



November 14, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, 9th Floor,
Boston, MA 02114

re: Draft Model Bylaws for Solar Photovoltaic Systems and BESS - BlueWave and New Leaf Comments

Dear Secretary Tepper,

Thank you for the opportunity to comment on the Draft Model Bylaws for Solar Photovoltaic Systems and BESS ("Draft Model Bylaws"). We greatly appreciate the continued efforts that your team is devoting to the implementation of the 2024 Climate Act. The Draft Model Bylaws provide a template for Local Governments to ensure compliance with DOER permitting regulations and are thus a critical piece of the implementation of the 2024 Climate Act.

The Draft Model Bylaws present a strong foundation on which Local Governments can craft their own bylaws. Given that these are *model* bylaws likely to be tailored by individual Local Governments, the model bylaws should represent the ideal balancing of a multitude of stakeholder perspectives, while ultimately aiming to expedite review and provide predictable permitting regimes to developers. As such, we suggest limited improvements to better align with the goal of streamlining the permitting process.

Draft Model Solar Bylaw

In all instances where system size/capacity is referenced in kilowatts or megawatts, the Model Bylaw should specify alternating current (AC) or direct current (DC). The Climate Act specifies that the threshold for applying for a consolidated local permit instead of a consolidated state permit is 25 MW DC, because DC is the more relevant metric for the purposes of land use impact. However, most references to system size in the Model Bylaw do not specify AC vs. DC. Further, in Table 1 in Section 3.1, Small facilities are defined as <25kW, and Medium facilities as 25-250kW. These thresholds match those used in the SMART program, however in that case they are denominated in AC. It may be appropriate to denominate the small facilities in AC, since those facilities are likely to have much less differential between their AC and DC size, and also are likely to have little to no land use impact regardless. However, as written, it is unclear since most of the references to kW or MW have no denomination at all.

2.0 Definitions

We appreciate the context note that is included to explain the applicability of CBAs. We submitted comments on the Guidance on Community Benefits Plans and Agreements strongly recommending that more clarity be provided as to the applicability of CBPs/CBAs, and how they might differ across projects of different sizes and levels of impact. We recommend editing this note to give guidance on both CBPs and CBAs. In addition, we recommend including similar text in the CBP/A Guidance.

3.0 Applicability

Section 3.0 defines applicability as “all new Solar Photovoltaic Installations *proposed to be constructed* after the effective date of this section” (emphasis added). As written, this could be interpreted to mean any facility constructed after the effective date, rather than any facility that applies for a permit after the effective date. We recommend clarifying that the intent is the latter.

We appreciate the inclusion of the Educational Note and references on MGL Chapter 40A Section 3.

3.1 Solar Photovoltaic Installation Classes

As proposed, the Large II (1,000 - 25,000 kW) category has solar located in all districts being subject to Special Permit. We recommend amending this such that Large II projects located in Commercial and Industrial zones are Site Plan Review, as opposed to Special Permit. Large-scale solar installations will be instrumental to reaching our climate commitments. By subjecting solar in the Large II category to Special Permit in all districts, this will not encourage developers to choose Commercial and Industrial parcels and will unnecessarily lengthen the permitting process for projects on parcels that are zoned for business use and for which solar likely has far less impact than any other form of commercial or industrial development.

We further recommend clarifying how Agricultural Solar Tariff Generating Units (“ASTGUs”) will be treated. Under the current proposal, it appears that ASTGUs >1 MW would be required to receive a Special Permit. This is misaligned with the SMART program and other aspects of the permitting reform process, which are encouraging developers to develop ASTGUs. We recommend that ASTGUs be treated the same as Landfill/Brownfield projects and be subject to Site Plan Review. We recognize the differences between Landfill/Brownfield which are existing site uses, and ASTGUs which are proposals for future uses, but there are safeguards that could ensure a project permitted as ASTGU is held to that commitment (such as permit conditions on receiving ASTGU status in SMART or fines for projects that do not achieve ASTGU status).

Finally, we greatly appreciate that the Model Bylaw designates Building Mounted and Canopy solar as by right in all districts. This is consistent with DOER’s other policies to encourage these types of solar installations, and yet it is at odds with our past experience permitting these types of projects in a number of towns. Allowing Building Mounted and Canopy solar by right will be a

meaningful step to streamline the deployment of these kinds of facilities.

5.0 Pre-Filing Requirements

The Model Bylaw states that Section 5.0 is applicable to all project categories, including By Right. We strongly recommend that By Right projects be exempt from Section 5.0. The purpose of by right zoning is that a community has already decided that a particular use is appropriate in that location. Requiring such projects to complete the Pre-Filing Requirements would represent a significant additional process burden, and would constitute differential treatment of clean energy projects as opposed to other types of development.

5.2 Fees

We encourage DOER to expand the Note included under Section 5.2 to indicate that fees for solar installations should be established with the same rationale that is used for other types of development, and that it is inappropriate for municipalities to use permit fees as a tool to discourage solar permit applications.

6.0 Site Plan Review

The “Additional Considerations” note included in section 6.0 states “Municipalities may impose additional conditions but must show they are necessary to protect public health, safety, *or the environment*” (emphasis added). This should read “health, safety, or welfare,” for consistency with the Dover Amendment. DOER is in the process of establishing extensive regulations and guidance to protect the environment from undue impact from solar development. It would be a major departure from the intent of the Climate Act to give municipalities license to impose any conditions they desire for categories other than those specified by the Dover Amendment.

6.2 Required Documents

Generally, the requirements outlined in this section are reasonable, however “xvi. Trees with a diameter at breast height (DBH) of 20 inches or greater within the project site that will be removed as part of the project” is a burdensome requirement not required in current permitting processes and which would add time and cost to the process. Item 6.2.A.i. already requires that the site plan document existing vegetation, while item 6.2.A.ii. requires documentation of proposed vegetation clearing, and the Site Suitability report will evaluate the level of impact on forest land. In addition to these forms of review, it would be unduly burdensome to require specific documentation of every individual tree that is proposed to be cleared.

In addition, item 6.2.A.v. requires “Contact information for the person(s) responsible for public enquiries *throughout the life of the Solar Photovoltaic Installation*” (emphasis added). It is not uncommon for solar facilities to change ownership. The Required Documents should include the current contact information, and the permit itself should require that relevant authorities be updated of any change in ownership and the new representatives’ contact information.

Section 6.2.H requires submission of an emergency response plan. The details of an emergency response plan may be specific to certain equipment, which may differ between manufacturers. Given that many projects face lengthy interconnection timelines, it is not uncommon for the preferred equipment manufacturer to change between the time of permitting and final construction. This is especially true in our current environment of rapidly changing federal policy with respect to tariffs and Foreign Entities of Concern compliance. We recommend noting that a project may submit an updated emergency response plan with its application for a building permit, as it is so noted in Section 6.1.I. for equipment specifications.

As noted above, we recommend that By Right projects be exempt from prefiling requirements, and if so, Section 6.2.K should be amended to note that it is not applicable to By Right projects.

Finally, in the Note at the end of Section 6.2, we recommend deleting the sentence “Municipalities may wish to extend to a greater distance to encourage more community engagement with the Solar Photovoltaic Installation development.” We do not see the rationale for treating solar development differently from other forms of development.

6.6.1 Setbacks

We greatly appreciate the Model Bylaw’s proposed setbacks, as well as the context Note. Excessive setbacks are a tool commonly used by municipalities that seek to discourage solar development altogether, and they serve to limit solar development overall by making it impossible to develop solar on some parcels, and in other cases by requiring the size of a solar project to shrink in order to satisfy the setbacks. Furthermore, excessive setbacks may increase the severity of land use impact of solar development in areas at the border between developed and undeveloped land. In these cases, the habitat impact, for example, is minimized by siting solar as close as possible to other existing development. Excessive setbacks therefore prioritize minimizing visual impacts over minimizing impact on natural resources.

6.8.3. Screening

We recommend deleting the sentence “If necessary and reasonable to minimize visual impacts on adjacent properties or public ways, BESS Installations which require Site Plan Review shall include year-round screening.” It is vague, and unnecessary given the reference to the DOER Standards and Conditions.

6.7.4 Fencing

We recommend that the fencing requirements reference the Massachusetts Electrical Code 527 CMR 12.00, and note that alternative measures to chain link fencing are acceptable as long as they are in accordance with 527 CMR 12.00. This may be particularly important for specific types of solar facilities such as canopy, floating, or dual use, where enclosure by chain link fencing is inappropriate or infeasible.

6.8.2 Land Clearing and Soil Erosion

The Notes on Environmental Protections makes several statements relative to “replacement” of impacted resources. While the term replacement is appropriate in certain instances, such as planting trees, there are other cases, such as for habitat impacts, for which it is more accurate to describe mitigation measures as conservation of comparable habitat, rather than “replacement,” which implies that new habitat can be created.

In addition, the Note states “Mitigation measures involving replacement of impacted resources...should adhere to a no net loss goal and at least a one-to-one replacement ratio of impacted land area.” This is problematic because the Note does not define what kinds of resources deserve such mitigation, and implies conversion of any undeveloped land could trigger 1:1 replacement. This runs counter to the intent of the Site Suitability framework, which attempts to evaluate the specific value of different land areas across different criteria. It is fundamental to the Site Suitability framework that not all undeveloped lands have equal conservation value. The Note should therefore be amended to delete the sentence quoted above and clarify that mitigation should be informed by Site Suitability scores, and the scope and type of mitigation should have a rational nexus to the scope and type of the impact.

6.9.2 Modifications

We agree that changes to a Site Footprint constitutes a material modification, however a project may increase its capacity in kWDC without changing its site footprint, by installing more efficient panels. We therefore recommend deleting “capacity in kWDC” as one of the listed examples of material modifications.

6.10.1. Removal Requirements

Section 6.10.2 states “A Solar Photovoltaic Installation will be considered to be abandoned if the facility ceases operation for over twelve (12) months.” However, Section 6.10.1 states that “The Solar Photovoltaic Installation shall be physically removed no more than 150 days after the date of discontinued operations.” Instead, this should be amended to say “no more than 150 days after the date of abandonment, as defined in Section 6.10.2.”

6.10.3 Decommissioning Fund

The Note on Surety states that a mechanism to account for inflation and other cost increases should be provided. However, Section 6.10.3 requires that the surety be 125% of the estimated cost, and that that estimate be updated on a regular basis. We consider that to be sufficient to ensure that cost increases are covered. If DOER intends to propose that it is not, we recommend clarifying the Note on Surety so that it is more specific, however in our opinion it would be excessive to require additional measures.

Draft Model Storage Bylaw

2.0 Definitions

We support defining BESS in Tiers, in order to provide a less-onerous permitting pathway for less-impactful projects. However, the proposed Tiers have thresholds in somewhat arbitrary places. We suggest the Tiers be redefined as follows:

Tier 1:

- Site Footprint (as defined in 225 CMR 29.00) of less than 1,000 sq.ft., or
- Less than 100kW of nameplate discharge capacity, or
- Less than 600kWh of dispatchable energy

Tier 2:

- Site Footprint greater than 1,000 sq.ft. and less than 1 acre, and
- Less or equal to than 30MWh of dispatchable energy

Tier 3:

- Site Footprint of greater than 1 acre, or
- Greater than 30MWh and up to 100MWh of dispatchable energy

This represents the natural break points in storage development. Most distribution feeders cannot accommodate storage projects larger than 5MW, and presently the typical duration of most BESS is less than 6 hours. However, it is relevant to include a Tier for projects larger than 30MWh, because some projects are able to interconnect a larger MW rated capacity, and because longer-duration projects are likely to become more commonplace over time.

With these new tiers, we recommend that the level of review for Tier 3 Projects in Commercial districts (both primary and accessory use) be Site Plan Review, rather than Special Permit, as those sites should be encouraged for development.

In addition, we reiterate our comments above regarding the definition of Community Benefits Agreement.

3.0 Applicability

We reiterate our comments above on clarifying applicability.

3.1 BESS Installation Tiers

We appreciate that the Draft Model Bylaw includes Tier 3 projects in Industrial districts as Site Plan Review. This will encourage developers to site in those areas. In the event that our recommendations regarding the re-defining of tiers is not accepted, we would still suggest that Tier 3 BESS projects (both primary and accessory use) in Commercial districts should also be

Site Plan Review, as opposed to Special Permit. Energy storage, even >10 MWh, occupies a small footprint and is well-suited to Commercially zoned parcels as those are often located close to load pockets that will benefit from energy storage deployment, especially as we electrify to meet our climate mandates.

Section 3.1.C. contains a typo in referring to Solar Photovoltaic Installations when it should refer to BESS Installations.

5.0 Pre-Filing Requirements

We reiterate our comments above regarding exempting By Right projects from pre-filing requirements.

5.2 Fees

We reiterate our comments above regarding Fees.

6.2 Required Documents

We reiterate our comments above regarding the requirement to identify trees with a DBH of 20 inches or greater; contact information; Emergency Response Plans; and the required distance for providing notice to abutters.

6.4 Operation and Maintenance Plan

There is a typo where Solar Photovoltaic Installations are referenced instead of BESS Installations.

6.8.3 Screening

We reiterate our comments above regarding screening.

6.8.6 Containment of Liquid Hazardous Materials

The definition of liquid hazardous materials is unclear and we are concerned that it could be interpreted to include the entire BESS container. This would benefit from clarification that BESS materials are not considered liquid hazardous materials.

6.8.7 Noise

Section 6.8.7 notes that BESS Installations must comply with all local noise bylaws or ordinances, in addition to DEP noise regulations. We are concerned that this creates an opening for municipalities opposed to storage development to establish noise regulations that are effectively impossible to comply with. We are already encountering this situation in certain municipalities today, where extremely stringent interpretations of the DEP noise policy are

effectively prohibiting storage development. The Commission on Clean Energy Infrastructure Siting and Permitting recommended that DEP's noise policy be re-evaluated specifically to facilitate storage deployment, as well as to create outcomes better aligned with environmental justice principles. The storage industry is currently working with DEP to amend their noise policy to accomplish this. We recommend that Section 6.8.7 require BESS Installations to comply with the DEP policy, and further alert municipalities that, as with other types of standards, they may go above and beyond the DEP policy only if they can demonstrate that it is necessary for public health, safety, or welfare.

6.9.2 Emergency Services

Please see our comment above on Section 6.2.A.v. of the Model Solar Bylaw. Section 6.9.2 of the Model Storage Bylaw should require identification of the person presently responsible for public inquiries, with a requirement to notify relevant authorities when that person changes.

6.9.3 Land Clearing and Soil Erosion

We reiterate our comments above on the paragraph on mitigation ratios included in the Notes on Environmental Protections.

6.11.1 Removal Requirements

We reiterate our comments above regarding the definition of the date of abandonment and the timing of the requirement to remove equipment.

6.11.3 Decommissioning Fund

We reiterate our comments above regarding the amount of the Decommissioning Fund.

Conclusion

New Leaf and BlueWave greatly appreciate the effort that EEA has put into developing this Guidance, and we appreciate the opportunity to provide these comments. Please do not hesitate to reach out with any questions or to discuss these issues further. We look forward to continued cooperative efforts to improve the siting of clean energy projects while streamlining and facilitating the deployment of clean energy.

Sincerely,

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