



Ashby Conservation Commission
895 Main Street
Ashby, MA 01431

Via email: EnergyPermitting@mass.gov

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Massachusetts Executive Office of Energy and Environmental Affairs
100 Cambridge Street
Boston, MA 02114

RE : Draft Guidances for Clean Energy Infrastructure Siting & Permitting

To Executive Office of Energy and Environmental Affairs Staff:

The Ashby Conservation Commission submits the following comments on the Executive Office of Energy and Environmental Affairs (“EEA”) Draft Guidelines for Clean Energy Infrastructure Facility Siting and Permitting, for Site Suitability Assessments for Clean Energy Infrastructure and Uniform Set of Baseline Health, Safety, Environmental and Other Standards. Ashby is a small rural town in the north central region of the state with a population of around 3,200. Our boards and commissions are generally made up of volunteers who may or may not have professional support staff. The Ashby Conservation Commission is all volunteer with no professional support staff. Our comments are guided by our experience as Commissioners anticipating Local Consolidated Permitting.

SITE SUITABILITY ASSESSMENTS FOR CLEAN ENERGY INFRASTRUCTURE

III. DEFINITIONS

Site Suitability Score Modifiers

The definition suggests the modifiers are “delineated in Sections IV.B.i. and vii” which don’t exist. Perhaps the B should be C?

In general we believe modifiers could be a viable way to tweak a marginal score, certainly not a way to overcome a poor (“not very suitable” or “not suitable”) score as suggested in the Guidelines. There has to be a path to No for poorly sited projects. Also, we believe burdens should be minimized and that impacts should be mitigated but neither minimization nor mitigation should then be considered “benefits” of a given project.

Small Clean Energy Generation Facility

We have the same issue here as we did in the Regulations at 29.04(2) for Adding Facility Type to the Definition of Small Clean Energy Generation Facility that “Following a rulemaking by the Department in consultation with the Board, the Department may add additional facility types to the definition of a Small Clean Energy Generation Facility, provided that the type of generation facility added produces no greenhouse gas emissions or other pollutant emissions known to have negative health impacts.” We express our opposition to this because the Department’s regulations as proposed were not written and reviewed with the forethought of some unknown future facility type in mind. Adding a facility type will require full review and accommodation for all that the new technology involves.

IV. SITE SUITABILITY ASSESSMENT

IV.A. Applicable Facilities exceptions

What is the process for facilities that are deemed exempt? Are they reviewed for all required permitting as before? Does this include wetlands permitting if applicable? Whatever the process, the guidelines should make mention of the permitting process for exempt projects.

IV.B. Scoring Process

The Guideline doesn’t mention how the applicant will convey their self-determined score. Applicants must be required to provide the individual scores for each criteria, not just their self-determined total score. They must also be required to provide the mapping results or reasonings/basis for each criteria score.

IV.B.i

There is no section IV.B.i. in the Guideline. Section IV.B starts at ii.

IV.B.iv. Request for Score Review

Request for Score Review is defined as a process through which Applicants may dispute the result of the Site Suitability Score Reviewer’s Formal Score Determination. Why are only applicants allowed to contest site suitability scores? What about the Municipality or Key Stakeholders? What will be our recourse if we believe the score to be inaccurate? The guideline states DOER’s determination is final. That will shut out municipalities and stakeholders.

IV.C.i. Criteria Development Potential

We are concerned that some lands labeled “previously developed” could in fact be within a protected Wetlands Resource Area or otherwise protected land, for example within the 200’ Riverfront Area. This makes automatic approvals problematic. Some review of these lands must be done.

IV.C.iii. CARBON STORAGE AND SEQUESTRATION

Why are forests only graded on their carbon and land coverage? Some may be lucky enough to be within BioMap areas but we believe it is shortsighted, with all that our forests provide us (water purification, rainfall collection, wildlife corridors and habitat, etc.), to decide whether a forest is worth preserving simply by how high it scores on a federal carbon monitoring system.

And why would we rely on the federal administration’s National Forest Carbon Monitoring System? At the time we thought it foolhardy to rely on anything from the Trump administration if you truly wanted to protect the environment. We now see a “Due to the Radical Left Democrat Shutdown...” banner on the site. Please consider finding another tool that will remain online, remain in existence and remain science based.

IV.C.vi. SOCIAL AND ENVIRONMENTAL BURDENS

We approve of the protections being afforded areas that are already overburdened by polluting industries to restrict further burdens of housing clean energy facilities, but fear this could just create a new category of “clean energy burdened area” out in rural Massachusetts.

Will the MassEnviroScreen tool be realtime? Will it be kept current with all of the acres of forest and farmland that will be targeted for the immense numbers of clean energy facilities needed to fulfill the requirements shown on the “Massachusetts’ Clean Energy Needs” slide at the Public Information Sessions? There was a municipality spokesperson at the Fitchburg Information Session that mentioned their town was already housing 30 solar installations. Numbers of installations and acreage lost must be tracked in real time.

IV.C.vii. SOCIAL AND ENVIRONMENTAL BENEFITS

We fear that ways scoring benefits to overcome not suitable and unsuitable scores via score subtractors will be pitting municipal Boards & Commissions trying to protect the environment, public health, the rural feel of their communities, etc. against their cash-strapped municipal governments who so often find themselves in difficult financial times narrowly focused on keeping the municipality “in the black.” We feel that key stakeholders, including Commissions and Departments of the municipality, must play a role in determining what benefits are truly deserving of score subtractors. How could we, the Boards and Commissions, support this? Our “job” as a Conservation Commission is specifically to protect the wetlands of the Commonwealth, not trade them for cash or playground equipment or some such agreement. One man’s “rational nexus” may not be the same as another’s. Who will be the arbiter? We

wonder how applicants will be urged to find more suitable sites if they can just buy their way to approval despite a poor site suitability score?

IV.D.ii. WETLANDS

As mentioned above, if the project is exempt from local consolidated permitting as qualifying with one of the three exemptions defined in Applicable Facility, are the applicants still required to get the Wetlands permit? What is required of these exempt facilities must be current permitting and must be made clear in either the Regs or these Guidelines.

IV.E. CRITERIA AND SCORING TABLE

We note that the Total Possible Score could never be 25 as multiple criteria are mutually exclusive such as being both prime farmland and a high carbon forest at the time. The Guidelines should make this clear and must not use mathematical scoring possibilities to suggest actual siting possibilities.

IV.F. SCORE MODIFIER TABLE

Regarding the bullet “Other benefits which improve quality of life, as prioritized by the host community”, it seems to us that EEA is proposing borderline unsuitable projects can be saved through score modifiers. We do not believe that poor scores (“not very suitable” or “not suitable”) should be allowed to buy their way out of the basement. Again as we mentioned above, the whole of the community must be included in determining if a proposed benefit improves the community’s “quality of life”, not just the municipal government’s bottom line.

VI. USE OF METHODOLOGY FOR CONSOLIDATED LOCAL PERMITTING

VI.C.ii. USE OF CRITERIA-SPECIFIC SUITABILITY SCORES

This Section states “Municipalities should use the criteria-specific suitability scores as a resource to determine if minimization or mitigation measures should be required for a project to receive a Consolidated Local Permit.” That suggests that projects with criteria specific scoring found to be “Not very suitable, moderate to high impact” requiring “Significant minimization and/or mitigation measures likely required” or “Unsuitable, high impact” can somehow just pay or gift their way to Approval, that there is no score that cannot be overcome with minimization or mitigation. If that is not EEA’s intention, the Guidelines should be modified to reflect your intention.

GUIDELINE ON UNIFORM SET OF BASELINE HEALTH, SAFETY, ENVIRONMENTAL AND OTHER STANDARDS

2. Standards that Apply to All Clean Energy Infrastructure Facilities (CEIF):

Article 97 Land Disposition

Regarding Article 97 Land Disposition, we are opposed to the guideline that states “CEIF projects should avoid, but are not prohibited from, being sited on Article 97 lands.” Article 97 land should not be disposed of for CEIF projects. If the CEIF is not impactful, such as a car port over an existing parking area in an Article 97 protected property, the project may be allowed to proceed WITHOUT disposition. CEIF projects should be prohibited from permanently disposing of protections. We all know a two-thirds vote at 11:59pm on the last day of the session isn’t a high bar to overcome.

Decommissioning/Abandonment

Regarding Decommissioning/Abandonment, disturbed earth resulting from decommissioning a CEIF should not be left unstable or otherwise not vegetated if that has the potential of a violation of Wetlands Regulations such as storm discharge to a resource area created by the erosion of loose soil.

Seeing the Healey Administration press release last week celebrating¹ the protection of 1,325 acres in neighboring Ashburnham and Winchendon, we wonder what the outcome would have been if these expedited siting & permitting reforms had been in place. The celebrated conservation only came about because a solar developer entered into an agreement to develop the property. If this land had not been saved by the municipalities’ right of first refusal² would the applicant have been allowed to minimize & mitigate their way to an approval? We hope not.

In general we feel many of the guidelines should actually be regulations as this would leave them less likely to be maneuvered around. Thank you for this opportunity to comment. We look forward to remaining engaged during this process.

Respectfully submitted,

The Ashby Conservation Commission

George A. Bauman, Chair

Roberta Flashman

Cathy Kristofferson

Robert Leary

conscom@ashbysma.gov

¹ “Healey-Driscoll Administration Celebrates 1,300 Acres Conserved in Winchendon and Ashburnham” available at <https://www.mass.gov/news/healey-driscoll-administration-celebrates-1300-acres-conserved-in-winchendon-and-ashburnham>

² “Mount Grace and Mass Audubon Celebrate Historic Vote to Protect 1,365 Acres of Forest in Winchendon” available at <https://www.mountgrace.org/about/news/post/winchendon-landscape-project>