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BY ELECTRONIC MAIL ONLY

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Secretary Rebecca L. Tepper, Chair  
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**RE: Ceres' Comments on Straw Proposal for Site Suitability Methodology for Clean Energy Infrastructure and Cumulative Impacts Analysis Guidance, to be developed under the 2024 Climate Act.**

Dear Secretary Tepper,

Ceres thanks you for the opportunity to submit these comments in response to the Energy Facility Siting Board's ("EFSB") straw proposal for Site Suitability Methodology for Clean Energy Infrastructure and Cumulative Impacts Analysis Guidance, to be developed in accordance with the 2024 Climate Act (the "Act").

Ceres is a nonprofit advocacy organization working with some of the largest businesses and investors in Massachusetts and across the country to build a cleaner, more just, and more resilient economy. Ceres organizes several influential business networks including the Business for Innovative Climate and Energy Policy Network (BICEP) - a coalition of over 80 major businesses committed to advancing public policies that reduce pollution and invest in innovative solutions to climate change.

Because the development of a resilient, safe and affordable source of clean energy provides a competitive advantage, these businesses are interested in the development of clean energy sources as quickly as possible. These companies support the development of regulations that can expedite the construction of necessary energy infrastructure without resulting in elevated energy prices or delays in the form of legal challenges or community opposition. They strive for regulatory certainty, which allows for supply chain resiliency and the build-out of accurate business models. Clarity of government requirements in the

siting process is of utmost importance. As an organization, Ceres seeks to ensure that the accelerated development of new resources does not unduly burden Massachusetts communities, particularly those that have already been subject to disproportionate social, environmental and energy burdens.

### **Definition of Vulnerable Populations**

In discussion of the methodology to be used in assessing criteria number 5. “Social and Environmental Burdens,” the straw proposal refers to “vulnerable populations” without defining them. Ceres supports aligning the term “vulnerable population” with that of “EJ Populations” or “EJ Neighborhoods,” established in the 2021 Climate Act<sup>1</sup> and demarcated in the publicly available [MA EJ Viewer](#). In the very few instances where there is proven discrepancy between a population’s vulnerable status and the demographic information available in the EJ Viewer, the OEJE can follow the statutory procedure outlined in the definition to clarify the correct boundaries. (The most obvious of these discrepancies are the very few census blocks in which high minority populations live in affluent neighborhoods). In addition, the site suitability methodology can also make use of the additional definition EEA developed in collaboration with the Department of Public Health for “vulnerable health EJ Populations” available [here](#). This term is explained in greater detail in the [Massachusetts EJ Policy](#), p.7, and highlights EJ Populations that are especially compromised in terms of elevated rates of childhood asthma, low birth weight, childhood lead poisoning, and/or heart diseases morbidity. This intersection between public health and environmental burdens highlights exactly the sort of indices that should be taken into consideration in cumulative impact analysis.

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<sup>1</sup> M.G.L. c.30 section 62 defines “Environmental justice population”, a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income; provided, however, that for a neighborhood that does not meet said criteria, but a geographic portion of that neighborhood meets at least 1 criterion, the secretary may designate that geographic portion as an environmental justice population upon the petition of at least 10 residents of the geographic portion of that neighborhood meeting any such criteria; provided further, that the secretary may determine that a neighborhood, including any geographic portion thereof, shall not be designated an environmental justice population upon finding that: (A) the annual median household income of that neighborhood is greater than 125 per cent of the statewide median household income; (B) a majority of persons age 25 and older in that neighborhood have a college education; (C) the neighborhood does not bear an unfair burden of environmental pollution; and (D) the neighborhood has more than limited access to natural resources, including open spaces and water resources, playgrounds and other constructed outdoor recreational facilities and venues.

Using a term that has already been statutorily determined and is utilized in other laws and EEA programs establishes consistency and clarity across state agencies. For instance, the Massachusetts Environmental Policy Act (MEPA) and the Municipal Vulnerability Preparedness (MVP) program and other state programs all use the EEA EJ definition as a basis for their work with vulnerable populations and incorporate the data set on maps used in their programs. This pan-agency approach conforms with the Healey-Driscoll Administration's intent to employ an "all of government approach" when addressing harms related to climate and vulnerable populations. The EJ map's use of these consistent definitions also aids in the enforcement of permit terms, especially because different portions of the permits will be enforced by different agencies, as referred to in the "Straw Proposal for Procedural Regulations."

### **Ineligible Areas**

The straw proposal outlines the concept of "Ineligible Areas" where generation and storage facilities should not be sited, and transmission and distribution facilities can apply for a waiver to be sited in such areas only under certain conditions. As currently outlined, such "ineligible areas" would only be in areas of "high conservation-value lands" that can be clearly identified through Bio Map, Article 97 lands, data sets outlining forests for carbon storage, and wetlands resource areas under 310 CMR 10.04.

Ceres applauds the clarity of this approach and encourages EEA and EFSB to extend this concept to existing EJ census block areas that are home to especially vulnerable populations. Such "ineligible areas," with high existing environmental and energy burdens and vulnerable populations, could be identified with a combined criteria gleaned from information currently in the [EJ Viewer](#), [MassDPH map](#), and include other data sets housed across the Governor's cabinet that provide information about environmental, public health, traffic, energy burden, housing, safety and climate resilience conditions in an affected area. The information could be made easily available on the proposed new OEJE CIA interactive maps. The proposed "burden metric" and "facility impact metric" could be used to identify such "ineligible areas" in which energy generation facilities and energy storage facilities should not be built due to high social and environmental burdens. This approach toward human public health in vulnerable communities would parallel the same care that is being afforded high-value conservation lands across the Commonwealth.

In addition, developers will be given a clear directive as to where generating and storage facilities can be most easily sited. Signaling to developers that certain land is off-limits will help ensure that communities who already bear an egregiously disproportionate environmental and public health burden do not again carry a disproportionate burden of energy infrastructure in the new, clean economy.

## **Mitigation Fees**

Ceres encourages EEA to authorize the EFSB and the DOER to assess mitigation fees based on site suitability determinations and to establish a trust fund for the collection and distribution of these fees for mitigation purposes. Ceres also encourages EEA to extend this concept to projects that are sited on or near vulnerable populations with whom a developer intends to negotiate a Community Benefit Agreement (CBA) and who has developed a Community Benefit Plan (CBP) with neighborhood input. Query as to whether the mitigation fund could be used to implement provisions in CBPs in a similar way that the fund will be used to support efforts such as natural resource protection, stewardship, and restoration programs. Under this expanded scenario, the calculation of the mitigation fee would be informed by weighted criteria related to environmental *and public health impacts* and policy goals.

## **Content of Cumulative Impact Analysis (CIA) - Discussion Questions from Slides**

A CIA should provide an accurate and broad “picture” of a community and as such, should include information about public health (because it is directly impacted by the environment), safety, traffic, housing, and social welfare. It should also include combined synergistic (not just piecemeal) effects of multiple sources on various media (air, water and soil). This sophisticated synergistic analysis goes beyond how EEA currently proposes to assess social and environmental burdens by separately screening areas for existing burdens, proximity to vulnerable populations, and impacts of specific infrastructure types. Such analysis also requires that the community is part of the conversation so that it can contribute real, on-the-ground evidence as to how it negotiates its current environmental burdens. A helpful article on the development of CIAs is available [here](#).

Many of these broad indices are found in the [ResilientMass](#) maps and should be used in CIA development. Ideally, in contrast with most of the information on the ResilientMass maps, the proposed new OEJE CIA maps will convey data in the smallest unit possible (i.e. census blocks instead of census tracts) and similarly make use of updated MA data that is housed across the state government agencies. Small census block units may not be possible for language or public health data but may be available and used for other categories. Importantly, the baseline conditions that are discovered during a CIA should be incorporated as part of the EEA’s criteria assessment and become part of the formal site suitability and permitting documents, so that future compliance and enforcement actions may refer to baseline conditions when needed.

Ceres thanks you for this opportunity to submit these comments on the straw proposal for site suitability methodology and welcomes any means by which we can further support you in the important work ahead. Please contact me at **[rreddi@ceres.org](mailto:rreddi@ceres.org)** if I may be of assistance.

Sincerely,



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Ceres