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November 14, 2025

Ms. Joanne Bissetta, Director, Green Communities Division
Massachusetts Department of Energy Resources
100 Cambridge Street, 9th Floor
Boston, MA 02114

Joint Comments of Clean Energy Groups on Draft Model Bylaw for Solar

Dear Ms. Bissetta,

The Alliance for Climate Transition ("ACT"), Solar Energy Industries Association ("SEIA"), Solar Energy Business Association of New England ("SEBANE"), and the Coalition for Community Solar Access ("CCSA") jointly, the "Clean Energy Groups," or "Industry," appreciate the opportunity to submit comments to the Massachusetts Department of Energy Resources ("DOER") regarding the draft model bylaw for solar installations.

ACT leads the just, equitable, and rapid transition to a clean energy future and a diverse climate economy. ACT is the only organization in the Northeast that covers all of the clean energy market segments, representing the business perspectives of investors and clean energy companies across every stage of development. Our 300+ members include companies based in Massachusetts, doing business, or hoping to make future investments in the state.

SEIA is the national trade association for the solar and storage industry, leading the transformation to a clean energy economy. SEIA works with its 1,000+ member companies and other strategic partners to fight for policies that create jobs in every community and shape fair market rules that promote competition and the growth of flexible, reliable, low-cost solar power. There are at least 453 solar companies based in Massachusetts along with regional and national companies doing business in the Commonwealth. The Massachusetts solar market value is 12.4 billion, creating over 11,600 jobs. Massachusetts is currently ranked 13th in the nation for total installed solar capacity, with 5,477 megawatts (MW) installed, enough to power more than 936,000 homes.

SEBANE is a nonprofit trade association representing 80 member companies from across the solar value chain, including residential installers and commercial developers, component manufacturers, financiers, and service providers. SEBANE's mission is to protect and promote the New England solar industry through informed policy advocacy, coalition building, and stakeholder education.

CCSA is a national coalition of over 120 businesses and non-profits working to expand customer choice and access to solar to all American households and businesses through community solar. Together, we are building the electric grid of the future where every

customer has the freedom to support the generation of clean, local solar energy to power their lives. Through legislative and regulatory advocacy, and the support of a diverse coalition—including advocates for competition, clean energy, ratepayers, landowners, farmers, and environmental justice—we enable policies that unlock the potential of distributed energy resources, starting with community solar.

I. Introduction

The Clean Energy Groups commend DOER for its efforts to provide and update the model bylaw for solar. The Clean Energy Groups believe that the Model Zoning Bylaw: Allowing Use of Solar Photovoltaic Installations ("Draft Model Bylaw") is generally reasonable and well-considered, offering much needed guidance for cities and towns to implement bylaws that are clear, consistent, and can be uniformly applied.

However, the Clean Energy Groups believe that further refinements and clarifications are critical to ensure that it serves its intended purpose in an efficient manner. We provide comments below to improve the Draft Model Bylaw and look forward to continuing to work with other stakeholders to advance an effective bylaw that appropriately balances various interests.

The comments below include recommendations to update requirements and verbiage throughout the Draft Model Bylaw. A specific focus was placed on ensuring clarity and consistency throughout the Draft Model Bylaw, and recommendations to ensure the bylaw remains effective without inadvertently creating delays.

Critically, the Clean Energy Groups urge DOER to amend its approach to Special Permits, as addressed in the final section below, so as to be consistent with well-established judicial precedents on the permissibility and effect of Special Permit requirements for solar facilities under G.L. c. 40A, § 3, 9. Unless these provisions are amended or clarified, the model bylaws are highly likely to spawn unnecessary confusion and litigation.

Given the significant overlap between the draft model solar bylaw and the draft model BESS bylaw, many of the comments below would apply as well to the draft model BESS bylaw. To the extent such comments are not reiterated in our separate comments on the draft model BESS bylaw, we ask that DOER receive such comments in this letter as applicable to the draft model BESS bylaw as well.

II. General Comments

The Clean Energy Groups recognize the value of model bylaws in this space, and support DOER's efforts to encourage adoption of a standardized approach and assist municipalities in their application. Small municipalities, in particular, may not have the resources to develop their own bylaws, and may further benefit from technical support in implementing standardized bylaws.

Further, the Clean Energy Groups appreciate the resources that DOER offers to support municipalities including the Climate Leader Communities certification program through the Green Communities program. While the As-of-Right zoning requirement through the Green Communities Act can be fulfilled by the by-right zoning for Solar Photovoltaic Installations in at least one Designated Location, the Clean Energy Groups want to ensure communities are provided resources beyond the guidance to adopt the bylaws.

Furthermore, the Clean Energy Groups recognize that the bylaws are intended to be optional, but recommend that adoption of the Draft Model Bylaw be made a requirement for attaining Green Communities status and benefits, to encourage its adoption by municipalities.

III. Comments on Specific Topics

The Clean Energy Groups recommend the following revisions and clarifications to the Draft Model Bylaw:

2.0 Definitions

- 1) **The definition of "Accessory Use" should clarify that both behind-the-meter and standalone solar may be accessory uses, clarify that ASTGUs are accessory uses, and remove the undefined term "small."**

Whether a solar facility is interconnected behind a meter or not should not be determinative of whether it is an Accessory Use; what is relevant is whether it is a secondary use of the premises. For example, a solar facility located on a parcel with a separate primary use (e.g. as a school) may or may not interconnect behind an existing meter. But it would likely be an Accessory Use regardless.

Further, both the definition of "Accessory Use" and the subsequent definition of "Primary Use" should affirmatively establish that in the context of an Agricultural Solar Tariff Generating Unit (ASTGU) under the SMART program, the agricultural use shall constitute the primary use, and the ASTGU use shall constitute an accessory use.

Finally, the definition uses the undefined term "small installations," which introduces unnecessary potential confusion. This term should be deleted.

The Clean Energy Groups recommend the following changes, **with proposed edits in red**:

Accessory Use: A Solar Photovoltaic Installation is considered an Accessory Use when it is secondary to the use of the premises for other lawful purposes. An Accessory Use cannot exist without a Primary Use on the same lot (or commonly owned abutting lots). Examples of Accessory Use include Building-Mounted Solar Photovoltaic Installations and Solar Canopies. ~~Small~~ **Notwithstanding the foregoing, Solar Photovoltaic Installations serving behind-the-meter load, including business cooperatives or residential microgrids, should be treated as an Accessory Use even if it is the sole facility located on the parcel. Solar Photovoltaic**

Installations not serving behind-the-meter load but located on a parcel with a separate Primary Use, should also be treated as an Accessory Use.. A Solar Photovoltaic Installation that qualifies as an Agricultural Solar Tariff Generating Unit shall be considered an Accessory Use to the agricultural use on the parcel. Whether a Solar Photovoltaic Installation is an Accessory Use shall not be determined by the amount of solar energy generated from that Solar Photovoltaic Installation that is consumed on site by the primary use of the parcel.

2) The definition of "As-of-Right or By Right Siting" should state affirmatively that such projects cannot be prohibited.

The current definition states that "Projects allowed As-of-Right, including those subject to Site Plan Review, cannot be prohibited except as provided by 225 CMR 29.00, but can be reasonably regulated by the person or board designated by local ordinance or bylaw."

Under the plain language of G.L. c. 40A, § 3, 9, the only basis on which a solar project can be prohibited is by "zoning ordinance or by-law" where "necessary to protect the public health, safety, or welfare." To the extent 225 CMR 29.00 were to authorize prohibition for reasons inconsistent with the express statutory limitations of 9, it would be contrary to existing law and would likely generate confusion and potential litigation. Furthermore, it is legally contradictory to state that a project allowed "As-of-Right" can be prohibited at all. As the Draft Model Bylaw repeatedly affirms in its notes, including on page 4: "Site plan approval acts as a method for regulating As-of-Right uses rather than prohibiting them."

The Clean Energy Groups recommend adopting the following change to this sentence:

"Projects allowed As-of-Right, including those subject to Site Plan Review, cannot be prohibited ~~except as provided by 225 CMR 29.00~~, but can be reasonably regulated by the person or board designated by local ordinance or bylaw."

3) The definition for "BESS" should be clear that BESS is not limited to qualifying as an Accessory Use only in specific situations.

The current definition for "BESS" states that "It may be a primary use or an Accessory Use to a solar generating facility, power generation facility, electrical substation, or other similar uses." This could be wrongly construed to imply that BESS can only be an Accessory Use when paired with other significant electrical facilities. To the contrary, BESS may be installed for many purposes, including resilience, where it could be an Accessory Use to residential, commercial or industrial uses broadly.

The Clean Energy Groups recommend amending this definition to state: "It may be a primary use or an Accessory Use ~~including, but not limited to, an accessory use~~ to a solar generating facility, power generation facility, electrical substation, or other similar uses."

4) The definition for "Brownfield" should be modified so as not to require a Site Footprint coextensive with a closed landfill.

Although some brownfield solar projects are installed entirely over a "disposal site," other such projects may lie partly on the disposal site and partly outside that area. Many parcels are not coextensive with a disposal site. It is quite common for a disposal site to consist of a portion or even multiple disconnected portions of a property, each with irregular shapes. The development of a property may be hindered by the presence of contamination at the property regardless of whether the contamination covers the entire property or just one or more portions of the property.

The development of a property may also be hindered by the presence or threat of contamination on or from a neighboring property. In addition, development of a property may be hindered by a significant risk that contamination is present even if the presence of contamination in reportable concentrations has not been confirmed and reported to MassDEP. Finally, the Draft Model Bylaw refers to a determination "by the Department," which would not make sense in the context of a local zoning bylaw.

We also note that Table 1 refers just to "Brownfield" even though all other rows in Table 1 refer to types of solar facilities.

For the reasons above, the Clean Energy Groups recommend the following changes:

- Change the first sentence of the definition of "Brownfield" to "A property the redevelopment or reuse of which is hindered by the presence of oil or hazardous materials on all or part of, or in the vicinity of, such property, where the disposal site at issue has received a release tracking number from MassDEP pursuant to 310 CMR 40.0000: Massachusetts Contingency Plan or a significant risk of oil or hazardous materials contamination has been identified by a Licensed Site Professional.
- Add a definition of "Brownfield Solar Facility," defined as "A Solar Photovoltaic Installation located wholly or in part on a Brownfield."
- In Table 1, replace "Brownfield" with "Brownfield Solar Facility."

5) The definition of "Building Permit" should be consistent with the language in the State Building Code.

The current definition of "Building Permit" states "A construction permit issued by an authorized building inspector; the Building Permit evidences that the project is consistent with the applicable local, state and federal building codes as well as local zoning bylaws, including those governing Solar Photovoltaic Installations."

Because the Zoning Act (and local bylaws promulgated thereunder) are intended to operate in tandem with the State Building Code (780 CMR), it is preferable that the language used in local zoning bylaws be consistent with parallel language in 780 CMR, which defines "permit" as "An official document or certificate issued by the building official that authorizes performance of a specified activity." In addition, there is no "federal building code," rendering that language surplusage in any event.

The Clean Energy Groups recommend amending this definition to state:

"An official document or certificate issued by the Building Inspector that authorizes construction of a Solar Photovoltaic Installation."

6) The definition of Canopy should clarify that a Canopy is an Accessory Use, and that any height restrictions should not be different from Primary Use structures in the same zoning district.

The Clean Energy Groups recommend amending this definition by including a final, clarifying sentence:

"A Canopy is an Accessory Use. The height limits of Canopies should be determined by the same restrictions for Primary Use structures in the same zoning district."

7) The definitions for "CBA" and "CBP" are unnecessary and should be removed.

Currently, the defined terms "CBA" and "CBP" are each used only once (in Section 6.8.2 and Section 6.2(e), respectively) in situations where they could be used without requiring a separate definition in Section 2.

Furthermore, the accompanying note expressly states that "communities are generally discouraged from requiring CBAs for all projects or specific types of projects." Including such definitions in a model bylaw is likely to encourage municipalities to do what the note expressly discourages. This is of particular concern given the significant constitutional concerns that the U.S. Supreme Court has held arise in the context of zoning-based exactions, under both *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

The Clean Energy Groups encourage DOER to reconsider the inclusion of these terms in the Draft Model Bylaw, and suggest it would be more effective to address these issues in "notes" or in separate guidance.

8) The definition for "Eligible Landfill" should be modified so as not to require a MassDEP post-closure use permit prior to permit application for a Site Footprint coextensive with a closed landfill.

While Table 1 provides for certain treatment of solar projects on a landfill, "Eligible Landfill" is defined as a landfill that has already received a post-closure use permit from MassDEP. The Draft Model Bylaw should not force an applicant to go through the lengthy and costly post-closure use permit process before applying for zoning approval under the Draft Model Bylaw.

Although some landfill solar projects are installed entirely over the cap of a capped landfill, other such projects may like partly on the capped landfill area and partly outside that area. In either case, solar development represents a beneficial reuse of the capped landfill with significant environmental and social value.

In addition, Table 1 refers just to "Landfill" even though all other rows in Table 1 refer to types of solar facilities. Also, the definitions include a definition of "Eligible Landfill," not "Landfill."

For the reasons above, the Clean Energy Groups recommend the following changes:

- Change the definition of "Eligible Landfill" to "Landfill Solar Facility," and change the definition to "A Solar Photovoltaic Installation located wholly or in part on a landfill that has obtained a Post-Closure Use Permit or with respect to which the applicant (or landfill owner or operator) plans to obtain a Post-Closure Use Permit."
- Add a definition of "Post-Closure Use Permit," defined as "Approval from MassDEP for the use of a Solar Photovoltaic Installation at the landfill as a post-closure use pursuant to 310 CMR 19.132:Post-closure Use of Landfills."
- In Table 1, replace "Landfill" with "Landfill Solar Facility."
- In Section 6.0, add a requirement that, in the case of a Landfill Solar Facility that is not already the subject of a Post-Closure Use Permit, the applicant (or landfill owner or operator) shall obtain a Post-Closure Use Permit prior to commencement of construction.

9) The definition of "Primary Use" should clarify that ASTGUs are not Primary Uses.

Currently, the defined term "Primary Use" states "A Solar Photovoltaic Installation is considered a Primary Use when the primary use of the lot or lots is for the commercial generation of power. Large-scale, groundmounted solar installations typically fall into this category."

As with the definition of "Accessory Use," the definition of "Primary Use" should affirmatively establish that in the context of an Agricultural Solar Tariff Generating Unit (ASTGU) under the SMART program, the agricultural use shall constitute the primary use, and the ASTGU use shall constitute an accessory use.

The Clean Energy Groups recommend amending this definition to state:

"A Solar Photovoltaic Installation is considered a Primary Use when the primary use of the lot (or **commonly owned abutting** lots) is for the commercial generation of power. Large-scale, groundmounted solar installations typically fall into this category. **A Solar Photovoltaic Installation that qualifies as an Agricultural Solar Tariff Generating Unit shall be considered an Accessory Use to the agricultural use on the parcel, and the agricultural use shall be considered the Primary Use.**"

10) The definition of "Site Plan Review" should be consistent with the case law referenced in the accompanying note that makes clear that denial is impermissible.

The current definition of "Site Plan Review" states that "Site Plan Review for By-Right projects may reasonably condition, but not unconditionally deny, the project applications."

Yet as the accompanying note makes unambiguously clear in citing the prevailing precedent: "Site plan approval acts as a method for regulating As-of-Right uses rather than prohibiting them."

Including the word "unconditionally" is inconsistent with the case law cited in the Note itself, which states that denial is not allowed *either* unconditionally *or* conditionally. The current phrasing implies that there is some form of denial under site plan review that *is* allowable, when legally that is not the case.

The Clean Energy Groups recommend revising this sentence to state:

Site Plan Review for By-Right projects may reasonably condition, but not ~~unconditionally~~ deny, the project applications."

The Clean Energy Groups further recommend making the same revision — deleting the word "unconditionally" — in the key in Table 1 (Section 3.0), which cross-references the above definition.

In the educational note regarding site plan review, the quotation from *Prudential* may be accurate but lacks critical context and is likely to be misunderstood. The note quotes *Prudential* as stating that site plan approval may be denied when "no form of reasonable conditions [can] be devised to satisfy the problem with the plan." In the context of site control, which involves a review of a proposed as-of-right use to ensure compliance with zoning bylaw standards and, if appropriate, impose reasonable conditions, a "problem with the plan" would necessarily refer to a situation where a proposed project does not comply with zoning bylaw standards, and there are no conditions that would cause the project to achieve compliance. It is not an invitation for a planning board to identify a "problem" with the proposed project other than noncompliance with zoning bylaw standards. We suggest adding the following at the end of that paragraph: "Accordingly, site plan approval for a Solar Photovoltaic Installation cannot be denied unless, even with reasonable conditions, the project will not comply with applicable bylaw standards. (As explained below, even in such cases, denial is not allowed if those bylaw standards are preempted by state law such as G.L. c. 40A, § 3 or 225 CMR 29.00.)"

3.0 Applicability

- 1) The phrase "proposed to be constructed" in Section 3.0 is likely to generate significant confusion and should be clarified with an objective bright-line standard.**

Currently, Section 3.0 states that it "applies to Solar Photovoltaic Installations proposed to be constructed after the effective date of this section."

The term "proposed to be constructed" is vague, unclear, and could be construed to have multiple different meanings, varying from initial interconnection application to commencement of actual construction. The intent appears to be that Section 3.0 applies to installations that apply for municipal approval after the effective date of the Section.

Additionally, the term "Section" is used when construing statutes to refer to numbered sections (here, meaning only 3.0), where it appears the intent is that the entirety of the bylaw apply (which in statutory construction would be the "chapter").

The Clean Energy Groups recommend revising the first sentence of Section 3.0 to state:

"This **chapter** applies to Solar Photovoltaic Installations **that submit an application for municipal approval on or after the effective date of this chapter, and did not previously obtain a building permit, variance, site plan review, or special permit.** This section also pertains to physical modifications **made after the effective date of this chapter** that materially alter the type, configuration, or size of these installations or related equipment."

- 2) **DOER's note on page 6 should state that the Draft Model Bylaw "is intended to comply with the Dover Amendment" rather than that it "complies with the Dover Amendment."**

While it is likely DOER's intent for the Draft Model Bylaw to comply with the Dover Amendment (G.L. c. 40A, § 3), DOER does not have legal authority to definitively state that it does so. It is a foundational legal principle that such a determination can only be made by a court of competent jurisdiction.

Modifying the text of the note to state that the Draft Model bylaw is "intended" to comply would appear to be a reasonable statement consistent with prevailing legal precedent. This is particularly true given that under the plain language of G.L. c. 40A, § 3, 9 (as noted in the Educational Note accompanying Section 3.0), the only basis on which a solar project can be prohibited or significantly restricted is where "necessary to protect the public health, safety, or welfare." To the extent 225 CMR 29.00 (or the Draft Model Bylaw) were to assert that a solar facility could be prohibited for reasons inconsistent with the express statutory limitations of 9, the regulation (or bylaw) would be open to legal challenge, generating both significant practical confusion and potential litigation.

In thinking about the issues above, it is important to understand the meaning of the statement in G.L. c. 25A, § 21(b) (as added by the 2024 Climate Act) that "[l]ocal governments acting in accordance with the standards established by the department for small clean energy generation facilities and small clean energy storage facilities pursuant to this subsection shall be considered to have acted consistent with the limitations on solar facility and small clean energy storage facility zoning under section 3 of chapter 40A." The legislature did not repeal G.L. c. 40A, § 3, 9, nor did it give DOER authority to disregard G.L. c. 40A, § 3, 9 or the case law developed to interpret the statute. The legislature merely gave DOER the authority to use its siting regulations to translate the statute and relevant case law into standards to help municipalities comply with G.L. c. 40A, § 3, 9.

3.1 Solar Photovoltaic Installation Classes

- 1) **Solar Installations up to 250 kW should not be subject to a Special Permit.**

Most existing municipal solar bylaws in Massachusetts reserve special permit requirements for large-scale ground-mounted solar facilities, typically defined as ground-mounted facilities greater than 250 kW DC. The Draft Model Bylaw provides that ground-mounted facilities between 25 kW and 250 kW require a special permit in an agricultural district. We believe that that would represent a material and unnecessary adverse change to permitting requirements for medium-scale ground-mounted facilities in Massachusetts. We ask that DOER change the designation for such facilities from "SP" to "SPR".

2) Solar Installations over 250 kW located in Commercial or Industrial Districts should be subject to Site Plan Review, not a Special Permit.

As explained in further detail below with respect to Section 7.0 (Special Permits), the Clean Energy Groups do not believe a special permit that allows for discretionary denial of a solar facility is consistent with either G.L. c. 40A, § 3, 9, or the uniform case law interpreting the broad scope of Dover Amendment protections for solar facilities.

The courts have consistently held that "[t]he better, and correct, view of the limits of local regulation of solar energy facilities allowed by G. L. c. 40A, § 3 is that such local regulation may not extend to prohibition except under the most extraordinary circumstances." *Summit Farm Solar v. Planning Board of New Braintree*, 2022 Mass. LCR LEXIS 11. See also *NextSun Energy LLC v. Fernandes*, 29 LCR 52 (Mass. Land Ct. 2021) ("[w]hile [G.L. c. 40A] § 3 does not necessarily bar subjecting a solar energy system to a special permit, it does limit the scope of any required special permit."); *PLH LLC v. Ware*, 2019 Mass. LCR LEXIS 246, *9 (Mass. Land Ct. 2019) ("a special permit [for a solar facility] cannot unreasonably regulate, cannot impose conditions that go beyond statutory limits provided under § 3 [and] cannot be used either directly or pretextually as a way to prohibit or ban the use . . .").

Even if this general objection is set aside, the Clean Energy Groups still recommend that Large I (250-1,000 kW) installations in Commercial Districts and Large II (1,000-25,000 kW) installations in Commercial or Industrial Districts be subject to Site Plan Review, rather than a Special Permit. As drafted, all Large II solar installations would require a Special Permit in every district, and Large I solar installations require a Special Permit in a Commercial District.

Retaining requirements that allow for discretionary denial of solar special permits is not only inconsistent with the statutory protections for solar under G.L. c. 40A, § 3, 9, but will in practice significantly discourage solar development on appropriately zoned parcels, and will measurably slow progress toward climate goals.

Revising Table 1 to provide for Site Plan Review in Commercial and Industrial Districts will streamline permitting in locations where solar will likely have fewer potential impacts than other allowed uses, and will encourage and incentivize the siting of solar in those zoning districts when compared to other zoning districts.

3) Agricultural Solar Tariff Generating Units under the SMART Program (ASTGUs) should be treated as Agricultural Uses (and allowed by-right consistent with G.L.

c. 40A, § 3, 1) or alternatively, the same as Landfill/Brownfield projects (and subject to Site Plan Review).

The SMART Program establishes extensive requirements for ASTGUs. See 225 CMR 28.07(5)(b)(3). Compliance with these requirements ensures that the ASTGU is appropriate for its location. However, the current draft would require ASTGUs to obtain a Special Permit in many situations (including for all ASTGUs over 1 MW), which conflicts with the SMART program and with broader permitting reforms intended to encourage ASTGU development.

The Clean Energy Groups recommend one of two approaches. First, that ASTGUs be treated as agricultural uses under G.L. c. 40A, § 3, 1 which provides that where the use of land is for the "primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture, or viticulture," the use shall not be prohibited, unreasonably regulated, or require a special permit. This would be accomplished by inserting a new row in Table 1 entitled "Agricultural Solar Tariff Generating Units (<25,000 kW)", and designating this use in each column as "BR". We note that, since 2022, G.L. c. 61A, § 2A(d) has required that ASTGUs be treated as agricultural uses protected under G.L. c. 40A, § 3, 1.

Alternatively, the Clean Energy Groups recommend that ASTGUs be treated the same as Landfill/Brownfield projects, and subject to Site Plan Review in all Districts (unless they are of a size and in a district currently shown on Table 1 as By Right, in which case they should continue to be treated as By Right).

Establishing such affirmative protections, grounded in existing statutory language, will incentivize agrivoltaic projects consistent with the intent of the SMART ASTGU program.

4) Table 1 should clarify that the permitting requirement for mixed use districts is the least restrictive classification.

At present, Table 1 lists four zoning districts: residential, commercial, industrial, and agricultural. While these are four common types of districts, municipalities often utilize other types of districts, including those that allow multiple uses (for instance, residential-agricultural districts, residential-commercial districts, and commercial-industrial districts).

The Clean Energy Groups recommend that in districts that articulate a combined use, Table 1 clarify that the classification requires the least restrictive use controls. For instance, Table 1 shows that a Medium-sized Primary use in a residential district is by site plan review, but in an agricultural district is by special permit. Table 1 should clarify that where the district is zoned "residential-agricultural", the permit requirement is for the least restrictive of the two classifications (here, site plan review).

5) Table 1 should clarify that a municipality is entitled to establish a less restrictive permitting classification for any use or district.

The Draft Model Bylaw should affirmatively clarify that a municipality may adopt a less restrictive standard for permitting in any category. For example, a municipality may designate a Medium primary use in a residential district (currently shown on Table 1 as "SPR") as "BR" instead, without contravening the Draft Model Bylaw.

As currently drafted, the classifications in Table 1 will mandate that certain municipalities impose stricter requirements on solar than they have currently, even though those municipalities have not adopted bylaws providing that more stringent requirements are necessary. For instance, a municipality that currently allows Large I projects with Site Plan Review may feel compelled by Table 1 to heighten its approval requirement to Special Permit for the same project, even when it believes Site Plan Review (or even By-Right siting) is more appropriate.

In short, the Draft Model Bylaw should not inadvertently discourage municipalities from adopting less restrictive standards for permitting than those indicated in Table 1 if those municipalities believe such less restrictive standards are appropriate for their communities.

6) Table 1 should be adjusted to avoid overlapping categories.

To avoid overlapping categories within Table 1 and to avoid an overlap with EFSB jurisdiction over Large Clean Energy Generation Facilities, Table 1 should be adjusted so that:

- the "Large I" category reads "> 250 kW - 1,000 kW)"
- the "Large II" category reads "> 1,000 kW - < 25,000 kW)"
- The "Large - Accessory Use" category reads "> 250 kW - < 25,000 kW)"

7) The note on page eight should be amended so that it does not imply that any municipality can adopt any approach to overlay districts and still remain consistent with the Draft Model Bylaw.

As noted above and explained in further detail below with respect to Section 7.0 (Special Permits), the Clean Energy Groups do not believe that a special permit that allows for discretionary denial of a solar facility is consistent with G.L. c. 40A, § 3, 9, or the uniform case law interpreting the Dover Amendment protections for solar.

In particular, Clean Energy Groups have grave concerns that the current phrasing of the note on Page 8 implies that municipalities would still be considered to have adopted the Draft Model Bylaw if they deviate from the requirements outlined in the Table of Uses in a manner that greatly increases the permitting threshold for solar projects, or greatly decreases the locations in which solar can be located. As the Supreme Judicial Court has made clear, "[w]hen interpreting [G.L. c. 40A, § 3, 9], [courts] keep in mind that it was enacted to help promote solar energy generation throughout the Commonwealth." *Tracer Lane II Realty, LLC v. City of Waltham*, 489 Mass. 775, 779 (2022). Any suggestion that 9 authorizes municipalities to restrict or even prohibit solar based on location, rather than on the basis of health, safety, or public welfare, is contrary to the central purpose of 9 as articulated in *Tracer Lane II*.

The Clean Energy Groups are further concerned that the encouragement for municipalities to “develop overlay zones . . . based on the areas most appropriate for Primary Use solar facilities,” without providing any criteria for what constitutes an “area most appropriate” for such facilities, is directly contrary to the bright-line rule established in Table 1 that does not provide for prohibition in any zoning district. The implication that Table 1 is merely *optional* for municipalities is highly troubling, for both purposes of internal consistency of the Draft Model Bylaw, and because of the practical uncertainty and inconsistency that will result.

The Clean Energy Groups strongly recommend that DOER delete the second and third paragraphs of this note. At minimum, the Clean Energy Groups recommend that DOER provide clear minimum expectations in this context. For instance, the Draft Model Bylaw establishes that Building-Mounted, Canopy, and installations under 25 kW are By Right in all districts. Any municipal approach should be expected to do the same, and not utilize an overlay district to circumvent those provisions. Similarly, no Accessory Use Installation is required to obtain a special permit under the Draft Model Bylaw, and this should be a minimum expectation for any municipality adopting the Draft Model Bylaw, regardless of whether a bespoke overlay district is established.

In addition, DOER’s illustrative example — that a municipality may exclude Primary Use solar categorically from a dense commercial district — is not based on any “health, safety, or welfare” assessment, and should be removed from the Draft Model Bylaw. There is no basis for a categorical conclusion that no Primary Use Solar Installation could ever be appropriate for such districts, and it is unnecessary for DOER to speculate simply to provide an example of something that should be exceedingly rare.

4.1 Compliance with Laws, Ordinances and Regulations

1) The Draft Model Bylaw should clarify that municipalities may not adopt solar-specific requirements in other bylaws that undercut the Draft Model Bylaw.

Section 4.1 currently states that “The construction and operation of all Solar Photovoltaic Installations shall be consistent with all applicable local, state and federal requirements”. The Clean Energy Groups believe that this language should affirmatively clarify that a municipality will not be considered to have adopted the Model Bylaw if it also adopts solar-specific bylaw provisions that undercut or contravene the Model Bylaw (for instance, by adding restrictions in other sections of its zoning bylaws, or its general bylaws, that directly or functionally “prohibit or unreasonably regulate” solar installations in contravention of G.L. c. 40A, § 3, 9.

Such a clarification is consistent with existing case law, which provides that a board “[runs] afoul of Chapter 40A, § 3 when it disregard[s] the Project’s satisfaction of the Solar Bylaw standards and instead proceed[s] to further require satisfaction of the special permit criteria in [the general provisions] of the Bylaw.” *ASD Three Rivers MA Solar, LLC v. Planning Board of the Town of Wilbraham*, 29 LCR 124 (Mass. Land Ct. 2021).

The Clean Energy Groups recommend revising Section 4.1 to insert the proposed second

sentence:

The construction and operation of all Solar Photovoltaic Installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. **To the extent any local general bylaw or zoning bylaw is inconsistent with the provisions of this chapter, the provisions of this chapter shall control.**

5.0 Pre-Filing Requirements

1) "By Right" installations should be exempt from Section 5.0.

The Clean Energy Groups recommend exempting By Right projects from Section 5.0. The Model Bylaw currently applies Section 5.0 to all project categories, including By Right. However, the express purpose of By Right zoning is to acknowledge that certain uses have already been deemed appropriate for a given location. Requiring these projects to complete Pre-Filing Requirements would impose unnecessary procedural burdens and single out clean energy projects for additional scrutiny not applied to other permitted uses.

In any event, because 225 CMR 29.08 will apply (or not, and it may not apply to some installations) independent of this Section 5.0, it is unnecessary to restate any such requirements here. Indeed, doing so may create confusion as to whether such projects have additional reporting or compliance obligations to the municipal zoning authority relative to the obligations set out in 225 CMR 29.08 (e.g. whether submissions must be separately made to the zoning authority)

If DOER does not agree to exempt by right installations from Section 5.0, the language of Section 5.0 should be amended to make clear that 225 CMR 29.08 only applies if it would otherwise apply to the installation, and the associated requirement is only to comply with 225 CMR 29.08.

5.1 Building Permit and Building Inspection

1) The Draft Model Bylaw should affirmatively state the steps required for closing out a building permit.

There is significant variation between municipalities at present regarding what is required to close out a building permit for a solar facility. In most municipalities, all that is required is a final inspection by the Building Department, ensuring that the project has been constructed as shown on the approved plans. This is consistent with building projects for other similarly unoccupied structures, such as sheds, barns, fences, pools, and the like.

However, other municipalities have taken the position that a solar project may not be completed until a "certificate of occupancy" has been issued. Since solar facilities are not "occupied" by individuals in the way homes or offices are occupied, there is no established or consistent definition of what a solar facility must show to obtain a "certificate of occupancy." In practice, such certificates are frequently withheld or

delayed by the municipality based on ad hoc criteria.

The Clean Energy Groups recommend adding the following text to establish that a solar project is closed out for building permit purposes once the final inspection has been satisfactorily completed:

"The Building Inspector shall provide a final inspection of any Solar Photovoltaic Installation within ten days after receipt of a written request by the Applicant for a final inspection. Upon concluding that the Solar Photovoltaic Installation has been constructed consistent with requirements of the Building Permit, the Building Inspector shall within five business days issue a written confirmation to the Applicant to this effect, declaring the Building Permit closed. The Solar Photovoltaic Installation shall not require any other approval or certificate from the Building Inspector to commence or continue operation."

In addition, we recommend that the educational note in Section 5.1 also reference the separate permit extension provision included as Section 119(a) of the 2024 Climate Act.

5.2 Fees

- 1) DOER should expand the Note under Section 5.2 to clarify that fees for solar installations may only be set using the same rationale applied to other types of development, and consistent with *Emerson College*.**

The Clean Energy Groups strongly recommend that DOER expand the Note under Section 5.2 to clarify that fees for solar installations may only be set using the same rationale applied to other types of development. The Note should also emphasize that under *Emerson College v. City of Boston*, 391 Mass. 415, 424-25 (1984), the Supreme Judicial Court has established that a fee is characterized by three features: 1) it is charged for a "particular governmental service which benefits the party paying the fee in a manner 'not shared by other members of society'; 2) they are paid by choice; and 3) "the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses." Any governmental charge that does not comport with all three features is a "tax," which may not be levied except by statute.

As relevant here, application fees can only be set at a level that will compensate the governmental entity for the services it provides (here, reviewing the permit application). Fees may not be used in a punitive manner to discourage or deter solar project applications, as setting disproportionate fees would constitute a violation of not only G.L. c. 40A, § 3, 9, but *Emerson College* as well.

6.0 Site Plan Review

- 1) DOER should clarify that the standards set forth in Section 6.0 (i.e., Section 6.1 through Section 6.10.3) apply only to Solar Photovoltaic Installations subject to site plan review.**

While the evident intent and most sensible reading of Section 6.0 (Site Plan Review) is

that the standards set forth in the following sections apply only to projects subject to site plan review, the drafting of some of the individual requirements creates some lack of clarity. Some standards are drafted using the phrase "Solar Photovoltaic Installations that require Site Plan Review must . . ." or words to similar effect, while other standards in Sections 6.1 through 6.10.3 are drafted without such language. We suggest that DOER remove such language from individual standards and provide in Section 6.0 alone that "Solar Photovoltaic Installations subject to Site Plan Review must comply with the requirements set forth in Sections 6.1 through 6.10.3."

2) The "Additional Considerations" Note in Section 6.0 must be changed to "public health, safety, or welfare" from "health, safety, or the environment" for consistency with the Dover Amendment, and must clarify the limitations on screening conditions established by case law.

The current wording grants municipalities an impermissibly overbroad license to impose restrictions on solar beyond the three narrow categories expressly established by G.L. c. 40A, § 3, 9. Those categories, established by the Legislature, are limited to "public health, safety, or welfare."

The Dover Amendment does not include or authorize municipalities to restrict solar facilities based on perceived impacts on "the environment;" indeed, a municipal effort to deny a solar special permit on precisely such a basis was struck down by the Appeals Court in *Sunpin Energy Servs., LLC v. Zoning Bd. of Appeals of Petersham*, 105 Mass. App. Ct. 641, 650 (2025) as being in excess of G.L. c. 40A, § 3, 9. The fact that 225 CMR 29.06 uses the phrase "Public Health, Safety, and Environmental Standards" cannot supersede the state Zoning Act to the extent that the regulation goes beyond the statutory bounds.

The Clean Energy Groups further note that in the "Purpose" section of the Note, the text suggests that Site Plan Review authorities may impose conditions tied to "screening and buffering." Yet as the Model Bylaw itself notes on page 6, *Summit Farm Solar v. New Braintree* held that in light of the limited bases under G.L. c. 40A, § 3, 9 on which solar facilities may be regulated, "towns cannot condition special permits on zero or negligible visual impact." This text should be clarified to avoid implying that municipalities may regulate visual impact in a manner contrary to established case law.

3) DOER should delete the second sentence in Section 6.0, requiring compliance with guidance and guidelines that have not been adopted as Zoning Bylaws consistent with the requirements of G.L. c. 40A, § 5.

As drafted, the second sentence of Section 6.0 could be read to give the Site Plan Review Authority broad discretion to interpret and apply with the force of law wide-sweeping and ambiguous guidance and guidelines. These materials currently exist only in proposed or draft form, have been subject to extensive comment, and, by their nature, cite to nearly every possibly applicable regulatory requirement for energy facilities. Nor is it clear to the Clean Energy Groups that these regulations, standards, and guidelines were drafted with that intent or purpose in mind. Those same documents are also clearly unfinished, making it unclear at this point what the Model Draft Bylaw would ultimately be referencing.

The Clean Energy Groups have serious concerns if this reference were to remain, as they are likely to give rise to disputes about the scope of the legal authority being exercised by the Site Plan Review authority. This is because guidance and guidelines are neither bylaws nor regulation: as such they can be amended, changed, or altered at any time without formal process, procedure, or any public notice. It is well-established that a "'policy' not lawfully adopted as a regulation, and containing no requirement of uniform application, could not form the basis of [a land use] commission's denial," *Fieldstone Meadows Dev. Corp. v. Conserv. Comm'n of Andover*, 62 Mass. App. Ct. 265, 268, (2004).

This is of particular concern in the context of a *Dover*-protected use under G.L. c. 40A, § 3, 9, given that such guidance or guidelines have not been adopted by the municipal legislative body as zoning bylaws consistent with G.L. c. 40A, § 5, or approved by the Attorney General (in towns) consistent with G.L. c. 40, § 32. Where "the provisions of the by-law taken together invest the board with a considerable measure of discretionary authority over [a *Dover*-protected] institution's use of its facilities," such ad hoc restrictions impermissibly "create a scheme of land use regulation for such institutions which is antithetical to the limitations on municipal zoning power in this area prescribed by G.L. c. 40A, § 3." *The Bible Speaks v. Bd. of Appeals of Lenox*, 8 Mass. App. Ct. 19, 33, (1979).

As a practical matter, because solar photovoltaic installations will have to comply with applicable laws whether or not those laws are referenced in the Model Bylaw, it is not evident to the Clean Energy Groups why it is necessary to incorporate what appears to be a broad set of all potentially applicable regulatory programs into the specific zoning provisions of Site Plan Review.

The Clean Energy Groups strongly urge DOER to delete the second sentence in Section 6.0 to avoid these complex and unnecessary legal issues.

6.2 Required Documents

1) DOER should clarify several required elements of the Site Plan in 6.2.A

For clarity and consistency, the Clean Energy Groups recommend the following revisions:

In (i), the two references to "etc." should be deleted, as this creates unnecessary ambiguity and vagueness, and allows permitting boards to impose their own ad hoc or subjective requirements. Required submission elements should be objective and uniform.

In (i) the reference to "topography" should be deleted, as it is duplicative of the more specific requirement in (xii) for contour lines.

In (ii), for clarity the words "changes to the" should be deleted, since it creates a grammatical ambiguity with respect to whether that predicate phrase applies to each of the other items in the list. For instance, retaining this phrasing would require that

site plans show only "changes in snow storage," rather than simply "showing snow storage".

In (iii) and (iv) a site plan will never show the signature of anyone other than the professional engineer. If DOER wishes to have signatures of owners, operators, or agents, that should be requested in a separate document, not on the site plan.

In (v), Solar facilities frequently change ownership over their operational life. Requiring contact information "throughout the life of the installation" is impractical at the time of application. Instead, applicants should be required to provide current contact information during permitting, and the permit should stipulate that project owners must update relevant authorities if ownership or key contact representatives change. This approach ensures accountability and ongoing communication without imposing unrealistic administrative burdens on applicants.

In (xvii), it is not clear what is meant by a public road that is "contiguous with the property." To avoid confusion, this should be clarified as "abutting the property."

In (xix), there is grammatical ambiguity as to whether the request is for a) (i) the location of floodplains (regardless of whether dams are present) and (ii) the locations of inundation areas for certain dams, or b) only if there are certain types of dams present, then the location of floodplains or inundation areas with respect to those dams. This should be clarified.

2) DOER should remove item 6.2.A.xvi, which requires documentation of all trees with a diameter at breast height (DBH) of 20 inches or greater proposed for removal.

This requirement is unnecessary and would impose significant time and cost burdens on project applicants. Existing provisions—6.2.A.i. (which requires documentation of existing vegetation) and 6.2.A.ii. (which requires documentation of proposed vegetation clearing)—already ensure adequate review of vegetation impacts. Furthermore, the Site Suitability report required for solar projects under separate guidance evaluates forest land impacts in greater detail. Requiring identification of each individual tree to be cleared would duplicate existing processes and introduce inefficiencies not found in other permitting frameworks.

3) Section 6.2.D is unnecessary and should be deleted.

The list of required documentation in Section 6.2.A through 6.2.K is already comprehensive and thorough. Practically, most significant projects will also be submitting for consolidated permits under 225 CMR 29.00, which requires even more comprehensive documentation. The purpose of such comprehensive listings is to provide certainty. There is no need to undermine that certainty by stating that applicants must provide a broad and vague category of unspecified documents identified at the ad hoc discretion of the local permitting authority.

4) Sections 6.2.D and 6.2.E should remove the reference to "associated guidance",

and Sections 6.4, 6.7.1, 6.7.3, and 6.10.1 should be revised to state that compliance with the referenced "Guidelines" is encouraged but not required.

Both Sections 6.2.D and 6.2.E require the submission of other information specified or required by 225 CMR 29.00 or "associated guidance". Similarly, sections 6.4, 6.7.1, 6.7.3, and 6.10.1 each reference mandatory compliance with certain "Guidelines".

As explained in detail above, guidance and guidelines are neither bylaws nor regulation: as such they can be amended, changed, or altered at any time without formal process, procedure, or any public notice. It is well-established that a "'policy' not lawfully adopted as a regulation, and containing no requirement of uniform application, could not form the basis of [a land use] commission's denial," *Fieldstone Meadows Dev. Corp. v. Conserv. Comm'n of Andover*, 62 Mass. App. Ct. 265, 268, (2004).

The Clean Energy Groups strongly urge DOER to delete the phrase "or associated guidance" in Sections 6.2.D and 6.2.E to avoid the complex and unnecessary legal issues that its retention will generate.

The Clean Energy Groups strongly urge DOER to revise sections 6.4, 6.7.1, 6.7.3, and 6.10.1 to state that Applicants, owners or operators (as the case may be) are encouraged to comply with the referenced Guidelines, since unless and until those Guidelines are adopted as either regulations or as text (rather than incorporated by reference) in the local zoning bylaw itself, they cannot form the basis of a mandatory zoning requirement under well-established judicial precedent.

5) DOER should clarify in Section 6.2.H that applicants must submit a *preliminary* emergency response plan, and may submit an updated emergency response plan at the time of the building permit application, consistent with Section 6.2.I regarding equipment specifications.

Emergency response plan details often depend on the specific equipment selected, which can vary between manufacturers. Because many projects experience extended interconnection timelines and must adapt to evolving market conditions—including federal tariff policies and Foreign Entity of Concern compliance—final equipment choices are frequently made after initial permitting. Allowing an updated emergency response plan to be submitted with the building permit ensures accuracy, aligns with existing provisions for equipment updates, and avoids unnecessary rework or delays during earlier stages of review.

6) DOER should delete Section 6.2.J.

It may be reasonable for a solar bylaw to provide that proof of liability insurance must be submitted prior to commencement of construction or prior to issuance of a building permit, but it is not reasonable to require proof of liability insurance at the time of application for site plan review. This may require an applicant to obtain and pay for liability insurance far in advance of when the applicant would normally need to obtain such insurance.

7) DOER should delete Section 6.2.K.

DOER is already implementing pre-filing requirements separately pursuant to 225 CMR 29.00. Those regulations and associated guidance will require submission of documentation confirming compliance with applicable pre-filing requirements. There is no reason to also require the same documentation to be submitted separately to the Site Plan Review Authority. Duplicating this requirement only increases burden for all involved and creates the potential for confusion about the logistics of submissions and the entity with authority to insure compliance with procedural requirements.

8) DOER should delete the sentence in the *Note* at the end of *Section 6.2* stating, “Municipalities may wish to extend to a greater distance to encourage more community engagement with the Solar Photovoltaic Installation development.”

There is no clear rationale for encouraging different and more onerous treatment of solar projects compared to other forms of development, particularly where solar facilities are entitled to *greater* protections under local zoning per G.L. c. 40A, § 3, 9, not *lesser* protections when compared to other forms of development. Removing this sentence ensures that solar development is subject to the same community engagement standards as other land uses, maintaining consistency and fairness across permitting processes.

6.6 Dimension and Density Requirements

Nearly all zoning bylaws have “frontage” requirements - typically, requirements that a buildable lot have some minimum amount of frontage on a public way. The enforcement or feared enforcement of zoning frontage requirements have unnecessarily reduced the number of sites available for solar (and BESS) projects. Frontage requirements, much like minimum lot size requirements, are used to minimize density and restrict development. They do not serve a significant public health, safety or welfare purpose, and for that reason the Chief Justice of the Land Court held that a local frontage requirement obstructing a solar project was preempted by G.L. c. 40A, § 3, 9. *Northbridge McQuade, LLC v. Hansson, et al.*, No. 18 MISC 000519 (Mass. Land Ct. June 10, 2021). The model bylaw should provide that frontage requirements otherwise applicable under the zoning bylaws may not be applied to prohibit a Solar Photovoltaic Installation, provided that there is adequate access to the project site for emergency vehicles.

For similar reasons, the model bylaw should provide that minimum lot size requirements otherwise applicable under the zoning bylaws may not be applied to prohibit a Solar Photovoltaic Installation. Where a proposed Solar Photovoltaic Installation will satisfy other dimensional and performance standards designed to minimize adverse impacts on neighboring properties (e.g., setback requirements and noise standards), there should be no need to block a Solar Photovoltaic Installation with a minimum lot size requirement.

6.6.1 Setbacks

1) DOER should establish a maximum proposed setback.

Excessive setbacks are often used by municipalities to discourage solar development, making some parcels undevelopable or forcing projects to shrink significantly. They can

also unintentionally increase land-use and habitat impacts by pushing solar projects farther from existing development. Siting solar close to already developed areas minimizes habitat disturbance and supports more efficient land use.

The Clean Energy Groups strongly encourage DOER to establish not just a minimum setback (as it has done), but also a maximum setback. The Note states that "generally, setbacks should not exceed 75 feet." The Clean Energy Groups believes that setbacks of no more than 50 feet are appropriate for solar facilities, and request that DOER affirmatively state that minimum setback requirements in excess of 50 feet would be inconsistent with the Model Bylaw. To the extent that greater distance from a neighboring property is necessary to achieve compliance with reasonable noise or other standards, appropriate siting and design should be achieved through compliance with such other standards, not by imposing arbitrary setbacks. Similarly, in the case of a solar + BESS project, to the extent that greater distance from a neighboring property is necessary to achieve compliance with applicable fire code standards, appropriate siting of the BESS component should be achieved through compliance with such code standards.

6.6.2 Appurtenant Structures

1) This language should conform to the requirements of G.L. c. 40A, § 3, 9.

To avoid grammatical confusion about whether appurtenant structures require site plan review independently of the solar facility, the opening of the first sentence should be rephrased to clarify that the structures are included in the broader review: "Where a Solar Photovoltaic Installation that requires Site Plan Review contains appurtenant structures, those appurtenant structures shall be subject to"

In addition, the requirement that the various appurtenant structures be "architecturally compatible" imposes a restriction inconsistent with G.L. c. 40A, § 3, 9, as aesthetics have been held to not constitute a valid health, safety, or welfare basis for regulation. As the court held in *Summit Farm Solar v. New Braintree* "To the extent the town's or the Planning Board's concern about visual impact is, as it appears to be, a purely aesthetic concern, it is not an appropriate subject of zoning regulation prohibiting, rather than regulating, a protected use."

Similarly, with respect to the text stating that structures should be "shaded from view by vegetation and/or joined or clustered to avoid adverse visual effects," as the Model Bylaw itself confirms on page 6, *Summit Farm Solar v. New Braintree* held that in light of the limited bases under G.L. c. 40A, § 3, 9 on which solar facilities may be regulated, "towns cannot condition special permits on zero or negligible visual impact."

In both instances, the referenced text should be either deleted or clarified to avoid implying that municipalities may regulate visual impact in a manner contrary to established case law.

6.7 Design Standards

1) Section 6.7.2 should be clear that safety-related signage is allowed.

Some facilities may require signage for safety reasons. It should be made clear that such safety signage is expressly permitted, even if otherwise prohibited in the zoning district generally. For instance, most municipalities prohibit signs in residential zones, meaning that a solar facility located in such a zone could not post a mandatory safety sign and still comply with the municipal sign bylaw.

The Clean Energy Groups recommend that the first sentence be revised to reflect this reality, as follows:

Notwithstanding any general or zoning sign bylaw to the contrary, safety-related signs of reasonable size and number shall be permitted on Solar Photovoltaic Installations that require Site Plan Review.

2) DOER should either delete the Note in Section 6.7.2, or at minimum clarify that the refusal of a utility to grant a request to install underground connections is not a basis for either a condition or a denial.

The Clean Energy Groups are concerned that the note following Section 6.7.2 regarding underground connections appears internally contradictory. It starts by stating that "municipalities may require utility connections . . . to be placed underground," yet the paragraph concludes by stating that "utility interconnections should generally not be required to be underground."

This language is exceptionally confusing, particularly given that the most common outcome of such a request to a utility is that the utility declines. Particularly where this note has no relationship to the section to which it is attached ("Signage"), the Clean Energy Groups encourage DOER to simply delete this paragraph to avoid creating unnecessary confusion.

To the extent DOER elects to retain this note, the Clean Energy Groups strongly urge DOER to expressly clarify that if a utility refuses a request to place connections underground, this refusal is not a basis for either a condition or a denial of Site Plan Review.

3) Section 6.7.3 needs to be clear that screening requirements must be reasonable, and the sentence stating, "If necessary and reasonable to minimize visual impacts on adjacent properties or public ways, Solar Photovoltaic Installations which require Site Plan Review shall include year-round screening" should be deleted.

It is important that screening requirements not become an unreasonable restriction on solar development. As the Model Bylaw itself confirms on page 6, *Summit Farm Solar v. New Braintree* held that with respect to a screening requirement, in light of the limited bases under G.L. c. 40A, § 3, 9 on which solar facilities may be regulated, "towns cannot condition special permits on zero or negligible visual impact." Section 6.7.3

currently risks that outcome. Reference to unfinished Guidelines in this section leaves the ultimate effect of this provision uncertain. If the references are maintained, it will be critical that the Guidance limit screening requirements to those that are reasonable, achievable, and proportionate to visual impacts.

The specific language “If necessary and reasonable to minimize visual impacts on adjacent properties or public ways, Solar Photovoltaic Installations which require Site Plan Review shall include year-round screening” is vague and unnecessary. If DOER maintains the existing reference to the DOER *Standards and Conditions*, which already address visual impact mitigation, then there is no need to introduce a new, ambiguous, standard.

4) In 6.7.4 “Fencing,” DOER should revise the fencing requirements to reference the Massachusetts Electrical Code 527 CMR 12.00 and clarify that alternative measures to chain link fencing are acceptable if they comply with that code.

Certain solar facility types—such as canopy, floating, or dual-use agrivoltaic installations—may not be suitable for enclosure by chain link fencing. Referencing 527 CMR 12.00 and allowing equivalent protective measures ensures flexibility while maintaining safety and code compliance. This approach accommodates diverse project designs without imposing impractical or unnecessary fencing requirements.

Similarly, for solar projects located in areas where flooding may be at issue, establishing that a reasonable effort to install fencing that allows for the reasonable flow of floodwater is sufficient to comply with the requirements. The Clean Energy Groups recommend revising this section to read as follows:

Solar Photovoltaic Installations that require Site Plan Review must be completely enclosed by fencing **consistent with the requirements of 527 CMR 12.00** to prevent entry by large animals or unauthorized persons. Where feasible, owners and operations of Solar Photovoltaic Installations shall undertake reasonable efforts to install wildlife-friendly fencing such as raised-bottom fencing to allow for passage of small animals. **Where feasible, owners and operators of Solar Photovoltaic Installations located in areas at risk of flooding shall undertake reasonable efforts to install fencing that allows for the reasonable flow of floodwater.**

6.8.2 Land Clearing and Soil Erosion

1) The language “or otherwise prescribed by applicable laws, regulations, and bylaws” should be deleted.

The statement that clearing of natural vegetation shall be limited to what is necessary for the construction, operation, and maintenance of the Solar Photovoltaic Installation is reasonable and appropriate, and consistent with the *Sunpin* decision. However, the additional language “or otherwise prescribed by applicable laws, regulations, and bylaws” raises the possibility that the municipality could use bylaws outside the Model Bylaw to restrict solar facilities beyond what the Model Bylaw authorizes, which could potentially contravene the protections of G.L. c. 40A, § 3, 9.

Nor is it clear what other “applicable laws, regulations, and bylaws” are being referenced, meaning that the language is unnecessarily vague and introduces significant uncertainty into a Site Plan Review process that is limited to compliance with local zoning. Indeed, even if other laws or regulations require additional compliance by the operator, it is not within the jurisdiction of the Site Plan Review authority to either require such compliance or enforce such compliance.

The Clean Energy Groups strongly urge DOER to delete this phrase to avoid these complex and unnecessary legal issues.

- 2) Amend the Note in 6.8.2 to delete the sentence stating, “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,” and clarify that mitigation should be guided by Site Suitability scores, with scope and type proportionate to the impact.**

The current language of this Note is overly broad and does not define which resources warrant mitigation, implying that conversion of any undeveloped land could require a 1:1 replacement. This fundamentally contradicts the purpose of the Site Suitability framework, which recognizes that undeveloped lands vary in conservation value. At minimum, aligning mitigation requirements with Site Suitability scores ensures that responses are evidence-based and proportionate to the actual level of impact.

DOER should also add to its Note that requiring mitigation in the form of offsetting conservation measures for solar development will generally only be appropriate if the same requirements apply equally to other forms of development or land use conversion, particularly given the heightened protections afforded to solar facilities under G.L. c. 40A, § 3, 9. This is of additional relevance given the significant constitutional concerns that the U.S. Supreme Court has held arise in the context of zoning-based exactions, under both *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

Finally, requirements to use conservation measures to offset use of undeveloped land should generally only be appropriate where the undeveloped land was of particular environmental value.

6.9.2 Modifications

What constitutes a “material modification” is currently left to the discretion of local officials and permitting boards, leading to inconsistency and confusion. To provide clarity for municipalities and solar operators alike, the Clean Energy Groups encourage DOER to revise this paragraph as follows to clarify that the specific items listed in the second sentence constitute the complete universe of “material modifications” that would require further approval.

All material modifications to a Solar Photovoltaic Installation made after issuance of the required Building Permit shall require approval by the Site Plan Review Authority. **For the purpose of this chapter, a material modification shall mean 1) any**

increase in Site Footprint ~~or capacity in kWDC~~, 2) the addition of battery energy storage, or 3) significant alterations to project configuration ~~shall constitute a material modification~~. All other modifications to a Solar Photovoltaic Installation other than routine maintenance and repairs shall be considered minor modifications, which shall require administrative approval from the Building Inspector (or, at the election of the owner or operator, the Site Plan Review Authority) that shall not be unreasonably withheld or delayed. Routine maintenance and repairs to a Solar Photovoltaic Installation, including the replacement of components that do not increase footprint or alter project configuration, shall not require approval.

An increase in capacity in kWDC that does not also constitute an increase in Site Footprint should not be considered a material modification. Solar equipment varies in efficiency by manufacturer, and final equipment choices may differ from those included in an initial application, leading to changes in kWDC output with no meaningful change to the physical design of the Solar Installation.

6.10 Abandonment and Decommissioning

- 1) DOER should amend Section 6.10.1 to state that decommissioning must occur "no more than 150 days after the date of abandonment, as defined in Section 6.10.2," for consistency across sections.**

As written, Sections 6.10.1 and 6.10.2 use inconsistent terms—"discontinued operations" and "abandonment"—to describe the same condition. Aligning the language ensures clarity in enforcement and prevents ambiguity about when the decommissioning timeline begins.

- 2) The surety requirement for abandonment or decommissioning should be reduced to 100 percent of the project and DOER should clarify that "additional surety" does not mean that an additional 125% surety is posted multiple times.**

The surety requirements of 125% of a project listed by 6.10.2 Abandonment and 6.11.2 Decommissioning Fund are unreasonable for a typical project, and risk constituting an unreasonable regulation of solar facilities in contravention of G.L. c. 40A, § 3, 9. We recommend that the surety requirement be lowered from 125 to 100 percent of a fully inclusive estimate. The surety requirement would otherwise place an undue burden on the project owner to have money set aside for the surety.

Further, the language "the project owner shall provide additional surety in the amount of 125% of the most recent estimated cost of decommissioning" suggests that the prior 125% surety would remain in place and a new *additional* 125% surety would be required every five years. This makes no sense and cannot be the intent. The language should be revised to clarify that the surety should be updated to reflect at least the required percentage of the most recent estimate, which may increase or decrease the amount of surety required.

Finally, the language in the first sentence is ambiguous as to whether the form of the

surety is at the option of the owner or of the Site Plan Review Authority. Similar language in existing bylaws has led to disagreement between project owners and municipal boards. The Clean Energy Groups strongly urge DOER to clarify that the choice of the form of surety is for the owner, as a requirement of a 100% (or 125%) cash surety would be financially prohibitive for many projects, and would constitute an unreasonable regulation (or even prohibition) on solar facilities in contravention of G.L. c. 40A, § 3, 9.

The Clean Energy Groups recommend revision of this paragraph as follows:

Prior to construction, the project owner shall provide the municipality, in cash, bond, letter of credit, escrow, or another form reasonably acceptable to the Site Plan Review Authority, a surety to cover the cost of removal of a ground-mounted Solar Photovoltaic Installation in the event the municipality must remove the installation and remediate the landscape. **The choice of the form of surety shall be at the sole and exclusive election of the project owner.** The amount of the surety shall be ~~125~~ 100 percent of a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The project owner shall provide an updated estimate after ten (10) years of project operation and subsequent updates in five-year intervals after that date, for the remainder of the project's lifetime. **After each such update interval, the project owner shall revise the required surety amount to be equal to provide additional surety in the amount of 125 100 percent of the most recent estimated cost of decommissioning. Upon revising the required surety amount, the project owner shall be entitled to terminate the previous surety, and to replace said previous surety with a surety provided to the municipality in the revised amount. If the previous surety had been provided to the municipality in cash, the project owner shall be entitled to the return of said cash surety by the municipality, upon the posting by the project owner of a new surety in the revised amount.**

7.0 and 7.1 Special Permit

- 1) DOER should remove all requirements to obtain a special permit and replace them with site plan review, or, alternatively, should specify that the site plan review standards are to be applied to special permits.**

The Clean Energy Groups do not believe a special permit that allows for discretionary denial of a solar facility is consistent with either G.L. c. 40A, § 3, 9, or the uniform case law interpreting the broad scope of Dover Amendment protections for solar facilities. The Clean Energy Groups strongly and emphatically urge DOER to remove Section 7.0 as being legally inconsistent with both state statute and judicial decisions, and to replace all references throughout the Model Bylaw to special permits with the site plan review standards of Section 6.0.

Massachusetts courts have clearly and consistently held that, if a special permit is required for a solar installation, that special permit cannot be denied based on policy preferences extraneous to those expressed in the zoning bylaw. *See, e.g., Sunpin Energy Services LLC v. ZBA of Petersham*, 105 Mass. App. Ct. 641 (2025). The courts have also consistently held that “[t]he better, and correct, view of the limits of local regulation

of solar energy facilities allowed by G. L. c. 40A, § 3 is that such local regulation may not extend to prohibition except under the most extraordinary circumstances." *Summit Farm Solar v. Planning Board of New Braintree*, 2022 Mass. LCR LEXIS 11. See also *NextSun Energy LLC v. Fernandes*, 29 LCR 52 (Mass. Land Ct. 2021) ("[w]hile [G.L. c. 40A] § 3 does not necessarily bar subjecting a solar energy system to a special permit, it does limit the scope of any required special permit."); *PLH LLC v. Ware*, 2019 Mass. LCR LEXIS 246, *9 (Mass. Land Ct. 2019) ("a special permit [for a solar facility] cannot unreasonably regulate, cannot impose conditions that go beyond statutory limits provided under § 3 [and] cannot be used either directly or pretextually as a way to prohibit or ban the use . . .").

Thus, the zoning bylaw must specify the applicable standards, must apply only those standards, and is limited to authorizing review under the site plan review standard, regardless of whether the zoning review is nominally denominated as "special permit."

Given the prevailing legal context, it does not make sense for DOER to establish a new "Special Permit" process — particularly one that establishes none of its own standards, but instead adopts the general special permit standards of the municipality. Indeed, the courts have held that incorporating a zoning bylaw's *general* special permit criteria to govern solar permitting (as Section 7.0 expressly proposes) is impermissible under G.L. c. 40A, § 3, 9. As the court held in *ASD Three Rivers MA Solar, LLC v. Planning Board of the Town of Wilbraham*, 29 LCR 124 (Mass. Land Ct. 2021), a board "[runs] afoul of Chapter 40A, § 3 when it disregard[s] the Project's satisfaction of the Solar Bylaw standards and instead proceed[s] to further require satisfaction of the special permit criteria in [the general provisions] of the Bylaw." (Emphasis supplied).

The Appeals Court reached the same conclusion in *Sunpin*. There, the Court reaffirmed that a local permitting authority may not repurpose general standards from elsewhere in the Zoning Bylaw and summarily declare — on behalf of Town Meeting — that Town Meeting had the requisite specific legislative intent (when passing those provisions) to not only abrogate the heightened protections of G.L. c. 40A, § 3, 9, but to also authorize the permit granting authority to wield those general provisions to deny solar permits in specific. As the Appeals Court held in *Sunpin*, "[m]ore specific direction in the by-law is necessary to require such specialized review. . . . However important policies promoting preservation of woodlands may be, they have not been adopted by the town to an extent that would allow the board to reject the plaintiff's special permit application in the circumstances presented here." *Sunpin*, 105 Mass. App. Ct. at 650.

The accompanying Note to Section 7.0 is equally concerning, as it suggests that municipalities may require other elements in addition to imposing their general special permit criteria. Given the clear precedents under G.L. c. 40A, § 3, 9 articulated above, such an approach invites municipalities to establish a *more* onerous standard for the approval of solar facilities when compared to every other special permit use, when the fundamental premise of the Dover Amendment (including G.L. c. 40A, § 3, 9) is to ensure that protected uses are subjected to a *less* onerous standard. The Note is particularly perplexing given that the examples offered — prime farmland, endangered species, and wildlife habitat — are not "health, safety, or welfare" criteria, and therefore cannot constitute bases for the denial of a solar special permit under 9 as a matter of

law.

To the extent DOER's intent is to reverse the effect of numerous state courts that have uniformly interpreted G.L. c. 40A, § 3, 9, the Clean Energy Groups strongly and emphatically urge DOER to reconsider. That approach would be a step backwards for certainty and consistency, would create unnecessary hurdles to the development of future projects in Massachusetts, and would be likely to engender new litigation on the same issues that have previously generated abundant and uniformly consistent legal precedents.

We also ask DOER to consider the procedural implications of requiring a special permit for certain solar Installations. Where courts have repeatedly indicated that a special permit for a use protected by the Dover Amendment cannot be denied and so is in the nature of site plan review, one key remaining difference between site plan review and a special permit is that site plan approval requires majority approval while, under G.L. c. 40A, § 9, a special permit requires supermajority approval. This can have massive real-world implications, resulting in unnecessary denials, delays and project failures.

Consider the circumstances of Sunpin: the Petersham ZBA actually voted 2-1 to grant a special permit for the project, but given that a unanimous vote was required to achieve a supermajority, the favorable majority vote was technically a denial, resulting in many years of litigation and a project that still hasn't been installed. (The appeal procedures provided for local consolidated permits in the 2024 Climate Act should provide some help with this type of circumstance but only to a point.)

If DOER is intent on providing a special permit process, it should make clear that the model bylaw does not authorize any substantive requirements or restrictions for special permits other than those applicable to site plan review as set forth in the Draft Model Bylaw, and it should make clear that it is not intending to change the applicable standard of review for special permit decisions applicable to solar projects, as developed in case law including the cases cited above.

DOER could also ensure that, if there is a heightened permitting process applicable to certain projects, the Model Bylaw makes clear that it requires only majority approval, whether by calling the process something other than a "special permit" or clarifying that the process is not intended as a special use permit under G.L. c. 40A, § 9.

1) DOER should broaden the waiver authority under the Model Bylaw.

As currently drafted, it appears the the Model Bylaw only allows for waiver of the document requirements in Section 6.2, screening requirements (for some undefined set of "smaller projects") in Section 6.7.3, and then in Section 7.1 waiver of the "special permit requirements," although that appears to be a reference to the standards in Sections 6.3 through 6.11.

In addition, the second waiver criterion in Section 7.1 requires a finding that the waiver "will not result in a Solar Photovoltaic Installation that is less protective of public health, safety, and welfare that if the waiver were not granted." If this criterion is interpreted

strictly, it is quite likely that it would never be satisfied. No requirement should be in the bylaw in the first place if it does not further public health, safety or welfare, and so almost by definition, any waiver of such a requirement will necessarily result in some compromise.

We recommend that DOER modify the Model Bylaw to provide for broader authority of local zoning authorities to waive bylaw requirements where circumstances warrant. There are several key reasons for broader waiver authority.

First, as explained above, the waiver authority as laid out in Section 7.1 is not entirely clear and may be practically unobtainable.

Second, it is extremely challenging to create requirements that appropriately apply to all project sites and that remain appropriate as solar technology and solar project design continue to evolve.

Third, as Land Court Chief Justice Gordon Piper indicated in Northbridge McQuade, LLC v. Hansson, et al., No. 18 MISC 000519 (Mass. Land Ct. June 10, 2021), it is critically important that local zoning boards understand that they have not only the authority but the duty to determine when a zoning requirement, as applied in the circumstances of a particular project, is preempted by G.L. c. 40A, § 3, 9.

Of course, the same legal principle would apply with respect to preemption by 225 CMR 29.00. While that authority and duty exist whether or not specified in a local bylaw, we believe that doing so expressly in the bylaw will be the best way to help zoning boards understand, and feel more comfortable with, that authority.

For the reasons above, we recommend the following:

- Allow for waiver of any of the requirements in the Model Bylaw.
- Modify the requirement in paragraph number 2 in Section 7.1 to read: "That such a waiver or reduction will not result in a Solar Photovoltaic Installation that endangers public health, safety or welfare."
- Expressly allow for a waiver upon a determination that a requirement in the zoning bylaws, as applied to the proposed project, is preempted by state law, including without limitation G.L. c. 40A, § 3 or 225 CMR 29.00, and provide that the permitting authority must make that determination promptly following a request by the applicant.
- Add an educational note referencing applicable case law and explaining a zoning board's authority and duty to determine whether a local zoning bylaw requirement is preempted by G.L. c. 40A, § 3 or 225 CMR 29.00.¶

Conclusion

On behalf of all of our members currently doing business in Massachusetts and those who hope to be part of our clean energy future, we thank DOER for your work to create Model Bylaws that will add consistency and clarity for municipalities and developers alike—helping to streamline the development process and drive down costs for all.

Sincerely,

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