**From:** Gerson, Zachary
**To:** SMART, DOER (ENE)
**Subject:** 400 MW Review Public Comments
**Date:** Thursday, September 26, 2019 5:17:57 PM

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Department of Energy Resources:

Thank you for the opportunity to comment on the 400 MW Review of the Department of Energy Resources' ("DOER") Solar Massachusetts Renewable Target Program (the "SMART Program").

I write to raise a specific issue regarding DOER's interpretation of the term "pervious open space" in the current regulations for the SMART Program at 225 C.M.R. § 20.05(e)(5). Under that section, a certification from a professional engineer is required for certain Solar Tariff Generation Units ("STGUs"). However, while applicability to STGUs installed on Land in Agricultural Use or Prime Agricultural Farmland is clear, as those terms are defined in the regulations, the scope of STGUs installed on "other pervious open space" is unclear. By virtue of being included in a list with other narrow terms, the context indicates its application is intended to be similarly limited in scope. Yet an expansive interpretation could potentially sweep in essentially all ground-mounted STGUs. Such a broad interpretation could disturb the reasonable expectations of industry participants that the term will be narrowly construed, consistent with the other terms in that same sentence.

Because the scope of this certification requirement is not clear, because the requirement is potentially broadly applicable, and because the precise scope of DOER's interpretation is not widely known, clarification on this point through guidance or regulatory changes would be helpful to industry participants. For instance, does DOER intend that any space with a soil or vegetated surface be considered "pervious open space"? Or, does DOER consider the terms "open" or "pervious" to be more restrictive, such that previously wooded areas or areas without significant ability to absorb rainwater would not be considered "pervious open space" for the purposes of 225 C.M.R. § 20.05(e)(5). Further, does DOER have a mechanism for determining whether a specific site constitutes "pervious open space"? If so, sharing that mechanism publicly would provide valuable transparency and guidance to industry participants.

In conclusion, this comment period offers DOER an opportunity to clarify the term "pervious open space" so that it is more clearly defined, more objectively ascertainable to industry participants, and more focused to serve the purposes of 225 C.M.R. § 20.05(e)(5). Increased certainty would allow project development to account for the treatment of particular sites.

Thank you for your attention to these comments.

Best regards,
Zach Gerson

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