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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 BESS**

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 BESS.

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 create a new model bylaw for battery energy storage systems ("BESS"). The Clean Energy Groups believe that the Model Zoning Bylaw: Allowing Use of Battery Energy Storage Systems ("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 and storage 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 BESS bylaw and the draft model solar bylaw, many of the comments below would apply as well to the draft model solar bylaw. To the extent such comments are not reiterated in our separate comments on the draft model solar bylaw, we ask that DOER receive such comments in this letter as applicable to the draft model solar 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.

In addition, 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 guidelines:

#### **2.0 Definitions**

**1) The BESS definition 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 if and when paired with other significant electrical facilities. On the contrary, BESS may be installed for many purposes, including resilience, where it could be an Accessory Use to residential, commercial or industrial uses more broadly.

The Clean Energy Groups recommend amending this definition to state (**proposed edits are in red**):

"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."

**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."

It is important to underscore the heightened protections from local zoning regulation to which BESS are entitled by state law. Under the plain language of G.L. c. 40A, § 3, 9, the Dover Amendment, "No zoning ordinance or bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the

collection of solar energy, except where necessary to protect the public health, safety or welfare."

Crucially, the courts have been clear that BESS Installations are "structures that facilitate the collection of solar energy," and therefore are protected by G.L. c. 40A, § 3, 9. Duxbury Energy Storage LLC v. Duxbury Zoning Board of Appeals, 23 MISC 0000643 (Mass. Land Ct. 2025); NextSun Energy LLC v. Fernandes, 2023 Mass. LCR LEXIS 63. Similarly, the Attorney General has repeatedly ruled that BESS Installations — whether accessory to a solar photovoltaic system or stand-alone — qualify as "structures that facilitate the collection of solar energy" entitled to the protections of § 3. Similarly, the Attorney General has repeatedly disapproved proposed municipal zoning bylaws that attempt to prohibit or unreasonably restrict BESS. See, e.g., Town of Wendell (AGO Opinion 10721) (prohibition on "stand-alone battery energy storage facilities" ran contrary to the "strong statutory protections for solar installations and related structures" and "the Tracer Lane II Court's recognition that large scale solar and related structures are 'key to promoting solar energy in the Commonwealth.'").

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 Solar Model Bylaw repeatedly affirms in its notes, "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 BESS Tiers should be revised.**

The Clean Energy Groups agree that it is reasonable to have different size facilities be treated differently under zoning classifications. However, exclusively using battery energy capacity as a deciding factor is a sub-optimal metric for assigning tiers. Focusing solely on energy capacity means that any increase in the energy *density* of BESS—even for those BESS using technology with no or significantly reduced fire risk—will subject these systems to unnecessary additional review and restriction. We suggest the following allocations for tiers:

#### **Tier 1 BESS should be defined as any project with:**

- Less than 1,000 square feet of project area, or
- Less than 100kW of nameplate discharge capacity, or
- Greater than 20 kWh and less than or equal to 600kWh of energy capacity

This definition would encompass most nonresidential small and behind-the-meter BESS Installations, none of which should require extensive review. The 600 kWh threshold is consistent with the 2020 edition of NFPA 855, the edition currently referenced in 227

CMR 1.00, and using it here would promote consistency and avoid confusion with the current Fire Safety Code. BESS exceeding this capacity trigger more stringent fire and safety requirements in the Massachusetts Comprehensive Fire Safety Code, such as performing a hazard mitigation analysis, undergoing specific fire testing (UL 9540A), and implementing more comprehensive monitoring and emergency planning. In the 2026 edition of NFPA 855, which will be referenced in the updated 2027 version of 527 CMR 1.00, 600 kWh is the maximum aggregate capacity allowed before more stringent requirements apply.

**Tier 2 BESS should be defined as any project with:**

- Greater than 1,000 and less than 15,000 square feet of project area, or
- Greater than 600kWh and less than 30MWh of energy capacity

These criteria would capture the most common category of nonresidential distributed BESS. Limiting Tier 2 to 10MWh or less — as currently proposed in the Draft Model Bylaw — would exclude from this tier nearly all distributed BESS, and would in practice create a category that would include virtually no BESS project. For context, most distributed BESS today are either 4-5MW or 16-30MWh, as that is what is economically viable on a distribution / class three phase feeder.

**Tier 3 BESS should be defined as any project with:**

- Greater than 15,000 square feet of project area, or
- 30MWh to 100MWh of energy capacity (greater than this goes to ESFB)

There are a limited number of distribution feeders in Massachusetts that can accommodate >5MW, <20MW BESS, while projects >20MW must go through the ISO-NE interconnection process. As the Commonwealth wishes to incentivize development of longer-duration storage, it may become increasingly common to see 6, 8 or 10+ hour facilities connected to the distribution system. Therefore it is reasonable for Tier 3 to include systems that are distribution-connected with a power rating of <20MW, but have a greater energy capacity than 30MWh.

In addition, we recommend deletion of the sentences in the tier definitions containing statements about a requirement to comply with various codes. As the sentences are the same for each tier, they do not serve any purpose in defining or distinguishing among tiers. More important, performance standards belong in the subsequent sections containing performance standards, not in the tier definitions.

**4) DOER should adopt a residential exemption.**

The Clean Energy Groups recommend exempting residential BESS entirely from the definition of Tier 1 BESS installations and from this Draft Model Bylaw under the applicability section.

Currently, the Draft Model Bylaw provides that Tier 1 BESS installations include systems with an aggregate energy capacity of less than 250 kWh. The Draft requires facilities to “comply with the State Electrical Code (527 CMR 12.00), the Massachusetts Comprehensive State Fire Safety Code (527 CMR 1.00), and National Fire Protection

Association ("NFPA") 855 or subsequent standards."

According to General Law - Part I, Title II, Chapter 22D, Section 4, the Board of Fire Prevention Regulations (BFPR) maintains the Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00. The state fire safety code builds on and amends the NFPA 1 model fire code and, for BESS, incorporates sections of NFPA 855, as directed by the BFPR. The Bylaws should not attempt to supersede the authority of the BFPR to establish fire safety code regulations for BESS by indicating that BESS installations of all three tiers must comply with the entire model code, NFPA 855, before amendments or inclusion directed by the BFPR. Sections are already being included by reference and at the direction of the BFPR.

Currently, 527 CMR 1.00 requires BESS in one- and two-family dwellings with an aggregate capacity of 1 kWh or more to seek a Fire permit, and any lithium ion batteries with a capacity of 20 kWh or greater also require a Fire permit before installation to ensure that the Commonwealth's fire safety regulations are being followed.

Under NFPA 855, up to 80 kWh of aggregate energy storage can be installed outdoors, on exterior walls, or in a garage of a one- or two-family dwelling for a residence, and the 2026 next edition of NFPA 855, which will be incorporated into a 527 CMR 1.00 update in 2027 (expected to be effective at some date in 2027), allows up to 100 kWh aggregate outdoor, on exterior walls, or in an attached garage. Often residential BESS installations are well below these thresholds.

We are concerned that the inclusion of residential BESS in Tier 1 and in the Model Bylaw could create confusion about which requirements apply to residential BESS, leading to onerous new requirements or delays in permitting projects. The Draft Model Bylaws propose to exempt Tier 1 BESS from Section 6.0 and Section 7.0 but the pre-filing requirements in Section 5.0 would apply. Requiring residential BESS to complete the pre-filing requirements in 225 CMR 29.08 would be adding complex new requirements to residential projects. For example, it would be impractical for a residential customer to host a public meeting in order to obtain permits to install a residential BESS on their home. Requiring such small-scale residential BESS to comply with extensive, additional permitting requirements that are clearly not designed for residential projects will disincentivize the use of these important tools. Residential installations should be exempted from this model bylaw. The Massachusetts Comprehensive Fire Safety Code and Massachusetts Electrical Code, 527 CMR 12.00, already establish safety and permitting requirements for such installations.

We recommend that residential projects up to an aggregate 100 kWh be exempt from the model BESS zoning bylaw, as such projects will already be adequately regulated under applicable provisions of the Commonwealth's fire safety, electrical and building codes and should not be subject to the additional permitting requirements and burdens contemplated by this model bylaw on BESS installations. We do not believe that it is the intention of the Draft Model Bylaw to add new regulatory requirements above and beyond the existing codes to residential BESS projects. However, the inclusion of residential BESS in the model bylaws could lead to misinterpretation by AHJs and result in severely restricting residential BESS deployment.



**5) The definition for “Brownfield” should be removed.**

This definition does not appear to be used anywhere in the Draft Model Bylaw. It should be removed.

**6) The definitions for “CBA” and “CBP” should be removed.**

Currently, the defined term “CBP” is not used anywhere in the Draft Model Bylaw other than in the definition section, rendering it disfavored surplusage under the standard canons of statutory construction.

In addition, the term “CBA” is used only once (in a Note in Section 6.9.3) in a situation where it 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.

**7) 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 second paragraph of the note below the “Site Plan

Review" definition as well as 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 BESS 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.)"

**8) The definition for "Stand-Alone Primary-Use BESS Installation" should be removed.**

This definition does not appear to be used anywhere in the Draft Model Bylaw. It should be removed.

**9) The term "Head of the Fire Department" should be defined for clarity and then used with consistency.**

We recommend adding a definition for the term "Head of the Fire Department", which is the individual responsible for issuing Fire permits, including BESS permits under 527 CMR 1.00. The Draft Model Bylaw provides a definition for "building inspector," but lacks clarity on who constitutes the "Head of the Fire Department".

**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 all new BESS 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 all new BESS 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. For Co-located BESS, also see the associated Solar Model Bylaw.”

**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 or storage 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 BESS Installation Tiers**

#### **1) No BESS Installations should be subject to Special Permit requirements.**

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 BESS Installation is consistent with either G.L. c. 40A, § 3, 9, or the uniform case law interpreting the broad scope of Dover Amendment protections for BESS Installations. As explained previously, the courts have held that BESS Installations are “structures that facilitate the collection of solar energy,” and therefore are protected by G.L. c. 40A, § 3, 9. *Duxbury Energy Storage LLC v. Duxbury Zoning Board of Appeals*, 23 MISC 0000643 (Mass. Land Ct. 2025); *NextSun Energy LLC v. Fernandes*, 2023 Mass. LCR LEXIS 63.

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 . . .”).

Retaining requirements in Table 1 that allow for discretionary denial of special permits is not only inconsistent with the statutory protections for solar and storage under G.L. c. 40A, § 3, 9, but will in practice significantly discourage solar and storage development on appropriately zoned parcels, and will measurably slow progress toward climate goals.

#### **2) Building-Integrated and Accessory BESS should be by right in all districts, regardless of Tier.**

Section 3.1.A.3 appears to indicate that Building-Integrated and Accessory Use BESS that are Tier 1 can be located by right in any district, implying that such uses remain subject to Table 1 if they are Tier 2 or Tier 3. Building Integrated and Accessory Use BESS (3.1.A) should instead be allowed by right in all districts regardless of tier, because they are by definition either a) integrated with an existing building or b) otherwise serving as an Accessory Use, so will have reduced incremental impacts. Section 3.1.A.3 should be amended to remove the words “Tier 1”, and the title of Table 1 should be amended to state that it applies only to BESS Installations under 3.1.B or 3.1.C.

If DOER is disinclined to make this change for Tier 3 BESS Installations, it should at least make the change for Tier 2 BESS Installations.

**3) 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 Tier 2 primary use in a commercial district is by site plan review, but in an industrial district is by right. Table 1 should clarify that where the district is zoned "commercial-industrial", the permit requirement is for the least restrictive of the two classifications (here, by right).

**4) 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 Tier 2 primary use in a commercial 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 BESS 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 Tier 3 primary projects in Industrial districts by right may feel compelled by Table 1 to heighten its approval requirement to Site Plan Review for the same project, even when it believes 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.

**5) The note on page eight should be amended so it does not imply that a 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 BESS Installation is consistent with G.L. c. 40A, § 3, 9, or the uniform case law interpreting the Dover Amendment protections for BESS Installations.

In particular, the 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 BESS Installations, or greatly decreases the locations in which BESS Installations 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 or BESS 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 one or more overlay zones . . . based on the areas most appropriate for Primary Use BESS,” 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, which 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 makes Tier 1 BESS Installations by right in all districts. Any municipal approach should be expected to do the same. Similarly, the Draft Model Bylaw allows co-located BESS wherever solar is allowed, and this should be a minimum expectation for any municipality adopting the Draft Model Bylaw.

In addition, DOER’s illustrative example — that a municipality may exclude BESS categorically from a dense commercial or residential 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 BESS 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 BESS-specific requirements in other bylaws that undercut the Draft Model Bylaw.**

Section 4.1 currently states that “The construction and operation of all BESS 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 BESS-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” BESS 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 BESS 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 BESS Installation. 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 BESS Installation may not be completed until a "certificate of occupancy" has been issued. Since BESS Installations are not "occupied" by individuals in the way homes or offices are occupied, there is no established or consistent definition of what a BESS Installation 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 BESS 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 BESS Installation within ten days after receipt of a written request by the Applicant for a final inspection. Upon concluding that the BESS 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 BESS 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 BESS 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 BESS 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 BESS 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) 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 BESS 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 authorize municipalities to restrict BESS 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 (and therefore BESS) 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.

- 2) 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 BESS 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), BESS Installations 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 BESS 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, 6.8.1, 6.8.3, and 6.11.1 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, 6.8.1, 6.8.3, and 6.11.1 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 BESS 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 BESS development."**

There is no clear rationale for encouraging different and more onerous treatment of BESS projects compared to other forms of development, particularly where BESS Installations 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 BESS development is subject to the same community engagement standards as other land uses, maintaining consistency and fairness across permitting processes.

**6.4 Operation and Maintenance Plan**

**1) DOER should delete Section 6.4.**

An Operation and Maintenance Plan is already required for obtaining the Fire Safety Code ESS permit, meaning it is unnecessary to include it as a Site Plan Review requirement. We encourage that this requirement be removed, as duplicative requirements may create unnecessary confusion if, for example, a Site Plan Review Authority rejects an Operation and Maintenance Plan that was approved by the Head of Fire Department.

**6.5 Emergency Response Plan**

**1) Where Emergency Response Plan requirements already exist under the State Fire Safety Code, Section 6.5 and its accompanying note are unnecessary for zoning purposes and should be deleted.**

It is reasonable to require the filing and approval of an Emergency Response Plan to the Head of Fire Department, as required by the State Fire Safety Code for batteries over 600 kWh (i.e., Tier 2 and 3, as we have proposed amending the Draft Model Bylaw). As a result, it is not necessary or helpful to include an Emergency Response Plan requirement in the Site Plan Review process, as the Site Plan Review Authority is unlikely to be well-suited to address these issues.

The Clean Energy Groups are gravely concerned the "guidance" that DOER's note encourages municipalities to request — for example, "an annual safety report" or "Evacuation/shelter-in-place plans" — will in practice provide communities that oppose all BESS on principle an avenue to block development via the imposition of additional,

onerous regulation and administrative requirements. While some of these items may indeed be appropriate for large BESS projects, smaller projects will often find it cost prohibitive to comply with annual safety reviews, first responder trainings, etc. And critically, such requirements are likely to be unnecessary and inappropriate. Moreover, the emergency response procedures should be reviewed by the body with the technical and professional expertise best suited to do so, which will generally be the Head of the Fire Department and not the Site Plan Review Authority.

Because an Emergency Response Plan is already required under the State Fire Safety Code, and there is an established procedure under the State Fire Safety Code for this process, DOER should remove this requirement from the Site Plan Review process and instead require concurrence from Head of Fire Department that site plan is consistent with State Fire Safety Code requirements.

**2) All references to NFPA 855 should be eliminated, substituting a reference to the Massachusetts Comprehensive Fire Safety Code, 227 CMR 1.00. If references to NFPA 855 are retained, they should reference a specific dated edition.**

The State Fire Safety Code currently references the 2020 version of NFPA 855. There are two subsequent versions of that standard, a 2023 and 2026 version, which are not yet codified in Massachusetts. In general, we recommend the model bylaw state that references to NFPA 855 are those codified in 227 CMR 1.00. We also note that the NFPA 855 model code for the Installation of Stationary Energy Storage Systems is not the same as the code for Massachusetts BESS installations in the Comprehensive Massachusetts Fire Safety Code, which only references sections of NFPA 855 and adds state-specific amendments.

Just as we do not need to explicitly reference NFPA 1, the model code for the entirety of 227 CMR 1.00, nor NFPA 70, the model code for the Massachusetts Electrical Code, there is no need to identify or require compliance with any edition of NFPA 855. That is already explicitly done, as necessary and with state-specific amendments added by the BFPR, within the Massachusetts Comprehensive Fire Safety Code, 227 CMR 1.00. Additional references to NFPA 855 potentially cause confusion and conflict with the Commonwealth's Fire Safety Code.

**6.7 Dimension and Density Requirements - Frontage and Lot Size**

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 BESS (and solar) 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 BESS 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 BESS Installation. Where a proposed BESS 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 BESS Installation with a minimum lot size requirement.

### **6.7.1 Setbacks**

#### **1) The designated setbacks and density requirements should be clarified.**

Excessive setbacks are often used by municipalities to discourage BESS development, making some parcels undevelopable or forcing projects to shrink significantly. They can also unintentionally increase land use and habitat impacts by pushing BESS projects farther from existing development. Siting BESS close to already developed interconnection locations minimizes habitat disturbance and supports more efficient land use.

The Clean Energy Groups are generally supportive of the approach to setbacks in Section 6.7.1. However, we recommend that DOER add to its existing Note (which states that "Setbacks, however, should not be so large as to result in de facto prohibition on BESS across large areas of the municipality") that setbacks greater than those recommended in the Note are unlikely to be consistent with G.L. c. 40A, § 3, 9.

### **6.7.2 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 BESS Installation, the opening of the first sentence should be rephrased to clarify that the structures are included in the broader review: "Where a BESS 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.

### **6.8.2 Signage**

- 1) Section 6.8.2 should be clear that signage should be consistent with and as required by the Fire Safety Code and Electric Code and that safety-related signage is allowed.**

BESS facilities will usually 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 BESS 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 adding a new first sentence to reflect this reality, as follows:

**Notwithstanding any general or zoning sign bylaw to the contrary, safety-related signs and signs required by either the State Fire Safety Code or the State Electrical Code, of reasonable size and number, shall be permitted BESS Installations.**

The additional signage requirements in section 6.8.2 are redundant with the Fire Safety and Electrical codes, potentially conflicting with code guidance and requirements, and should be deleted.

- 2) DOER should either delete the Note in Section 6.8.2, 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 6.8.2 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 6.8.3 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, BESS Installations which require Site Plan Review shall include year-round screening" should be deleted.**

It is important that screening requirements not become an unreasonable restrictions on BESS. 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 6.8.3 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.

This is a serious concern because experience has shown that municipalities that generally oppose BESS frequently impose screening requirements unrelated to actual concerns about visual impacts in a pretextual effort to make BESS projects uneconomic. BESS Installations are often no more unsightly than commonly found structures in all zoning districts, and should not generally require any screening greater than what is required for other facilities with similar visual impacts. Tier 1 and Tier 2 facilities (assuming that the Tier 2 limit of 15,000 square feet is adopted) should not require screening *at all*, with the potential exception of certain residential abutters.

Further, the specific language "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" 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.

#### **6.8.4 Fencing**

- 1) 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 BESS may not be suitable for enclosure by chain link fencing. They may be already within an access-controlled location, they may be co-located with resources that are not suitable for such fencing, or they may have other unique situations that require different fencing approaches. 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. The Clean Energy Groups recommend revising this section to read as follows:

BESS Installations which 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. If applicable, fencing for all BESS Installations shall comply with standards established by the electric utility to which the BESS connects.

#### **6.8.5 PFAS**

- 1) This section should be revised to avoid implying any requirement to use fire-suppression foams, or that the applicant will control the actions of the fire department.**

Section 6.8.5 states that "The applicant shall certify that non-PFAS fire-suppression foam shall be employed to the extent that they are commercially available, efficacious, and compliant with federal and state fire codes."

This should be amended to clarify that the Draft Model Bylaw does not require that foams be used (there are frequently better options), but that, if foams are used by the applicant, they will be of non-PFAS type.

Further, the applicant cannot prevent the municipal fire department from using its preferred foams. Section 6.8.5 should be amended so that the applicant certification applies only to any foams that may be incorporated into the applicant's designs, and not to any foams that the fire department may employ.

#### **6.8.6 Containment of Liquid Hazardous Materials**

- 1) DOER should amend this section to define the term "Liquid Hazardous Materials."**

The Clean Energy Groups recommend clarifying with specificity what the term "Liquid Hazardous Materials" includes. We recommend using an established and known definition that is used for similar purposes and applied in other contexts, to avoid inadvertently covering materials that should not be subjected to an additional containment requirement (and are not subject to such a requirement at other locations).

In addition, the new definition should make clear that it applies to materials that the applicant stores at the location of the BESS, and not (for instance) firefighting water volumes.

#### **6.8.7 Noise**

- 1) DOER should amend this section to require compliance with *applicable* noise standards and to avoid inappropriately emphasizing distance as a factor in reducing noise at sensitive receptors.**

We recommend modifying the first sentence of this section by requiring compliance with "applicable" state noise regulations. We recommend deleting the reference to local noise

bylaws or ordinances, as we believe that state noise regulations establish adequate noise standards, and more stringent local noise standards would unnecessarily restrict BESS deployment.

We also recommend deleting the second sentence in this section. Noise at a receptor can be affected by many factors other than distance, meaning that maximizing distance between equipment and a receptor is not always the best means of minimizing the noise contribution of equipment at that receptor. For instance, a closer location may be shielded from a receptor by features of the natural or built environment that do not exist at a more remote location.

Moreover, there will frequently be tradeoffs between noise contributions at different receptors and between efforts to minimize noise contributions and address other priorities, such as compliance with setbacks or visual impacts. More fundamentally, DOER should not condone use of a special noise standard for BESS unlike noise standards that apply to other commercial or residential uses. The focus should be on promoting project design likely to comply with applicable noise standards, not on requiring minimization of noise beyond compliance with such standards.

To the extent a further statement is needed (and we do not think this is the case), we recommend: "Equipment layout should reflect efforts to reduce noise contributions and sensitive receptors, to the extent reasonably practicable and consistent with other requirements and limitations, in order to facilitate compliance with applicable noise standards."

- 2) **DOER should amend its Note to clarify that noise studies are not appropriate for Tier 1 BESS, Tier 2 BESS that are 100' or more from the nearest residence, or Tier 3 BESS that are 300' or more from the nearest residence.**

Noise studies are expensive and time consuming. DOER should make clear that noise studies should not be required where they are unlikely to meaningfully inform review. Sound studies should not be required for Tier 1 BESS, Tier 2 BESS greater than 100' from the nearest exterior wall of an inhabited residence, or Tier 3 BESS located 300' or more from the nearest exterior wall of an inhabited residence.

## **6.9 Safety and Environmental Standards**

- 1) **DOER should remove Section 6.9.1.**

Much of this section is duplicative of the ESS permit requirements in the State Fire Safety Code and State Electric Code. It should be removed to avoid current or future conflict with these evolving codes and because it is not necessary to duplicate existing requirements. Beyond that, it is settled law that municipalities have no authority to adopt zoning (or other) bylaws that regulate matters already regulated by the state building, fire or electrical codes. To the extent a provision is needed, it should simply require compliance with applicable provisions of the State Fire Safety Code and State Electric Code.

**2) Language should be amended to refer to the “Head of the Fire Department” for consistency with the Fire Safety Code.**

We recommend being consistent with the State Fire Safety Code and using “Head of the Fire Department” rather than “fire marshal and building officials” in 6.9.1 and “fire chief” in 6.9.2 Emergency Services.

**3) The language “or otherwise prescribed by applicable laws, regulations, and bylaws” in 6.9.3 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 BESS 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 BESS 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.

**4) 6.9.3 should be amended to defer to the State Fire Safety Code instead of setting a distance-based vegetation removal requirement.**

We recommend deferring to the State Fire Safety Code in 6.9.3, rather than setting a 10-foot vegetation removal requirement. Even if 10 feet is the applicable current requirement, the State Fire Safety Code can change and does, and it is unnecessary for the bylaws to lock in a specific standard that may become outdated. We recommend replacing the second paragraph with the following:

**“All combustible vegetation shall be removed within the minimum distance from the BESS modules required by the State Fire Safety Code.”**

**5) Amend the Note in 6.9.3 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 note in this section focuses on issues that are more pertinent to solar facilities, and in comments submitted on the Draft Model Solar Bylaw today, we provided comments on this content that DOER should also incorporate into the Draft Model Bylaw for BESS.



In specific, 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 BESS 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 BESS 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.

#### **6.10.1 BESS Installation Conditions**

This section provides that the owner or operator of the BESS “shall be responsible for the cost of maintaining . . . any access road(s), unless accepted as a public way.” We recommend changing this to “any access road(s) within the project site.” There may be instances where access to the project site is across a private way over which the BESS owner has a non-exclusive easement but no right to maintain that private way.

#### **6.10.2 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 BESS 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 BESS Installation which require a Site Plan Review 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 any increase in Site Footprint ~~or capacity in kWDC or kWhDC~~, or significant alterations to project configuration that would adversely impact neighboring properties ~~shall constitute a material modification~~. All other modifications to a BESS 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 BESS Installation, including the replacement of components that do not increase Site Footprint or alter project configuration, shall not require approval.

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

### **6.11 Abandonment or Decommissioning**

- 1) DOER should amend Section 6.11.1 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 6.11.2 Abandonment and 6.11.3 Decommissioning Fund are unreasonable for a typical project, and risk constituting an unreasonable regulation of BESS 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) 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 in the event the Municipality must remove the BESS 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 BESS Installation 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 and BESS Installations. 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.

As noted previously, Massachusetts courts have been clear that BESS Installations are "structures that facilitate the collection of solar energy," and therefore are protected by G.L. c. 40A, § 3, 9. Duxbury Energy Storage LLC v. Duxbury Zoning Board of Appeals, 23 MISC 0000643 (Mass. Land Ct. 2025); NextSun Energy LLC v. Fernandes, 2023 Mass. LCR LEXIS 63. Massachusetts courts have clearly and consistently held that, if a special permit is required for a solar installation (which includes a BESS 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 BESS Installations 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 BESS special permit under § 9 as a matter of law, and certain of these subjects may lie beyond the legitimate scope of municipal zoning authority even without taking into account the special limitations imposed by the Dover Amendment.

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 BESS 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 BESS 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.

## **2) 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 6.8.3, 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 BESS 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 BESS technology and BESS 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 BESS 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.¶



#### **IV. 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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