

COMMENTS ON SITE SUITABILITY ASSESSMENTS FOR CLEAN ENERGY INFRASTRUCTURE Version Jan. 29, 2026

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General Statement

There have been some improvements to the Site Suitability Guidance in the recent Jan. 29, 2026 draft however overall, these guidelines continue to be insufficient for the intended goals of ensuring that clean energy facilities in Massachusetts are appropriately sited. The most notable change is the elimination of many core issues such as protection of drinking water, wetlands and noise that EEA states are adequately addressed by other regulations. While the prior version was definitely insufficient in regards to these matters, not mentioning them at all leaves a significant gap since most existing regulations are not within the context of clean energy siting and therefore remain insufficient. On the whole, these guidelines are narrowly focused and only address narrow issues related to site suitability.

I. PURPOSE

The stated purpose is to describe a “*methodology for determining the suitability of sites for Applicable Facilities for use in the review of applications for Consolidated Permits, Consolidated Local Permits, and Consolidated State Permits*” Unfortunately, given the limited scope of these guidelines, in tandem with the equally limited Cumulative Impact Guidelines, I believe that clean energy facilities will continue to be sited poorly in Massachusetts.

III. DEFINITIONS

Avoidance. This is a good addition, it needed to be defined in regulation.

Minimization. This is a good addition, it needed to be defined in regulation.

Mitigation. This is a good addition, it needed to be defined in regulation.

Site Footprint – the addition of “*land altered of its natural vegetative composition and structure*” is good. I would presume this addresses land in buffer zones that might be outside a fenceline.

IV. SITE SUITABILITY ASSESSMENT

Given the exemptions given to projects that receive a federal tax credit, this statement is disingenuous. The exemption should be made clear here, as well as elsewhere, so that readers are not given the wrong impression. The key here is “*Applicable Facilities*”.

A. Applicable Facilities

As mentioned above, it is notable that EEA is exempting facilities per EFSB's and DOER's regulations, that will be receiving a federal tax credit, either because construction began by July 2026 or were placed into service by July 2027. I see no reason to exempt these. This is a giveaway to developers who likely have claimed that doing the due diligence of Site Suitability will slow things down. It seems when a project is rushed, Site Suitability is even more important.

B. Scoring Process

i. It is good that the Criteria Specific scores will be required to be shared with stakeholders as part of the Pre-Filing process.

iii. Requests for Score Review by DOER

The reasons for requesting reconsideration by Local Government or stakeholders is only for "*materially erroneous, incomplete, or otherwise faulty data*". These are very narrow parameters and are especially troublesome since the Applicant gets to score itself. The reasons for reconsidering a score should be expanded. This is further aggravated by the statement that "*Any score determination issued*" by DOER "*will be final*". So, in summary, this means that the Applicant gets to score itself, that there is likely no practical way to appeal the self-assigned score, and that the decision is then final. I can't imagine any project getting scores bad enough to hinder what the developer wants.

iv. Requests for Score Review by EFSB

Same as above. The reasons for requesting reconsideration by Local Government or stakeholders is only for "*materially erroneous, incomplete, or otherwise faulty data*". These are very narrow parameters and are especially troublesome since the Applicant gets to score itself. The reasons for reconsidering a score should be expanded. This is further aggravated by the statement that "*Any score determination issued*" by EFSB "*will be final*". So, in summary, this means that the Applicant gets to score itself, that there is likely no practical way to appeal the self-assigned score, and that the decision is then final. I can't imagine any project getting scores bad enough to hinder what the developer wants.

C. Criteria

i. Climate Change Resilience

This category is a misnomer and has the wrong focus. In actuality, this measure, as stated in the guidelines are to assess the risk of flooding of the facility. While the Climate Resilience Design Standards Tool does have an Ecosystem Service Benefits Score, EEA is not focused on this output. The other outputs from the Tool are Climate Hazard Exposure Score (for the facility) and Climate Risk Ratings (also for the facility). Despite the title (branding) of this criterion, it has nothing to do with climate resilience for the community or the environment.

Of course, developers should not be building facilities in places with risk of flood can occur, This is especially true since there is an increasing likelihood that FEMA coverage or flood insurance

will be unavailable if these facilities are in a floodplain. This is a lackluster and insufficient criterion.

I would suggest that EEA change its focus for this criterion to address how the facility advances the climate resilience of the host community. Promoting appropriate siting for community resiliency seems extremely important in the short, medium and long-term and something that engineers building infrastructure will not address and unless the Commonwealth requires it. The criterion should encourage maintaining forests, protecting water, minimizing stormwater, retain soil integrity, etc. – achieving greater resiliency in a changing climate.

iii. Biodiversity

I am glad to see that the data sources for determining biodiversity have been expanded to include Priority Habitats and the Index Of Ecological Integrity, as well as the BioMap elements which were originally suggested.

It is still not clear to me why EEA continues to prioritize Priority Habitat over BioMap except for the reason that it would trigger MEPA review?

Similarly, as I have commented many times before, there is nothing in the BioMap materials from MassWildlife that places greater value on Core Habitat over Critical Natural Landscape – both are equally important but have different characteristics. This seems to be a myth internal to EEA that has now achieved “urban legend” status with no basis in fact. I would encourage EEA to apply the same protective approach for both categories of BioMap.

Generally speaking, in reviewing the prioritization chart, it seems that EEA is splitting hairs in the scoring table. I do commend EEA for recognizing Regional Connectivity, a BioMap Component, since what we do in Massachusetts has ecosystem impact on the larger Northeast Region. This is often overlooked but vitally important.

iv. Agricultural Resources

As I commented previously, determining site suitability of agriculture based on soil quality data is insufficient. So I am pleased to see the addition of the USGS Annual National Land Cover Database added to the data sources. I do not think this additional information gets to the details of what type of agricultural use is occurring but it is definitely an improvement.

To reiterate my other concerns regarding measures - the Prime Farmland Soils data indicates the quality of the soil, it does not reflect the agricultural activity or use. Poor siting involves not only putting installations on land that has good soil for agriculture but equally, if not more important, taking land out of agricultural production for clean energy development. For example, SMART 3.0 discourages the conversion of crop growing to hay production or grazing, a net loss to essential food production. Another limit to the soil quality data is that land with the same rating may be used differently – even between agricultural uses. For example, a solar installation located on a side field where there is underutilized land along a farm’s edge might be a good location and helpful to a farm’s viability and therefore its long-term operation, while placing it on an active field on the same farm and similar soil is poor siting. Agriculture is an activity, not just a soil rating. This should be accounted for by EEA.

If EEA is going to allow facilities to be developed on agricultural land, it should prioritize land that is the least good for production and/or minimally used for food production. I continue to suggest that EEA prioritize land designated as “Not Prime Farmland”, giving it a zero rating. This category may be implied in the Scoring Table but it is not explicit and should be. Additionally, the scoring table does not differentiate between cultivated crops and pasture hay, which is a blind spot by EEA. These are different and should be scored differently. There is also no scoring based on the placement of clean energy on a field. As mentioned above, fallow land on the edges of productive farms can be economically beneficial to farmers allowing continued growing while not depreciating the agricultural ability – these should be scored differently than facilities that are on the productive land.

v. Social and Environmental Burdens

As I have commented elsewhere, the MassEnviroScreen tool is inadequate, as designed. It primarily focuses on impacts to public health and the impacts on people. It barely addresses the burdens on the environment. Given this, it is an insufficient tool for measuring environmental impacts and to assume otherwise is mistaken. This means that projects that might have actual negative impacts on the environment may not get a high MassEnviroScore given the narrow focus on people and public health. As a result the Social and Environmental Burden score will be low even if there are real environmental burdens. This means regulators will be unable to condition projects because the Site Suitability score will artificially reflect low impact.

D. Score Modifiers

i. Development Potential

It is great that a facility using canopies or those that are located on brownfields, eligible landfills or previously developed land are incentivized in terms of scoring. However, I do not think automatically assigning a score of zero to carbon sequestration, biodiversity, agricultural, and social and environmental burdens scores makes sense. This should all be evaluated separately for each criterion. The scoring might end up being zero but there might be unexpected instances where it is not. Notably, providing a score of zero means the regulators cannot condition any minimization or mitigation efforts, in the rare instance these may be needed.

It is also good that any facility that overlaps with Protected Open Space will get a score of 5. Here again, I think evaluating for each category individually rather than automatically assigning the score makes sense and is more sound basis for regulation.

The following exemption to the Open Space scoring is very troubling. For “*Facilities with a Site Footprint that intersects with or crosses through Protected Open Space shall be calculated as if the Applicable Facility was not sited on Protected Open Space if such Applicable Facility can demonstrate no other suitable route or location exists, or provided that no replacement land was required*”. I would suggest that if it is a bad location, the Applicant should not get a pass; they should be asked to go elsewhere where suitability is appropriate. Additionally, it is worth noting that Applicable Facilities exempt those that receive a federal tax credit, thereby allowing these facilities to be built in Open Space.

I am encouraged that these regulations specifically indicate that “If the Applicable Facility is on Protected Open Space that is also Article 97 land, the Applicant may also need to first take the necessary steps to remove the land’s Article 97 classification pursuant to the Open Space Act”. This makes clear that the requirement for a two-thirds majority vote by the legislature is not implied.

ii. Social and Environmental Benefits

I continue to believe scoring should be associated with environmental siting not social benefits. However, assuming EEA’s orientation on this matter, the fact that social benefits can modify a poor social burden score by up to 5 points means that it opens the door making a bad project a good project. I can understand some modest modification but undoing a poor score completely makes no sense. This reminds me of the giant loophole with SMART 2.0 where developers could buy their way to a better score by claiming socially-oriented Adders that had nothing to do with the environment.

EEA’s focus on public health and people rather than the environment can be seen in the four newly added categories – 3 of the 4 do not focus the environment. Economic Development and Workforce Creation, Infrastructure and Community Support, and Implementation of Environmental and Health Protections, as described focus on people and society, not the environment.

It is good that EEA requires that Qualifying Benefits must be documented and relative to the scale of the facility.

E. Other Siting Considerations

It is a dramatic change from the previous version of Site Suitability guidelines that EEA removed numerous sections on protection of drinking water, wetlands, noise, and air quality and emissions. While I definitely thought the previous sections were insufficient for environmental protection, the deleting of them creates a gap that must be addressed in regulation. EEA states that “*Applicable Facilities are subject to all other state and local laws, regulations, bylaws, and rules pertaining to impacts to drinking water resources, wetlands, endangered species, noise, air quality, emissions, and public health, among other topics. This guidance does not address siting of Applicable Facilities with respect to such impacts as there is already a substantial body of existing rules and requirements pertaining to such matters and this guidance is not intended to supplant these existing rules*”. While it is true that there are other regulations that cover these other issues, those regulations are not specific to Clean Energy Facilities and are also inadequate in certain regards. My original critique was that EEA simply cited existing regulations. This means that EEA is dropping the ball.

This is very important since much rides on the Site Suitability scoring for conditioning a project; not having the Site Suitability score for core issues of siting means that 1) a project may appear suitable when it may not be and 2) that regulators, especially Local Government will have a hard time protecting against threats to drinking water resources, wetlands, endangered species, noise, air quality, emissions, and public health. Specifically, DOER regulations 225 CMR 29.00 require

that mitigation be based on Site Suitability scores. If there is no score, how can they regulate an issue. Equally important, if a Local Government seeks to condition a project regarding an issue not identified by Site Suitability, it can be argued that it is in conflict with the Dover Amendment, Ch40A Sec. 3 para 9 since this regulation does not address them? This is a serious oversight. If EEA wants to yield its regulatory power and not address some elements of site review, it must explicitly allow Local Government to do so in the context of this regulation. I am not suggesting that EEA restore these Other Considerations in its regulations BUT it must specifically allow EFSB, DOER and Local Government to regulate responsibly for other conditions, especially to provide legal protections in light of the Dover Amendment.

F. Score Modifier Table

Developmental potential. As mentioned previously, while I believe projects with Canopies or on Brownfields, Eligible Landfills, and Previously Developed Lands should and will likely receive a score of 0 in most instances, these criteria should be reviewed individually rather than getting a score automatically. I feel less strongly about projects on Open Space getting an automatic score of 5 but it is reasonable to assess them individually, as well. EEA could make a statement that unless shown otherwise, these will be presumed to be a 0 or a 5, when reviewed individually.

Social and environmental benefits – I cannot overstate how important I think it is that any social or environmental benefits be approved by the host community; this is a protection of some sort.

As noted above, allowing up to 5 points to be removed for Social Benefits is too much. It should be noted that this cap is not reflected in the Score Modifier Table but is stated in the Social Benefit section – an inconsistency in these regulations. A more modest cap of 2.0 points would allow for up to four benefits to be accounted for, although this still seems problematic since it can change a bad or poor project to a good one without necessarily mitigating the identified environmental harms, even those focused on public health and environmental justice concerns, which presumably is the goal of the modifier. Building a baseball field or creating a training program does not alleviate harms associated with environmental exposure, so the benefit to a community is questionable – likely more political than substantive. The modifiers should be directly related to the harms caused.

V. USE OF METHODOLOGY AT THE ENERGY FACILITIES SITING BOARD

A. Pre-filing

It should be required rather than recommended that the estimated scores be shared with stakeholders during the Pre-Filing period and prior to seeking Final Score Determination. I would suggest this is a “shall” rather than a “should”. Additionally, the term “*will be expected*” does not carry sufficient regulatory weight.

B. Application Requirements

The removal of “*documentation to support the scoring analysis*” removes crucial data for regulatory review. This should be required and reinserted into the regulations.

Still missing is the need to provide an explanation for why the alternative sites were not chosen. There needs to be a defensible decision as to why other siting options were not considered and without information, comparison cannot occur.

C. Permitting Adjudication

i. Use of Criteria-Specific Suitability Scores

I support the intention that minimization measures is focused on the project site but these regulations state that this is the priority. I think EEA must state a strong preference for mitigation on the project site. Currently, the regulations read “*Minimization could include minimization of impacts on the project site*” which makes it optional and not a priority.

It seems that the alternative to onsite mitigation is a mitigation payment to the host community, which is okay. I am glad to see that off-site mitigation is not an option – the focus on mitigation should be in this order – onsite and if not, within the host community.

What is REALLY problematic is the statement “*All Minimization and Mitigation measures should have a rational nexus to the impact or burden*”. While this should be true for the impacts or burdens identified by the Site Suitability Assessment, what about the various impacts not addressed and beyond the scope of the Site Suitability assessment? This is especially important now that EEA has removed issues like drinking water, wetlands, noise, and air pollution from these regulations. EEA needs to include a similar statement as it did in Other Siting Considerations section, stating that there will be impacts beyond the scope of these regulations that can be minimized or mitigated and are allowable and covered under the Dover Amendment.

v. De Novo Adjudication

Given the limitations I previously identified whereby a Local Government can request review of the scoring, I think the outlined process is okay.

VI. USE OF METHODOLOGY FOR CONSOLIDATED LOCAL PERMITTING

A. Pre-Filing

It is good that estimated scores be shared with stakeholders during the Pre-Filing period and prior to seeking Final Score Determination. I would suggest this is a “shall” rather than a “should” since the term “*are expected*” does not carry sufficient regulatory weight. I appreciate that these must be submitted as part of the application to Local Government. The requirement for including a description of how the scores informed the project design is important.

B. Application Requirements

Similar to the EFSB application requirements, there is no requirement for documentation to support the scoring analysis. This means there is no data for regulatory review by the Local Government regarding the basis for the scoring. Interestingly there is only the requirement to document score modifiers; a seeming bias by EEA. The documentation should be required in the regulations.

Still missing is the need to provide an explanation for why the alternative sites were not chosen. This needs to be a defensible decision why the proposed site was chosen over alternatives in the context of site suitability. Without information on all sites that were considered or possible, comparison cannot happen. This is different than “*why the site was chosen*”, which doesn’t necessarily require comparison.

I am happy to see the upgrade to include a description of the proposed minimization and mitigation measures.

C. Permitting Process

i. Use of Criteria-Specific Suitability Scores

I think the statement that “*minimization could include measures to reduce impacts on the project site*” should be stronger. A preference if not a requirement; projects should be required to minimize onsite, this should not be optional. Similarly, I think the statement regarding mitigation should be stronger too – EEA should state a strong preference for onsite mitigation whenever possible, and if not possible the requirement for mitigation or the equivalent (payments?) to be in the host community.

Similar to the approach for EFSB, what is REALLY problematic is the statement “*The level and type of Minimization and Mitigation measures required should be informed by each Criteria-Specific Site Suitability Score and specific impacted resource and should have a rational nexus to the category in which the score was assessed.*” While this should be true for the limited impacts or burdens identified by the Site Suitability Assessment, there can be other impacts or burdens beyond the scope of the Site Suitability measures. This is especially the case now that EEA has removed issues like drinking water, wetlands noise, and air pollution/emissions. EEA needs to include a similar statement as it did in Other Siting Considerations section, that there will be impacts beyond the scope of these regulations that can be minimized or mitigated and are allowable and covered under the Dover Amendment. Notably, EEA goes out of its way to address the basis for a Local Government denying a project due to a score but does not address how Local Government is allowed to impose conditions on environmental issues not covered by the Site Suitability guidelines.

Regarding the assumptions in the chart, I appreciate the reduction in the scale, especially the adjustment that greater than 2.5 is now “*Not very suitable*”. However, the chart states that that although projects scoring greater than 4.0 are determined to be unsuitable, and may require significant minimization or mitigation, there is no statement that unsuitable projects can be denied. This is a huge shortcoming and will put Local Governments in a regulatory and possibly legal bind. This option must be explicitly stated. Bad projects should be allowed to be denied.

VII. FUTURE UPDATES TO METHODOLOGY AND GUIDANCE

It is disappointing that EEA is not willing to review these regulations before March 1, 2028, three years after going into effect. I am certain the need for improvements and changes will be required before then. It should be noted that review will only commence by March 2028, so

given the required political and statutory processes involved in a review, changes likely won't occur until 2029.

ADDITIONAL NOTE

While DOER in its regulations 225 CMR 29.00 does address various details of siting such as slope, constraints on earthmoving, minimization of erosion conditions, etc, EFSB does not do so in its regulations 980 CMR 15.00 This leaves a gap in the practical review of Site Suitability for Large Clean Energy facilities that should be addressed by EFSB. Referencing DOER's regulations seems like a first good step.