

Ms. Judith Judson
Commissioner
Department of Energy Resources
100 Cambridge St., Suite 1020
Boston, MA 02114

Re: Land Use and Siting Guidelines Public Comment

Dear Commissioner Judson:

We are writing to express our opinions on the proposed SMART guidelines released by DOER on January 22, 2018. As a Massachusetts-based solar development company with projects in the Commonwealth, Oak Square Partners has a true stake in how the SMART regulations will be administered and we hope that the DOER will seriously consider our suggestions. In addition to our comments on the guideline, we ask that DOER subject projects that have been awarded a Statement of Qualifications for the 100 MW Competitive Procurement only to the natural interpretation of the agency's final regulations as they existed at the time of the Request for Proposals.

In the final regulations, the agency provided that a project would be considered Category 1, Non-agricultural if they were sited on "previously developed" property. "Previously developed" property was defined by 225 CMR 20.05 (5)(e) as "having pre-existing paving, construction, or altered landscapes." Under this plain language a property was one distinct unit which could be categorized as either "previously developed" or not depending on its characteristics.

The Draft Guidelines describe a very different process for determining a project's eligibility for Category 1. Under the Guidelines, if a parcel is partially developed but the project is sited on a portion of forested or undeveloped open space then it will not be considered to be a "previously developed" site. This is a material difference from what was finalized and relied upon in the published regulations. Additionally, our concerns surrounding the proposed language are the following:


- It does not consider a situation where a project is sited across both developed and undeveloped space on a parcel. For example, if a solar project is located across both developed and undeveloped (forested or open space) area, the guideline is unclear if the entire array is subject to the subcontractor. We believe such a facility should not be subject to a subcontractor.
- A solar project is more than an array of panels. Stormwater treatment facilities, access roads, equipment pads, etc, are all part of any project, and therefore should be considered when characterizing whether a project is located on developed or undeveloped land.

Under the Guidelines, the regulated parties must demonstrate to the agency's "satisfaction" that a site is "previously developed". Such discretion is not reasonable because it does not give notice to regulated parties about how the agency will evaluate a parcel. The agency should provide additional guidance which will include examples of properties and how they would be characterized. This will provide regulated parties a common understanding of the agency's judgement criteria.

In regards to projects which qualified under the 100 MW procurement, it is arbitrary and capricious to subject award recipients to retroactive guidance that was not available during the initial solicitation. In addition, award recipients were not afforded an opportunity to contest the agency's land use categorization during the five day window between notice of award and deadline to accept. Recipients were forced to accept the categorization or decline and face significant penalties in the form of exclusion from the first several program blocks.

We appreciate the hard work and dedication of DOER in creating the Guidelines for the SMART program. We believe that the above suggestions will improve the SMART program and encourage further growth of the solar industry in Massachusetts. Thank you for considering our comments and we hope the agency will include our recommendations in the final guidelines.

Sincerely,


Sevag Khatchadourian
John Typadis
Demetri Typadis