

COMMENTS ON SITE SUITABILITY ASSESSMENTS FOR CLEAN ENERGY INFRASTRUCTURE

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(You will note *Some but not all cross over with our interpreter (that's a joke) Michael De Chiara who is our Shutesbury Planning board's comments. We are lucky to have him do some translating for us. But these comments are very much also our own.)

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DEFINITIONS

Applicable Facility – It seems to me that Burdened communities are burdened, in part, because of the lack of regulatory protections regarding public health, safety and welfare – both over the course of history and in the recent past. So it remains puzzling to me that EEA would require less regulatory oversight and less assessment for these communities. While a Cumulative Impact Assessment will certainly provide data and analysis that is necessary to protect these communities from project harms, I do not think a CIA will replace the process and the data provided by a Site Suitability Analysis. I would suggest all projects be required to have a Site Suitability Analysis.

Site Footprint – these regulations should make clear that the site footprint also includes any required buffer zone outside of the fenced project area if land alterations occur. This may not be apparent with the current wording about clearing, it seems like the assumption about clearing pertains to grading or roadways.

SITE SUITABILITY ASSESSMENT

iii. Carbon Storage and Sequestration

This is a good criteria, however , neither source for

measurement - the National Forest Carbon Monitoring System and the Annual NLCD land cover data websites are user friendly and therefore review by local government or

stakeholders will be difficult, making accountability of scoring difficult to achieve. There is also the very real danger of using a measurement system related to carbon sequestration that is maintained by the USDA or the USGS given the federal government's willingness to downplay climate crisis and take data offline. I would suggest EEA figure out a better way to measure the desired information. Also, given the importance of soil for carbon sequestration, EEA should also refer to the

Commonwealth's Healthy Soils Program.

iv. Biodiversity

I think the sources of measurement – BioMap and Natural Heritage and Endangered Species provide the correct data sources to assess biodiversity. However, it is not clear to me why EEA is prioritizing Priority Habitat over BioMap except for the reason that it would trigger MEPA review? **Similarly, as I have said many times before there is nothing in the BioMap materials from MassWildlife that places greater value on Core Habitat over Critical Natural Landscape** – Please note that this is the BIGGEST point that the MANY of hundreds of people who have written, not just to you, but to our legislators, to our governor, and the SAME POINT those of us who have attended countless hearings and meetings, are pushing for!! The same message we have been pushing for at protests and in the press. **WE MUST protect our FORESTS.** We, along with Connecticut are the only states that are DESTROYING the level of 1,000's of acres of otherwise protected FOREST ZONED lands from clear cut, FOR solar. **You would not be facing the opposition from towns that you are a facing, if you would protect CRITICAL Landscape as WELL as Core Habitat by making these spaces INELIGIBLE from projects. Simple.**

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 strict protective approach for both categories of BioMap.**

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.

In terms of calculating a score, it is unclear what 1) "grid cells centered inside the Site Footprint" means. I strongly support EEA continuing the SMART 3.0 approach that any land

overlapping with BioMap is considered in BioMap but the “grid cell centered” language makes this unclear.

Unlike the other data sources, these are user friendly and easily accessible to local government and the public.

D. OTHER CONSIDERATIONS OF NOTE

i. Drinking Water Supply

I have major problems with this section. I think EEA drops the ball in terms of water protection. There is so much more that should be included here. The current Siting Suitability feels like it is kicking the can down the road and leaving municipalities without a clear road forward to protect

drinking water. Paragraph 2 states that “Local controls must be in the form of zoning or general bylaws or ordinances, or health regulations that meet the requirements of the 310 CMR 22.00” The 310 regulation is focused on and limited to protection of public water supplies. By simply citing that DEP is the regulator of water supplies, EEA is missing all the communities that rely on private drinking water wells and that do not have public water supplies. Many, many small towns do not have public water. For example, my town of Shutesbury is 100% supplied by residential drinking water wells, the only public water (by technical definition) is the well that supplies the elementary school. This oversight needs to be corrected. Further, by my reading, the actual DEP regulations are insufficient in terms of protecting various drinking water sourced by aquifers or the water sources that protect them. In Western Mass. recent resistance to ESS placement has occurred in Westfield and Orange, both of which have public water supplies but the aquifers sourcing the water are vulnerable to ESS contamination. In the case of Orange, for example, approximately 60% of the town’s water comes from one aquifer; if that is contaminated by an ESS, there is no real alternative source to provide the volume needed.

Additionally, despite EEA’s statement that DEP’s Drinking Water Program’s Guideline #2011-1 covers batteries, my reading of this policy does not indicate that. The policy was developed in 2011 when ESS was not a policy issue. My reading is that this policy covers solar and wind; only by legal extension (the SJC’s interpretation that accessories to a solar development such as ESS)

are batteries included. So, this statement seems to fall short, and I do not think it is accurate. Furthermore, without regulations that adequately allow protection of drinking water as it relates to clean energy protection, municipalities are both vulnerable and legally hamstrung. As an example, in the case of Shutesbury, the AG twice rejected town-approved energy storage regulations that included water protection (2023 solar bylaw and

a 2024 Energy Storage general bylaw), as being in conflict with the Dover Amendment. Based on the Clean Energy statute and its statement that municipalities that comply with the subsequent clean energy regulations will be deemed to be compliant with the Dover Amendment, there is a pathway for EEA, EFSB and DOER to allow municipalities to provide regulatory protection for drinking water. It is up to EEA, DOER and EFSB include enabling language to allow municipalities to develop zoning and regulations that protect drinking water.

Substantively, there is much that can contaminate drinking water supplies. Since DOER requires ESS to be included in a solar installation in order to receive a SMART subsidy, ESS installations will continue throughout the state. This is furthered by the Commonwealth's efforts to build more standalone energy storage. While debatable about how safe lithium-ion battery technology is becoming, the fact remains that fires do occur at these facilities and toxins are released into the air and into the ground, often by heat suppressing water applied by fire fighters. More recently, I have found evidence that PFAS can be found on ESS sites, both because it is part of the lithium-ion battery components and because it also can be applied as standard firefighting practice. The Commonwealth is well aware of the burdens and dangers of PFAS in our soils and water; EEA

should be working to reduce the instances of PFAS and other contamination and relying on outdated DEP regulations.

My strong position is that water protection is essential. EEA, must embrace the Environmental in its name and provide clear siting protections for drinking water – both public and private. For public this should extend to all zones – I, II and III. This should include prohibition on ESS in areas where drinking water sources are vital and contamination would leave communities vulnerable. Further, the Siting Suitability guidance should explicitly enable municipalities to develop zoning and regulations that are protective of drinking water. In short, I think EEA staff need to dig much deeper into this issue and come up with a better solution than citing outdated

DEP regulation.

ii. Wetlands

This too seems to be inadequate with EEA simply citing Wetlands law with little expansive thinking. Of course, solar and batteries should not be in wetlands jurisdictional areas. But how about considering expanded buffer zones around the wetlands beyond the state Wetlands regulations. In addition, many municipalities in the Commonwealth have local

wetlands regulations that provide for greater protections in order to minimize the negative impacts on wetlands. EEA Siting Guidelines should explicitly allow municipal wetlands regulations to be in full effect in regards to the siting of clean energy. The current Siting draft only states that “Local jurisdictions may also have wetlands protection bylaws” – a simple statement of fact but it doesn’t affirm municipalities can use these regulations in the clean energy context. Further this guidance cites that the EFSB can waive these local regulations, undermines local protective intent and also raising questions about if municipal regulation is allowed. The language should clearly allow local wetlands regulations to be in effect for clean energy projects.

iii. Noise

Similar to wetlands, there is one state standard for noise as established by DEP regulation.

However, some municipalities, such as Shutesbury, have developed more nuanced regulations to address issues of noise that reference the DEP noise regulation. The Site Suitability regulations should explicitly allow local regulations that do not conflict with DEP noise standards to be in effect so that implementation of these regulations can be locally informed and applied. It is important to note that noise issues can be different during construction than they might be during operation. If not in these Site Suitability guidelines, DOER and EFSB need to address noise in performance and design standards, as well as in DOER’s Public Health guidelines. If EFSB has the ability to waive noise requirements, as noted in footnote 15, then there must be a requirement for written explanation that is publicly available and subject to public comment.

iv. Air Quality and Emissions

EEA rightly calls out anaerobic digestion facilities as sources of air pollution - these should not be considered clean energy.

More to the point this regulation does not address the possibility of emergency-based emissions which would most likely come from an energy storage fire. The possibility of ESS fires makes the need for appropriate siting important. For example, we have seen in both California and New York state ESS fires that evacuation occurred. Therefore, proximity to schools, hospitals, or other facilities that would need to be evacuated in case of an ESS fire, should be taken into account when scoring a facility. Even if no scoring is applied, it would be responsible for these guidelines to address the potential issues; better to prohibit siting in proximity of potentially vulnerable uses. These regulations could also reference DOER and EFSB public health sections of the respective regulations.

F. SCORE MODIFIER TABLE

Developmental potential. For projects with canopies on appropriately sited land, I think an automatic zero score for the Developmental Potential criteria makes sense. But this should not be extended to the other criteria – zero scores need to be earned and demonstrated for Biodiversity, Carbon Storage, Agricultural Resources and Social and Environmental Burdens. The Commonwealth does want to encourage canopies and appropriate siting but I fear that by creating an automatic zero pathway for all criteria, this might allow for canopy projects that could in other ways get a mixed criteria score. EEA should require facilities to demonstrate good siting to get good scores.

Social and environmental benefits – EEA’s requirement that social and environmental benefits can modify a score only with agreement by the host municipality is excellent and essential. To reiterate, while I think communities should be respected for knowing their own needs, I think projects that trigger a modifier should be limited to those that directly relate to siting rather than unrelated benefits like job creation. Other benefits like pollinator design should be required by

DOER and EFSB by performance and design standards.

V. USE OF METHODOLOGY AT THE ENERGY FACILITIES SITING BOARD

A. Pre-filing

It is excellent 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 “may”, the term “will be expected” does not carry sufficient regulatory weight.

B. Application Requirements

In addition to documenting why the site was chosen, this requirement should also include explanation for why the alternative sites were not chosen. This needs to be a defensible decision and without information on all sites that were considered or possible, comparison cannot happen. As a regulator, if presented with the documentation of social and environmental benefits, my first question would be “what does the host municipality think about these?” So, I think it is important for this requirement to include not simply the applicant’s ideas and a proposal for social and environmental benefits but those that have

been discussed with the host municipality, demonstration of some engagement regarding these, and if possible, an indication (not commitment) of interest by the host municipality. This will likely occur if there is a Community

Benefit Plan or Agreement submitted with an application but since these are not required by OEJE this cannot be taken for granted.

C. Permitting Adjudication

be necessary.

iii. Use of Total Site Suitability Score

As mentioned earlier, any modifiers that are applied should only be applied to the Total Score

rather than the Criteria Specific score otherwise the basis for mitigation or conditions will be less

clear. The preservation of Criteria Specific Score can inform review of the projects design plan

and mitigation measures.

iv. Use of Criteria-Specific Suitability Scores

See above regarding preserving Criteria Specific Scores, even if modifiers are allowed.

v. De Novo Adjudication

I support the approach that during De Novo review the Site Suitability Scores should remain unchanged. Additionally, I think the EFSB should have a process that is clearly established beforehand about what changes may be considered de minimis so it is understood by all parties when a new Site Suitability Analysis would be triggered. Project changes or site condition changes that are not de minimis should definitely require a new Site Suitability Assessment that includes community engagement and input otherwise an applicant can change siting during a denovo process with no accountability or consequences.

VI. USE OF METHODOLOGY FOR CONSOLIDATED LOCAL PERMITTING

A. Pre-Filing

Same as for EFSB permitting process: It is excellent 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 “may” since the term “will be expected” does not carry sufficient regulatory weight. I appreciate that these must be submitted as part of the application to Local Government.

ADDITIONAL NOTE

While it might be assumed that EFSB and DOER regulations will address details of siting, given the importance of various elements of clean energy facility siting, I think these should be mentioned in EEA's Site Suitability Guideline. I would suggest EEA make explicit mention of these to establish the fact that these need to be included in state regulations, presumably by

EFSB and DOER. These include:

- Minimization of slope for the entire site and installation on slopes
- Constraints regarding earthmoving for construction and installation
- Placement and extent of stormwater controls
- Minimization of erosion conditions
- Required road frontage
- Wetlands buffers
- Buffers outside of the developed area (outside fencing of arrays)
- Total size of developed parcel
- Limitations on contiguous parcels
- Road integrity/length and composition (paved/unpaved)
- Proximity to traffic
- Proximity to residences, businesses or other local uses