



November 14, 2025

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Via Email: green.communities@mass.gov
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Re: Model Bylaw Comments – Solar Photovoltaic Systems and Battery Energy Storage Systems (BESS)

Dear Ms. Bissetta:

Mass Audubon offers the following comments on the draft model bylaws for solar photovoltaic systems and BESS. These comments supplement comments Mass Audubon submitted previously to DOER and the Energy Facilities Siting Board (EFSB) on proposed regulations and guidance documents implementing the 2024 Climate Act.

Summary Comments

The Climate Act requires that the new siting and permitting process apply site suitability criteria to avoid, minimize and mitigate impacts on climate change resilience, carbon storage and sequestration, biodiversity, and social and environmental benefits and burdens. Please also see attached Mass Audubon's previous detailed comments on the draft regulations for local consolidated permits and the comments on definitions and application of the avoid, minimize mitigate framework submitted previously by The Nature Conservancy.

These model bylaws, along with the regulations and guidance documents, should include provisions for prohibiting or denying projects to avoid sites with excessive impacts based on the site suitability criteria. That is missing from the draft bylaws. The 2024 Climate Act also includes a provision stating that communities that comply with the new small clean energy siting local consolidated permit regulations (325 CMR 29.00) are presumed to be in compliance with the solar zoning exemption at MGL Ch.40A S.3. As presently drafted, the model bylaws do not follow these important provisions of the law, in that they do not provide for communities to exclude large ground mounted projects and/or BESS from locations of highest site suitability sensitivity. The SMART regulations establish clear mapping criteria for determining ineligible sites. The local permitting regulations and model bylaws need to align with that and be equally clear.

Siting within developed areas should be as-of-right and easy to permit quickly and at minimal expense. We support By-Right designation in all zones for small and medium accessory use solar and battery systems. We also support automated permitting for accessory use solar and battery projects, e.g through Solar App+. Accessory use systems should not be subject to site plan review (SPR) except when part of an overall development project that requires SPR.

Municipalities will need considerable support and assistance in implementing the new local consolidated permit system. This should include training and technical assistance on use of the model bylaws and the bylaw updating process.

We also offer several suggestions on other provisions of the bylaws, including minimization and mitigation; the importance of specifically upholding local water supply, wetlands, and floodplain bylaws and ordinance; and refinements on setbacks, fencing, mitigation, and emergency response.

Specific Comments

Alignment with Site Suitability Criteria and Application of Avoid/Minimize/Mitigate Framework

Avoidance: Communities should have clear authority to exclude areas of high natural resource value and sensitivity, including the ability to establish zones where medium or large stand-alone (Primary Use) projects are ineligible and the right to deny projects with excessive impacts to high conservation value resources in the site suitability criteria. Both the total criteria and individual category criteria should be considered, and the total scoring must recognize that some criteria are mutually exclusive (e.g. high carbon forest does not overlap with prime farmland in production).

Where a portion of a parcel is of highest sensitivity for any one category of criteria, the bylaw should provide for exclusion of that portion of the property.

Minimization: Additional design refinements and conditions should minimize impacts to resources that are included in the criteria but not of highest sensitivity. Project construction, operations and maintenance conditions should further minimize impacts.

Mitigation: Unavoidable impacts should be mitigated, e.g. by protecting equivalent lands or payments to a mitigation fund.

Local Resource Protections: Communities should have clear authority to exclude areas of high natural resource value and sensitivity. Based on both the statewide site suitability criteria and locally important resources. The draft notes that “stormwater management, watershed protection, flood zones, and wetland protections are regulated at the state and federal levels.” Local wetlands, water supply and floodplain bylaws should also be fully upheld.

The model bylaws should include zone categories in which a community can prohibit medium to large ground mount solar and BESS where the site suitability assessment criteria indicate that those locations contain resources of the highest site sensitivity (e.g. highest carbon forests, BioMap Core, prime farmland). For areas where smaller patches of important resources are interspersed with more suitable areas, the bylaw should allow the community to deny or require redesign of a project to avoid impacts to the areas of highest sensitivity within the project parcel.

Compliance with MGL Ch. 40A S.3

The model bylaws note:

Section 23 of Chapter 239 of the Acts of 2024 states in part that local governments acting in accordance with the standards set by DOER governing the siting and permitting of small clean energy infrastructure

facilities by local governments “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.” This model bylaw also complies with the Dover Amendment protections for solar facilities. However, the DOER standards set forth in 225 CMR 29.00 and associated Guidelines do not address all aspects of solar siting and permitting, and the municipalities that deviate from the DOER standards or the model bylaw in a way that significantly restricts the feasibility of solar and/or is not necessary to protect public health, safety or welfare may risk violating the Dover Amendment.

Both bylaws then summarize the history of key legal cases. This essentially restates the legal status **prior to passage of the 2024 Climate Law**. Instead, the model bylaws should law to help **clarify what is reasonable to protect public health, safety or welfare**. This should include that a local zoning bylaw can explicitly exclude areas where the natural resource value is especially high based on local as well as statewide data (e.g. BioMap local data layer, local water supply protection areas, local floodplain or erosion sensitivity mapping). The example provided in the draft is a prohibition on large ground mount solar in dense commercial zoning districts. That is an economic interest, and while perhaps valid, it is not connected with the environmental sensitivity criteria in the 2024 Climate Act.

BESS Combined with Solar – Whole Project Accessory or Primary Use

Solar and BESS systems will increasingly be paired together, both for behind the meter and stand-alone projects. This is beneficial to our clean energy systems overall. The draft BESS bylaw states that BESS co-located with a solar facility can be treated as an Accessory Use. This should only apply to small or medium projects within development (rooftop, parking lots, turfed landscaped areas) where the solar is also an Accessory Use. BESS included with stand-alone ground-mount solar arrays that are a Primary Use should be considered part of a single project with the entire project treated as a Primary Use in zoning.

Setbacks

Appropriate setbacks vary depending on the project type and setting. Small and medium accessory solar projects, including parking canopy projects and projects located on turfed landscaped areas should have minimal setback requirements, possibly as low as 10 feet for small accessory systems. BESS and inverters for solar arrays should be set back and shielded from propagating noise onto adjacent properties. The bylaw notes should acknowledge the need to consider the setting and provide setbacks that protect adjoining properties from impacts. Excessive setbacks that reduce the portion of the site that can be utilized for solar and BESS without providing meaningful benefit in terms of reduced impacts should be avoided.

Fencing

Please add language requiring that fencing not obstruct wildlife movement corridors or existing or planned trail connections. The municipal Open Space and Recreation Plan should be a relevant source of information in addition to state sources like BioMap. Where necessary to maintain movement corridors, the bylaws should provide for fencing to be bifurcated within a site or provide a naturally vegetated perimeter corridor around the edge of the project to allow through movements of medium and large mammals. Perimeter corridors should be functional, not mowed turf adjacent to roadways.

Project Site Documentation and Land Clearing:

The SPR provisions include significant documentation of existing conditions. The bylaws should also have a look-back provision to deter advance clearing of sites prior to application. The language on land clearing is vague and should be strengthened. As noted above, where high conservation value resources like high carbon forests, BioMap Core, Priority Habitat, or wetlands exist, the bylaw should include provisions for ineligibility of all or parts of a parcel based on such resources.

Mitigation

Mitigation is the last step in the avoid/minimize/mitigate hierarchy. The mitigation formula should be equivalent to or stronger than SMART mitigation for solar projects if, as proposed in the draft regulations, mitigation under local consolidated permits allows projects to avoid paying SMART mitigation. Some municipalities are not likely to have the administrative systems (e.g. dedicated funding mechanisms) to manage local mitigation (unless via permanent conservation of portions of the project site). There are likely temporal and land protection project scaling issues that will make it difficult to provide 1:1 mitigation at the local level in many instances. On the other hand, if mitigation payments go to the state, this could result in funding high value conservation projects statewide but at a loss of local resources. EEA and DOER need to work with municipalities and conservation organizations to sort these issues out and establish mitigation mechanisms that are workable for applicants, municipalities, and the state.

BESS and Fire Code

The draft BESS bylaw requires compliance with safety and permitting requirements in the MA Fire Code and NFPA 855. Rather than repeating language from the existing MA Fire Code, the bylaw should reference the Code as updated from time to time.

Emergency Response

The bylaw should include provisions allowing municipalities to require monetary support for local response capacity (equipment, ongoing training, operational funding) for large projects if the community does not have adequate resources to fulfill the emergency response plan.

Conclusion

Mass Audubon appreciated DOER's efforts in drafting these model bylaws as well as the regulations. We are available to discuss further or answer any questions.

Sincerely,



E. Heidi Ricci
Director of Policy and Advocacy

cc: Rick Collins, Director, Division of Clean Energy Siting and Permitting