



July 25, 2025

Grace Fletcher
SMART Program Manager
Department of Energy Resources
Commonwealth of Massachusetts

Dear Ms. Fletcher,

Thank you for soliciting comments on the recent SMART Emergency Regulations. We are very appreciative that DOER recognizes the urgency of establishing SMART 3.0 quickly and with sufficient capacity to enable the maximum number of projects to proceed while the federal Investment Tax Credit (ITC) is still available. We also want to extend our thanks to you and your team for incorporating stakeholder feedback as this proposal has evolved.

We have a number of detailed questions and a few suggestions for adjustments in the final regulations; the theme that connects most of them is that we appreciate any opportunity for flexibility so that we can work together to accelerate the deployment of solar that can still leverage the ITC.

Land Use Comments

Wetlands: 225 CMR 28.08(1)(a) states that projects are ineligible if they intersect with “Wetland Resource Areas, including Buffer Zones, as defined under 310 CMR 10.04.” However, under the SMART 2.0 regulations, projects are ineligible if they are “sited in a wetland Resource Area, as defined in 310 CMR 10.04: Definitions, **not** including Buffer Zones, as defined in 310 CMR 10.04: Definitions, **except as authorized by all necessary regulatory bodies**” (emphasis added). We strongly recommend that this change be reversed and that the SMART 2.0 language be copied exactly into SMART 3.0. Excluding wetland buffer areas would have an enormous impact on the availability of land for solar development, a change which has not been contemplated during the extensive stakeholder discussion on land use criteria that has taken place over the last 18 months.

Land use transition exception: SMART 2.0 included a transition exception to some of the land use requirements for projects with interconnection applications predating 9/27/19. There are a number of projects that qualify for this exception and have yet to begin construction due to Capital Investment Project (CIP) delays. These projects have faced extraordinary circumstances, and when they are finally online nearly a decade will have passed since they submitted interconnection applications. While it is reasonable for land use regulations to evolve over such a long period of time, projects that were developed in good faith under the regulations in effect at the time should be held harmless from subsequent changes and allowed to participate in the program that is in effect when they are finally able to qualify. In this case, that is SMART 3.0, because DOER has decided to end SMART 2.0 participation for projects that do not begin on-site construction in 2025.

For CIP projects such as these, expected online dates are mostly in 2028, so it is not feasible to start on-site construction so soon in advance of possible PTO. Therefore we recommend that the land use transition exception included in SMART 2.0 be extended so that projects that meet the original exception date criteria can participate in SMART 3.0.

Core Habitat and Carbon Storage Predetermination: We greatly appreciate that DOER listened to stakeholder feedback in the creation of the new land use framework. A core improvement in the new framework is that it acknowledges that land use impacts exist on a spectrum, and that it will be impossible to reach our decarbonization mandates if we seek to avoid land use impacts altogether. However, we have one remaining concern with the framework as proposed, which is that sites can be deemed ineligible to participate in SMART based on GIS data, with no opportunity for verification and waiver contemplated in the Emergency Regulations. These GIS datasets are not necessarily updated on a regular basis, and many components are based on automatic offsets from a particular landscape feature, rather than actual on-the-ground data. Our development team therefore regularly encounters sites that overlap with Core Habitat GIS layers, where the actual conditions on the site tell a different story. We recommend that DOER allow projects to petition for eligibility if they can supply field data from a qualified third party that demonstrates that the application of one of the categories leading to SMART ineligibility is inconsistent with the facts on the ground. For example, a site may be flagged in GIS as being ineligible due to forest carbon sequestration, yet in reality the site has previously been cleared of trees for a non-solar purpose. These land cover changes may be captured in a future update to the GIS datasets, but there is no established schedule of updates and therefore an opportunity for waivers is essential.

In addition, in cases where it is a rare species that triggered the Core Habitat designation, we recommend providing an opportunity for a more case-specific framework that follows the Natural Heritage Endangered Species Program permitting approach. There are certain species that can happily coexist with solar development, where in fact solar development does not represent much of a change of conditions from the existing conditions on the site. For example, rare turtle species enjoy the sandy conditions of cranberry bogs, so cranberry bogs are often flagged by NHESP and therefore also Core Habitat. When seeking a permit from NHESP, we may only need to make only minor adjustments to a project design because installing solar on a current or former cranberry bog does not dramatically change the conditions of the site. This is not the case for other species, for example a forest-loving species would be dramatically affected by the clearance of a forest for solar. Therefore we recommend that DOER follow the NHESP permitting approach when determining eligibility for sites that receive the Core Habitat designation due to the presence of rare species. The NHESP team are the experts in rare species, and the most qualified to determine if solar development on a particular site would represent an unacceptable impact to a given species and its habitat.

Gravel Pits as Previously Developed: We recommend that DOER clarify that gravel pits or other excavation sites are covered in the “absence of topsoil” category under the definition of “Previously Developed”. Confirmation of this in the regulations would avoid the need for such projects to apply to DOER for a determination of “Previously Developed” status and therefore would reduce administrative burden and contribute to expediency for projects.

Grading: In Section 28.08(7), we request that you confirm that the undefined terms, “field soils,” and “soil(s)” refer to topsoil. As written it is slightly unclear and could be interpreted to prohibit grading. While we understand that grading or other disturbance of the soil may be a concern for projects seeking qualification as ASTGUs, we request that you clarify this language to confirm that grading is acceptable for standard ground mount projects. Most projects utilizing single axis trackers require some amount of grading: typically the topsoil is removed and stored onsite, then redistributed throughout the graded area once grading is complete, after which the area is replanted. The federal reconciliation bill includes a requirement that projects beginning construction after Jan. 1, 2026 not exceed a maximum percentage of equipment manufactured by entities with ownership links to “Foreign Entities of Concern” (FEOC) in order to access the Investment Tax Credit. This maximum threshold decreases every year, and is challenging to meet because even solar panels that are manufactured in other countries include primary components made in China (a FEOC country) or by companies with Chinese ownership. Including trackers on a project, however, can make a substantial contribution to that project’s ability to achieve the minimum non-FEOC percentage because trackers can much more easily be sourced from non-FEOC manufacturers. However, trackers cannot automatically be added to any project because potential sites in Massachusetts tend to have a lot of topography and wetlands, so the resulting project design may not be compatible with the design requirements (such as minimum row length and maximum undulation) for a tracker. Allowing grading, as long as topsoil is restored and appropriate cover species are replanted, is important to enable projects to use trackers. If grading is restricted, there are many fewer sites that would work with trackers, and therefore those projects would have a much more difficult time meeting the minimum non-FEOC percentage required to retain access to the ITC.

In addition, in order to retain the ITC, projects must either energize by the end of 2027, or commence construction by July 4, 2026. Based on the executive order issued by the President on July 7, 2025, we are expecting the definition of “commence construction” to change, with the express purpose of making it more difficult to qualify. Whereas previously equipment purchases were considered eligible, we expect that on-site construction will become an increasingly important tool to demonstrate commencement of construction. For projects that have a longer amount of time between construction commencement and ability to energize (i.e. due to the delay in completing construction of interconnection upgrades), it is problematic to install equipment on-site that will sit unused for multiple years. Therefore, other on-site construction, such as grading and construction of access roads, will be the preferred method for demonstrating commencement of construction. We urge DOER not to unnecessarily restrict grading, as this could have the unintended consequence of threatening ITC eligibility for certain projects.

Cumulative Impact and Grid Alignment Mitigation Fee criteria: As noted above, we are strongly supportive of the new mitigation fee framework for managing land use impacts from solar. However, we are concerned that the Cumulative Impact and Grid Alignment criteria are unnecessarily punitive and also contradictory, meaning it would not be possible for a project to receive a clean score on both at the same time. Our understanding of the intent of the Grid Alignment criterion is that it aims to ensure that developers are seeking out sites in areas with approved CIPs, where additional hosting capacity is being created with ratepayer funding. We fully support this intent; indeed, even without this element of the Mitigation Fee calculation we are and

will be extremely focused on prospecting for new projects within CIP areas. However, we would prefer this criterion to be an opportunity for projects to improve their mitigation fee score if they are in a CIP area, rather than penalizing a project that may be able to find interconnection capacity elsewhere. CIP areas represent a small fraction of the land area of Massachusetts; while there is absolutely a public interest in encouraging utilization of CIP capacity, it is unnecessary and counterproductive to penalize projects that manage to find capacity in the majority of the state which is not in a CIP area.

In parallel, we are concerned that the Cumulative Impact criterion will penalize all projects that do locate in CIP areas, because by definition the CIPs were created in areas that have seen a large amount of solar development to date. This criterion would be more appropriately applied as a positive encouragement for developers to seek out sites in areas that have seen less prior solar development, rather than a penalty for developers that have rationally sought out sites in CIP areas. If the Cumulative Impact and Grid Alignment criteria are established to negatively impact a project's mitigation fee score, then they are in conflict and it will be extremely difficult for any project to be sited in a way that avoids these penalties. However, if these criteria are an opportunity to positively impact a project's mitigation fee score, then the intent can be achieved without overly penalizing projects.

Project Segmentation Comments

Cumulative capacity of projects with a Project Segmentation exception: We appreciate the flexibility to develop multiple projects of different Locational Adder types on a single parcel. This will certainly have the effect of increasing the number of Locational Adder projects that are developed. We request that DOER confirm that the 5MW AC capacity cap will be applied on a per-project basis, not on a total per-parcel basis, in the event that there are multiple projects on a single parcel receiving an exemption from the Project Segmentation rule. For example, if there is both a rooftop and a canopy project on a single parcel, we recommend that DOER allow each of those components to be sized up to 5MW AC, rather than limiting the total to 5MW AC.

Multiple Brownfield projects: We appreciate the additional flexibility to do brownfield projects up to 10MW AC. However, interconnection becomes more complicated (and expensive) for projects larger than 5MW AC, due to the requirement for additional studies, and in Eversource territory, the requirement for multiple feeders and additional switchgear. We therefore recommend that the Project Segmentation exceptions be expanded to allow two separate brownfield projects of up to 5MW AC on a single parcel.

ASTGU inclusion in Project Segmentation exception: 225 CMR 28.13(3)(f) states that any project can only have one Locational Adder at a time, unless one of them is a Brownfield, so we greatly appreciate that 28.08(5)(a)2 states that projects with a Locational Adder are exempt from the Project Segmentation rule. This is important because small projects are more challenging from a financial viability standpoint, because soft costs are very similar no matter the project size. Locational Adder projects are often small, and often have higher-than-average costs by nature of being a Locational Adder project, so being able to combine multiple Locational Adder projects on a single parcel greatly increases the chances of viability for all components. However, ASTGU is not

included in the list of Locational Adders in 28.08(5)(a)2 that are eligible for an exception to the Project Segmentation rule. We recommend that ASTGUs be added to 28.08(5)(a)2 so that it is possible to have an ASTGU along with a Canopy, Rooftop, or Floating project on a single parcel. It would be a shame to forgo feasible Canopy, Rooftop, or Floating capacity for such projects simply because the Project Segmentation exceptions do not include ASTGUs. In addition, if ASTGU projects cannot be co-located with other Locational Adder projects, there may be more pressure to expand the capacity of the ASTGU portion, and/or add ground mount capacity, in order to reach an overall size that is financially viable.

Shared POI for projects receiving Project Segmentation exception: Given that Locational Adder projects are likely to have physical constraints that limit project size, and given that in general larger projects are more economically viable, we expect that there will be a significant number of “combo platter” Locational Adder projects that take advantage of the exception to the Project Segmentation rule. We recommend that DOER confirm that multiple STGUs on a single parcel which qualify for an exception to the Project Segmentation rule can share a point of interconnection as long as they are separately metered. Requiring separate POIs would substantially increase both soft and hard costs for such projects.

Shared battery for projects receiving Project Segmentation exception: Similarly, we recommend that qualifying multiple STGUs on a single parcel be allowed to share an energy storage system, with the system size allocated proportionally among the different STGUs. Requiring separate energy storage systems would increase total project costs and would likely instead lead to more requests for exemptions from the energy storage requirement.

Additional Comments

Floating capacity cap: Thank you so much for including floating solar as an eligible category. However, we are concerned that the 10MW per year capacity limit will unnecessarily delay projects, threatening their ability to access the ITC. We believe that the total physical potential for floating solar is only approximately 40MW. An overall capacity cap of 40MW would be more appropriate than an annual cap of 10MW, because it would not create any artificial delay for projects that will ultimately be eligible. This is important because we believe that the majority of floating solar projects that can meet DOER’s interconnection application date requirement are participating in the Round 2 CIP group studies. That means that the majority of projects will become eligible for SMART around the same time. Based on our analysis, if a 10MW annual cap remains, 2025 will be undersubscribed and 2026 will be oversubscribed. If DOER keeps an annual cap, we recommend that any unused capacity be allowed to roll over to the following year. Further, if an annual cap in any given year is oversubscribed, we recommend that floating projects be able to receive a general SMART PSOQ and be waitlisted for the adder only. However, our strong preference is for an overall capacity cap rather than an annual cap, or simple reliance on the interconnection application date cutoff to limit floating capacity.

Floating Solar definition: Section 28.02 defines the eligible water bodies for Floating Solar as those used for water treatment, agricultural, or industrial activities. We request that DOER clarify that a pumped hydroelectric facility in a human-made reservoir is eligible as an “industrial activity”.

Predeterminations: There are a number of project types that will require predeterminations from DOER. We urge you to publish clear guidelines and take all possible steps to process predeterminations quickly. Timeliness and regulatory certainty are more important than ever as companies make difficult decisions about which projects to continue investing in, in the larger context of scarce resources to safe harbor projects for the ITC. In addition, we recommend that projects be allowed to apply in the initial ten-day application window for the opening of the 2025 program year even if they have a predetermination pending. Given that regulations and guidelines are still being finalized, we are concerned that there will be insufficient time before October 15th for projects to submit predetermination applications and for DOER to review them.

Public Comment on Applications: We echo the comments made by CCSA regarding our concern about the prospect of public review of SMART applications. We agree with CCSA that the permitting process will provide sufficient opportunity for public comment, and that section 28.06(1)(e)1 introduces a significant new source of uncertainty into the development process, at a time when projects need regulatory certainty more than ever.

While we have noted a number of detailed comments and suggestions above, on the whole SMART 3.0 has made New Leaf more optimistic about Massachusetts than most of our other markets around the country. We greatly appreciate DOER's incorporation of stakeholder feedback to date, in particular on the issues of program capacity and land use. We remain optimistic that we have the ability to successfully deploy a significant amount of solar that remains supported by the ITC, and also that the SMART 3.0 framework allows DOER the flexibility to adapt to a post-ITC reality. Thank you for considering these comments and for your partnership as we strive to continue driving toward a world powered by renewable energy.

My sincere thanks,
Jess

A handwritten signature in black ink, appearing to read 'Jess Robertson', is placed over a light gray dotted rectangular background.

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