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The Energy Facilities Siting Board  
One South Station  
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**Subject: EFSB 25-10 – Implementation of 2024 Climate Act Siting and Permitting Changes: Site Suitability Criteria**

The American Clean Power Association (ACP)<sup>1</sup> and RENEW Northeast, Inc. (RENEW)<sup>2</sup> submit these comments in response to the Executive Office of Energy and Environmental Affairs (EEA) request for written comment on the Draft Guidance on Site Suitability Assessments for Clean Energy Infrastructure. Thank you for the opportunity to provide input on the guidance, which works to advance the Commonwealth's commitment to clean energy deployment using a transparent and effective permitting framework.

**Positive Elements to Retain**

ACP and RENEW support the aim of the guidance and appreciate the inclusion of factors that preserve flexibility, including the availability of modifiers and options for appeal. Score modifiers enhance the flexibility of the scoring framework and allow for meaningful adjustments to reflect site-specific development considerations or benefits. This ensures that scores are responsive to site-specific circumstances, and supports the overall goal of creating a practical, adaptable, and workable guidance framework.

Additionally, the ability to appeal a Formal Score Determination to either the DOER or the EFSB is a critical safeguard that promotes transparency and accountability. By including an appeal process, the guidance ensures that developers have recourse if they believe scores have been applied in error or without appropriate consideration of discretionary factors.

**Implementation of Site Suitability Score Criteria**

ACP and RENEW are concerned that the current scoring framework risks becoming an unintended pass-fail mechanism rather than a guidance tool. The draft repeatedly states that the methodology should be used as an initial screening tool to inform siting decisions by Permitting Authorities as a consideration alongside other aspects of a project, but it does not sufficiently clarify that scores are not an exclusionary permitting

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<sup>1</sup> ACP is the leading voice of today's multi-tech clean energy industry, representing energy storage, wind, utility-scale solar, clean hydrogen, and transmission companies. ACP is committed to meeting America's energy and national security goals and building our economy with fast-growing, low-cost, and reliable domestic power. Learn more at [cleanpower.org](https://cleanpower.org).

<sup>2</sup> The comments expressed herein represent the views of RENEW and not necessarily those of any particular member of RENEW. RENEW Northeast ([www.renew-ne.org](https://www.renew-ne.org)) unites environmental advocates with developers and operators of the region's largest clean energy projects to coordinate their ideas and resources with the goal of increasing environmentally sustainable power generation in New England from the region's abundant renewable energy resources.

tool. For example, in Section B. Scoring Process, the draft states that applicants should estimate site scores as early as possible before submitting an application to allow time to make design changes or choose a different site. This suggests that a high score could carry enough weight to disqualify a site that might otherwise be suitable due to this element alone. In utility-scale clean energy development, developers consider a multitude of factors, all of which contribute to site selection.

Accordingly, we urge EEA to clearly state within the guidance that scoring is advisory: Scores do not independently determine permitting outcomes, and that the respective permitting authority may approve a higher-scoring project for any statutorily compliant reason. In alignment with the 2024 Climate Act, specific uses for scores should be determined by EFSB and DOER in their regulations; EEA's methodology should be used as a tool to inform permitting decisions rather than aim to determine them.

Further, we recommend that any score review process be incorporated into the formal application review timeline for large clean energy infrastructure facilities. If an Applicant provides estimated scoring in the application, it should not need to be reviewed and assessed prior to submitting the full Consolidated Permit Application. This has the potential to further lengthen an already lengthy pre-filing application process that does not appear to address the 2024 Climate Act's intent of streamlining and expediting the permitting process for clean energy infrastructure. The estimated score submitted by the Applicant can be reviewed in conjunction with the rest of the application during the completeness review, and any requests for additional information relating to scoring (the cure process outlined in the guidance) can be provided to the Applicant during that completeness review period.

ACP and RENEW also request that EEA clarify process sequencing for score determinations. As drafted, it is difficult to determine when scoring estimates, as opposed to Final Score Determinations, occur, and how iterative project changes should be incorporated into scoring. We recommend that EEA clearly describe each stage of review and the order in which scoring, revisions, deliberation, and final action occur. A visual flowchart describing these steps would further improve transparency and minimize uncertainty or misuse of the methodology.

Even if further detail is not added on process sequence, the existing expectations for obtaining a Formal Score Determination are unrealistic. Specifically, requiring fully developed plans such as final site layouts during requests stage does not reflect how projects are conceived, evaluated, and refined. In practice, developers must first confirm basic feasibility, including interconnection and site control, before investing in detailed engineering. When the guidance demands final-level specificity prematurely, otherwise viable projects may be discouraged or delayed, which ultimately undermines the Commonwealth's clean energy and reliability goals. A phased approach that allows concept-level materials at filing and detailed plans later in the process would be more realistic and more effective.

### **Cure Process**

As written, the proposed process to cure application deficiencies could cause unnecessary delays in the pre-filing process. While the draft specifies time windows for applicants to cure application deficiencies and

an overall deadline of 30 days to determine completeness, it does not set internal deadlines for resolution of deficiencies. The concern here is twofold: 1) The overarching 30 day timeline does not accommodate the time needed to adequately resolve deficiencies, and a clarification should be added to the end of the paragraph on “Formal Score Determination” to clarify that “The Site Suitability Score Reviewer shall review the information provided and determine an Applicable Facility’s final Total Site Suitability Score and Criteria-Specific Suitability Scores within 30 days, *unless found to be deficient.*” 2) Within the 30-day window for completeness determinations, there is no deadline for notice that a deficiency has been found. ACP and RENEW recommend that EEA establish a 15-day timeline for notification by a Reviewer that an application has deficiencies.

Further, after a 30-day window to cure any deficiencies, an application still found deficient can be determined incomplete, and an applicant must wait 30 days to file again. This waiting period contradicts the intention of the 2024 Climate Act, which aims to streamline the siting and permitting process for clean energy infrastructure facilities. While a degree of flexibility for both applicant and reviewer to cure deficiencies is appreciated, ACP and RENEW recommend that the waiting period between a determination of incompleteness and the submission of a new application be shortened to no longer than 15 days.

### **Development Potential**

While the draft provides robust detail on most of the site suitability criteria, it takes a higher-level approach on Development Potential. The current system does not adequately account for the value of proximity to existing substations or transmission lines - factors that reduce land disturbance, minimize community impact, and provide significant public benefit. It may be appropriate to reduce scores based on interconnection capacity, as it is essential to develop energy infrastructure in these locations. Further, proximity to substations could reduce scores as shorter generation-tie lines will have fewer impacts on the surrounding environment.

Additionally, the current draft guidance assigns a Total Site Suitability Score of 25 to any Applicable Facility whose Site Footprint overlaps with Protected Open Space, including land protected under Article 97. While this approach may be appropriate for significant, above ground encroachments, it is not workable for project elements such as underground electric cables that often run for many miles and cannot reasonably avoid crossing Article 97 land. Moreover, such underground cables have temporary, de minimis impacts that do not materially affect the conservation value of the land.

We recommend that the guidance incorporate exemptions for underground cables, and other small-scale or non-invasive uses of Article 97 land, consistent with the draft regulations under development pursuant to M.G.L. c. 3, § 5A; Acts 2022 c. 274, § 2.<sup>3</sup> Specifically, the draft Article 97 disposition, change in use or interest regulations recognize that certain temporary easements, subsurface or air rights easements, or other non-fee simple interests that affect zero acres of Article 97 land may not require Replacement Land (and instead warrant Funding In Lieu). These provisions reflect a more nuanced and practical approach to evaluating

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<sup>3</sup> Available: <https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter274>

impacts, particularly in densely developed areas where siting clean energy infrastructure is constrained, and load demand may be greatest.

Incorporating such exemptions into the Site Suitability Guidance would ensure alignment with the broader regulatory framework and support the Commonwealth's clean energy goals without compromising the integrity of protected open space. This is especially critical in urban and suburban contexts where available land is limited, the options for siting underground cables are often very constrained, and infrastructure siting must balance environmental protection with feasibility.

### **Agricultural Resources**

ACP and RENEW appreciate EEA's commitment to preservation of the commonwealth's agricultural land. However, the agricultural resources scoring criterion does not adequately account for landowner choice or property rights. While we commend the office for incorporating existing agricultural use into the score, we strongly advise that EEA account for landowner preference in agricultural scoring or remove the section entirely. While at face value it makes sense to keep land currently being farmed in agriculture, the current approach overlooks the reality that continued farming may not be viable or desirable for every landowner. Many farmers that choose to transition certain acreages to renewable energy do not wish to continue farming on those acres, and the current scoring methodology penalizes them for doing so. Renewable energy projects provide reliable income to farmers to subsidize variable farming revenue, insulating against negative effects of variables outside of farmers control, such as weather, price fluctuations, and market pressure. ACP and RENEW recommend that the scoring framework incorporate landowner choice as a legitimate factor and avoid the assumption that agricultural designation equates to long-term agricultural use.

Further, agricultural land, even when undeveloped, is working land. Locating projects on or near working lands can help minimize potential conflicts with other stakeholder-sensitive resources, such as wildlife habitats and historic or cultural sites, which are more likely to be impacted when development occurs on previously undisturbed areas.

### **Social and Environmental Benefits**

Regarding the social and environmental benefits modifier, additional clarity is needed on the scoring mechanics. Specifically, the guidance states that one point may be subtracted per individual benefit achieved, yet the written example suggests that two points may be subtracted for a single benefit. ACP and RENEW request EEA clarify their intent as to whether if a prospective project is combined with a second resource would therefore have a compounding reduction on the site's score. If so, this should be made clear, or the example should otherwise be adjusted to reflect the table contents.

Furthermore, the current draft requirement that an Applicable Facility must coordinate with the host municipality in order to apply a social and environmental benefit score modifier raises significant practical concerns. As written, the guidance conditions the ability to use the modifier on the municipality's agreement

to one or more benefits, which then become binding as part of any permit. While this approach encourages collaboration, it does not account for circumstances in which a municipality may be unresponsive, obstructive, or otherwise delay negotiations despite a developer's good-faith efforts. Conditioning the modifier solely on municipal cooperation creates a scenario in which developers may be penalized for factors beyond their control, potentially discouraging investment in sites that could otherwise deliver meaningful community and environmental benefits.

To address this concern, the guidance should be revised to allow developers to receive credit for social and environmental benefit efforts even in cases where municipal agreement cannot be secured. For example, the scoring framework could recognize documented outreach, proposed benefit programs, or voluntary commitments implemented by the developer independently of municipal approval. This approach would ensure that the modifier fulfills its intended purpose, encouraging tangible community and environmental benefits, while avoiding unintended barriers created by inconsistent municipal responsiveness.

### **Biodiversity**

While the scoring framework for project sites is robustly developed, ACP and RENEW have concerns about the biodiversity mapping features. As currently written, the mapping features could create misleading results about site-suitability. Specifically, the BioMap framework appears to encompass most undeveloped and non-cultivated land in the state, making these areas appear difficult to avoid. Projects which may otherwise have low impacts on the surrounding environment and community could receive disproportionately high suitability scores based on a single mapping resource.

Additionally, it is unclear whether the biodiversity scoring feature accounts for the actual overlap between a project's site footprint and mapped biodiversity areas. Many utility-scale projects employ micro-siting to avoid sensitive resources, and this cannot be appropriately represented using the 30x30 meter grid cells proposed in the guidance. For example, an access road may appear to cross a small portion of a high-value cell even though there is no on-the-ground disturbance of actual habitat. The current methodology does not account for these key details, and ACP and RENEW are concerned that projects with minimal overlap of high-value cells could receive the same score as those with extensive overlap.

Further, the geospatial data referenced in this portion of the guidance is not yet available online, limiting stakeholder ability to meaningfully assess the impact of the requirement. We recommend that EEA: A) incorporate proportional overlap and allow for field-based adjustments, and B) ensure the maps will be made available for public input and be regularly updated based on field data.

### **Pre-Filing**

980 CMR 16.04(1)(a) implies that a project proponent will continuously perform a site suitability and cumulative impact analysis throughout the duration of the pre-filing engagement to inform alternative sites. This neither conforms with 980 CMR 13.03(1)(f) nor considers best practices for selecting the optimal site for CEIF. Further, this language contradicts the proposed language in 980 CMR 16.06(1)(a)(6), where a project proponent in consultation with the MEPA Office is required to "present a description of the site selection

process and the alternatives analysis used in selecting the Applicant's preferred option along with locus maps/lists showing project locations considered and associated environmental resource constraints."

Similarly, this is of concern for two-part connector projects (divided to comply with ISO-NE's 1,200 MW reliability requirements) that have already undertaken substantial outreach and engagement, completed site selection, and have received all permitting approvals for the first phase of the project. The guidelines and regulations should include an exemption for existing projects from needing to conduct a new site suitability analysis, which would increase costs and needlessly delay critical energy infrastructure crucial to meeting the Commonwealth's climate and energy goals. Regardless, requiring any continuous evaluation of alternative sites after a clean energy project proponent has identified the singular site would add additional time, cost and administrative complexity to the site selection process, which could result in delays to a proponent beginning pre-filing consultation with the host community.

### **Application Requirements**

In the section on application requirements, appears to use "mitigation" to broadly mean "avoidance, minimization, and/or mitigation." We recommend that more specific language is used here to avoid confusion with use of the term mitigation elsewhere in the document, where it applies to compensatory offset measures. Additionally, as written, the guidance implies that all non-zero suitability scores trigger an expectation for avoidance, minimization, or mitigation measures; ACP and RENEW recommend that the guidance explicitly state that the need for these measures should be based on project-specific impacts.

Additionally, ACP and RENEW recommend that if the scoring process requires submission of materials before site control is secured, the final guidance should make explicit that such materials will be kept confidential. Public disclosure of early-stage suitability filings exposes applicants to premature community opposition or loss of prospective sites.

### **Use of Total Site Suitability Score**

ACP and RENEW also request greater transparency on how the Total Site Suitability Score will be used in the state permitting process. Specifically, the guidance should clarify the relative importance of site suitability scores compared to project-specific information. If minimization and mitigation requirements are determined based on score rather than project-specific impacts, ACP and RENEW strongly recommend that EEA make these thresholds clear and be more explicit about how scores may/should influence permitting decisions. Without this clarity, applicants face significant uncertainty and risk delays in the permitting process.

Signed,

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