

February 13, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, 9th Floor,
Boston, MA 02114

Comments on the Draft Guidance on Site Suitability Reports

Dear Secretary Tepper,

Thank you for the opportunity to comment on the draft Guidance on Site Suitability Assessments. We greatly appreciate the enormous effort that your team is devoting to the implementation of the 2024 Climate Act. We also appreciate the move toward a more data-driven approach to site suitability, with the goal of applying it more consistently across the commonwealth.

Thank you for incorporating many of our previous comments, including clarifying that high scores on one or more criteria increase the burden of mitigation but are not grounds for automatic permit denial; referencing other policies on noise, drinking water, etc. rather than restating them; and clarifying references to “alternative sites”.

We have a number of comments for further improvements to the Guidance.

Site Suitability Scoring Process

We support the shift to a webmap that automatically produces a score, allowing Applicants to self-serve rather than wait for DOER to issue a Site Suitability Report for each project. We also appreciate that Applicants have the ability to request a score revision by DOER for the inevitable situations where GIS data are inconsistent with the facts on the ground.

The Guidance on Minimization and Mitigation details the Avoid, Minimize, Mitigate framework and its application to the different Site Suitability Criteria. However, there is a disconnect between the timing of incorporation of most avoidance and minimization measures, and the way the Site Suitability Scores are generated. For example, a Project Footprint may overlap with flood zones, and therefore the Site Suitability Score for Climate Change Resilience produced by the webmap is high. However, the project may have already been designed to incorporate many of the minimization best practices listed in the Minimization and Mitigation Guidance. The score generated by the webmap will fail to reflect these elements of project design and will therefore produce an artificially high score. **Applicants must therefore have the opportunity to apply to DOER to verify a score modification based on minimization and mitigation measures**

that have already been incorporated into the project plan at the time of scoring. This is a distinct situation from those in which the data are inaccurate, and is not currently contemplated in the Guidance.

CIP Score Modifier

We understand the reasoning for moving away from a total score approach, toward a framework that considers Criteria-Specific scores individually. However, we strongly disagree with the decision to remove any consideration for projects located in CIP areas. The Commonwealth has approved significant ratepayer investment in order to increase hosting capacity for clean energy development in these specific geographic locations. Unfortunately, certain CIP areas have significant overlap with land that receives high scores on the Biodiversity and Carbon Storage and Sequestration criterion, making full avoidance infeasible. While we continue to strongly advocate for consideration of site suitability at the outset of the LTSP and any other future grid planning efforts, the fact is that the site suitability was not sufficiently developed during the consideration of the development of the CIPs, causing this conflict between existing ratepayer-funded investments and the Commonwealth's land use policy. Offering a modest score adjustment to projects that aim to use the CIP-enabled capacity and contribute to paying back the ratepayer-funded investment is a reasonable accommodation to align grid planning and land use policy. **We recommend that projects in CIP areas be allowed to apply a .5 point reduction to one of their Criteria-Specific Scores.** Without such a reduction, mitigation requirements may be too high for a sufficient number of projects to move forward, and ratepayer-funded grid capacity may remain unutilized.

Webmap

We greatly appreciate the effort that has gone into creating a (mostly) consolidated online mapping tool. This tool will greatly streamline the process for both developers and stakeholders to understand a proposed project's suitability. The map is extremely user-friendly in terms of calculating a project's scores across the criteria. However, no further information is provided as to why those scores were produced. Providing backup detail is important in order for both Applicants and other stakeholders to be confident in the accuracy of the scores and to better inform the development of appropriate Minimization and Mitigation measures.

In addition, it does not appear that background data is downloadable. Given that several of the criteria are based on an index incorporating multiple datasets, EEA has effectively created new datasets that are different from those developers are accustomed to using. **In order to effectively avoid impacts to sensitive areas and understand the potential for minimization and mitigation strategies, developers need to screen for these criteria at the beginning of the prospecting process. Developers therefore need to be able to download the statewide data for each criterion in a GIS format** so that they can use it within the other software tools they use for prospecting. It is not practical to draw a polygon in the EEA tool for every site under consideration during the prospecting stage.

Requests for Site Suitability Score Revision

We remain concerned with the overly broad definition of the terms Local Stakeholder and Key Stakeholder (225 CMR 29.02 and 980 CMR 16.02, respectively). We have commented repeatedly during the review processes for those regulations that the overly broad definition of those terms introduces unnecessary uncertainty into the Local and EFSB permitting processes. In the context of the Site Suitability Guidance, it is concerning because any Local or Key Stakeholder can request a Site Suitability Score Revision, which can delay the process up to 30 days. In the absence of any revisions to those definitions in 225 CMR 29.02 and 980 CMR 16.02, **we strongly urge EEA to clearly spell out in the Site Suitability Guidance which stakeholders may request a Score Revision.** Below is the revised definition of Local/Key Stakeholders that we recommended to both DOER and EFSB for incorporation into their regulations:

Local/Key Stakeholders include abutters of the Project, including residents (both owners and renters) and businesses, and elected or appointed municipal officials (e.g., mayor or town/city manager, relevant Council/Select Board members, Chair(s) of the Conservation Commission, Planning Board, Zoning Board, and Head of the Department of Public Works) representing the municipality(ies) where a proposed Project is sited. The Director of the EFSB or the Local Government in the municipality(ies) where a proposed Project is sited may designate up to five (5) organizations as Local/Key Stakeholders, which may include public interest groups, organizations serving the local community in the vicinity of a proposed Project that could be affected by a proposed Project; regional planning officials, representatives of labor groups (e.g., union locals, building trades councils, central labor councils, and the Massachusetts AFL-CIO) and apprenticeship programs, and federally recognized, state-acknowledged, or state-recognized Tribes with a presence in Massachusetts.

We continue to believe that these suggested edits are necessary to prevent against bad faith attempts by third-party actors to delay a Consolidated Permit review. It is therefore crucially important that EEA more clearly define within the Site Suitability Guidance who may request a Site Suitability Score Revision.

Mitigation Ratios

We will be submitting comments separately on the mitigation ratios proposed in the Guideline on Minimization and Mitigation. However, we are compelled to mention here as well that the ratios proposed in that draft Guideline are completely out of scale and will likely represent a significant additional burden on clean energy projects. A score for 2.5 or less is considered suitable/low impact. Very minimal mitigation should therefore be required, however the proposed Guideline requires mitigation at a ratio of 2:1 for such a low impact project and up to 4:1 for a high impact project. Requiring mitigation at such high ratios will increase the cost of clean energy projects, and could threaten project viability even for projects with low or moderate scores, requiring

Minimization and Mitigation Measures that are far beyond the impacts a project can be reasonably expected to create. Most clean energy projects receive ratepayer funding either directly for grid infrastructure or via the SMART program, Section 83E procurements, etc. Excessive mitigation requirements will increase the cost to ratepayers of these programs and investments, and therefore mitigation levels should carefully consider ratepayer affordability. As drafted, the Guideline on Minimization and Mitigation represents a significant additional regulatory burden, which is contrary to the purpose of the clean energy infrastructure siting and permitting reforms and Governor Healey's stated goal of reducing red tape in order to facilitate deployment of clean energy.

Process for Data Updates

While we are approaching a clearer understanding of the datasets that will be used to determine Site Suitability scores, most of these scores are based on datasets that are maintained by third parties, and there is a lack of clarity about how and when they are updated. A lack of clarity on updates is problematic, yet frequent updates may also be problematic, for example the implication that the Carbon Storage index will be updated annually, as the draft Site Suitability Guidance references "[t]he most recent year of land cover data". **When data sources are updated, it is imperative that there be a transition exception for projects that were developed in good faith with reliance on the dataset that was in existence when the project took its first steps. If the data underlying the Site Suitability scoring system changes, a project's Site Suitability Score should be able to rely on the dataset that was active when it submitted either a permit application or an interconnection application.**

Dual-Use Agricultural Facility Scoring

We would like to reiterate our previous comments that Dual-Use Agricultural Facilities should be included among the project types that automatically receive a zero on Criteria-Specific Suitability Scores with the exception of Climate Resilience. Dual-Use Agricultural Facilities are adding solar to an existing farming use within the site footprint, not converting land that was previously undeveloped. In recognition of this, the SMART program includes Dual-Use facilities when exempting all Locational Adder projects from the Mitigation Fee. We recommend that Dual-Use Agricultural Facilities receive an automatic zero score on all criteria except Climate Resilience, conditional upon being accepted as an ASTGU in the SMART Program.

Climate Change Resilience Scoring

As we noted in our October 17 comments on the prior Draft Guidance, it is unclear how to use the referenced Climate Resilience Design Standards tool to score a project and its current form is likely to cause confusion and inaccuracy. We eagerly await the release of a usable tool to evaluate this criterion, and we repeat our strong recommendation that this scoring be based on more well understood and verified data, such as FEMA flood risk maps. However, any scoring based on drawing a polygon on a map will ignore topographical and other elements of project

design that contribute to climate resilience. For example, a project footprint may overlap a flood risk area, yet grading associated with the construction of the project may remove that risk.

Social and Environmental Benefits Negotiations

As we noted in our previous comments, we respectfully disagree that siting a clean energy project in an environmental justice community necessarily represents a net additional burden to that community, and we appreciate the inclusion of Social and Environmental Benefits as a score modifier. We remain concerned that the ability to modify a project's score depends entirely on a successful negotiation with the host municipality. It is unfortunately common for developers to be faced with municipalities that seek opportunities to deny projects rather than negotiating in good faith. **If a project and a municipality are unable to negotiate an agreement, there should be an opportunity for the developer to propose benefits and receive an independent review from DOER or the EFSB, as applicable.**

New Leaf and BlueWave greatly appreciate the effort that EEA has put into developing this Guidance, and we appreciate the opportunity to provide these comments. We welcome opportunities for further discussion and collaboration as this Guidance is finalized and implemented.

Sincerely,

/s/ Jessica Robertson

Jessica Robertson

Director of Policy & Business Development, New England

New Leaf Energy

jrobertson@newleafenergy.com

/s/ Sean Burke

Sean Burke

Director of Policy

sburke@bluewave.energy