central labor councils, and the Massachusetts AFL-CIO) and apprenticeship programs, and federally recognized, state-acknowledged, or state-recognized Tribes. 980 CMR 16.02.

Language Access Plan means the Language Access Plan established by the Board pursuant to Executive Order No. 615. 980 CMR 1.01(4).

Large Clean Energy Generation Facility (LCEGF) means energy generation infrastructure with a nameplate capacity of not less than 25 megawatts that is an Anaerobic Digestion Facility, Solar Facility or Wind Facility, including any Ancillary Structure that is an integral part of the operation of the LCEGF. 980 CMR 1.01(4).

Large Clean Energy Infrastructure Facility (LCEIF) means an LCEGF, LCESF, or LCTDIF. 980 CMR 1.01(4).

Large Clean Energy Storage Facility (LCESF) means an energy storage system as defined under M.G.L. c. 164, § 1, with a rated capacity of not less than 100 megawatt hours, including any Ancillary Structure that is an integral part of the operation of the LCESF. 980 CMR 1.01(4).

Large Clean Transmission and Distribution Infrastructure Facility (LCTDIF) means electric transmission and distribution infrastructure and related ancillary infrastructure that is:

- (a) a new electric transmission line having a design rating of not less than 69 kilovolts and that is not less than 1 mile in length on a new transmission corridor, including any Ancillary Structure that is an integral part of the operation of the transmission line;

- (b) a new electric transmission line having a design rating of not less than 115 kilovolts that is not less than 10 miles in length on an existing transmission corridor except reconducted or rebuilt transmission lines at the same voltage, including any Ancillary Structure that is an integral part of the operation of the transmission line;
- (c) any other new electric transmission infrastructure requiring zoning exemptions, including standalone transmission substations and upgrades and any Ancillary Structure that is an integral part of the operation of the transmission line; and
- (d) facilities needed to interconnect offshore wind to the grid.

A LCTDIF shall be:

- (a) designed, fully or in part, to directly interconnect or otherwise facilitate the interconnection of a CEIF to the electric grid;
- (b) approved by the regional transmission operator in relation to interconnecting a CEIF;
- (c) proposed to ensure electric grid reliability and stability; or
- (d) designed to help facilitate the electrification of the building and transportation sectors.

A LCTDIF shall not include new transmission and distribution infrastructure that solely interconnects new and existing energy generation powered by fossil fuels on or after January 1, 2026. 980 CMR 1.01(4).

Limited Participant means any Person allowed to participate in an adjudicatory proceeding pursuant to M.G.L. c. 30A, § 10, and 980 CMR 1.05(2). A Limited Participant is not a Party. 980 CMR 1.01(4).

Local Government means a municipal or regional authority, board, commission, office, or other entity, as defined in M.G.L. c. 25A, § 21, that would have had jurisdiction to issue at least one permit for an LCEIF or SCEIF absent a Consolidated Permit. Local Governments enforce the portions of a Consolidated Permit that relate to subject matter within their jurisdiction as if that portion of the Consolidated Permit had been directly granted by the Local Government. 980 CMR 1.01(4).

Local Government Representative means the Chief Administrative Officer of the Local Government, or their designee(s), pursuant to 225 CMR 29.02. 980 CMR 1.01(4).

Local Request for Review Based on Lack of Resources means a notification filed by the Local Government that its resources, capacity, or staffing do not allow for review of a SCEIF's Consolidated Local Permit Application within the required maximum 12-month timeframe for Local Government review. 980 CMR 14.01.

MassEnviroScreen (MES) means a GIS-based mapping tool developed and administered by the Office of Environmental Justice and Equity that uses Indicators to produce an MES Score and provide Indicator data for every Census Block Group across the Commonwealth. 980 CMR 15.02(1).

MassEnviroScreen Score (MES Score) means the numerical score output from the MES. 980 CMR 15.02(1).

MEPA Office means the Massachusetts Environmental Policy Act Office within the Executive Office of Energy and Environmental Affairs that administers MEPA and 301 CMR 11.00. 980 CMR 16.02.

Ministerial Permit means a non-discretionary permit or approval for a CEIF Project that meets objective, pre-defined codes and standards, and is typically approved in a streamlined, time-bound, administrative process that does not involve adjudication. A Ministerial Permit is usually issued after other adjudicatory or discretionary permits are issued, and the project is at a more advanced state of design completion, prior to the intended start of construction or operation of a CEIF Project. 980 CMR 13.01(4).

Notice of Completeness means notice by the Presiding Officer that the Application substantially and materially complies with all Application requirements. 980 CMR 13.01(4).

Noticed Alternative Site or Route means a site or route that an Applicant has submitted for review by the Board, in addition to a Proposed Site or Route, and provided Notice to affected abutters and others concerning this site or route. 980 CMR 15.00 does not impose upon the Applicant an obligation to propose an alternative site or route but recognizes that in certain circumstances the Applicant may be required to do so or may elect to do so. 980 CMR 15.02(1).

OEJE means the Office of Environmental Justice and Equity within the Executive Office of Energy and Environmental Affairs, as established in M.G.L. c. 21A, § 29. 980 CMR 16.02

Party means an applicant, any Person allowed to intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, § 1(3), and 980 CMR 1.05(1), or any Person who intervenes in an adjudicatory proceeding by right. 980 CMR 1.01(4).

Person means a natural person, partnership, corporation, association, society, authority, agency, department, or division of the Commonwealth, or any body politic or political subdivision of the Commonwealth including municipal corporations. 980 CMR 1.01(4).

Permit means a municipal, regional, or state permit, authorization, determination, license, or approval that would otherwise be individually required to construct and operate a CEIF Project, absent an EFSB Consolidated Permit. 980 CMR 1.01(4).

Permit Enforcement Agency (PEA) means an agency, authority, board, commission, office, or other entity that would have jurisdiction to issue at least one Permit for a CEIF Project in the absence of an EFSB Consolidated Permit. PEAs enforce the portions of an EFSB Consolidated Permit that relate to subject matters within their jurisdiction as if such portions had been directly granted by the PEA. PEA may include Local Government and Local Government Representatives. 980 CMR 13.01(4).

Permit Advisory Agency (PAA) means a municipal, regional, or state agency, authority, board, commission, office, or other entity that would advise a PEA concerning recommended permit

conditions on the issuance of at least one Permit for a CEIF Project that would otherwise be issued without an EFSB Consolidated Permit, but does not have jurisdiction for issuance of such Permit(s). 980 CMR 13.01(4).

Pre-filing Engagement Status Checklist means a document to be filed by an Applicant with DPP approximately midway through the Pre-filing Outreach Period that catalogs the status of pre-filing consultation and engagement requirements and includes supporting documentation identified in 980 CMR 16.00. The checklist shall include an attestation by the Applicant that all statements contained therein are true. 980 CMR 16.02.

Pre-filing Engagement Completion Checklist means a document that reflects completed pre-filing consultation and engagement requirements to be filed by an Applicant with DPP, the Board, and Local Government and state permitting agencies at the completion of the Pre-filing Outreach Period and together with the Pre-filing Notice. The Applicant shall submit supporting documentation identified in 980 CMR 16.00 to DPP at the completion of the Pre-filing Outreach Period. If certain outreach or agency consultation requirements cannot be completed, the Applicant shall attach a statement clarifying the reason or a waiver or partial waiver that was requested from and approved by DPP pursuant to 980 CMR 16.03(1). The checklist shall include an attestation by the Applicant that all statements contained therein are true. 980 CMR 16.02.

Pre-filing Notice means the Notification of Intent to File Application filed by an Applicant with DPP, the Board and Local Government and state permitting agencies no less than 60 days and no more than 90 days prior to filing an Application or a petition to construct with the Board. 980 CMR 16.02.

Pre-filing Outreach Period means the period of time between the start of pre-filing consultation and engagement activities specified in 980 CMR 16.04 and the submission of the Pre-filing Notice to the Board and DPP. For purposes of 980 CMR 16.00, the Pre-filing Outreach Period begins when the Applicant meets with DPP and OEJE. The Applicant may meet with the stakeholders prior to the beginning of the Pre-filing Outreach Period. 980 CMR 16.02.

Presiding Officer means Board staff assigned by the Director to conduct adjudicatory proceedings for matters within the jurisdiction of the Board. 980 CMR 1.01(4).

Project means the structures, equipment, facilities, and land uses, and the construction and operation thereof, for which an applicant requires an approval, permits, or authorizations of the Board. The specific elements of a Project will be unique in each proceeding. 980 CMR 1.01(4).

Project Impact means an effect on the environment, socioeconomic and public health conditions, or climate change resiliency, resulting from construction and operation of the Project. A Project Impact can be either positive or negative. 980 CMR 15.02(1).

Proposed Site or Route means the Applicant's preferred location for a Project site or route that it submits for approval by the Board. 980 CMR 15.02(1).

Remedial Action means an action taken that would avoid, minimize, or mitigate one or more Disproportionate Adverse Effects. 980 CMR 15.02(1).

Site Footprint means the area of land and water encompassed by a CEIF's equipment, plus any land significantly impacted by construction of the CEIF, including, but not limited to, land altered for clearing, grading, and roadways. 980 CMR 15.02(1).

Site Suitability Mapping Tool means a web-based mapping tool established and maintained by the EEA in accordance with the Site Suitability Guidance, which contains geographic information system data layers used to determine Criteria-specific Suitability Scores. The mapping tool shall have the capability to automatically calculate a CEIF's Criteria-specific Suitability Scores by delineating the CEIF Site Footprint in the mapping tool. 980 CMR 15.02(1).

Site Suitability Guidance means guidance and criteria for the assessment of the suitability of the proposed siting of a CEIFs, as established by the Executive Office of Energy and Environmental Affairs, pursuant to M.G.L. c. 21A, § 30. 980 CMR 13.01(4).

Site Suitability Report means a written report documenting the Applicant's Criteria-specific Suitability Scores, any Site Suitability Score Modifiers, as defined in the Site Suitability Guidance, the Applicant is seeking to apply, and any other required supporting documentation, in a form and manner established by the EEA, in consultation with the Board and the Department of Energy Resources. 980 CMR 15.02(1).

Site Suitability Score Modifier means positive or negative adjustments to a CEIF's Criteria-specific Suitability Scores that are reflective of development potential or social and environmental benefits, as prescribed in the Site Suitability Guidance. 980 CMR 13.01(4).

Small Clean Energy Generation Facility (SCEGF) means energy generation infrastructure with a nameplate capacity of less than 25 megawatts that is an Anaerobic Digestion Facility, Solar Facility or Wind Facility, including any Ancillary Structure that is an integral part of the operation of the SCEGF. 980 CMR 1.01(4).

Small Clean Energy Infrastructure Facility (SCEIF) means an SCEGF, SCESF or SCTDIF. 980 CMR 1.01(4).

Small Clean Energy Storage Facility (SCESF) means an energy storage system as defined in M.G.L. c. 164, § 1, with a rated capacity of less than 100 megawatt hours, including any Ancillary Structure that is an integral part of the operation of the SCESF. 980 CMR 1.01(4).

Small Clean Transmission and Distribution Infrastructure Facility (SCTDIF) means electric transmission and distribution infrastructure and related ancillary infrastructure, including:

- (a) electric transmission line reconductoring or rebuilding projects;
- (b) new or substantially altered electric transmission lines located in an existing transmission corridor that are not more than 10 miles long, including any Ancillary Structure that is an integral part of the operation of the transmission line;

- (c) new or substantially altered electric transmission lines located in a new transmission corridor that are not more than 1 mile long, including any Ancillary Structure that is an integral part of the operation of the transmission line;
- (d) any other electric transmission infrastructure, including standalone transmission substations and upgrades and any Ancillary Structure that is an integral part of the operation of the transmission line and that does not require zoning exemptions; and
- (e) electric distribution-level projects that meet a certain threshold, as determined by the Department of Energy Resources.

A SCTDIF shall be:

- (a) designed, fully or in part, to directly interconnect or otherwise facilitate the interconnection of a CEIF to the electric grid;
- (b) designed to ensure electric grid reliability and stability; or
- (c) designed to help facilitate the electrification of the building and transportation sectors. A SCTDIF shall not include new transmission and distribution infrastructure facilities that solely interconnect new or existing generation powered by fossil fuels to the electric grid on or after January 1, 2026. 980 CMR 1.01(4).

Solar Facility means a ground-mounted facility that uses sunlight to generate electricity. The nameplate capacity for a Solar Facility shall be calculated in direct current. 980 CMR 1.01(4).

Specific Geographical Area (SGA) means an area in which a proposed facility may be located and is determined based on facility-specific radial distances from the Facility Boundary, as established by the Board in 980 CMR 15.05(1). Each Proposed Site or Route and each Noticed Alternative Site or Route, if any, has its own SGA. 980 CMR 15.02(1).

Wind Facility means an onshore or offshore facility that uses wind to generate electricity. 980 CMR 1.01(4).

**ATTACHMENT 3 – LIST OF COMMENTERS FOR CONSTRUCTIVE APPROVAL**

**Attachment: List of Commenters for EFSB 25-10-D**

**Written Commenters:**

1. Town of Blandford (1/9/26)
2. Michael DeChiara (1/9/26)
3. BlueWave and New Leaf (1/9/26)
4. Plymouth Infrastructure and Conservation Public Benefit LLC (4/10/26)
5. RENEW Northeast and Alliance for Climate Transaction (1/9/26, 4/17/26)
6. Conservation Law Foundation (1/9/26, 4/17/26)
7. National Grid & Eversource (1/9/26, 3/12/26, 4/17/26)

**Oral Commenters (from January 7 and February 26, 2026 Board Meetings):**

8. David Rosenzweig (Eversource and National Grid 1/7/26, 2/26/26)
9. Diedre Matthews (National Grid 1/7/26, 2/26/26)
10. Dierdre Buckley (Eversource 1/7/26)

The full list of comments made in this proceeding can be found in the Fileroom:

<https://eeaonline.eea.state.ma.us/dpu/fileroom/#/dockets/docket/12678>