The Clean Energy Industry Partners include New Leaf Energy and BlueWave Energy, members of the Massachusetts Commission on Energy Infrastructure Siting and Permitting:

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Via E-mail to sitingboard.filing@mass.gov

The Executive Office of Energy and Environmental Affairs;
The Office of Environmental Justice and Equity;
The Energy Facilities Siting Board ("EFSB");
The Department of Public Utilities ("DPU"); and
The Department of Energy Resources ("DOER")

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Re: Comments on the Site Suitability Methodology for Clean Energy Infrastructure Straw Proposal

Dear Climate Act Implementing Agencies:

The Clean Energy Industry Partners (the "Industry Partners") thank the Climate Act Implementing Agencies[1] and their staff for their work on the stakeholder sessions to date and the accompanying straw proposals. Solicitation of diverse input is critical for the success of efforts to implement the 2024 Climate Act (An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers, St. 2024, c. 239) (the "Climate Act").

[1] As used in this letter, the "Climate Act Implementing Agencies" or "Implementing Agencies" refers to: the Executive Office of Energy and Environmental Affairs ("EEA"), the Office of Environmental Justice and Equity ("OEJE"), the Energy Facilities Siting Board ("EFSB"), the Department of Public Utilities ("DPU"), and the Department of Energy Resources ("DOER").

The Site Suitability Methodology for Clean Energy Infrastructure Straw Proposal (the "Straw Proposal") should start a positive discussion about these important and complex issues. The Industry Partners appreciate the opportunity to engage at this early stage of development, but it will be important for the Implementing Agencies to continue to seek and receive input on these complex issues; there has not been sufficient time to fully assess and respond to the Straw Proposal. The Industry Partners encourage ongoing dialogue and future opportunities to provide input.

In this letter, the Industry Partners provide initial comments by responding to the questions posed in the Straw Proposal. The Industry Partners are continuing to work through this complex proposal and its interactions with other proposals and policies. As a result, the Industry Partners' thinking on these issues may evolve.

At a high level, and recognizing that many important aspects of the proposal are not fully developed, the Industry Partners are concerned that the Straw Proposal overly emphasizes negative impacts associated with clean energy facilities and underemphasizes their positive contributions to the Commonwealth and its communities. Clean energy facilities provide a wide array of benefits, including to natural and working lands. Clean energy facilities should be sited to minimize negative impacts. Projects that are well-sited should be advanced, and projects with significant impacts should proceed only with adequate and appropriate steps to avoid, minimize, and mitigate impacts. But it is critical to remember that many clean energy facilities (especially smaller facilities that will be required to go through new permitting processes under the Climate Act) have few and limited negative impacts. Conversely, these facilities are critical to achieving the Commonwealth's emission reduction goals, support a thriving clean energy economy, preserve natural capital, provide or enable ecosystem services, and put the Commonwealth on a path to sustainable long-term energy affordability.

The Industry Partners are also concerned about the extent of reliance being placed on BioMap tools. These tools are inadequate for this important task and subject to frequent errors that could give misleading and inaccurate results.

Questions Posed in the Straw Proposal

Question 1: *Are the proposed evaluation criteria appropriate? Are there criteria that should be applied to certain types of infrastructure and not others?*

Response: As the Industry Partners understand the Straw Proposal, seven criteria are proposed: (1) Development Potential, (2) Climate Change Resilience, (3) Carbon Storage and Sequestration, (4) Biodiversity, (5) Social and Environmental Burdens, (6) Social and Environmental Benefits, and (7) Agricultural Production Potential. With some refinements, discussed below, these categories may be generally reasonable. However, measuring these criteria in a way that effectively differentiates between well-sited and poorly

sited projects will be challenging because of data limitations. No rigid methodology can fully capture all factors bearing on whether a site is well suited for a project. Many relevant factors are subjective, difficult to measure or compare in a quantitative fashion, or require a high degree of granularity to be meaningful and accurate. Scores on generalized criteria should be used as one piece of information and should be viewed holistically with other information provided by an applicant or stakeholders. Further, because there is no "right level" of tradeoff between these different criteria, and any weights applied would not be sensitive to the subjective nuance of a specific project and location, disaggregated scores may be more helpful than aggregated scores.

More specifically, many of the proposed criteria are likely to interact or overlap with each other in ways that could unintentionally place undue weight on certain factors common across criteria or fail to appropriately value factors that are not fully captured in the criteria. This makes the specific data sources and criteria weighting important. For instance, carbon storage sequestration, biodiversity, and agricultural production scores may be aligned in systematic ways that magnify or double-count certain factors if that overlap is not accounted for in the methodology. Development potential could also have significant covariation with other criteria. All these criteria may push development towards areas that have previously experienced certain types of development. In contrast, the social and environmental burdens criteria may push certain types of development away from previously developed areas. The Implementing Agencies should carefully consider how the criteria they choose, the data sets they use, and the weights they assign to criteria interact with broader goals.

Further, some data sets may result in unreasonable scores if there is not a way to apply site-specific information in the scoring process. For instance, agricultural production, if measured using soil mapping, could result in areas that are not or could not be used for agricultural purposes (*e.g.*, landfills, paved or developed areas, brownfields) being identified as having high agricultural value, leading to "false negatives" that could warp scoring results. Similar "false negatives" could be encountered with many or all of the criteria presented in the Straw Proposal, as statewide GIS layers are updated only periodically and may be based on inaccurate or out-of-date information. There is extensive experience in Massachusetts with poorly-mapped BioMap layers resulting in faulty results. Further, site-specific mitigants to the impacts on agricultural production are also not considered; agrivoltaics projects, under which energy production and agricultural production coexist, will necessarily be sited on agricultural land but should

receive favorable consideration instead of the negative consideration proposed in the current criteria. If standardized scoring is adopted, the Implementing Agencies should allow an applicant to present a case for why a score on one or more criteria should be adjusted to reflect actual site conditions.

With respect to the proposed "development potential" criterion, the law does not define this term, while the Straw Proposal defines it in the following statement: "A critical factor in the siting of clean energy generation is the ability to connect to Massachusetts' transmission or distribution systems, or in the case of transmission and distribution infrastructure, the ability to serve nearby loads." *See* Straw Proposal at 3-4. However, interconnection feasibility is not the only factor that goes into a site's development potential. In order to be potentially developable for clean energy infrastructure, a site must have sufficient available land at appropriate slopes and orientation, while avoiding wetlands and other land use types prioritized by the remaining criteria, in addition to having sufficient capacity to cost-effectively interconnect to the grid. Defining "development potential" as interconnection capacity alone could lead to results such as urban areas with no available land receiving an advantageous score. In order to avoid such inaccurate results, this criterion must consider both land availability and interconnection capacity at the same time.

In practice, the only areas that will receive an advantageous score for interconnection capacity in the near term under the proposed definition are areas with approved Capital Investment Plans ("CIPs"). While there is a public interest in ensuring that ratepayer-funded grid upgrades are fully utilized, it is also in the public interest to advance projects outside of CIP areas where the developer will fully fund any grid upgrades necessary to interconnect.

By definition, the CIPs were reactive, responding to past development patterns rather than starting from a land use perspective to consider the most appropriate and feasible locations for future development. One of the primary purposes of the Electric Sector Modernization Plans ("ESMPs") was to determine where interconnection capacity can be cost-effectively and proactively expanded in areas that can accommodate additional development of clean energy infrastructure; unfortunately, this proactive planning process is still being established. In the absence of proactive planning for grid infrastructure to connect distributed generation, penalizing clean energy infrastructure through the permitting process if it is not sited close to existing interconnection capacity dramatically narrows the potential

areas for clean energy development to a small fraction of the Commonwealth. It would also have the perverse result of punishing projects that a developer advances precisely because the developer has investigated a particular site and determined that the site has development potential on the basis that a rough and inaccurate standard formula assumes that the site does not.

With respect to the proposed "carbon storage and sequestration" criteria, the Industry Partners recommend that the amount of carbon offset by the operation of a project also be considered in this criterion to fully capture the effect of a project on carbon emissions and progress towards emissions goals. As described, this criterion is intended to track contributions towards the Commonwealth's net zero greenhouse gas emissions commitment. *See* Straw Proposal at 4. However, measuring only changes to carbon stock on a site and changes to carbon sequestration in biomass over 30-50 years will not accurately measure a project's contribution towards net zero emissions. In fact, the proposed approach would systematically and dramatically understate the contributions of clean energy facilities to achieving the Commonwealth's emissions goals by omitting consideration of the most significant effects of such facilities. The Implementing Agencies should develop a methodology for estimating clean energy facilities' contributions to reduced emissions over their useful life and include that value in this criterion, which could be renamed as a "Carbon Impact" Criteria. To the extent that this criterion was not actually intended to reflect contributions to Massachusetts's greenhouse gas emissions standards, but rather a desire to avoid changes to existing ecosystems, it would be better to achieve that purpose through a thoughtfully weighted biodiversity criterion.

Similarly, the "Climate change resilience" criterion seems to contemplate only that clean energy facilities will negatively affect resilience (as a result of being sited in areas of increased risk from climate-related risks). If so, this is a wildly incomplete view of clean energy facilities and resilience. In fact, many clean energy facilities may be proposed precisely because they ***improve*** resilience. This could be by providing redundancy, replacing existing facilities with newer, more robust facilities, enabling or establishing micro-grids, or allowing for energy-self supply or backup. Put bluntly, installing a battery storage facility at a hospital that could run critical facilities in the event of an emergency should not result in a negative siting score because that hospital is in an area that may experience floods in the future – a criterion that gives that result would be worse than unhelpful.

Finally, the Implementing Agencies should consider developing guidance on interpreting scores generated using these standards. Without context, it may be difficult to interpret the meaning of project scores, especially when the process is new.

Question 2: *Are there other criteria that should be added (e.g., public health, safety, or welfare-related metrics)? Please provide proposed metrics and data sources to assess any recommended criteria.*

Response: The Industry Partners support continued dialogue about additional criteria. Potential criteria could include contributions to reductions in greenhouse gas emissions, contributions to reductions in emissions of other air pollutants, economic contributions to communities, or provision of various ecosystem services.

Question 3: *EEA proposes to assess social and environmental burdens by screening areas for existing burdens, proximity to vulnerable populations, and impacts of specific infrastructure types.*

a. Is this the right way to assess social and environmental burdens?

b. Would this be duplicative of the cumulative impact analysis requirements?

c. Should the site suitability methodology consider whether an area hosts a disproportionately large amount of specifically energy infrastructure?

Response: Assessing social and environmental burdens in a manner that can be quantitatively compared across the state fairly and meaningfully will be challenging. The Implementing Agencies should carefully consider which existing burdens are relevant and measurable for this evaluation and whether specific types of proposed projects affect those specific burdens in a way that makes it meaningful to score them on that basis.

Moreover, the Implementing Agencies should consider whether a rough screening tool that may send counterproductive signals is beneficial when a more site-specific cumulative impacts analysis will also be conducted, at least for some projects, that is likely to provide more relevant information to the approval authority. The Industry Partners are not necessarily opposed to a criterion to measure social and environmental burdens. Such a criterion may even be important to balance other criteria, which appear generally crafted to favor siting in previously developed areas. However, the Industry

Partners expect that a criterion of this type will be difficult to implement while also being duplicative of and inferior to the case-by-case cumulative impact assessment. The Industry Partners worry that such a criterion may also contribute to misinformation and inaccurate information due to its necessarily generalized approach and the complexity of specific communities and projects.

These concerns are especially acute because there are fundamental reasons to expect that it will be challenging to successfully implement an effective social and environmental burdens criterion. First, a methodology that assumes all clean energy facilities will negatively burden communities could easily lead to poor results for affected communities. For instance, scoring approaches that prevent or delay resources from locating in areas due to historical burdens (for example high levels of air pollutants) to which those resources will not contribute (and which they may, in fact, alleviate) may not make sense and may, in fact, be counterproductive. A standard that would penalize siting a solar resource on a landfill or above a large parking lot because the landfill or parking lot had historically contributed to environmental burdens in the community would be inconsistent with the Commonwealth's siting objectives and the host community's interests. Similarly, standards that prevent, delay, or impair the siting of clean energy facilities in a community when those facilities are necessary to allow that community to access services like EV charging, behind-the-meter solar, electric heat pumps, or capacity for new electric loads (*i.e.*, new economic activity) or to benefit from enhanced reliability would not protect that community from additional burdens. Perversely, such standards would contribute to burdens by preventing the historically burdened community from accessing the benefits of the energy transition, impairing economic growth, preventing additions to the local tax base, preventing redevelopment of impaired properties, and leading to less reliable electric service.

Second, many clean energy facilities have limited or narrow impacts that may have no meaningful negative effect on nearby communities. For instance, solar facilities do not cause traditional environmental burdens like emissions of pollutants into the air or release of pollutants into waterways. A scoring approach that assumes locating a community solar facility within a mile of a community that was historically affected by an old industrial facility should be disfavored due to impacts to that community, for instance, may lead to misleading results in the likely scenario that the solar facility has no negative effect on that community. A project-specific assessment could show this lack of impact, but a blunt tool like a standard scoring

methodology is unlikely to be able to effectively distinguish between when a project impacts a burdened community and when it does not.

Given these challenges, if the Implementing Agencies move ahead with a criterion of this type, they should not use a methodology that assumes clean energy facilities located in or near communities with existing burdens are always bad for those communities and that the extent of the harm measured can be based on the scope of a current or historical burden without considering the nature of the relevant historical burdens and anticipated project impacts. Instead, the Implementing Agencies should consider a more nuanced approach that identifies the types of impacts typically associated with a project of a specific type and the types of burdens a community faces.

A community that has been burdened by the nearby location of a significant source of air emissions may not be burdened by hosting a solar facility that does not contribute to air emissions, and indeed is part of the solution to phasing out such emission sources.

It is critical that the Implementing Agencies not adopt a standard of this type that could interfere with the use of more site-specific considerations. No formulaic approach will be able to both be applied across the Commonwealth and reflect accurately the nuanced needs of communities. Neither communities nor project proponents are served by a rough metric that may not accurately capture the unique experience of relevant communities.

In addition, a poorly-implemented cumulative impact metric could conflict with the scoring criterion discussed above relative to a facility's proximity to grid infrastructure and the Commonwealth's policy with respect to CIPs. As noted above, interconnection capacity currently exists primarily in CIP areas. These areas are, by definition, areas that have experienced significant solar development to date. At the same time, as noted above, it is in the public's interest to ensure that the additional hosting capacity that has been approved through the CIPs is fully utilized. In this context, a scoring standard that penalized projects located in CIP areas because of the very investments made to enable facility interconnections would be counterproductive. It would be inappropriate to penalize a facility in one criterion if it is not located near grid infrastructure, while penalizing a facility in a different criterion if it is located near grid infrastructure that has been expanded in response to prior clean energy development.

Finally, a scoring mechanism that is specifically based on the locations of historical energy infrastructure would likely be a poor approach. If the Implementing Agencies move ahead with a criterion of this type, it should be based on the premise that incremental burdens to burdened communities are disfavored (*i.e.*, recognizing and minimizing harms to communities where additional impacts may be more acutely felt), not a premise of corrective justice that holds new clean energy facilities accountable for past energy siting. The focus should be on identifying actual impacts from proposed facilities on burdened communities. A scoring criterion should not be based on the faulty assumption that preventing clean energy facilities in a location can correct or rectify historical siting consequences associated with past energy infrastructure. It is important to remember that many clean energy projects are themselves being developed to address environmental impacts associated with past energy facilities. There is no reason to directly link new solar and storage projects to legacy energy facilities: they do not have similar impacts on host communities, at least some types (including clean generation and storage) are unlikely to be developed by related entities, and there can be substantial benefits to converting sites used for older energy purposes to new, clean energy facilities (*e.g.*, converting a gas-fired generator to an energy storage facility).

Question 4: *Should EEA assess social and environmental benefits by adding points if a project would provide certain benefits, like siting facilities on brownfields or landfills, siting on the built environment, providing habitat benefits, creating local jobs, or displacing an emitting resource?*

a. Are these the right ways to assess social and environmental benefits, or are there different benefits or metrics we should consider?

Response: Please see the Industry Partners' response to the previous questions. Appropriate consideration of the many benefits that clean energy facilities can provide is important to generating scores that are accurate and meaningful. While some additional criteria to reflect these benefits could be helpful, it may be difficult or impossible to capture all the complex and nuanced ways that projects can provide social and environmental benefits using predetermined objective scoring criteria. Nevertheless, some refinements could reflect common, easily measured, or particularly desirable benefits by providing set or weighted "points." That said, because there are infinite project variations and means of providing benefits, the application and review process must allow project proponents to present

and explain other benefits without limitation regardless of whether they are captured in set, predetermined categories.

Social and environmental benefits that EEA should consider for additional points or other weighting include:

- Ecosystem services (such as contributing to biodiversity, providing pollinator or other habitat, etc.);
- Contributions to achieving greenhouse gas emission reductions;
- Contributions to reducing emissions of other air pollutants;
- Siting on brownfields;
- Siting on landfills;
- Siting on or in buildings or parking lots;
- Siting at former energy facilities;
- Displacing emitting resources (*e.g.*, replacing on-site fossil generators);
- Provision of services directly to customers in the community (*e.g.*, behind-the-meter use);
- Siting energy storage on feeders subject to the "Distribution Circuit Multiplier" under the Clean Peak Standard;
- Providing, protecting, or restoring habitat;
- Creating jobs;
- Contributing to resiliency (unless captured in other criteria);
- Contributing to service reliability; and
- Contributing to customer climate goals or objectives (e.g. the emission reduction goals of municipalities, educational institutions, corporations, or non-profit organizations).

Question 5: *Is the proposal to use riverine and sea level rise exposure scores to assess climate resilience, focusing on flooding risks the right way to assess climate resilience?*

a. Should other climate risks be considered?

b. Do different types of energy infrastructure face different risks?

c. Additionally, should EEA consider not just climate risks the energy facility may face, but also how the facility may exacerbate climate impacts in the surrounding area?

Response: Climate change resilience impacts are not primarily a factor of site location. Resilience impacts are also affected by the type of project and the project design. A project may be located in an area with flooding risk, yet be

designed in such a way that the project itself is not threatened by flooding, and may even improve flood resilience.

In addition, many clean energy facilities will contribute to resilience in other ways: distributed generation and storage resources, as well as transmission and distribution investments, can reduce vulnerability to outages caused by climate-related weather or ecosystem changes. Facilities can be designed to be robust in changing conditions, even if they are located in areas that may be subject to climate-related risks. In fact, it may be important to locate resilient facilities in vulnerable areas to ensure future resiliency. Projects that are designed appropriately for their location and meet applicable standards over their useful life should not be penalized based on this criterion and projects should have an opportunity to demonstrate that this is the case.

Further, this criteria is incomplete if it does not assess positive contributions to resilience. If locating a clean energy facility at a particular site provides climate resilience, that benefit should also be reflected in scoring.

Question 6: *The site suitability methodology is required to consider "development potential" by law and grid alignment is proposed as the metric for considering development potential for generation and storage projects. Is this the right way to evaluate development potential for these types of projects?*

a. For transmission and distribution projects, could development potential be considered by measuring the amount of load projected for that area in the future by the ESMP load projections or EEA's planned building electrification load projection analysis, and/or by overlap with designated areas of development as defined by Chapter 40R (Smart Growth zoning), the MBTA Communities Act, or other already designated areas?

Response: As the Industry Partners understand the Straw Proposal, for generation and storage facilities, the Implementing Agencies propose to measure "grid alignment" (which is itself being proposed as a measurement of development potential) by calculating a project's distance from existing or planned substations, CIPs or ESMP investments. The Industry Partners are concerned that this approach to measuring development potential would not be effective and could be counterproductive. The best measurement of "developmental potential" is the judgment of developers, who are motivated by market forces to seek cost-effective solutions. Put simply, if the purpose of this criteria is to avoid unnecessary investment in interconnection

upgrades, developers are already highly motivated to take this into account. The Industry Partners encourage the Implementing Agencies to engage with stakeholders to work on developing a criterion for "development potential" that would be helpful in the siting process and not simply an inaccurate proxy for market forces.

As to the specific proposal advanced in the Straw Proposal, costs of interconnecting generation and storage projects often, but not always, increase with distance from a substation. CIPs and ESMP investments may (and are generally intended to) reduce the costs of interconnection. The proposal in the Straw Proposal could serve as a rough proxy for interconnection costs. However, it is important to recognize that interconnection costs can be highly variable and are affected by many factors. Distance from substations will not always accurately reflect interconnection costs, and inclusion in ESMP or CIP planning is not necessary for a clean energy facility to have a positive development potential.

Project developers are already highly motivated to reduce interconnection costs and will only pursue projects where such costs can be supported. As a result, any project for which a project proponent submits an application will have a positive development potential in this sense. For that reason, it is not clear that a criterion of this type would distinguish between projects in a meaningful way, and any method applied is likely to be imprecise and inaccurate. Put bluntly, a criterion that suggests a project being advanced is less cost-effective than other projects based on this type of approach will be subject to significant error and will miss the point that the project has already been sited to maximize development potential in this sense through the operation of the incentives associated with a competitive marketplace.

Further, upgrades that a solar or energy storage facility pays for to interconnect often provide local benefits through the improvement of local grid conditions (e.g., upgrade from single phase to three phase). These benefits go uncaptured in a simple distance metric.

If the Implementing Agencies move ahead with a criterion of this type, the Industry Partners agree that this criterion should recognize in some way the benefits of siting a facility where ratepayers have invested in grid infrastructure, such as the CIP areas.

More broadly, the Industry Partners recommend that any criterion of this type not be overly prescriptive. An applicant should have an opportunity to explain why a proposed site has a high development potential in cases

where the scoring approach would otherwise show a low potential, but the project proponent can make a reasonable case that the site is cost-effective.

Question 7: *How should the site suitability methodology be integrated with the cumulative impacts analysis proposal(s) that will be proposed by OEJE and the EFSB? If yes, please provide specific recommendations on how this may be best achieved.*

Response: Please see the Industry Partners' responses to Question 3 above. For projects for which a CIA is prepared, that CIA is likely to overlap significantly with any site suitability criterion used to measure social and environmental burdens and benefits. A CIA is likely to be a more comprehensive and project- and site-specific evaluation of such burdens and benefits, whereas a standardized criterion will be inherently more generalized. A CIA might also bring to light information relevant to interpreting scores on other site suitability criteria.

The Industry Partners recommend that, if the Implementing Agencies adopt a site suitability standard that is applicable to projects preparing a CIA, scoring consistent with that standard be presented in an application and that relevant scores be addressed, as appropriate, in an accompanying CIA. The CIA can be expected to provide additional detail and context at least with respect to social and environmental burdens and benefits. For example, a project may receive a high or low score from applying the standardized site suitability methodology for social and environmental burdens that does not reflect the more robust conclusions in a CIA. Applicants should be able to present the standardized score with an "asterisk" directing attention to the CIA to provide additional context.

Question 8: *How should this framework consider the suitability of where undersea transmission cables are sited? Note that this framework applies only to projects under state jurisdiction, which includes the portions of undersea transmission cables in state waters (i.e., 3 nautical miles or less from the shoreline).*

Response: N/A

Question 9: *Should this methodology be applied differently to linear infrastructure (e.g., transmission lines and distribution feeders) as opposed to non-linear*

infrastructure (e.g., generation facilities, energy storage, and substations)? If so, please provide specific examples of how these types of facilities should be evaluated differently.

Response: Site suitability criteria should be applied to reflect the different impacts of different types of projects. Linear and non-linear projects can have different impacts, particularly with regard to criteria intended to capture development potential and social and environmental factors. It appears that the Implementing Agencies are already considering that a "development potential criteria" should be different for utility infrastructure, and the Industry Partners agree that, on this criteria, it is important to have different scoring methods. As described above, when considering social and environmental factors, a methodology would be more meaningful if it was specific to the types of impacts associated with a type of facility and whether those types of impacts would contribute to relevant burdens in a community.

Question 10: *What weights should be assigned to each criteria for the purposes of scoring?*

Response: Weighting should be done carefully. Disaggregated scores are likely to be more helpful to siting considerations than an aggregated weighted score because of the inherent complexity of evaluating site suitability and the subjectiveness of relevant factors. To the extent it is valuable to generate an overall weighted score, a criteria reflecting total contributions to greenhouse gas emissions (not just current or future carbon sequestration) should be significant. A primary reason for siting clean energy facilities is to reduce carbon emissions and advance the Commonwealth's climate goals. Projects that leverage a locus to provide more emission reductions should be recognized favorably in the siting process.

In addition, the Implementing Agencies should avoid applying unintended weight to factors that may be closely aligned across multiple criteria. For instance, as proposed, the carbon sequestration and storage criteria may be capturing some of the same interests also captured in the biodiversity criteria. Weighting should recognize that the same relevant factors may be present and captured in multiple criteria to prevent those duplicated factors from being over-weighted. Further, it is critical that the methodology adopted not result in scoring that unreasonably limits areas being deemed suitable for development.

Question 11: *Should the site suitability methodology include "ineligible areas," with the ability for utility infrastructure to apply for a waiver?*

a. Are the potential ineligible categories proposed appropriate?

b. Should any of these land categories be implemented into the site suitability methodology as criteria rather than as ineligible areas?

c. Are there other categories of land we should consider as "ineligible areas?"

Response: Explicitly identifying ineligible areas in this process and at this level of generality is unnecessary and inadvisable, especially due to data limitations, such as those that affect BioMap data. If development of a proposed project is prohibited under current law, that project would not be able to proceed and obtain approval through the new permitting process. The Implementing Agencies should not expand the scope of this rulemaking process to create new substantive restrictions that effectively amend the substantive requirements of already existing constitutional, statutory, or regulatory programs. For instance, Article 97 lands are highly regulated under Article 97 itself and under implementing statutes and policies. Similarly, the Wetlands Protection Act includes robust and complex provisions governing use of resource areas. It is doubtful that the Climate Act authorized regulations that would effectively amend the substantive provisions of these or other existing laws (or in the case of Article 97, constitutional provisions).

Moreover, creating newly ineligible areas for development would not be beneficial and could negatively impact the Commonwealth's ability to achieve its greenhouse gas emission mandates. Bright line restrictions would only serve to constrain permitting authorities (beyond the limits of current law) and prevent consideration of projects that would otherwise be permissible under applicable laws and might have overwhelmingly positive site suitability when considered holistically. For instance, consider a project where only a very small part of a project footprint overlaps with an area recognized as "top 20% of forests for carbon storage statewide," but no alteration of that area is proposed. In fact, the project proposes to maintain and preserve that area as a visual buffer. Or imagine a project that would put solar panels on an existing disturbed area of Article 97 land (formerly used for parking) for the purpose of providing renewable power to an existing municipally-owned bathhouse or septic treatment facility. Or consider a project where an abandoned industrial building is located within an area

designated as protected habitat for a pollinating insect, and the proposed project would remove abandoned industrial facilities and add solar panels with pollinator-friendly habitat such that the Natural Heritage and Endangered Species Program considers the change a significant net-positive for the relevant species. Or imagine an underground electrical interconnection that passes under a habitat area but entails no surface disturbance whatsoever. The point is that projects come in infinite variations, and it is not advisable to create immutable bright-line restrictions when a case-by-case evaluation would yield a better result.

In addition, prohibiting use of lands based on a Geographic Information System ("GIS") layer is inappropriate due to the varying quality of the underlying data and the periodic nature of updates to those datasets. For example, a particular site may show up in GIS as BioMap Core Habitat, yet it has been previously excavated as a gravel pit.

Approval authorities should retain the discretion to review projects holistically and approve or reject them on their overall merits. The scoring criteria could assist this review by requiring that applicants identify overlap with potential problematic areas and explain why the overlap should be allowed. Regardless of whether areas are made ineligible, development is unlikely to proceed where permitting approval is unlikely.

While a waiver process might be viable, a waiver process could be burdensome for reviewing authorities and project developers. It would be more efficient to require additional information justifying the project siting be included with applications for projects in such areas.

If areas are made ineligible, and a waiver process is implemented, there is absolutely no reason to prevent generation and storage resources from being able to apply for a waiver. A waiver could always be denied. Such a prohibition would only serve to preclude projects that would otherwise be approved and to prevent development of projects that might clearly be in the public interest.

Question 12: *Which data sources and metrics should be used for scoring each criterion?*

Response: The Industry Partners look forward to continued efforts to refine criteria. As described in various contexts above, the Industry Partners caution about reliance on BioMap data, which can be faulty or misleading.

Question 13: *Should any of the criteria scoring metrics vary for different types of energy infrastructure? If so, how?*

Response: Please see the Industry Partners' response to Question 9. It makes sense to evaluate development potential differently for utility projects and generation or storage projects. For a development potential criteria, it might also make sense to include recognition that energy storage facilities may be valuable located in proximity to existing renewable generation or on highly loaded circuits.

It would also make sense to evaluate social and environmental factors based on the specific impacts associated with different types of facilities rather than assuming all facilities have similar impacts. For example, the slides accompanying the straw proposal suggest a blunt approach of "Score = Facility Impact × Existing Burden × Population Vulnerability." That approach assumes that all impacts associated with a type of facility could be aggregated and all existing burdens could be aggregated and that multiplying those metrics is relevant regardless of whether the impacts and burdens align. This approach would not accurately capture whether a proposed facility would contribute to the types of burdens faced by a community and, for that reason, may not be accurate as a tool for comparing the significance of community impacts across different projects and communities. The Straw Proposal suggests that a more fine-tuned analysis looking at different types of impacts, potentially for facilities and communities, could be used. *See* Straw Proposal at 5. A more fine-tuned approach, if well-crafted, would likely be a better tool for identifying whether a proposed project would significantly affect relevant communities.

Question 14: *How should project footprint, or the boundaries of a project's footprint, be measured?*

a. Should the definition of project footprint vary for different types of energy infrastructure, or for different site suitability criteria?

Response: A project's footprint should reflect the area that will be permanently altered. Property parcel boundaries are often inflexible, and the locus that matters for measuring impacts is the boundary at which alterations to existing conditions will occur.

Question 15: *What kinds of requirements or permit conditions should a permitting agency be able to institute based on a project's site suitability score to ensure project developers avoid, minimize, and/or mitigate environmental impacts?*

Response: The new consolidated approval process consolidates existing permitting and approval processes. The conditions a permitting agency implements should be consistent with the types of conditions that may be instituted under the otherwise applicable laws. The scope of appropriate conditions could vary from project to project. For instance, a project that would require an Order of Conditions due to work in areas jurisdictional to the Wetlands Protection Act, could be conditioned in the same ways that such projects may currently be conditioned under that program. But it would not be appropriate to use conditions from the Wetlands Protection Act for a project that does not include any work in jurisdictional areas under that program.

The site suitability standards will, hopefully, provide the permitting agency with more information to assess what conditions are appropriate. For example, a poor score on a criteria reflecting climate resilience may indicate that it would be appropriate to consider conditions that make the facility more resilient, while a poor score on a biodiversity metric may make it appropriate to consider conditions that avoid, minimize, or mitigate impacts to biodiversity. Existing state and local programs already protect these interests and provide models for reasonable and effective conditions that can be applied using the information generated through the application of the site suitability standards. Further, the mitigation hierarchy will provide additional information on which available condition approaches may be appropriate to a specific situation.

Regardless of the approach the Implementing Agencies take on permit conditions, it is critical that there be transparency for the development community as to what types of conditions are permissible and likely, and how the types of conditions will be linked to the application and the site suitability standards.

Question 16: *If they are ultimately implemented, what should be the minimum and maximum levels of mitigation fees to discourage siting in less suitable areas while not being excessive?*

Response: The Implementing Agencies should not advance mitigation fees based on site suitability designations at this time. A lot is changing at once for the siting and permitting of clean energy facilities, and the effects of these changes will not be clear until there is experience under the new permitting

regime. Transition to the new siting regime will be complex and potentially burdensome for both project proponents and implementing agencies. EEA would be better served by monitoring initial experience under the new permitting regime and then assessing whether a mitigation fee structure would be beneficial. A mitigation fee structure that turns out to be set poorly could stall development at a crucial time for achieving the Commonwealth's clean energy goals.

Moreover, depending on the final criteria and methodologies adopted and on the threshold set for "less suitable areas," it is possible that large portions of the state might unreasonably fall into this category. Additional costs from this mitigation would likely be borne by ratepayers (for utility projects) and by the Commonwealth through slowed progress towards clean energy goals (please also see the response to Question 17). It is worth noting that, as currently proposed and without knowing ultimate weights, the criteria under consideration are tilted towards considerations of negative impacts rather than positive impacts, including—oddly—with regard to contributions to the Commonwealth's greenhouse gas emissions goals (impacts to carbon sequestration considered, but not generation of clean energy) and resilience (location in at risk areas considered, but not contributions to enhancing resilience). This focus on negative impacts may tilt scores so that proposed sites seem "less suitable" when they are not.

Question 17: *What kinds of projects should mitigation fee funds be used for?*

a. Should they be used for general conservation and resilience projects throughout the state, or for host community-specific mitigation projects?

b. How should community benefits agreements interact with mitigation fees?

Response: Please see the response to the previous questions. While mitigation fees may be appropriate in the context of an incentive program such as the Solar Massachusetts Renewable Target Program ("SMART"), it is premature to levy fees on many or all clean energy infrastructure projects as a condition of permitting. Applying new fees to clean energy facilities will: (1) increase the costs of developing utility infrastructure, resulting in higher electric rates for consumers across the commonwealth; and (2) raise the cost of clean energy generation and storage relative to existing generation and carbon-based alternatives, slowing progress towards the Commonwealth's emission reduction goals and delaying the benefits of a clean energy transition (including, but not limited to, job creation and reduced emissions of air pollutants). Negative impacts from siting will be addressed by requiring

avoidance, minimization and mitigation on a project-by-project basis. It is unnecessary to apply an additional mitigation fee – particularly one based on rigid generic standards – in addition to project-specific conditions.

Conclusion

The Industry Partners again thank the Implementing Agencies and their staff for their work on the Straw Proposal and the stakeholder sessions more broadly.

Please do not hesitate to reach out with any questions or to discuss these comments further.

Sincerely,

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