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Massachusetts Executive Office of Energy and Environmental Affairs (EEA)
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Subject: **EEA Draft Guidance on Site Suitability Assessments for Clean Energy Infrastructure**

Dear EEA Staff,

The Environmental League of Massachusetts ("ELM") appreciates the opportunity to comment on the Executive Office of Energy and Environmental Affairs (EEA)'s draft guidance for site suitability assessments of large and small clean energy infrastructure facilities, related to regulations required by Ch. 239 of the Acts of 2024, *An Act promoting a clean energy grid, advancing equity and protecting taxpayers*. ELM respectfully submits comments on the overall draft guidance.

ELM commends EEA for its thoughtful approach and for incorporating several provisions that will significantly advance the Commonwealth's clean energy and environmental protection goals, and offers the below recommendations to maximize the effectiveness and impact of key components of the guidance.

Recommendations and Comments

General Comments

The 2024 Clean Energy Law applies a mitigation hierarchy to all projects to which site suitability applies. This requires applicants to avoid or minimize or, if impacts cannot be avoided or minimized, mitigate siting impacts. EEA should better incorporate this mitigation hierarchy throughout the Guidance. Importantly, this framework makes inclusion of mitigation a floor to siting decisions: mitigation is required. Because mitigation is not optional, it cannot be treated as a benefit used to reduce site suitability scores, except in situations where the score is increased.

IV.A – Site Suitability Assessment, Applicable Facilities

- **EEA should define what constitutes "Newly Established Public Rights of Way".** EEA has only applied site suitability requirements to clean transmission and distribution infrastructure facilities in "newly established Public Rights of Way." While this language reflects the statutory mandate, EEA should clarify what "newly established" means. Based on the statutory language, EEA should include all "Public Rights of Way" created after the statute was enacted as "newly established Public Rights of Way."

IV.B – Site Suitability Assessment, Scoring Process

- **EEA should revise the Guidance to include a timeline for Requests for Score Review by DOER and/or EFSB.** Requests for a score review by the Department of Energy Resources ("DOER") or the Energy Facilities Siting Board (EFSB) should include a window defining the amount of time parties have to appeal a final site suitability determination. While EEA has included timelines for both the formal score determination and the cure process, it has not established a period during which an applicant, local government, or "substantially and specifically affected" party are permitted to request a review of the formal score determination from the EFSB or DOER. DOER and EFSB have 30 days to review the request, but EEA should establish a window that governs the parties' timeframe to submit a request. This will provide more clarity to those seeking a review.

IV.C - Site Suitability Assessment, Criteria

ELM recommends that applicants be required to disclose the values and calculations used in any self-calculated elements of their site suitability score in a manner that is easily accessible to community members. This information should be made available to both government entities evaluating site suitability scores and to the public as part of pre-filing engagement disclosures, including on the project website if one is required. Transparency in score calculation is essential to ensuring that key stakeholders and the community can engage meaningfully in the permitting process during an expedited timeline.

i. Climate Change Resilience

ELM supports inclusion of the Climate Change Resilience criteria score as part of the Site Suitability assessment as a means for Projects to proactively avoid siting in areas that are increasingly vulnerable to flood hazards as climate change accelerate. ELM supports use of the Climate Resilient Design Standards Tool to underpin the climate change resilience criteria score, as it provides geographic data that is precise and up to date for Massachusetts. Project Proponents who use the tool receive a preliminary climate exposure score (Not Exposed, Low Exposure, Moderate Exposure, or High Exposure) across four climate parameters, two of which EEA included in its site suitability scoring (sea level rise and riverine flooding). The tool offers precise geographic data on climate risks at the project footprint scale, and offers helpful resources for Project Proponents to use the Tool and interpret results. EEA's Guidance provides clear instruction on how to convert the Tool outputs directly into a

Climate Change Resilience Criteria Score from 0 to 5. ELM supports use of the Climate Resilient Design Standards Tool, but recommends one additional improvement to improve transparency:

- **Project Proponents should be required to provide enough information in their application so that permitting authorities and score reviewers can understand how the Climate Resilience Criteria Score was derived.** The tool is structured such that Project Proponents are tasked with populating the details of their project into the tool and answering a series of Yes or No questions to assess a project's overall risk exposure to climate hazards. However, without knowing the inputs that went into the tool, it is nearly possible for anyone besides the Project Proponent to understand how the score was derived. During permit decision making (and in cases where there is a Request for Score Review), it will be important to have documentation on how a Project Proponent arrived at their criteria score to settle any disputes. ELM recommends that, as part of the Site Suitability Report submitted as part of the application, Project Proponents be required to include documentation showing the answers they submitted into the tool to arrive at their Climate Change Resiliency Score. This ensures that the permitting agency (whether a local government or EFSB), impacted stakeholders, and the Score Reviewer, have transparency and trust in this criteria score.

ii. Carbon Storage and Sequestration

ELM supports inclusion of the Carbon Storage criteria score as part of the Site Suitability assessment to prevent siting in areas that store large quantities of carbon. However, ELM notes that EEA's draft guidance and calculation methods are very complex, likely leading to confusion among Project Proponents, communities, and key stakeholders. ELM recommends the following improvements:

- **EEA should update the Site Suitability Guidance to provide more clarity on calculating the Carbon Storage Criteria Score.** EEA proposes different scoring mechanisms for lands with low vs. high carbon storage potential (i.e., storing less than vs. more than 200 Mg of CO_2-equivalent per acre, respectively). While EEA proposes a relatively straightforward approach for scoring low carbon-storage sites based on USGS land cover data (these sites can score a 0 or a 1), its proposed approach for scoring high carbon-storage sites based on NFCMS forest carbon storage projections for 2070 is confusing and difficult to implement. As currently drafted, it's unclear how Project Developers are expected to convert National Forest Carbon Monitoring System (NFCMS) forest carbon projections into a Carbon Storage criteria score out of 5 points. EEA's Guidance simply states that these high carbon sites will be given a score between 1 and 5 as "rescaled from NFCMS Total Ecosystem Carbon in 2070." This isn't enough information for Project Proponents to transparently or accurately calculate Carbon Storage Criteria scores for their projects, or for permitting agencies and key stakeholders to understand and evaluate the scores. ELM notes that while EFSB and DOER have a statutory deadline to promulgate regulations implementing siting and permitting reforms from the clean energy law by March 1, 2026, there is additional time and flexibility for EEA to update the elements of the Guidance related to data sources and methods. ELM recommends that

EEA update the Guidance to provide additional instructions and resources before the regulations are promulgated so that all parties in a proceeding have clarity and transparency on how the Carbon Storage Criteria Score is calculated by the time the regulations become effective.

- **EEA should use more precise geographic data to derive the Carbon Storage Criteria Score. Alternatively, EEA should update the Guidance to contextualize that there may be cases where it's appropriate for a Project to receive a Carbon Storage Criteria Score different than what EEA's method would yield.** As currently drafted, EEA proposes calculating carbon storage values for 30-meter grid cells across the entire state, and deriving a project's Criteria-Specific score by taking the average value of those cells with centers in the site footprint. ELM recommends using carbon storage data with a finer geographic resolution. Otherwise, ELM cautions that the proposed approach risks inadvertently excluding or penalizing suitable low-carbon sites that are smaller than a 30-meter cell resolution may capture. Alternatively, if EEA opts to retain this geographic resolution and scoring approach, ELM recommends updating the Guidance to contextualize that the Carbon Storage data that feeds into the Carbon Storage Criteria Score is pixelated, and that there may be cases where it is appropriate for a Project to receive a different Criteria score than what EEA's proposed scoring method would yield. It's important to contextualize this information for permitting agencies and score reviewers to understand i) the intent of the Criteria Score (i.e., to preserve high-carbon lands); ii) the limits of the underlying data and methods used to calculate the score (i.e., pixelation and low resolution); and iii) whether there may be additional information related to carbon storage on or near the project footprint that is appropriate to consider in calculating the Criteria Score (i.e., updated aerial imagery, land use of neighboring parcels, etc.). ELM emphasizes the importance of contextualizing this information so that permit decision-makers and Score Reviewers have enough information to accurately assess a Project's Carbon Storage Criteria Score.

iii. Biodiversity

ELM supports inclusion of the Biodiversity Criteria Score as part of the Site Suitability assessment to avoid siting in areas with the highest habitat and biodiversity value. ELM notes that the proposed scoring approach is appropriate and clearly incentivizes projects to avoid the most sensitive lands and ecosystems. While ELM is overall supportive of the proposed approach and calculation method, ELM recommends one additional improvement.

- **EEA should update the Site Suitability Guidance to provide more clarity on calculating the Biodiversity Criteria Score for low-impact areas.** As currently drafted, the EEA Guidance states that areas that are NOT in BioMap Core Habitat, Critical Natural Landscapes, or Regional Connectivity components, as well as areas that are NOT in NHESP Priority Habitats, shall receive a score between 0 and 2 "proportional to CAPS [(Conservation Assessment Prioritization System)] Index of Ecological Integrity." This does not supply enough information for Project Proponents to transparently or accurately calculate Biodiversity scores for their projects, or for permitting agencies and key stakeholders to understand and evaluate the scores. ELM notes that, while EFSB and

DOER have a statutory deadline to promulgate regulations implementing siting and permitting reforms from the 2024 law by March 1, 2026, there is additional time and flexibility for EEA to update the elements of the Guidance related to data sources and methods. ELM recommends that EEA quickly update the Guidance to provide additional instructions and resources so that all parties in a proceeding have clarity and transparency on how the Biodiversity Criteria Score is calculated.

iv. Agricultural Resources

ELM supports inclusion of the Agricultural Resources Criteria Score as part of the Site Suitability assessment to avoid siting in areas that are the most suited for agricultural production. ELM notes that the proposed scoring approach is appropriate and clearly incentivizes projects to avoid the most productive agricultural lands. While ELM is overall supportive of the proposed approach and calculation method, ELM recommends one minor correction.

- **EEA should correct references to the biodiversity index in the Agricultural Resources section.** ELM notes that the Agricultural Resources section includes two references to the Biodiversity Index that appear to be in error. These references are in Footnote 11, and the sentence immediately following EEA's overview of the steps to calculate the Agricultural Resources Criteria Score. ELM believes this should instead refer to an agricultural resource index.

v. Social and Environmental Burdens

ELM strongly supports assessing cumulative social and environmental burdens to ensure that projects of all sizes, in their siting decisions, account for the disproportionate social and health burdens borne by communities that have hosted legacy energy infrastructure. Accounting for social and environmental burdens using MassEnviroScreen should be, as the name suggests, a screening tool to guide projects away from siting in Burdened Areas if the project would create incremental harms without commensurate benefits. As currently drafted, ELM is concerned with how EEA's Site Suitability Guidance weighs social and environmental burdens, and how it will intersect with EFSB's forthcoming Cumulative Impact Analysis regulations. At the crux of the matter, ELM is concerned by the potential inconsistency in how large and small projects are expected to address cumulative impacts.

- **EEA should ensure that the Social and Environmental Burdens Criteria Score is robust enough to address cumulative impacts for small projects.** Under the 2024 clean energy law, EFSB is tasked with promulgating regulations for cumulative impact analysis (CIA) as part of its review of large and small clean energy facilities. To date, ELM's understanding has been that clean energy projects – regardless of size – would be required to undergo either a site suitability assessment or a cumulative impact analysis, but not both. The determinative factor of which type of review a project undergoes should be its proximity to burdened communities, not size.

However, DOER's draft 225 CMR 29.00 makes no mention of how EFSB's forthcoming CIA regulations will apply to small projects. Further, the only mention of cumulative impact analysis that EEA mentions in its Draft Regulations is in the Environmental and Social Burdens section. ELM is increasingly concerned that small projects outside of EFSB's jurisdiction will not be required, by regulation, to conduct a cumulative impact analysis at all. If this is the case, it creates a potential loophole for small projects, and inconsistent application of the siting and permitting reforms in the 2024 Clean energy law. If small projects are not required to conduct a CIA in regulation, then the way EEA weighs the Social and Environmental Burdens Criteria Score in its Site Suitability Guidance may serve the de facto function of addressing cumulative impacts. If so, the Social and Environmental Burdens Criteria Score should be weighted more heavily in its contribution to the Total Site Suitability Score.

ELM notes that responsible siting decisions should appropriately balance preservation of critical natural and working lands as well as environmental justice and equity. As such, ELM recommends that EEA adjust the Social and Environmental Burdens Criteria Scoring mechanism to ensure the Social and Environmental Burdens Criteria Score contributes a greater share to the final Total Site Suitability Score. It is ultimately the net impact on the site that matters, and whether it generates harms to the community, environment, or biodiversity, relative to the benefits it delivers.

At the time of this writing, the EFSB's draft CIA regulations and guidance have not been released and DOER's 225 CMR 29.00 regulations have not been finalized, so it is difficult to weigh in on how the forthcoming CIA regulations will apply to small facilities. However, ELM emphasizes the importance of consistently applying the outcomes of screening tools like Site Suitability Assessments and Cumulative Impact Analyses in permit decision-making. Maintaining consistency across both processes is essential to ensuring that, regardless of regulatory pathway, the basis for making permit decisions is consistent across projects and communities and does not inadvertently lead to inequitable deployment or mitigation. ELM intends to submit comments to this effect when the CIA draft regulations and guidance are released in the coming months.

IV.D - Site Suitability Assessment, Score Modifiers

i. Development Potential

ELM supports inclusion of the Development Potential Score Modifier as part of the Site Suitability assessment to encourage projects to site on areas that minimize unnecessary land conversion, and that connect to the grid in the places it is most cost-effective to do so. ELM notes that the proposed modifiers appropriately incentivize siting on buildings by automatically subtracting 5 points from the scores for solar canopies and projects sited on previously developed or degraded lands. ELM also notes that the proposed modifiers appropriately account for future grid needs by automatically subtracting one point for projects located in areas that the DPU already approved for electric upgrades.

ii. Social and Environmental Benefits

ELM strongly supports inclusion of the Social and Environmental Benefits Score Modifier as part of the Site Suitability assessment to encourage Project Proponents to deliver benefits to a host community. ELM notes that the proposed scoring approach is appropriate, flexible, and clearly incentivizes projects to focus not only on minimizing or mitigating harms to a community, but on delivering tangible benefits to ensure broad buy-in. While ELM is overall supportive of the proposed approach and calculation method, ELM recommends one additional improvement.

- **Reform scoring to ensure meaningful social and environmental benefits.** To apply for a social and environment benefit criteria score subtractor, an applicant should develop a community benefit plan or community benefit agreement (CBP or CBA) following the Office of Environmental Justice & Equity's (OEJE's) guidance. Benefits should be designed with communities, not ascribed by host municipalities. OEJE's guidance contains strong recommendations around community engagement and co-creation of meaningful benefits. Without following the guidance, the proposed eligible subtractors have the potential to be insignificant and misaligned with community priorities. For example, how much utility bill assistance is considered significant enough to earn a point? A CBA process promotes alignment with benefits that make a difference. To ensure enforceability and accountability, the CBA should be certified with the host municipality. If a CBA is not incorporated into the site suitability process, benefit criteria score subtractors should only include benefits that address social and environmental burdens identified through MassEnviroScreen. For example, benefits as vague as "Funds publicly available EV charging stations" or "Creates or maintains local jobs" should not directly offset risks to agriculture resources, biodiversity, or climate change resilience.