

# Comments on Massachusetts Energy Facilities Siting Board (EFSB) Draft Proposed Regulations 980 CMR 15.00

**Prepared for: Environmental Defense Fund**

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## RECOMMENDATIONS

Overall, the proposed draft rulemaking is logical, aligns with the governing statute, and is well reflected in the proposed guidelines and standards provided by the Office of Environmental Justice and Equity (OEJE). We have a few recommendations below, that are further informed by comments submitted to OEJE on their proposal. We have attached those comments for reference.

### 15.06 Assessment of Burdened Areas for Elevated Indicators

The CIA Report Template should include Specific Indicators identified using the MassEnviroScreen tool, as well as Site Suitability Assessment Indicators for Carbon Storage, Biodiversity, and Agricultural Resources. It should also include the opportunity for applicants to add Indicators of their own choosing. For discussion of this recommendation, please refer to the attached comments under 'Non-EnviroScreen Indicators'.

### 15.07 Disproportionate Adverse Effect Analysis

The regulations should remove the qualifying term “materially” in any determination of Elevated Indicator exacerbation, as it muddles both the applicant and the EFSB’s ability to determine impact. Please see more discussion of this recommendation in the attached comments under ‘Section 4 Language Revisions.’

### Cumulative Impact Assessment Template

The format and content of the CIA Report Template is essential to appropriate implementation of the proposed draft regulations. We recommend providing a draft version of that template for stakeholder review ahead of the formal rulemaking proceeding. At the very least, the template will be critical to ensuring appropriate review during rulemaking.



# Comments on Massachusetts Executive Office of Energy & Environmental Affairs (EEA) Draft Standards and Guidelines for Cumulative Impact Analysis (CIA)

**Prepared for: Environmental Defense Fund**

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## About the Authors

**Energy Futures Group (EFG)** is a clean-energy consulting firm based in Hinesburg, Vermont, with 15 years supporting regulators, agencies, utilities, and advocates across 45 U.S. states, eight Canadian provinces, and Europe. We specialize in designing, implementing, and evaluating programs and policies that promote energy efficiency, renewable and distributed resource investment, affordability, and strategic electrification. EFG offers deep expertise in utility system assessment and resource planning, including integrated resource planning (IRP), distributed energy resource (DER) forecasting, and scenario analysis. Our team has evaluated hundreds of clean energy programs and contributed to the development of nationally recognized initiatives. We also provide expert witness testimony on energy efficiency and utility planning in regulatory proceedings throughout North America. EFG's work continues to shape utility filings, inform policy decisions, and drive the success of clean energy deployment.

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## Acknowledgements

These comments were primarily prepared by EFG on behalf of Environmental Defense Fund. Any omissions or errors in the report are the responsibility of the EFG team.

## EXECUTIVE SUMMARY

The Office of Environmental Justice & Equity (OEJE) standards appropriately align with statutory goals by requiring that applicants tie project impacts to remedial actions, but their effectiveness depends on clear implementation. As written, the CIA risks favoring well-resourced applicants unless clear templates and documentation requirements are instituted. OEJE must draw a clear line between responsive actions and additional actions that provide “benefits”. To ensure fairness, the framework should clarify language to distinguish sufficient actions and allow additional indicators and paired measures based on community input.

## STRUCTURE: LACKS SPECIFICITY

### Qualitative Measurement

A large portion of measures to address proposed actions in this framework will necessarily be measured qualitatively, as the proposed guidelines acknowledge. Unfortunately, the unquantifiable nature of these measures introduces a risk of uneven application quality. Measures that require qualitative support are more nebulous and thus more difficult to identify and describe. As such, larger or well-funded entities with greater resources, experience, or access to consultant support may more easily demonstrate compliance. Smaller applicants – especially those unfamiliar with avoidance, mitigative, or minimization actions – may require clearer guidance on what constitutes a sufficient submission.

The format of the CIA Report Template referenced in the proposed regulations and any paired guidance is essential to ensure fair participation. If sufficient training and examples are provided, the gap between applicants may be closed. However, it is difficult to comment on the appropriateness of the CIA as proposed in this document without a clear understanding of how applicants will be expected to report on analysis performed or proposed actions taken.

### Documentation

In comments on the Site Suitability Assessment, we recommended that the Executive Office of Energy and Environmental Affairs (EEA) affirmatively require documentation of each benefit and that they provide relevant examples to reduce the need for case-by-case consideration. Similarly, OEJE should clearly and affirmatively require documentation of all proposed actions and provide relevant examples. Documentation might include the following:

- *Signed Collective Bargaining Agreement*
- *Signed agreements with municipal bodies such as city councils, selectboard, economic development boards, planning commissions, or conservation commissions*
- *Documentation of displaced pollutants provided by utility or monitoring body*

There are some cases where it may not be feasible for developers to provide documentation at the time of their permitting application. In those cases, applicants should be allowed to submit relevant internal documentation for consideration. Documentation of these measures is critical to ensuring that EFSB can consider any changes to project scope that would constitute a material change worthy of reconsideration.

## CONFLATION OF BENEFITS AND REMEDIAL ACTIONS

As part of the mitigation hierarchy outlined under Step 5 of the guidelines, OEJE states that applicants should (1) avoid negative impacts, (2) minimize impacts, and (3) implement mitigation measures, in that order. Later, the draft guidelines emphasize that “a community benefit does not substitute for any required mitigation measures”.

**OEJE must be very clear that benefits cannot be substituted for actions or measures directly tied to Elevated Indicators.**

In some cases, in examples presented on the Nov 6<sup>th</sup>, 2025 webinar, proposed mitigation or minimization measures blurred the line between remedial action and community benefit. For instance, in Step 5 Example (Sudbury Hudson Project), a rail trail is proposed as a mitigative action tied to an Elevated Indicator related to PM 2.5 emissions. It is not clear that this measure is either necessary or applicable. In this scenario, because avoidance is the preferred first-line measure, electrification of construction vehicles and equipment should be considered sufficient, and the minimization proposal to move construction off-road is further beneficial if the avoidance measure doesn't avoid all emissions. However, the rail trail might be considered to constitute a simple additional benefit to the community, rather than being tied to the Elevated Indicator, as required by statute.

While this example is not one where conflating remedial measures and benefits creates a negative outcome, without language clarity, applicants may be able to propose benefits masquerading as measures and ultimately, not address Elevated Indicators. It is critical to understand how actions and measures will be documented in the CIA Report Template to ensure that there is a clear line drawn between benefits and measures.

## NON-ENVIROSCREEN INDICATORS

### Site Suitability Assessment Criteria

While the CIA will largely not apply to rural areas, and appropriately so given its intended scope, certain criteria from the Site Suitability Assessment may still be relevant in burdened areas (BAs) that do fall within the assessment's reach. Requiring applicants to complete both an SSA and CIA would be unduly burdensome, but three of the criteria in that assessment are not appropriately covered in the CIA.

The CIA should include carbon storage, biodiversity, and agricultural resources as defined in the SSA as required indicators for consideration. Climate resilience and social and economic indicators are sufficiently covered by the existing EnviroScreen indicators.

We would not expect most burdened areas to have Elevated Indicators related to the three SSA criteria listed above. However, for that proportion of areas that do, it is critical to recognize and act on them. For example, many areas in the northwest part of the state that qualify for CIA are identified in the EEA BioMap as Core Habitat areas and as NHESP Priority Habitats of rare species. Under the SSA, developers would be assessed based on this elevated impact. Similarly here, sites should be assessed for impact and required to identify avoidance, minimization or mitigation measures to address risk.

### Additional Indicators

Developers should be allowed to propose additional indicators and mitigative measures, especially those surfaced through community engagement or outlined in a Community Benefits Plan (CBP). This flexibility would allow the framework to better reflect local conditions and lived experiences, while maintaining consistency with statutory goals of tying project impacts to remedial actions and avoiding disproportionate burdens.

For example, while transportation restrictions are not included as indicators under MassEnviroScreen, many burdened areas may have reduced physical access to good available jobs. An applicant should be able to identify existing transportation barriers – like their project provides ten permanent unionized jobs, but the site is not within walking distance of a train or bus line. In that case, a proposed mitigative action could be the institution of a subsidized carpool program.

Providing tangible benefits in the form of positive externalities should be considered but must not be mistaken for mitigation efforts.



## Structure

To accomplish the two recommendations outlined above, we recommend the addition of SSA indicators and additional optional indicators as visualized below. The figure below also shows the addition of required documentation for each recommendation.

**FIGURE 1.** Proposed Additions to Cumulative Impact Assessment

	Elevated Indicator Exacerbated	Proposed Impact Avoidance	Proposed Impact Minimization	Proposed Impact Mitigation	How do measures address project impacts?	Documentation
EnviroScreen Indicators	Indicator					
	Indicator					
	Indicator					
Site Suitability Assessment Criteria	Carbon Storage					
	Biodiversity					
	Agricultural Resources					
Additional Indicators	Project-Specific Indicator					
	Project-Specific Indicator					
	Project-Specific Indicator					

## LANGUAGE CLARIFICATIONS

### Step 4 Language Revisions

Language under Step 4 should be revised to read:

For each Elevated Indicator, the applicant must determine if the project will:

1. ~~Worsen~~**Exacerbate** the condition of that indicator during either the construction phase or the operation phase of the project, or
2. **Have no impact on the condition of that indicator during those same phases, or,**
3. Improve the condition of that indicator during those same phases.

If the project is likely to ~~materially~~ exacerbate an Elevated Indicator, this impact will be considered a disproportionate adverse effect.

Terms should be standardized across the guidelines. We recommend the use of exacerbate without the “material” qualification, as any impact should trigger the consideration of avoidance, minimization, or mitigation measures.



## Use of “Benefits”

Relevant to the discussion about avoidance, minimization and mitigative actions versus benefits above, OEJE should carefully review the use of “benefits” across the guidelines and standards to ensure that the statutory intent tying elevated indicators to actions is met.

## RECOMMENDATIONS

- Provide stakeholders the opportunity to provide feedback on the CIA Report Template.
- Affirmatively require documentation for each responsive action.
- Allow internal company documentation where signed agreements or similar documentation is not yet available.
- Provide clear guidance to differentiate between remedial actions and benefits paired with the CIA Report Template.
- Provide examples of remedial actions in each category.
- Add Site Suitability Assessment criteria for carbon storage, biodiversity, and agricultural resources as required in all CIAs.
- Allow applicants to propose additional indicators and responsive actions specific to their projects and informed by community engagement.
- Edit language for Step 4 as detailed to better reflect indicator impact.
- Review use of “benefits” language across guidelines and standards.