Comments on Site Suitability Methodology for Clean Energy Infrastructure Straw Proposal & S
https://www.mass.gov/doc/2024-ca-site-suitability-proposal-english/download

Comments by Michael DeChiara, Shutesbury, MA
[redacted]

GENERAL COMMENTS

1. Slide 28: Regarding mitigation, EFSB/DOER must be clear with applicants that the reason that harms cannot be avoided or minimized can not be based on finances. This is the predominant reason developers say they can't do the right thing - that it is cost prohibitive. If applicants are allowed to continue with poor siting just because it eats into their profits, then the entire mitigation hierarchy will be a hollow statement with little meaning. This needs to be made explicit in the regulations.

2. Slide 27: According to the slides, the applicant will determine its own Suitability Score. This is a recipe for scamming and will certainly not reflect the true situation. This is especially true given the subjective nature of some of these scores. Similar to my recommendation that EFSB/DOER have the ability to engage a third-party with no industry connections (reliant on other business by the industry) to conduct a more objective scoring analysis. Like other third-party reviews, this would be paid for by the applicant.

3. In considering data sources, I think EFSB/DOER needs to look beyond data sets and also consider "on the ground" factors and narrative evaluation, which will qualitative can be quantified by a reviewer. EFSB/DOER also should re-think its data sources given the shift away from climate work of all types by the federal government - these sources may either disappear or may be biased going forward.

SITE SUITABILITY CRITERIA

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

As I wrote to DOER regarding the SMART 3.0 approach, the prior SMART 2.0 use of adders and subtractors allowed for gaming of the system and ultimately resulted in continued poor siting in the Commonwealth. The expansion of solar in forests and on agricultural land is documentation of this failure. It was therefore with great appreciation that SMART 3.0 shifted its approach to the mitigation fee approach.

EFSB and DOER should follow the approach used by SMART 3.0 in its revised approach by only considering negative siting to create the score. It is alarming that EFSB/DOER is considering "benefit" offsets (essentially adders) among their siting criteria - this just recreates the loopholes that can be scammed by applicants to allow for poor siting. Benefits are just adders with different name. I strongly think that no benefits should be considered in the calculation of a suitability score. The intent is supposed to be to push developers to site projects appropriately which means minimizing bad criteria. Opening the door by offering offsets for "benefits" enables them to do a calculation game - "what can we get away with regarding bad siting if we can counter the hit of low scores by gaining points with promised benefits?" At the very least, non-siting related benefits like job creation and recreation should definitely be taken off the table. This is akin to the SMART 2.0 adder for providing energy to a low-income community (to be named later with little accountability or documentation required) something that I saw firsthand used to get SMART credits for a 30 acreage solar project build entirely in the forest. Benefits are a bad idea and will result in poor siting.

In terms of the specific criteria:

A. **Developmental potential.** This criteria is also in the SMART 3.0 straw poll. While it is true that the Commonwealth should not be encouraging long transmission lines and proximity creates more resiliency in a climate-turblent world, this criteria must be weighted very low and needs to be further refined in terms of what scoring means and encourages. SMART 3.0 weights proximity to grid infrastructure among the lowest criteria.

   This is important because this criteria measures the distance for existing and <u>planned</u> substations. One of the reasons that there have been proposals for large ESS installations in the forests of Wendell, for example, is there is a substation nearby which the utilities like but the result is allowing an ESS in the forest. Only if the mitigation fee is weighted so fewer points are gained for this criteria, will this kind of placement in forests be avoided.

   Equally troubling is the fact that planned substations are considered as well as current substations. While we need to grow and update the grid, this cannot be an excuse for bad siting of energy generation. A substation could be planned for a poor location in proximity to forests, agriculture, or wetlands because it is convenient for the utility. That will not mean it is good for clean energy siting. So again, this factor should be weighted the least.

B. **Climate Resilience**. I think this criteria is very important but EFSB/DOER it is reasoning (slide 25) gets it very wrong. "Ensuring the resilience of energy infrastructure" is not the reason for this criteria as the slide suggests. Rather it is the need for communities and the ecosystems to be resilient in the face of dramatic changes from the climate crisis. Climate change is here and with it storms, drought, flooding, etc. The goal is to site clean

energy in ways that enables communities and the surrounding environment to mitigate these naturally. For example, I have heard that Massachusetts, as a state, is cooler because of the surrounding forests in western Mass, NH and VT. If we lose more forests, the heating up of eastern Mass from climate change will be even worse.

It is not clear if the suggested Climate Resilience Design Tool (link in slides doesn't work) is the appropriate tool. I would suggest it is not sufficient. In another slide, it is suggested that the measurement be focused on river and sea level rise which seems very narrow. This should be measured in relation to ecosystem services, wildlife, water quality and quantity, etc.

This should be among the most weighted criteria.

C. **Carbon Sequestration and storage.** I think this is an essential criteria and should receive most weighting. I think the measurements make sense - both tree and soil storage, sequestration - current and future. I would also suggest that more data sources can be found beyond a single federal source.

D. **Biodiversity.** This is another very important criteria. I will commend EFSB/DOER for including both parts of BioMap as being important - both Core Habitat and Critical Natural Landscapes, which it has not done consistently in the communications/straw polls. I think both must be included. However, I would suggest that Critical Natural Landscapes (CNL) are equally as important as Core Habitat. For your convenience, Critical Natural Landscape (CNL) includes various sub categories: Landscape Blocks, Coastal Adaptation Areas, Tern Foraging Habitat, Aquatic Buffer, and Wetland Buffer. All are important element for biodiversity. BioMap differentiates Core Habitat and CNL not because one is more important than the other but because they are differently important. Both should get the same very important scoring and weighting.

E. **Social and environmental burdens.** First off, I think burdens is a soft term; I would suggest harms and potential harms. The regulations need to make clear that poor siting creates more than just inconveniences - it can have fundamentally dangerous impacts, especially in light of our changing environment due to the climate crisis.

While I massively support protection of historically disenfranchised and harmed communities, which tend to be low-income and/or populated with majority BIPOC residents, I think EFSB, DOER and even CalEnviro Screen, leave out rural communities. This framework often focuses on urban populations, or when rural is considered, a focus on tribal areas. While these are very important to identify and protect, I believe EFSB/DOER must look at the social and environmental burdens on rural areas as well since clean energy installations require land and open space and rural areas have been ground zero for this type of development. Looking at Massachusetts for example, there are several central Mass. rural towns with more than 10 industrial scale solar

installations; one I believe has 17. This creates social and environmental harm and further similar development must be prohibited.

F. **Social and environmental benefits.** As stated at the outset, I think no benefits should be included in the criteria for a siting score. This is especially true of non-site related criteria like job creation or recreation; these make no sense in this scoring model and do not promote good siting. They are effectively ways of allowing bad siting by allowing applicants to provide feel good that are politically palpable; job creation especially has no accountability at the permitting stage. Similarly, displacing an emitting source or providing habitat benefits are positive things when considered in isolation but they do not promote appropriate siting, in fact if they also can serve as cover for poor siting criteria. Allowing benefits as part of an offset in the scoring creates a large loophole that will continue Massachusetts' poor track record of insisting on appropriate siting through disincentives (just consider why we have lots of projects in forests already despite protective rhetoric of SMART and 2014 DOER Model Solar Bylaw). There should be no benefits in the scoring calculation.

G. **Agricultural production potential.** This is an important criteria and I commend EFSB/DOER for including it even though it is not in statute. However, given the continued push for agro-solar/dual use solar, this needs to be a strict criteria. Simply allowing continued growing to continue on the land is an insufficient standard. The SMART 3.0 straw poll allowed dual use solar with limited documentation of estimated yields - these future estimates must be stringent; not just an assurance by the developer that promised yields will occur. Dual use solar is still in the experimentation stage with little hard data and should be treated as such in these regulations. Similarly the type of agriculture is important - growing crops is not the same as grazing (often used in agro solar).

   Similarly, the use of USDA farmland soils is likely also insufficient. This criteria needs to protect and enable continued vibrant agriculture (as stated Mass. doesn't have enough and is losing it through other forms of development). In the context of the climate crisis this needs to be expanded and protected rather than allowing clean energy to take land out of production. The MA Local Food Action Plan, MDAR and regional agriculture groups like CISA in South Deerfield, should be consulted.

   Additionally, it is important to remember that forestry is considered agriculture in Massachusetts and is a protected use. Forestry in the context of these regulations should not be covered under the agricultural category - it should be under categories related to trees.

In general, the Site Suitability Scoring approach, which is similar to the SMART 3.0 approach makes sense if the above recommendations are incorporated. While I do support low scoring projects in being rejected, I do not think there should be a score that guarantees project

approval - the numbers and the information behind them should speak for the appropriateness of the project's siting.

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.
There should definitely be additional criteria.

Public health, safety and welfare is at the core of the Ch40A Sec3 para 9 solar exemption which includes both solar and energy storage. INotably, the basis for local zoning is public health, safety and welfare. In particular, there must be a criteria about the proximity to and protection/endangerment of drinking water. This includes private drinking wells, public water supplies, recreational bodies of water and wetlands. I do not have the data sources but the approach should, in part, include proximity to known sources of water with the caveat that no one knows how water flows underground, so distance is a limited metric.

Additional criteria should include slope which was included in the 2023 DOER Technical Potential of Solar report for important reasons. DOER stated that above 20% slope was not acceptable and received a grade of "C". Slope directly impacts erosion and sedimentation, potential flooding and in the worst case, like Williamsburg, MA, catastrophic collapse.

Lack of infrastructure is another important criteria that is not considered from an urban policy perspective. Most clean energy development in Massachusetts is occurring in rural areas with little infrastructure. This includes the lack of a central water system for fire fighting (in the case of ESS fires). Many small towns across the Commonwealth and certainly in Western and Central Mass. do not have municipal water systems - no hydrants or piping to transfer large amounts of water. This is essential for emergency fire fighting with lithium ion batteries, a known danger. Similarly, most rural Mass towns have unpaved roads which cannot support industrial construction. I speak from personal experience that my unpaved road had semi trucks traveling every day for months on it, regardless of the season (including mud season), followed by endless daily travel by contractor vans and trucks in the later stages of construction. Unpaved roads get destroyed by this overuse (not designed for this), endangering emergency service access, and limiting the use of local roads by school buses, and regular daily commuting.

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?**

Responding in reverse order…

Most definitely, site suitability must consider whether an area already hosts considerable energy infrastructure. The use of the term “disproportionate” is crucial - what is a lot for a town of under 2,000 people is different for a municipality of 50,000 or one million residents. The measurement should take into account population, total developable land area, as well as the site suitability criteria to evaluate what is proportionate or not. As mentioned above, some central Mass. towns already have in excess of 10-15 industrial scale solar sites - mostly due to the inability to reasonably regulate given the Ch40A solar exemption. This is overburdening on these communities.

I do think there is a great deal of overlap between social/environmental HARM assessment and cumulative impact but they are different and serve different purposes. The goal of the site suitability scoring is to direct proper siting of projects by assessing where they are located. The purpose of cumulative impact is to determine if a defined area/community will be overburdened by the proposed project. Some criteria will be the same or different but the purposes of these mechanism are different. Both assessments are important.

An essential part of a social and environmental assessment is talking to the community. A database will not capture the local knowledge nor the local threats/harms. This data needs to be documented and treated as “real” even if it is qualitative and not in a database. The collection of this data should be done by a third-party that is accountable to EFSB/DOER and not the applicant.

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?

As I have mentioned previously, allowing points for so-called benefits, invites loopholes and gaming the system. As mentioned, especially egregious is the inclusion of non-siting related benefits like jobs or recreational opportunities. Similarly, eliminating an emitting source does nothing to encourage appropriate siting. What encourages appropriate siting is guidance that says if you put a project in the wrong place you will get a low score - full stop.

In terms of putting projects on preferred locations like on brownfields or landfills, these can be encouraged through the current proposed siting criteria. For example, an installation on a brownfield, landfill or built environment would not impact forests, carbon sequestration/storage loss, biodiversity, agriculture, etc. Therefore presumably such a project would get the highest score and would be developed. I would suggest that the more carve-outs and categories EFSB/DOER creates, the more loopholes and complexities will exist, ultimately risking the intentions of the site suitability scoring. If the regulations have strong and clear criteria, a good project should be elevated based on these criteria and a poorly sited projects will be similarly

obvious and not developable. Creating gray areas or different project type criteria muddies the waters.

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?**

Again, answering in reverse…

Of course, EEA should be considering climate impacts in the surrounding area. The impact on and resilience of the energy facility itself is less relevant; what is important is the resiliency of the community and the specified area. For example, if an industrial scale solar project clearcuts 50 acres of trees in forested land (BioMap or not), it changes the ecosystem - threatening resilience of water, temperature, animal life, flooding, etc. The solar panels or batteries might endure storms or temperature swings but the surrounding area is hugely impacted in a negative way. I would suggest that if EFSB/DOER does not consider the climate impacts of installation of clean energy projects on the surrounding area, it is intentionally ignoring its responsibilities. Similarly, as noted earlier, EFSB/DOER must expand its thinking of resiliency beyond the actual facility - this thinking is woefully inadequate.

Yes, different facilities presumably face different risks but as noted above, these risks should be evaluated from an engineering, durability perspective. For example, will the panels endure in certain situations, is a wind turbine secure in high winds and increasing storms? These are engineering, project integrity issues, NOT a climate resiliency issues. These should not be confused. One is a basic requirement for building anything; the climate resiliency has much far reaching implications.

I would refer to reports from the Municipal Vulnerability Preparedness program for the various risks due to climate change since many risks are covered in their material. What is usually missing in measurement sources and therefore level of impact, is the risk to ecosystems since these are complex and inter-related, and therefore not as easy to measure. But I would suggest this is the most important thing to measure. We are currently in the climate crisis and ecosystems are already changing. We need to maintain and actually increase resiliency of our ecosystems to mitigate the negative impacts of climate change - for people and the natural world in which we live.

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 asCommonwealth of Massachusetts Executive Office of Energy and Environmental Affairs defined by Chapter 40R (Smart Growth zoning), the MBTA Communities Act, or other already designated areas?**

As noted earlier, I believe there are problems with how "development potential" is considered currently since it risks undermining the intentions of appropriate siting. I acknowledge there is a pull and tug of priorities but we cannot let grid alignment result in codified poor energy siting. Proximity to substations for interconnection should be minimized within reason so that the grid and long transmission lines are not susceptible to storms and other climate change impacts, nor that long transmission lines infringe upon communities/regions through which they run (which could also be poor siting). But, current substation siting already has demonstrated that utilities and developers are eager to place large scale energy installations, especially ESS, in inappropriate locations simply to be close to interconnection. This is certainly true in Wendell for ESS and Shutesbury for solar. My suggestion is that "development potential" should be considered but with a much lower weighting because it is less important than the other proposed criteria and because in no instance should a project be sited poorly (in forests, ag land, etc) because it was close to a substation.

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.

No! I think site suitability directly relates to cumulative impacts but they should be separate. Site suitability scoring should stand alone - "just the facts" so to speak. Is the project sited well or not? Cumulative impact data and report is another essential piece of the puzzle for the regulatory body to consider when reviewing a project but it is a different data source with a somewhat different perspective and scope. So while closely related, I would support these being separate efforts. What should occur in the development of both the site suitability methodology and cumulative impacts is that they are aligned and not at cross purposes; rather they should be complementary in providing the data needed for an informed regulation decision and to promote good siting.

An analogy might be in the health realm. A person might have a Body Weight Index that indicates they are obese. This is a score similar to site suitability. A medical professional then does an assessment of other factors - age, level of exercise, smoker or not?, other chronic conditions. These are factors that impact a person's health. When taken together, the BMI and the lifestyle factors paint a picture of a person's current and potential future health. This should be the same approach as the Site Suitability Score and the Cumulative Impact Report/Narrative.

UNIQUE INFRASTRUCTURE TYPES

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).

No comment

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.

While the technologies and project types are different, the criteria for all types of energy infrastructure are the same. While I know non-linear related issues better, in reviewing a transmission line currently under consideration by EFSB, the same issues arose. How many trees to cut down for ease of access by the applicant, the proximity to wetlands, the location of the transmission lines in regards to slope. These all impact resiliency, carbon storage/sequestration, etc. In short - keep the criteria constant with the recognition for how these criteria might show up might differ with the technology.

SITE SUITABILITY SCORING

10. What weights should be assigned to each criteria for the purposes of scoring?

Before addressing the weights, it is important to also state that the methodology as proposed in the slides is incomplete and therefore insufficient. The SMART 3.0 mitigation fee methodology also accounted for the scale of the project by multiplying each score by the acreage. The size of a bad project has worse impact than a bad small project.

- Developmental potential - *least important so should be weighted the least. I would suggest that placement of projects in proximity to substations could create bad siting in some instances and this should be reflected in the scoring of this criteria. Scoring currently seems too simplistic. So maximum points should be 5.*
- Climate Resilience - *hugely important but the proposed focus of scoring is WAY OFF base. The reason is not to ensure resilience of energy infrastructure but resilience of the communities, the ecosystem to withstand changes from the climate crisis.*
- Carbon Sequestration and storage - *hugely important. Rating system seems okay. I don't know about the data set but am encouraged if Clark University is involved.*

- Biodiversity - *hugely important. Great to see that both components of BioMap are included - Core Habitat AND Critical Natural Landscapes - but I would lower maximum score for CNL (3 or 4? on scale of 1-10).*
- Social and environmental burdens - *very important*
- Social and environmental benefits - *should be eliminated from criteria*
- Agricultural production potential - *very important. I think the data source needs to be expanded beyond a data set of soil quality. There needs to be more contextual data available - role of the farmland in the community (is it the only farm?). Also if the goal is to allow development on the edges of farmland, how is this identified - it could have the same soil rating but in practice have different usability.*

  MY SUGGESTIONS:
- Public health, safety and welfare - *very important*
- Slope - *important. Anything over 20% slope (see Technical Potential of Solar report) should get 0 points. Zero slope should get 5 points.*
- Lack of infrastructure - *very important*

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?"

Most definitely, there should be ineligible areas! Otherwise everything is fair game as SMART 1.0 and 2.0 have clearly demonstrated. To be clear, even with the 2014 DOER model solar bylaw and SMART 1.0 and 2.0 stated preferences for siting, development has occurred in forests, on agriculture, over aquifers and in bodies of water (Southeast Mass. cranberry bogs). So NO must mean NO.

Additionally, for these regulations to work, communities need to have trust - which currently is not there given the track record of clean energy development in Mass. Waivers suggest and in fact, may allow favoritism and exceptions. This undermines the rules which presumably will be finalized because they mean something. There should be no waivers.

I also need to point out the inconsistency in this question and the scope of the Biodiversity criteria. BioMap has two large categories - Core Habitat and Critical Natural Landscape. The Biodiversity criteria reflects both should be included but this question does not. I would suggest that the state created BioMap for a reason and land in both categories are deemed important to protect. The differentiation was based on their characteristics not their importance - both are BioMap. BioMap land should be ineligible.

I commend DOER for introducing the concept of protecting the top 20% of carbon sequestration land in the state for SMART 3.0. I think EFSB and DOER should do the same.

I support the prohibition of development in wetlands however I think this scope is limited. It is easy to suggest because there are current wetlands systems in place to identify these through mapping or delineating wetlands. However, project development on land that can threaten drinking water must also be “no go” places - one cannot replace drinking water once it is contaminated or reduced due to changing underground flows. This clearly means no development over aquifers or known significant recharge areas.

Finally, DCR forest land or other state owned land should not be exempt from site suitability scoring, especially since these are publicly held lands. All forested land must be treated the same regardless of whether the state owns it; climate implications do not recognize this difference and poor siting is poor siting.

12. Which data sources and metrics should be used for scoring each criterion?
I do not have deep knowledge of the range of data sources but to reiterate several points.

- EFSB/DOER needs to legitimize and incorporate qualitative and “on the ground” data. There are many well developed methods for quantifying narrative or originally qualitative data. Quantitative data by itself is incomplete.
- EFSB/DOER should not rely on one source of data - which is current the case for some criteria
- EFSB/DOER must reconsider use of some federal data sources since they might disappear (if they haven’t already) and what remains might be biased given the administration’s denial of climate science.

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

I believe this is answered in #9

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?

From my experience there are different boundaries for any project, regardless of the type. All of which should be documented by an applicant. There is the Area of Disturbance which is the land area where any changes will occur due to construction including the installation itself. This will also include fencing, driveways, access roads, etc. There is the total size of the parcel. For a non-linear project this would likely include areas not disturbed; for linear projects it would be everything within the right of way. Finally, in between the boundaries of the Area of Disturbance and the boundaries of the parcel are buffer areas. This can be the buffer between solar panels on the perimeter and surrounding land or between the transmission poles and the outer bounds

of a right of way. EFSB/DOER should require all of these areas and measurements to be reported. This data is important. For example, in Shutesbury, to promote carbon sequestration/ storage and ecosystem protections,we also require a 4:1 ratio of land conserved for the life of the project to developed land for solar, so the size of the project footprint and overall parcel is important. I also do think it is important to prevent an applicant from downplaying the impact of a project by being able to report smaller area affected rather than the larger impacted area. The public and the regulatory body needs to have the data to understand the full impact of these projects.

I would suggest that for all technologies, EFSB/DOER require buffer zones between the projects and the undeveloped land on a parcel.

GUIDANCE

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?

The Clean Energy Statute clearly states that municipalities that abide by the DOER clean energy regs are considered to be compliant with the solar (and ESS) exemption - Ch40a, Sec 3 para 9. Therefore, if a project has a bad site suitability score, a permitting body for small clean energy projects and presumably EFSB for larger projects should be within its rights to deny the project. Under current law this something that is extremely at the municipal level.

Conditions should also directly relate to mitigating any less positive suitability ratings or issues identified in the Cumulative Impact Assessment. Conditions should always be case by case and contextual; they should be responsive to the needs of the communities and surrounding area. For projects that have a good site suitability score and can be built, conditions should be consistent with more usually zoning requirements that enable a project to fit within the context of a community.

The projects that are questionable conditions might be a tool for mitigation of less than stellar siting conditions. Here too these must respond to the particular siting suitability criteria that are problematic and the cumulative impact findings that are troublesome. However, conditions should not ensure poor projects can still proceed.

In terms of specific conditions, energy storage is the most obvious for needing conditions. This could include requiring safer technology - iron phosphate rather than lithium ion batteries. It likely should include adequate containment for water in the case that there is a battery fire and contaminated water deployed on site to minimize thermal runaway. Similarly, financial conditions for training of local emergency responders and access to emergency contact information make sense. There should also be a bond required to protect residents against irreparable harms like drinking water contamination.

In terms of most industrial projects, conditions should include a bond for damage to roads during construction, buffer zones between solar arrays and surrounding forest or agricultural land.

MITIGATION FEES

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?

DOER, in developing SMART 3.0 struggled with this too. I do not think there is an exact number for minimum or maximum. Rather I think EFSB and DOER need to look at the objectives. The goal of the mitigation fees is to incentivize appropriate siting by making it too costly to propose bad siting. This will certainly be informed by the amount of revenue an applicant assumes it can make. If it will make one million dollars in profit, than $20,000 in mitigation fees is not a sufficient disincentive. However, if a smaller project i expecting $200,000 in profit, then $20,000 fee is a bigger bite and may influence project placement and design. This is to suggest that SMART 3.0's approach of multiplying the mitigation fee by acreage makes sense here too - the fee must be scaled to the size of the project and its potential revenue and impact. If the mitigation fee is too small it will not have the primary objective of disincentivizing poor siting. Collecting fees, while helpful, is not the primary reason for this policy lever. The ultimate goal of a mitigation fee is to force proper siting and flexibility must be maintained so that each project can be guided by this financial mechanism.

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?

Mitigation fees should definitely be used primarily by the host-community otherwise, these projects will continue to be extractive in nature. The impact of a project is local as a Cumulative Impact Assessment would demonstrate. Mitigation should be primarily focused locally. There can be some percentage of the fee that goes to a statewide pool for projects that serve less resourced communities or regional projects; perhaps 80% local, 20% general pool.

The use of mitigation fees should be tied to the climate crisis - mitigation, adaption and decarbonization, generally. This can include local or regional projects that might be otherwise supported by DOER's Climate Leaders Program, Green Communities Program, orMunicipal Vulnerability Program since given the scale of needed local transition, there will likely not be enough money to support all 351 communities in a decarbonization transition. Eligible uses should also encourage energy conservation (rather than environmental conservation unless there is a mitigation element to these) or the promotion of greater resilience

Host community agreements should be separate from mitigation fees. As noted, mitigation fees are designed to be a policy lever to discourage poor siting and should be directly tied to energy and climate related projects, as noted above. A host community agreement can be more expansive - it is based on what the community prioritizes. This can and likely should be focused on resiliency, adaptation, etc. but it could also include non-siting, non-climate issues needed or wanted by the community/municipality. If the starting point of these regulations are that communities know best what they need and want, then they should be able to design a host agreements as they see fit.

In short, host community agreements and mitigation fees/projects are separate tools with separate purposes and therefore separate characteristics/eligible uses.