

## ADVISORY & FINANCE COMMITTEE

The following meeting of the Advisory & Finance Committee has been posted and will be held

**At:** Plymouth Town Hall  
Mayflower II Meeting Room  
11 Lincoln Street  
Plymouth, MA 02360

**On:** Wednesday, January 18, 2017 at 7:00PM

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*Items on the agenda will include but are not limited to the following.*

*Other discussion may include items that were not reasonably anticipated by the Chairman 48-hours in advance of the meeting posting.*

Call to Order

Announcements

Public Comment

Agenda Items

- ATM Article 30: Bylaw-Ground Mounted Solar      Charl Heller, Petitioner  
Lee Hartmann, Director of Planning & Development
- Public Records Law Update      Derek Brindisi, Assistant Town Manager
- ATM Article 27: General Bylaw – Soil Removal      Lee Hartmann, Director of Planning & Development
- ATM Article 28: Zoning Bylaw – Excavation      “
- ATM Article 11: Town Promotion Fund      “
- FY2018 Proposed Budget Presentation      Lynne Barrett, Director of Finance

Old/New/Other Business

- Sub-Committee & Committee Liaison Updates

Public Comment

Adjournment

*Next Meeting: Wednesday January 25, 2017 7PM Mayflower II Meeting Room – Town Hall*

PROPOSED AMENDMENT:

**205-77. Ground-Mounted Solar Photovoltaic Systems**

A. **Intent.** The intent of this bylaw is to promote, by-right, subject to Site Plan Review, in all Districts, the generation of solar energy and to minimize the impacts of solar facilities on the character of neighborhoods, on property values, on the scenic, historic and environmental resources of the Town; and to protect health and safety, while allowing solar energy technologies to be utilized.

**B. Location and Area Requirements.**

Except as otherwise provided herein, GMSPS are allowed by right in all zoning districts subject to Site Plan Review under Section 205-32.

1. Site Plan Review is not required for a GMSPS that:
  - a. Actively occupies 1,500 square feet or less of land and has a total GMSPS height of less than 8 feet from final grade, subject to Section C.2.e.; or
  - b. is located on agricultural land, and used primarily for the accessory generation of energy for the operation of the agricultural use; or
  - c. is located on a Development Site consisting primarily of Disturbed Area and, if located within any of the following Districts, provided a minimum 200-foot Buffer is in place along each Lot line that abuts a Residential District:
    - I. Airport (AP)
    - II. Arterial Commercial (AC)
    - III. General Commercial (GC)
    - IV. Highway Commercial (HC)
    - V. Light Industrial (LI)
    - VI. Light Industrial/Waterfront (LI/WF)
    - VII. Mixed Commerce (MC)
    - VIII. Parking Lots
    - IX. Power Line Utility Easements
2. Prohibited.
  - a. A GMSPS that actively occupies more than ~~fifteen~~ five acres in area in any Residential District.
  - b. GMSPS are prohibited on any parcel that include Estimated Habitats of Rare Wildlife or Priority Habitats of Rare Species as identified by the Commonwealth of Massachusetts Natural Heritage and Endangered Species Program or that are located within a State designated Area of Critical Environmental Concern (ACEC).
  - c. GMSPS are not allowed on parcels in R20-SL, R20-MD, R20-MF, R25, R40 and RR zones that have been previously disturbed (i.e.

cleared or substantially cleared of natural vegetation by other than natural forces such as fire or flood) for a period of five years from the date of disturbance.

C. **Standards.** The following standards apply to all GMSPS:

1. **Setback** – A GMSPS site and construction thereon shall conform to the dimensional and intensity requirements set forth in Table 5 of the Zoning Bylaw.
2. **Design** –
  - a. **Lighting** – High efficiency lighting, such as LED, or equivalent, shall be limited to that required for safety and operational purposes, and shall comply with the requirements of §205-65 Prevention of Light Pollution.
  - b. **Utility Connections** – Cabling and utility connections within the GMSPS shall be placed underground.
  - c. **Security** – The GMSPS must be physically secured by measures including, but not limited to, appropriate fence material, construction, locking devices and surveillance equipment.
  - d. **Signage** –
    - i. Required: A sign complying with Sign bylaw §205-19 shall identify the owner and operator, if not the same, and provide the following information: business name for any company or other entity owning and/or operating the installation, with the business address and name of a contact person for each; electric utility or other safety warnings and a 24-hour emergency contact phone number.
    - ii. Prohibited: Any advertising display.
  - e. All emergency vehicle access ways shall conform to dimensional requirements of the Plymouth Fire Department.
  - f. Screening, as defined in §205-3, shall be installed to shield residences from a GMSPS.
  - g. Buffers as defined in §205-3 are required as follows:
    - i. A minimum of ~~75~~ 150 feet for 1 to 2 MW DC systems;
    - ii. A minimum of ~~150~~ 200 feet for systems greater than 2 MW DC.
3. **Land Clearing, Soil Erosion and Habitat Impacts.**
  - a. Clearing of native vegetation on any undeveloped or land in its natural state shall be limited to that necessary for the construction, operation and maintenance of the GMSPS. Effective internal storm water management and erosion control features shall be maintained at all times during and post-construction.

Installed fencing shall maintain a minimum distance of 8 inches from final grade for small wildlife passage.

- b. Stormwater management controls shall comply with Plymouth's Stormwater Design Guidelines. Percolation tests will be required if no stormwater system controls are provided.
- c. Management of all vegetated areas within the GMSPS shall be maintained throughout the life of the project through mechanical means and without the use of chemical herbicides.

4. **Information Required with Zoning Permit for all GMSPS.**

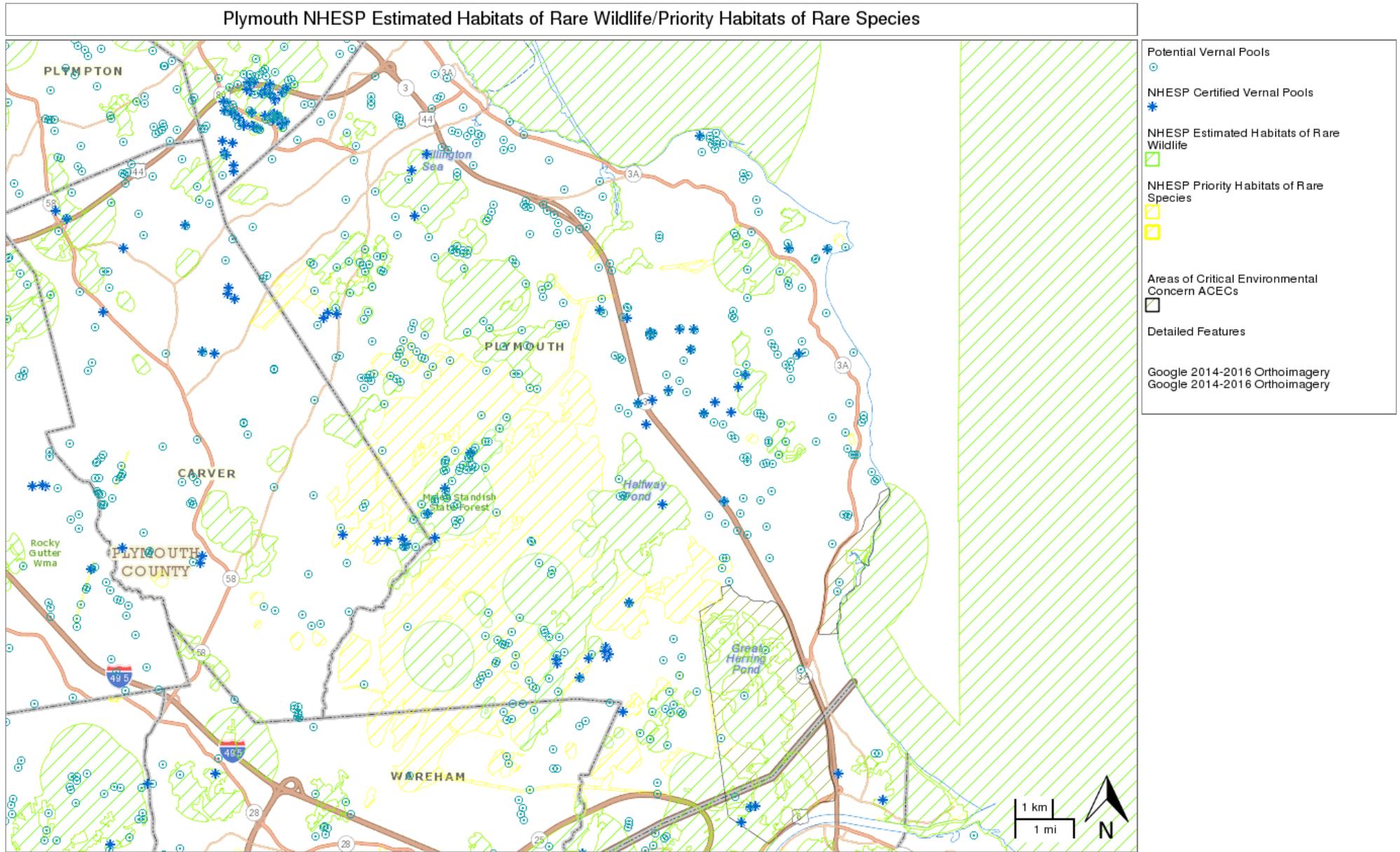
- a. **Landscape Plan** – A landscape plan prepared by a Registered Landscape Architect is required and shall include location of existing significant trees, shrubs and grasses to remain and all proposed additions, identified by specimen size and species at installation. Low growth vegetation shall be planted and maintained in areas under GMSPS rack equipment.
- b. **Materials** – Manufacturer's specifications for a proposed GMSPS shall be provided for all equipment and attendant facilities and include documentation of the major system components to be used, including panels, mounting system, rated name plate capacity, colors, inverter and interconnection details.
- c. **Safety** – The GMSPS Owner or Operator shall submit a copy of the project summary, electrical schematic, and Development Site plan to the Building Commissioner, with a copy for review by the Fire Chief. Instructions to de-energize the system shall be made available to public safety personnel. The owner or operator shall identify a responsible person for public inquiries throughout the life of the GMSPS.
- d. **Financial Surety** – Except for a municipally owned GMSPS, a project designed to generate in excess of 2MW shall require a performance guarantee in the form of a cash bond in an amount approved by the Building Commissioner to cover the cost of GMSPS removal in the event the town must remove the installation and stabilize the Development Site with loam and seed.

5. **Other Requirements.**

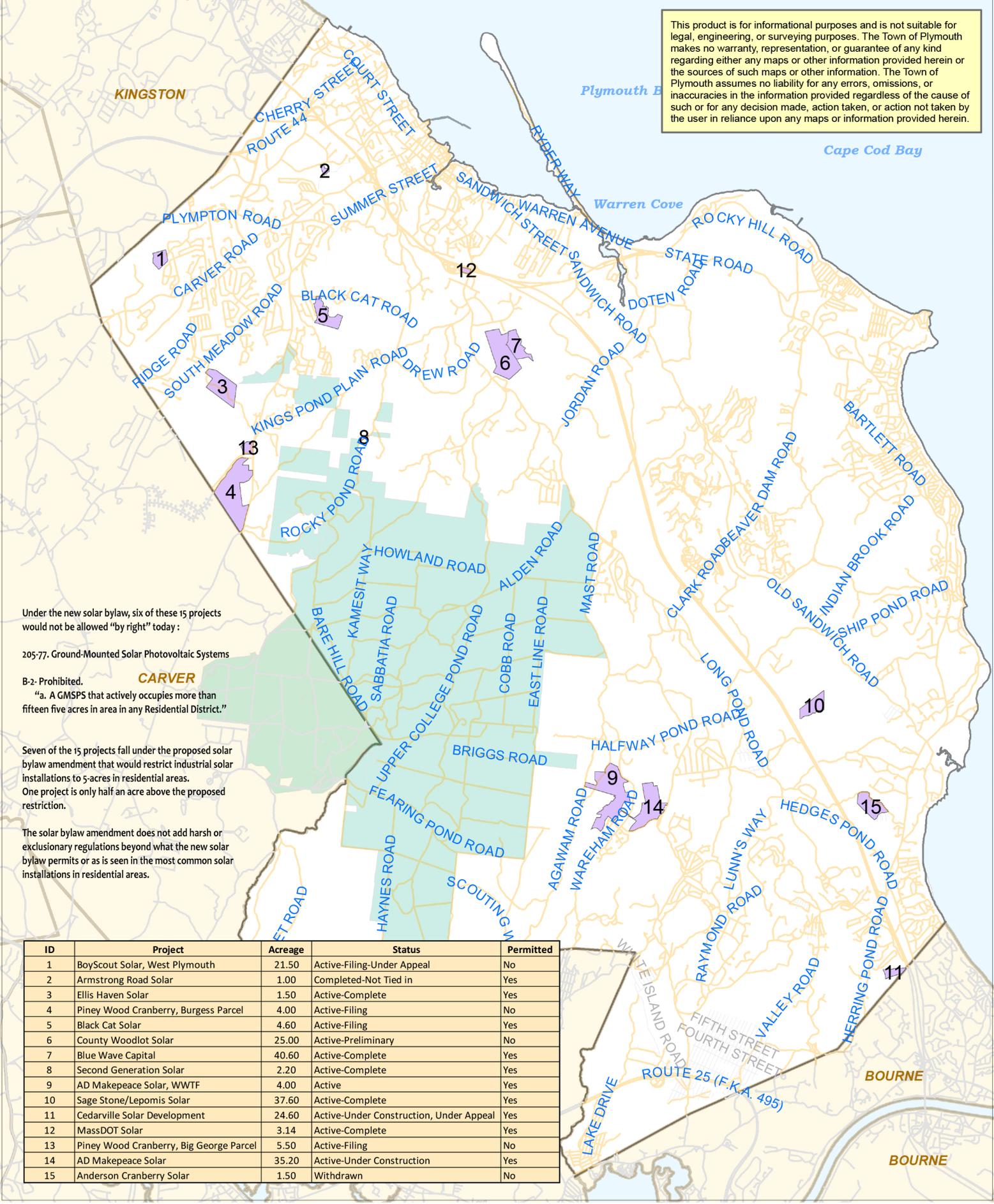
- a. **Notification** – When site plan review is required, at least fourteen days prior to site plan review by the Planning Board, notice of the time and place of said review shall be sent by mail by the GMSPS Owner/Operator, postage prepaid to abutting owners of land within three hundred feet of the property line of the parcel or parcels upon which the GMPS proposes to be situated, as said abutters appear on the most recent applicable tax list. The assessors maintaining any applicable tax list shall certify the names and addresses of parties in interest and such certification shall be conclusive for all purposes.

At least 60 business days prior to the commencement of work on a project, the GMSPS Owner/Operator shall notify abutters within 300 feet of when work will commence and that site plans are available for public review at Town Hall.

- b. **Modification** – A substantial modification to a GMSPS shown on an approved Site Plan shall require Site Plan modification in compliance with the standards and procedures applicable to the original application.
- c. **Segmentation** – Adjacent parcels in the same ownership or control shall be deemed to be one parcel for purpose of calculating the area limitation of §B.2 above.
- d. **Abandonment** – A GMSPS shall be deemed abandoned when its operations are discontinued for more than one year without the written consent of the Building Commissioner; or if the Building Commissioner has determined that the installation is a hazard to public safety and the conditions have not been corrected within three months. A GMSPS must be removed by its owner and the site restored when it has been abandoned as provided herein.
- e. **Site Restoration** – A GMSPS must be removed by its owner within 150 days from the date of discontinuation of operations. The owner or operator shall notify the Building Commissioner by certified mail of the proposed date of discontinuation and provide detailed plans and schedule for GMSPS removal and restoration of the site to a function approved by the Building Commissioner or to a natural vegetative state.
- f. **Exemption** – This Section 205-77 shall not apply to a GMSPS for which a zoning permit was issued and was still in effect as of July 20, 2016 [the first publication date of notice of the August 8, 2016 Planning Board public hearing], but the record owner of the land shall have the right to waive this exemption, in which case this Section 205-77 shall apply.



This product is for informational purposes and is not suitable for legal, engineering, or surveying purposes. The Town of Plymouth makes no warranty, representation, or guarantee of any kind regarding either any maps or other information provided herein or the sources of such maps or other information. The Town of Plymouth assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such or for any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein.



Under the new solar bylaw, six of these 15 projects would not be allowed "by right" today:

205-77. Ground-Mounted Solar Photovoltaic Systems

B-2. Prohibited.  
 "a. A GMSPS that actively occupies more than fifteen five acres in area in any Residential District."

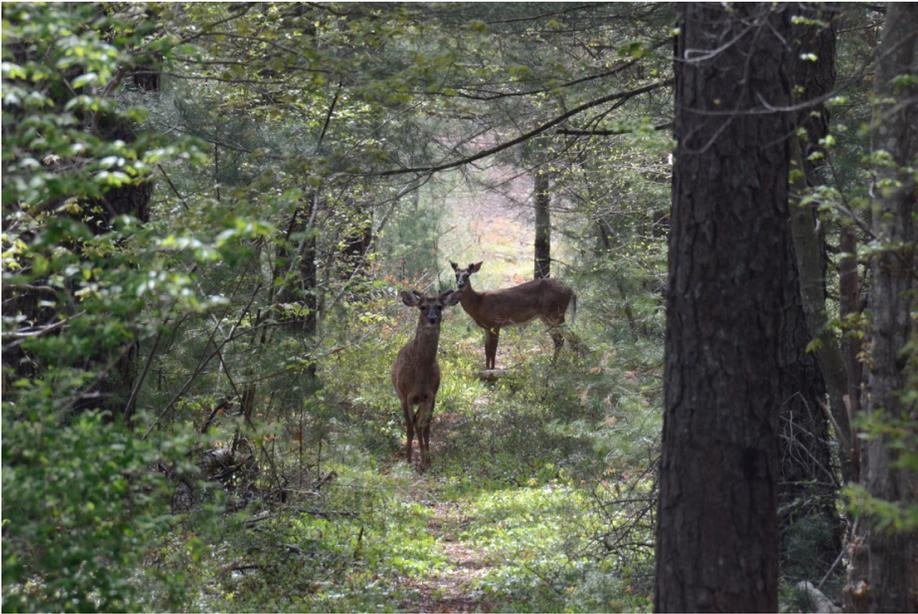
Seven of the 15 projects fall under the proposed solar bylaw amendment that would restrict industrial solar installations to 5-acres in residential areas. One project is only half an acre above the proposed restriction.

The solar bylaw amendment does not add harsh or exclusionary regulations beyond what the new solar bylaw permits or as is seen in the most common solar installations in residential areas.

ID	Project	Acreeage	Status	Permitted
1	BoyScout Solar, West Plymouth	21.50	Active-Filing-Under Appeal	No
2	Armstrong Road Solar	1.00	Completed-Not Tied in	Yes
3	Ellis Haven Solar	1.50	Active-Complete	Yes
4	Piney Wood Cranberry, Burgess Parcel	4.00	Active-Filing	No
5	Black Cat Solar	4.60	Active-Filing	Yes
6	County Woodlot Solar	25.00	Active-Preliminary	No
7	Blue Wave Capital	40.60	Active-Complete	Yes
8	Second Generation Solar	2.20	Active-Complete	Yes
9	AD Makepeace Solar, WWTF	4.00	Active	Yes
10	Sage Stone/Lepomis Solar	37.60	Active-Complete	Yes
11	Cedarville Solar Development	24.60	Active-Under Construction, Under Appeal	Yes
12	MassDOT Solar	3.14	Active-Complete	Yes
13	Piney Wood Cranberry, Big George Parcel	5.50	Active-Filing	No
14	AD Makepeace Solar	35.20	Active-Under Construction	Yes
15	Anderson Cranberry Solar	1.50	Withdrawn	No

# Plymouth Ground-Mounted Solar Projects - 2016





## **An Amendment to Protect Neighborhoods, Preserve Forests, and Enhance Quality of Life**

Before the company cleared the trees behind this Plymouth home for their 25-acre solar array you would often see deer wandering along the trails, hear the songs of birds in the morning, enjoy the muted light of the sun through acres of pine and oak and feel extreme temperatures muted or enhanced by its natural insulation.

There was no reason to think this would ever change.

The property depicted here is zoned "Rural Residential" and lies within a state-designated Area of Critical Environmental Concern (ACEC) supposedly "requiring special management attention to protect important historic, cultural and scenic values, fish or wildlife resources or other natural systems or processes."

Plymouth's newly adopted and well-intentioned solar bylaw (205-77) provides guidelines for streamlined permitting but reduces the ability of residents to have input into commercial solar projects that dramatically alter their neighborhoods and does not prevent the devaluation of property or protect our highest value forests and habitats.

The proposed Amendment will do just that while helping meet many of the goals of Plymouth's master plan including maintaining the rural character of the community.

### **The proposed amendment to the solar bylaw will:**

1. Reduce the maximum installation parcel size from 15 to 5 acres in Residential zones;
2. Prohibit GMSPS on parcels identified by the Massachusetts Natural Heritage and Endangered Species Program as Estimated Habitats of Rare Wildlife or Priority Habitats of Rare Species or those located within a designated ACEC;
3. Increase buffers from 75 feet to 150 feet for 1 to 2 MW DC systems;
4. Increase buffers from 150 to 200 feet for systems greater than 2 MW DC;
5. Require the GMSPS owner to notify abutters 14 days prior to the site plan review when a site plan review is required.

**Date: January 12, 2017**  
**To: Plymouth Finance Committee**  
**Re: Proposed Solar Bylaw Amendment**

The town's own map of proposed and permitted ground mounted solar arrays has a lot to contribute to the debate over the reasonableness of a 5-acre maximum array lot size in residential areas.

Under the existing bylaw, passed just last year, six of fifteen projects approved by the town would not be allowed "by right" today because they exceed – often dramatically – the present 15-acre limit.

More importantly, though opponents of the amendment have argued that a five-acre maximum size would be a de facto ban on solar (suggesting that no commercial developer would consider an array that small) seven of the 15 proposed or permitted arrays on this map are under 5 acres. Another is just a half-acre larger.

The crux of this debate is what size of array is too big, or too small, in a rural, residential area.

The state\* breaks down arrays into small, medium and large arrays, and says that a large array is anything over 40,000 square feet, or just 1 acre!

The amendment proposes to allow developers up to five times that size, up to five acres in a residential zone.

The pattern of solar array development in Plymouth, backed up by the state's own definitions, make it clear that five acres is more than enough.

**\* Model Zoning for the Regulation of Solar Energy System Department of Energy Resources  
Massachusetts Executive Office of Energy and Environmental Affairs December 2014**

<http://www.mass.gov/eea/docs/doer/green-communities/grant-program/model-solar-zoning.pdf>

**Solar Energy System, Large-Scale: An Active Solar Energy System that occupies more than 40,000 square feet of surface area** (equivalent to a rated nameplate capacity of about 250kW DC or greater).

<b>40,000 square feet</b>	=	<b>0.91827364554637</b>
Square foot		Acre

Solar Energy System, Medium-Scale: An Active Solar Energy System that occupies more than 1,750 but less than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 10 - 250 kW DC).

Solar Energy System, Small-Scale: An Active Solar Energy System that occupies 1,750 square feet of surface area or less (equivalent to a rated nameplate capacity of about 10 kW DC or less).

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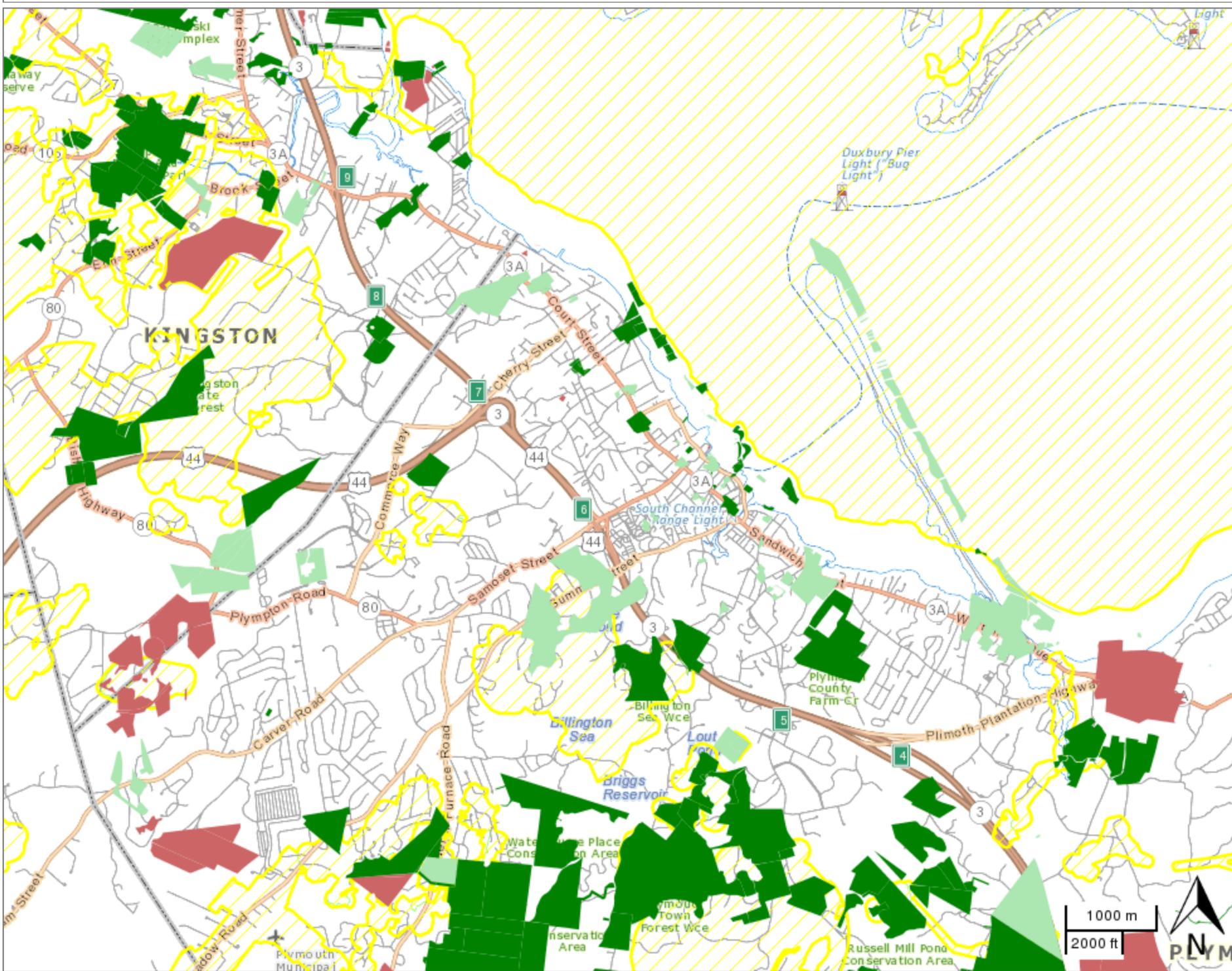
**Siting Preferences (from the document above, page 5)**

Where a solar facility is sited, as well as placement on the site once selected, is an important consideration, particularly in regard to large-scale ground mounted facilities. DOER strongly discourages locations that result in significant loss of land and natural resources, including farm and forest land, and encourages rooftop siting, as well as locations in industrial and commercial districts, or on vacant, disturbed land. Significant tree cutting is problematic because of the important water management, cooling, and climate benefits trees provide.

Respectfully submitted,

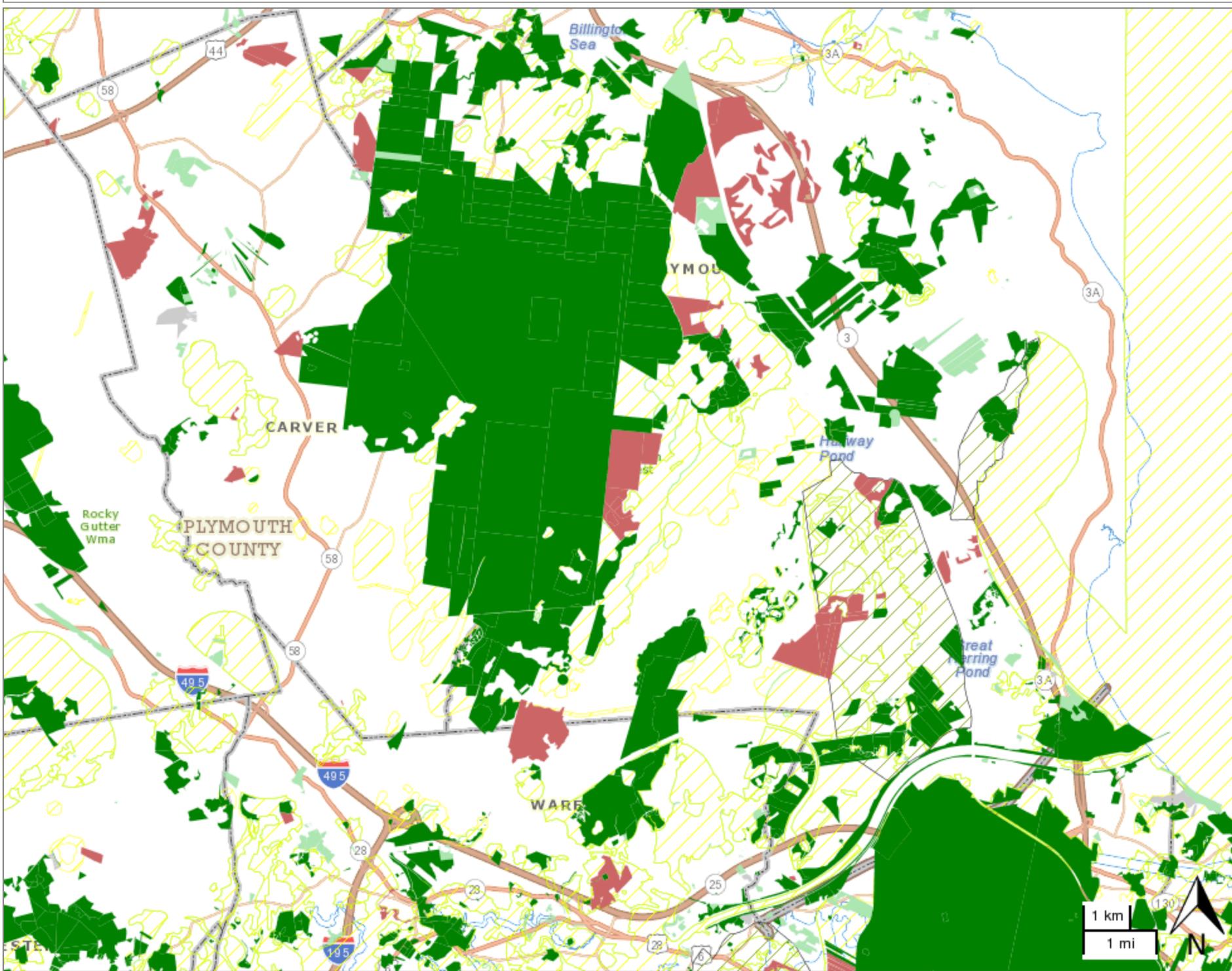
Sharl Heller  
201 Center Hill Road, Plymouth

# Plymouth North Open Space Protected



- Openspace by Level of Protection
  - IN PERPETUITY
  - LIMITED
  - TERM LIMITED
  - NONE
  - UNKNOWN
- Areas of Critical Environmental Concern ACECs
- NHESP Priority Habitats of Priority Species
- NHESP Estimated Habitats of Wildlife
- Detailed Features

# Plymouth South Open Space Protected



- Openspace by Level of Protection
  - IN PERPETUITY
  - LIMITED
  - TERM LIMITED
  - NONE
  - UNKNOWN
- Areas of Critical Environmental Concern ACECs
- NHESP Priority Habitats of Rare Species
- NHESP Estimated Habitats of Wildlife
- Detailed Features

**Model Zoning for the Regulation of Solar Energy Systems<sup>1</sup>**  
Department of Energy Resources  
Massachusetts Executive Office of Energy and Environmental Affairs  
December 2014

*This model zoning and accompanying Guidance were prepared to assist Massachusetts cities and towns in establishing reasonable standards to facilitate development of solar energy systems. These systems include small-, medium- and large-scale as well as both ground-mounted and roof-mounted installations.<sup>2</sup> The model zoning language provided here is not intended for adoption precisely as it is written. Communities will need to carefully consider how this language may be modified to suit local conditions and where it should be inserted into an existing Zoning Bylaw/Ordinance. Further, it is highly recommended that any language adapted from this model be reviewed by municipal counsel prior to adoption.*

*As small-, medium-, and large-scale ground-mounted and roof-mounted solar energy systems become more prevalent in Massachusetts, many communities are attempting to regulate the installation of these systems through their Zoning Bylaw/Ordinance. Developing these regulations has been particularly challenging for a number of reasons. Most notably, the Massachusetts General Laws contains several provisions that specifically address the ability of local governments to regulate solar energy systems and/or to protect solar access from development or vegetation (shading) on adjacent properties. While the language within Chapter 40A Section 3 states that a local government may not prohibit these uses, it does say they cannot be “unreasonably regulated” without providing guidance on what that particular phrase means. The Solar Energy Systems Policy Guidance, which accompanies this model zoning and succeeding sections of this document provide more explanation regarding the implications of the statutes on this issue and its significance to local zoning.*

*Unlike model bylaws/ordinances typically developed by the Commonwealth, the regulatory language provided here is not packaged as a “stand-alone” section of a Zoning Bylaw/Ordinance. With ground-mounted and roof-mounted solar energy systems, the statutory framework and “accessory” nature of some of these installations lend themselves to a different approach. This model zoning therefore assumes that municipalities will have many “typical” sections within their Zoning Bylaw/Ordinance and that several of these sections would be amended to address this issue. For the purposes of this model zoning, the Bylaw/Ordinance sections that are amended include:*

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<sup>1</sup> This material is based upon work supported by the U.S. Department of Energy under Award Number DE-EE0005692. This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

<sup>2</sup> This material was prepared by the Horsley Witten Group.

*The Definitions Section;  
Allowable Uses;  
Dimensional Requirements; and  
Site Plan Review.*

*There is also further discussion intended to help communities regulate these systems in the context of a Local Historic District.*

## **Definitions**

*Commentary: Within a Zoning Bylaw/Ordinance, the Definitions Section usually stands alone. Definitions are also sometimes included as a sub-section within other sections of the Zoning Bylaw/Ordinance. For example, terms related to the protection of water resources may be included in a water resource protection overlay district section. We recommend that the following terms be added to the general Definitions Section of the Zoning Bylaw/Ordinance.*

Photovoltaic System (also referred to as Photovoltaic Installation): An active solar energy system that converts solar energy directly into electricity.

Rated Nameplate Capacity: The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

Solar Access: The access of a solar energy system to direct sunlight.

Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

*Commentary: While it is anticipated that installed solar energy systems will most frequently be photovoltaic, this model zoning uses the statutory definition of a solar energy system, which is broader and permits the installation of solar thermal systems as well.*

Solar Energy System: A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

Solar Energy System, Active: A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

Solar Energy System, Grid-Intertie: A photovoltaic system that is connected to an electric circuit served by an electric utility.

Solar Energy System, Ground-Mounted: An Active Solar Energy System that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

Solar Energy System, Large-Scale: An Active Solar Energy System that occupies more than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 250kW DC or greater).

Solar Energy System, Medium-Scale: An Active Solar Energy System that occupies more than 1,750 but less than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 10 - 250 kW DC).

Solar Energy System, Off-Grid: A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility.

Solar Energy System, Passive: A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

Solar Energy System, Roof-Mounted: An Active Solar Energy System that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium- or large-scale).

Solar Energy System, Small-Scale: An Active Solar Energy System that occupies 1,750 square feet of surface area or less (equivalent to a rated nameplate capacity of about 10 kW DC or less).

Solar Thermal System: An Active Solar Energy System that uses collectors to convert the sun's rays into useful forms of energy for water heating, space heating, or space cooling.

## **Use Regulations**

*Commentary: Within a Zoning Bylaw/Ordinance, the Use Regulations describe which land uses are allowed within different zoning districts of the community, and which permits are required. The Use Regulations typically include a Use Table and/or a narrative description of the principal and accessory uses that are allowed, prohibited and/or allowed only through a Special Permit within each zoning district.*

*Pursuant to Chapter 40A Section 3, a Massachusetts municipality may not prohibit or unreasonably regulate solar energy systems except where necessary to protect public health, safety or welfare. Therefore, although these systems must be allowed within the community, they may be regulated where necessary to protect public health, safety or welfare through other provisions of the Zoning Bylaw/Ordinance. For example, these systems will still need to meet dimensional regulations and other performance standards necessary to protect public health, safety or welfare. In addition, a Site Plan Review process may be used to collect information that will ensure compliance with the performance standards in the Zoning Bylaw/Ordinance. Where some communities include Design Review in their permit processes, these communities will need to balance their desire for certain design objectives with the Commonwealth's protection of solar energy systems. Finally, as drafted this model zoning requires a special permit for a large-scale ground-mounted facility in a residential district and prohibits such systems in another residential district. While a special permit is discretionary, and language expressing uncertainty and cautioning communities about the lack of case law regarding Chapter 40A Section 3 has been included, the Attorney General's Office has approved local*

*zoning using this permitting mechanism. While DOER cannot offer a definitive interpretation, limited use of special permits when applied to the largest of solar systems, especially when these systems are allowed elsewhere by right, may well be reasonable regulation. In DOER's view, given the plain language of the statute, it is prudent to allow opportunity to site all scales of solar energy systems somewhere in the community. These provisions are described in more detail in the following sections. A more detailed discussion of DOER's understanding of Chapter 40A Section 3 is provided in the Policy Guidance for Regulating Solar Energy Systems that serves as a companion piece to this regulatory guidance.*

*As a cautionary note, while regulating aesthetics can arguably be considered a matter of protecting public welfare, attempting to place restrictions on materials, setbacks or height, and other similar items, as related to aesthetics, can create roadblocks to actual installation. It is therefore not recommended that communities regulate aesthetics of solar energy systems, or that they do so very cautiously, due to the strong statutory protections in Chapter 40A Section 3.*

*Two examples are provided in this section for how roof-mounted, small-scale ground-mounted, medium-scale ground-mounted, and large-scale ground-mounted solar energy systems can be incorporated into a municipality's Use Regulations. In these examples, roof-mounted solar energy systems, regardless of size, are allowed as-of-right throughout the community. As-of-right siting means that development may proceed without the need for a Special Permit, variance, amendment, waiver, or other discretionary approval. These projects cannot be prohibited, and can be built once a building permit has been issued by the inspector of buildings, building commissioner or local inspector.*

*For ground-mounted systems, there is a distinction between how small-scale, medium-scale and large-scale systems are treated and where each are allowed as-of-right, via site plan review, or by special permit. The model zoning allows small-scale ground-mounted systems as-of-right throughout the community. These are of a size that would service a house, small businesses, or small municipal building.*

*The model zoning allows medium-scale ground-mounted systems as-of-right in all districts except residential zoning districts; in these districts Site Plan Review is required. This means that medium-scale ground-mounted systems cannot be prohibited, and that DOER considers Site Plan Review reasonable regulation. Site Plan Review is discussed in more detail later in this document, but in general it establishes criteria for the layout, scale, appearance, safety, and environmental impacts of certain types and/or scales of development. Typically, site plan approval must be obtained before the building permit is issued. Since medium-scale ground-mounted systems can reach up to approximately an acre in size, DOER believes it is reasonable and appropriate to provide more regulatory scrutiny via Site Plan Review for these projects in residential districts to protect public health, safety, or welfare.*

*As drafted, the model zoning requires Site Plan Review for large-scale ground-mounted systems within most zoning districts, a special permit in one residential district, and prohibits such systems in another residential district. However, communities should remember that the language of the zoning exemption for solar energy systems is imprecise. While some communities already require a Special Permit to install a large-scale ground mounted solar facility, and/or*

restrict them to certain districts, it is not clear whether these regulations are consistent with the Chapter 40A Section 3 mandate that they be reasonable and necessary to protect public health, safety, or welfare.

### **Connection to the Massachusetts Green Communities Designation and Grant Program**

Recognizing the uncertainty around how regulations may or may not be interpreted as reasonable, DOER allows communities to meet Green Communities Criterion One by zoning for the as-of-right installation of a solar facility of at least an acre in size in a designated location. For more information on the Green Communities Designation and Grant Program, please visit: <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/>.

### **Siting Preferences**

Where a solar facility is sited, as well as placement on the site once selected, is an important consideration, particularly in regard to large-scale ground mounted facilities. DOER strongly discourages locations that result in significant loss of land and natural resources, including farm and forest land, and encourages rooftop siting, as well as locations in industrial and commercial districts, or on vacant, disturbed land. Significant tree cutting is problematic because of the important water management, cooling, and climate benefits trees provide.

In regard to farm properties, rooftops are preferable. If roof space is inadequate non-productive, non-arable agricultural land is the second choice. Should this also prove infeasible or inadequate a dual use of land design concept could preserve productive farmland by continuing crop production underneath high-mounted and well spaced panels. Finally, if none of these are feasible or they are inadequate the least productive land should be used first to minimize the loss of productive food/crop land.

### **Overlay Zoning Districts**

Overlay zoning districts are one zoning approach that could be used to permit solar energy systems, and in ways not allowed under the base zoning districts. For example, the model zoning as drafted requires Site Plan Review for medium-scale ground mounted solar energy systems in residential districts. An overlay district could be used to permit such facilities without Site Plan Review in a portion of these residential districts where Site Plan Review is deemed unnecessary, while retaining the review for the balance of the districts.

In addition, some communities may wish to conduct a feasibility analysis to determine where large-scale solar energy systems are most appropriate within the municipality and use an overlay zoning district approach to encourage the siting of facilities in the most feasible locations. Once an area has been established through a thoughtful and analytical process, the municipality could enact overlay zoning legislation to prioritize these areas for large-scale solar energy systems. Many Massachusetts communities have already taken this approach through adoption of a large-scale ground-mounted solar overlay district, often based on DOER's [Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations](#).

**Agricultural Exemption:**

*In addition to the exemption pertaining to solar energy systems Section 3 of Chapter 40A also exempts agricultural uses from zoning regulations that would otherwise apply. Thus, when the majority of the power from a solar energy system (or a wind turbine) is integral to farm production construction and operation of the system would covered by the exemption. Questions on the applicability of the agricultural exemption to solar energy systems should be directed to Gerry Palano at the Dept. of Agricultural Resources ([Gerald.Palano@state.ma.us](mailto:Gerald.Palano@state.ma.us) or 617-626-1706).*

Example 1 (Use Tables):

	<b>Residential-1 (R1)</b>	<b>Residential-2 (R2)</b>	<b>Residential-3 (R3)</b>	<b>Commercial (C)</b>	<b>Industrial (I)</b>	<b>Public (P)</b>
<b><u>PRINCIPAL USE</u></b>						
Medium-Scale Ground-Mounted Solar Energy System	SPR	SPR	SPR	Y	Y	Y
Large-Scale Ground-Mounted Solar Energy System	SP	N	SPR	SPR	SPR	SPR

Y = Allowed  
SP = Special Permit

N = Prohibited  
SPR = Site Plan Review

	<b>Residential-1 (R1)</b>	<b>Residential-2 (R2)</b>	<b>Residential-3 (R3)</b>	<b>Commercial (C)</b>	<b>Industrial (I)</b>	<b>Public (P)</b>
<b><u>ACCESSORY USE</u></b>						
Roof-Mounted Solar Energy System	Y	Y	Y	Y	Y	Y
Small-Scale Ground-Mounted Solar Energy System	Y	Y	Y	Y	Y	Y
Medium-Scale Ground-Mounted Solar Energy System	SPR	SPR	SPR	Y	Y	Y

Y = Allowed  
SP = Special Permit

N = Prohibited  
SPR = Site Plan Review

Example 2 (Uses listed):

1.0 Residential District Uses

1.1 Uses Permitted

1.1.1 Roof-Mounted Solar Energy Systems

1.1.2 Small-Scale Ground-Mounted Solar Energy Systems

## 1.2 Uses Allowed through Site Plan Review

- 1.2.1 Medium-Scale Ground-Mounted Solar Energy Systems
- 1.2.2 Large-Scale Ground-Mounted Solar Energy Systems in the R3 District

## 1.3 Uses Allowed via Special Permit

- 1.3.1 Large-Scale Ground-Mounted Solar Energy Systems in the R1 District

## 2.0 Non-Residential District Uses

### 2.1 Uses Permitted

- 2.1.1 Roof-Mounted Solar Energy Systems
- 2.1.2 Small-Scale Ground-Mounted Solar Energy Systems
- 2.1.3 Medium-Scale Ground-Mounted Solar Energy Systems

### 2.2 Uses Allowed through Site Plan Review

- 2.2.1 Large-Scale Ground-Mounted Solar Energy Systems

## **Dimensional Regulations**

*Commentary: In most cases, the existing dimensional standards in a Zoning Bylaw/Ordinance will allow for the development of small-, medium-, and large-scale solar energy systems. However, if a municipality finds alternate dimensional standards are necessary to allow solar energy systems while protecting public health, safety, or welfare, it may impose them. As a reminder, while regulating aesthetics can arguably be considered a matter of protecting public welfare, attempting to place restrictions on dimensional standards, such as setbacks or height, as they relate to aesthetics can create roadblocks to actual installation. It is therefore not recommended that communities regulate aesthetics of solar energy systems due to the strong statutory protections in Chapter 40A Section 3, or that they do so very carefully.*

*With regard to more basic dimensional requirements such as setbacks from the property line, municipalities may also find that adjustments can be made to encourage broader use of solar energy systems. Below is a series of dimensional regulation amendments that a municipality could adopt to further encourage small-, medium-, and large-scale ground-mounted and roof-mounted solar energy systems, or simply clarify requirements pertaining to them.*

### Height

*Commentary: It is recommended that for purposes of height, roof-mounted solar energy systems should be considered similar to chimneys, television antennae, roof-top mechanical equipment and other appurtenances that are usually either allowed a much higher maximum height (e.g., 100 feet instead of 35 feet) or are exempted altogether from building height requirements. Such*

*an exemption can be stated in the definition of “Building Height” or through language similar to that provided in the following example.*

*It is recommended that existing zoning district height limitations apply for all ground-mounted solar energy systems. If the ground-mounted solar energy system is accessory to a principal building or structure on a lot, then the height restriction for accessory structures would apply. If the ground-mounted solar energy system is the principal structure on a lot, then the height restriction for principal structures would apply.*

Example:

## 1.0 Building Height Regulations

### 1.1 Exemptions

1.1.1 Mechanical equipment and appurtenances necessary to the operation or maintenance of the building or structure itself, including chimneys, ventilators, plumbing vent stacks, cooling towers, water tanks, broadcasting and television antennae and roof-mounted solar energy systems.

### Setbacks

*Commentary: It is recommended that small- and medium-scale ground-mounted solar energy systems that are accessory to a primary building or structure on a lot be provided with more flexible setback requirements than those that would typically apply to a primary structure. Many communities already provide some flexibility for “accessory structures” like sheds, allowing these to be closer to the lot line than the primary structure. For example, where a front/side/rear yard setback for the primary structure may be 50 feet, setbacks of 20 feet may be allowed for accessory structures. When ground-mounted solar energy systems are developed as accessory structures to a home, business or other building or structure, they should be afforded at least the same flexibility.*

*If a community does not have this type of reduced setback already built into the Zoning Bylaw/ Ordinance, a provision could be added that effectively reduces the setback distance just for this use. For example, if the community has a dimensional table, a special footnote could be added to the dimensional table as indicated in the following examples. It should be noted that often times there is a distinction between how accessory structures are regulated in a residential zoning district and how they are regulated in a commercial or industrial district. Therefore, communities should ensure that provisions for flexible setbacks for small- and medium-scale ground-mounted solar energy systems are incorporated wherever appropriate.*

*The first example applies a reduction of 50% to the otherwise required setbacks for accessory uses. The value of 20 feet is used in the second example; however, this may be altered based on local conditions. For example, in some communities, particularly urban communities, the required side- and rear-yard setback distances may be shorter than 20 feet. In these*

*circumstances, the existing shorter setback distances should remain for small- and medium-scale ground-mounted solar energy systems.*

*As opposed to small- and medium-scale ground-mounted solar energy systems, which are typically sited as accessory to a principal building or structure on a lot, large-scale ground-mounted solar energy systems are usually sited as principal structures. Whenever a solar energy system is sited as a principal structure on a lot, it is recommended that the setback requirements for principal structures in that zoning district apply. Regardless of the scale of the system or the minimum setback required solar energy system installers often allow a sufficient setback to avoid the issue of shading by vegetation on neighboring properties.*

*Placement of solar energy systems in front yards should be avoided if at all possible. However, in DOER's view the statutory protections for solar energy systems create a situation where a ground-mounted array could not be prohibited outright in a front yard, so the language provided in the following example includes a standard for the front yard setback. DOER recognizes the concerns this may raise in residential neighborhoods and acknowledges that communities should work with property owners to find appropriate locations for ground-mounted systems in side or rear yards.*

#### Example Dimensional Table Footnotes for Accessory Installations:

- (1) Small- and medium-scale ground-mounted solar energy systems accessory to principal use may be located no closer than [1/2 of the setback that would otherwise apply] from the front, side or rear lot line. All ground-mounted solar energy systems in residential districts shall be installed either in the side yard or rear yard to the extent practicable
- (2) Small- and medium-scale ground-mounted solar energy systems accessory to a principal use may be located no closer than [twenty (20) feet] from the front, side or rear lot line. All ground-mounted solar energy systems in residential districts shall be installed either in the side yard or rear yard to the extent practicable.

#### **Lot Coverage**

*Commentary: A number of communities use "maximum lot coverage" or "maximum impervious surface" as one of their dimensional standards. While it is clear that such features as driveways or buildings would be included in any calculation of lot coverage, many other features may be more ambiguous depending on how clearly the definition in the Zoning Bylaw/Ordinance is written. Awnings, porches, decks and similar features can often become a matter of dispute. Regardless of the definition, it is recommended that solar energy systems with grass or another pervious surface under them be exempted from lot coverage or impervious surface calculations. If the area is to be paved or otherwise rendered impervious then this land area should in fact count toward any coverage or impervious surface limit. It is also important to note that this recommended exemption is not intended to apply to municipal stormwater regulations, as the panels could have the effect of altering the volume, velocity, and discharge pattern of stormwater runoff. The following provision could be included as a footnote to the Dimensional Table related*

*to maximum lot coverage and impervious cover requirements, or as a separate provision within the dimensional regulations.*

Example:

Solar energy systems shall not be included in calculations for lot coverage or impervious cover as defined in [INSERT SECTION REFERENCE FOR ‘DEFINITIONS’].

### **Site Plan Review Requirements and Performance Standards**

*Commentary: Although not specifically addressed under Chapter 40A, Site Plan Review is included within the local Zoning Bylaws/Ordinances of many Massachusetts communities. Site Plan Review is meant to enforce clear and fair design standards for different types of development. This is typically done through a coordinated review process that circulates development applications among, and invites input from, all local boards and commissions that might permit a project, including Local Historic District Commissions as applicable. Site Plan Review is usually triggered by either specific types of uses (e.g., commercial or industrial development), or certain scales of uses (e.g., non-residential buildings over 5,000 square feet).*

*Typically, Site Plan Review procedures and requirements are provided within a separate section of the Zoning Bylaw/Ordinance. However, there are instances when communities provide separate Site Plan Review provisions and procedures within a section pertaining to a particular use or development type (e.g., Planned Business Development, etc.). Consistent with the Legislature’s intent to facilitate the siting of solar energy, communities should shape the Site Plan Review provisions of their Zoning Bylaws/Ordinances to enable large-, medium- and small-scale solar energy system projects to proceed without undue delay.*

*Model language for Site Plan Review for medium-scale ground-mounted solar energy systems is provided in the following Example 1. As discussed earlier in this document, Site Plan Review may be appropriate when medium-scale ground-mounted systems are sited within residential districts. The model language provided in Example 1 below is based on, but is less stringent than, the provisions in the Massachusetts DOER [Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations](#).*

*Example 2 provides model language for Site Plan Review for large-scale ground-mounted solar energy systems when they are permitted as of right. As discussed earlier in this document, Site Plan Review may be appropriate for large-scale ground-mounted systems when they are sited anywhere within the community. The model language provided in Example 2 below is based on the provisions in the Massachusetts DOER [Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations](#). Example 2 is also intended for use in concert with the special permit language in the next section of this model zoning.*

*Example 3 provides model language for roof-mounted and small-scale ground-mounted systems when they are part of a larger project where Site Plan Review is triggered through another threshold (e.g., commercial development, non-residential buildings over 5,000 square feet, etc.). It is important to note that the installation of roof-mounted or small-scale ground-mounted solar*

*energy systems does not trigger Site Plan Review on its own. However, when such systems are included as part of a larger development proposal that requires Site Plan Review, the municipality has the opportunity to review the roof-mounted or small-scale ground-mounted solar energy systems as part of the larger proposal.*

*As discussed earlier in this document, while regulating aesthetics can arguably be considered a matter of protecting public welfare, attempting to place restrictions on solar energy systems as they relate to aesthetics can create roadblocks to actual installation. It is therefore not recommended that communities regulate aesthetics of solar energy systems, or that they do so very cautiously, due to the strong statutory protections in Chapter 40A Section 3. However, where communities already have Site Plan Review standards that relate to aesthetics, such as screening requirements, these standards should also apply to solar energy systems. In other words, solar energy systems should not be singled out and regulated more stringently than other uses that require Site Plan Review; however, they can be held to the same level of restrictions that are in place for other uses.*

Example 1 (Site Plan Review provisions for medium-scale ground-mounted solar energy systems in residential zoning districts):

1.0 Site Plan Review

1.1 Applicability

1.1.1 Medium-scale ground-mounted solar energy systems proposed within residential zoning districts shall undergo Site Plan Review prior to construction, installation or modification as provided in this section.

1.2 Site Plan Document Requirements

Pursuant to the Site Plan Review process, the project proponent shall provide the following documents, as deemed applicable by the Site Plan Review Authority:

1.2.1 A site plan showing:

- (a) Property lines and physical features, including roads, for the project site;
- (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- (c) Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;

- (d) Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- (e) Name, address, and contact information for proposed system installer;
- (f) Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- (g) The name, contact information and signature of any agents representing the project proponent; and
- (h) Zoning district designation for the parcel(s) of land comprising the project site.

*If the following are not addressed in existing site plan review regulations, then the community may wish to include them:*

- (i) *Locations of active farmland and prime farmland soils, wetlands, permanently protected open space, Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and “Important Wildlife Habitat” mapped by the DEP.*
- (j) *Locations of floodplains or inundation areas for moderate or high hazard dams;*
- (k) *Locations of local or National Historic Districts;*

- 1.2.2 Proof that the project proponent will meet the required Site Plan Review notification procedures.

*Commentary: Provision 1.2.2 above should reference the municipality’s existing Site Plan Review public and/or abutter notification procedures if applicable. For example, a community may require projects that are subject to Site Plan Review to notify all property owners within 100 feet of the project site.*

### 1.3 Site Plan Review Design Standards

- 1.3.1 Standards for medium-scale ground-mounted solar energy systems proposed within residential zoning districts

1.3.1.1 Utility Notification - No grid-intertie photovoltaic system shall be installed until evidence has been given to the Site Plan Review Authority that the owner has submitted notification to the utility company of the customer’s intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

1.3.1.2 Utility Connections - Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

1.3.1.3 Safety - The medium-scale ground-mounted solar energy system owner or operator shall provide a copy of the Site Plan Review application to the local fire chief. All means of shutting down the solar installation shall be clearly marked.

*Commentary: With regard to issues of access and safety, communities looking to adopt zoning for medium-scale solar energy systems should be aware of any unique local requirements that could apply. For example, if the fire department will want an Emergency Response Plan as part of approval, this should be folded into the review process as seamlessly as possible.*

1.3.1.4 Visual Impact – Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to minimize visual impacts by preserving natural vegetation, screening abutting properties, or other appropriate measures.

1.3.1.5 Land Clearing, Soil Erosion and Habitat Impacts - Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances.

*Commentary: As drafted, this model zoning does not require medium-scale ground mounted solar energy systems to be fenced, but this is something communities will want to consider. Regardless, many project proponents will find fencing prudent.*

Example 2 (Site Plan Review provisions for large-scale ground-mounted solar energy systems):

1.0 Site Plan Review

1.1 Applicability

1.1.1 Large-scale ground-mounted solar energy systems shall undergo Site Plan Review prior to construction, installation or modification as provided in this section.

1.2 Site Plan Document Requirements

Pursuant to the Site Plan Review process, the project proponent shall provide the following documents, as deemed applicable by the Site Plan Review Authority:

1.2.1 A site plan showing:

- (a) Property lines and physical features, including roads, for the project site;
- (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- (c) Blueprints or drawings of the solar energy system signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- (d) One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and overcurrent devices;
- (e) Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- (f) Name, address, and contact information for proposed system installer;
- (g) Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- (h) The name, contact information and signature of any agents representing the project proponent; and
- (i) Zoning district designation for the parcel(s) of land comprising the project site.

*If the following are not addressed in existing site plan review regulations, then the community may wish to include them:*

- (j) *Locations of active farmland and prime farmland soils, wetlands, permanently protected open space, Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP.*
- (k) *Locations of floodplains or inundation areas for moderate or high hazard dams;*
- (l) *Locations of local or National Historic Districts;*

- 1.2.2 Documentation of actual or prospective access and control of the project site (see also Section 1.3.1.1);
- 1.2.3 An operation and maintenance plan (see also Section 1.3.1.2);
- 1.2.4 Proof of liability insurance; and
- 1.2.5 A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required Site Plan Review notification procedures and otherwise inform abutters and the community.

*Commentary: Provision 1.2.6 above should reference the municipality's existing Site Plan Review public and/or abutter notification procedures if applicable. For example, a community may require projects that are subject to Site Plan Review to notify all property owners within 100 feet of the project site.*

### 1.3 Site Plan Review Design and Operation Standards

#### 1.3.1 Standards for large-scale ground-mounted solar energy systems

1.3.1.1 Site Control - The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar energy system.

1.3.1.2 Operation & Maintenance Plan - The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar energy system, which shall include measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation.

1.3.1.3 Utility Notification - No grid-intertie photovoltaic system shall be installed until evidence has been given to the Site Plan Review Authority that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

1.3.1.4 Lighting - Lighting of large-scale ground-mounted solar energy systems shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar energy system shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

1.3.1.5 Signage - Signs on large-scale ground-mounted solar energy systems shall comply with a municipality's sign bylaw/ordinance. A sign consistent with a municipality's sign bylaw/ordinance shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar energy systems shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar energy system.

1.3.1.6 Utility Connections - Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

1.3.1.7 Emergency Services – The large-scale ground-mounted solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar energy system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

*Commentary: With regard to issues of access and safety, communities looking to adopt zoning for large-scale solar energy facilities should be aware of any unique local requirements that could apply.*

1.3.1.8 Land Clearing, Soil Erosion and Habitat Impacts - Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of solar energy system or otherwise prescribed by applicable laws, regulations, and bylaws/ordinances.

## 1.3.2 Monitoring and Maintenance

1.3.2.1 Solar Energy System Installation Conditions - The large-scale ground-mounted solar energy system owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief, Emergency Management Director, and Emergency Medical Services. The owner or operator

shall be responsible for the cost of maintaining the solar energy system and any access road(s), unless accepted as a public way.

1.3.2.2 Modifications - All material modifications to a large-scale ground-mounted solar energy system made after issuance of the required building permit shall require approval by the Site Plan Review Authority.

### 1.3.3 Abandonment or Decommissioning

#### 1.3.3.1 Removal Requirements

Any large-scale ground-mounted solar energy system which has reached the end of its useful life or has been abandoned consistent with Section 1.3.3.2 of this bylaw/ordinance shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

#### 1.3.3.2 Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the large-scale ground-mounted solar energy system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned large-scale ground-mounted solar energy system. As a condition of Site Plan approval, the applicant and landowner

shall agree to allow entry to remove an abandoned or decommissioned installation.

*Commentary: Recognizing that other remedies, such as a tax lien, are available to communities in the event an abandoned facility is legitimately putting public safety at risk this model zoning does not require the provision of surety to cover the cost of removal in the event the municipality must remove the installation and remediate the landscape. Communities can, however, require surety in circumstances where a valid planning purpose for doing so exists.*

*Commentary: As drafted, this model zoning does not require large-scale ground mounted solar energy systems to be fenced, but this is something communities will want to consider. Regardless, many project proponents will find fencing prudent.*

Example 3 (Site Plan Review provisions for roof-mounted and small-scale ground-mounted solar energy systems as part of a larger project that triggers Site Plan Review):

## 1.0 Site Plan Review

### 1.1 Site Plan Document Requirements

1.1.1 Requirements for Roof-Mounted and Small-Scale Ground-Mounted Solar Energy Systems - Where these solar energy systems may be accessory to a use allowed through Site Plan Review, the Site Plan Review shall include review of their adequacy, location, arrangement, size, design, and general site compatibility.

1.1.1.1 Roof-Mounted Solar Energy Systems – For all roof-mounted systems, the applicant shall provide:

- (a) The shortest distance between the solar collector and all edges of the roof.
- (b) The distance between the solar collector and any other existing rooftop features such as chimneys, spires, access points, etc.
- (c) The height of the solar collector both from finished grade and, where applicable, from the finished surface of the roof.

1.1.1.2 Small-Scale Ground-Mounted Solar Energy Systems – For all ground-mounted systems, the applicant shall provide:

- (a) The distance between the proposed solar collector and all property lines and existing on-site buildings and structures.
- (b) The tallest finished height of the solar collector.
- (c) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures.

1.1.1.3 System Components – The Plan must include documentation of the major system components to be used, for example the panels, mounting system, and inverter.

1.1.1.4 Installer Details – The Plan must include the name, address, and contact information for proposed system installer.

## 1.2 Site Plan Review Design Standards

### 1.2.1 Standards for roof-mounted and small-scale ground-mounted solar energy systems

1.2.1.1 Utility Notification - No grid-intertie photovoltaic system shall be installed until evidence has been given to the Site Plan Review Authority that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

1.2.1.2 Emergency Access - Solar energy systems shall be located in such a manner as to ensure emergency access to the roof, provide pathways to specific areas of the roof, provide for smoke ventilation opportunities, and provide emergency egress from the roof.

- (a) For buildings with pitched roofs, solar collectors shall be located in a manner that provides a minimum of one three-foot wide clear access pathway from the eave to the ridge on each roof slope where solar energy systems are located as well as one three-foot smoke ventilation buffer along the ridge.
- (b) Residential rooftops that are flat shall have a minimum three-foot wide clear perimeter and commercial buildings that are flat shall have a minimum four-foot wide clear perimeter between a solar energy system and the roofline, as well as a three-foot wide clear perimeter around roof-mounted equipment such as HVAC units.
- (c) To the extent practicable, the access pathway shall be located at a structurally strong location on the building (such as a bearing wall).

*Commentary: Building and Fire Department personnel should be involved in the development of emergency access standards, and any zoning standards that are adopted should be consistent with local building and fire codes.*

1.2.1.3 Safety – No roof-mounted solar energy system shall be located in a manner that would cause the shedding of ice or snow from the roof into a porch, stairwell or pedestrian travel area.

## Special Permits

*Commentary: Special Permits are addressed in Chapter 9 of the Zoning Act, and most Massachusetts communities have regulations pertaining to them within their zoning bylaw or ordinance. Below is model language for municipalities requiring special permits for large-scale ground-mounted solar energy systems. It is intended to be adopted and implemented alongside Site Plan Review language for large-scale ground-mounted systems included as Example 2 in this model zoning. Rather than include separate special permit standards applicable specifically to large-scale ground-mounted solar energy systems, this language simply directs that a permit be issued pursuant to the already established special permit bylaw/ordinance of the community.*

*Municipalities will, however, want to audit their special permit language, especially the approval standards, for compatibility with the siting of large-scale ground-mounted solar energy systems. Such systems should have far lower impacts than commercial or industrial uses that often require issuance of special permit, and communities should keep in mind the requirement in Chapter 40A Section 3 that any regulations pertaining to solar energy systems be reasonable.*

### 1.0 Special Permit with Site Plan Review

#### 1.1 Special Permit Requirements

- 1.1.1 Where required a special permit shall be issued prior to construction, installation or modification of any large-scale ground-mounted solar energy system. The special permit granting authority shall include as part of its special permit review and proceedings all the provisions and requirements of the Site Plan Review standards applicable to large-scale ground-mounted solar energy systems.

## Pre-Existing Non-Conforming Uses and Structures

*Commentary: Alterations, extensions and structural changes to pre-existing non-conforming uses and structures (e.g., existing buildings that do not meet the dimensional requirements of the Zoning Bylaw/Ordinance) that intensify non-conformities or result in additional non-conformities may not be allowed beyond a certain threshold or may require a Special Permit pursuant to the local Zoning Bylaw/Ordinance. It is recommended that the installation of roof-mounted or small-scale ground-mounted solar energy systems associated with pre-existing non-conforming uses or structures be exempt from this requirement. An example provision is provided below. Communities not comfortable with providing this exemption to small-scale ground mounted systems due to their potential to be located on very small lots may wish to apply Site Plan Review or continue to require a Special Permit where this can be justified to protect public health, safety, or welfare. As to roof mounted systems on non-conforming properties, given the exemption afforded solar energy systems, DOER believes it would be unreasonable to disallow them or require a Special Permit even when installation would exacerbate a pre-existing building height non-conformity.*

Example:

1.0 Pre-Existing Non-Conforming Uses and Structures

1.1 Improvements that do not change the use or the basic exterior characteristics or appearance of the building or structure are allowed. Such improvements include but are not limited to the following:

1.1.1 Installation or replacement of solar energy systems.

**Historic Districts**

*Commentary: Many communities in the Commonwealth have adopted Local Historic Districts to protect and preserve buildings, landscapes and neighborhoods of historic significance. In recent years, conflict has occasionally arisen about the installation of solar energy systems within these districts on historic buildings and structures, since some argue that they have adverse impacts on the visual appearance and integrity of the buildings and structures.*

*As described in the DOER Policy Guidance for Regulating Solar Energy Systems, Local Historic District Commissions must consider the policy of the Commonwealth to encourage the use of solar energy systems and to protect solar access when considering issuance of a certificate of appropriateness for a solar energy system. However, thoughtful design guidelines can help ensure that solar energy systems are sited while the goals of historic preservation continue to be achieved.*

*Design guidelines can require that solar energy systems not be visible from public areas, to the greatest extent practicable. When it is not feasible (either physically or economically) to locate solar energy systems out of the public eye, solar energy systems can be required to be designed to certain architectural standards (e.g., building-integrated, use of solar shingles) to the greatest extent practicable. However, these options may be infeasible as well due to the high cost and low performance of many of these technologies. To meet these challenges, Local Historic District Commissions are encouraged to write design guidelines that support the development of solar energy systems and are sensitive to the historic preservation goals of the Commission.*

## Plymouth town counsel says prohibiting solar arrays in residential districts makes sense

**Friday**

Posted Oct 14, 2016 at 12:13 PM

Updated Oct 14, 2016 at 12:55 PM

That ticking noise you hear may be the end of solar arrays in residential areas of Plymouth.

By **Frank Mand**

[fmand@wickedlocal.com](mailto:fmand@wickedlocal.com)

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PLYMOUTH - That ticking noise you hear may be the end of solar arrays in residential areas of Plymouth.

Town Counsel Mark Reich of KPLaw, in ruling on an amendment to a proposed solar bylaw (Article 26 of Saturday's Town Meeting) dropped that ticking bomb, suggesting that whatever happens at Town Meeting there is a strong legal argument for opposing arrays in residential areas.

Town Meeting Rep. Bill Abbott's proposed amendment, if the bylaw was approved by Town Meeting, would have done just that: eliminate arrays in residential areas.

But because Abbott's amendment was proposed late in the process (after the language of the bylaw had been set, the warrant article printed) Abbott's amendment language was forwarded to Reich for review.

Reich said yes, the language was fine, but then went on.

"In my opinion," Reich noted at the end of his comments on the amendment, "prohibiting large solar installations in residential districts, while allowing such installations in other districts, is not an unreasonable regulation. See *Briggs v. Zoning Board of Appeals of Marion*, 22 LCR 45 (2014)."

In 2014 the judge in the *Briggs v. Zoning Board of Appeals* case ruled that:

- The ZBA Decision, which prohibits large scale commercial solar farms in a residential district, appears to be rational.
- "Separation of residential and commercial districts is a longstanding purpose of zoning... designed to protect residence against business."
- Primary uses that are commercial are prohibited in residential districts.
- Zoning ordinances are intended to apply uniformly and divide land into compatible uses to have a predictive quality
- Therefore, provided that the ZBA can justify a finding that a solar energy farm is "light manufacturing" under the Bylaws, I find that the ZBA Decision, which maintains the division between commercial solar energy systems and residential accessory solar energy uses, is reasonable and does not violate G.L. c. 40A, §3.

This appears to be an important admission by Reich, in that it echoes what Attorney Margaret Sheehan, representing abutters who have appealed several proposed Plymouth solar arrays, has been arguing for more than a year.

If the town had adopted that approach - using regulations already on the books that prohibited commercial arrays in residential areas - many of the 14 approved arrays in town would not exist today, at least not at their present locations.

Comments from town officials were sought early Friday, but as this story went to press no responses had been received.

*Follow Frank Mand on Twitter @frankmandOCM.*

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REPORT AND RECOMMENDATION OF THE PLANNING BOARD  
ON THE PETITION OF SHARL HELLER, ET AL ON THE PROPOSED AMENDMENT  
TO SECTION 505-77 GROUND-MOUNTED SOLAR PHOTOVOLTAIC SYSTEMS

DATE OF PUBLICATION OF PUBLIC HEARING: November 30, 2016  
December 7, 2016  
DATE OF PUBLIC HEARING: December 19, 2016  
January 9, 2017

VOTE: On January 9, 2017 the Planning Board voted (3-2) to recommend Town Meeting take the following actions on the proposed amendments to Section 205-77 Ground Mounted Solar Photovoltaic Systems of the Zoning Bylaw:

Underlined to be added and ~~strikethrough~~ to be deleted:

205-77(B)(2)(b.) GMSPS are prohibited on any parcel that includes Estimated Habitat of Wildlife or Priority Habitat or Rare Species as identified by the Commonwealth of Massachusetts Natural Heritage Program and Endangered Species Program or that are located within a State designated Area of Critical Environmental Concern (ACEC).

C(2)(g.) Buffers as defined in §205-3 are required as follows:

- i. A minimum of ~~75~~ 150 feet for 1 to 2 MW DC systems;
- ii. A minimum of ~~150~~ 200 feet for systems greater than 2 MW DC.

C(5)(a.) Notification - When site plan review is required, at least fourteen days prior to site plan review by the Planning Board, notice of the time and place of said review shall be sent by mail by the GMSPS Owner/Operator, postage prepaid to abutting owners of land within three hundred feet of the property line of the parcel or parcels upon which the GMSPS proposes to be situated, as said abutters appear on the most recent applicable tax list. The assessors maintaining any applicable tax list shall certify the names and addresses of parties in interest and such certification shall be conclusive for all purposes.

The Planning Board does not support the maximum size reduction in B(2)(a.) from fifteen acres to five acres.

NEED & JUSTIFICATION:

During the Fall 2016, Town Meeting process, a number of individuals encouraged the Town to continue to explore options to further regulate ground mounted solar photovoltaic system in Plymouth. This petitioned article seeks to impose two new limitations and modify three existing provisions.

All five Planning Board members are in support of:

- Restricting GMSPS in sensitive environmental areas,
- Notifying abutters of site plan review, and
- Increasing the two existing buffer requirements.

However, a majority of the Board does not support reducing the maximum size of GMSPS to only 5 acres. A limitation of 5 acres is viewed as too restrictive.

EFFECT:

This article includes 5 modifications to the current bylaw:

1. Reduces the maximum size of a ground mounted solar photovoltaic system to 5 acres (opposed by the Planning Board);
2. Prohibits ground mounted solar photovoltaic system in Areas of Critical Environmental Concern and in areas identified by the Commonwealth as habitat for rare or endangered species;
3. Buffers are increased for 1 to 2 megawatt system from 75 feet to 150 feet
4. Buffers are increased for 2 megawatt or greater system from 150 feet to 200 feet; and
5. Requires abutter notification of Planning Board site plan review.

INTENT:

The Intent of this amendment to further refine the Bylaw approved at the Fall 2016 Annual Town Meeting and to impose reasonable regulations on ground mounted solar photovoltaic system to further protect Plymouth's residents and its unique natural environment.

TOWN OF PLYMOUTH BY:

\_\_\_\_\_  
Timothy Grandy, Chairman

\_\_\_\_\_  
Ken Buechs

\_\_\_\_\_  
Paul McAlduff

\_\_\_\_\_  
Malcolm MacGregor

\_\_\_\_\_  
Robert Bielen

BEING A MAJORITY OF THE PLANNING BOARD

DATE SIGNED BY THE PLANNING BOARD: \_\_\_\_\_

DATE FILED WITH TOWN CLERK: \_\_\_\_\_

cc: Town Clerk  
Board of Selectmen  
Advisory and Finance Committee

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**THE NEW PUBLIC RECORDS LAW  
TECHNICAL REQUIREMENTS  
AND  
PRACTICAL IMPLICATIONS**

**FALL 2016 INFORMATION SESSIONS**

**PREPARED BY THE  
KP LAW, P.C. GOVERNMENT INFORMATION  
AND ACCESS GROUP**

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**THE NEW PUBLIC RECORDS LAW**

**Technical Requirements and Practical Implications**

KP Law Government Information and Access Group  
 Gregg J. Corbo, Esq., Lauren F. Goldberg, Esq., Michele E. Randazzo, Esq.,  
 and Brian W. Riley, Esq.

**KP LAW**  **THE LEADER IN PUBLIC SECTOR LAW**

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**AN ACT TO IMPROVE PUBLIC RECORDS**

*Why are we here today?*

- Chapter 121 of the Acts of 2016, signed into law on June 3, 2016, makes far-ranging changes to the law
- The portions of the law applicable to public records practices become **effective on January 1, 2017**
- The law further requires that the Supervisor of Records promulgate applicable regulations no later than January 1, 2017; proposed regulations have been issued
- Significant adjustments will need to be made to public records practices

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**HEIGHTENED INTEREST IN OPEN GOVERNMENT  
— WHAT IT MEANS ON THE LOCAL LEVEL**



- Appeals being filed with more frequency with the Supervisor of Records over technical noncompliance
- Appeals being filed more frequently in court, often with OML and COI counts

- Intense scrutiny locally and nationally over public records practices and other "sunshine law" requirements
- Frequent requests for thousands of electronically maintained documents, particularly e-mail
- Anticipation of new law taking effect

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**NEW PRL - OVERVIEW OF SIGNIFICANT ISSUES**

- Creation of Records Access Officers and duties thereof
- Timelines and obligations for responses to requests
- Assessment of fees
- Appeals (requestor, Attorney General, court)
- Attorneys Fees and punitive damages
- Revisions and clarifications to particular exemptions



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**SUMMARY OF TOPICS**

- Review existing PRL, including exemptions
- Summarize technical requirements of the new PRL
  - Records Access Officer
  - New time frames
  - Responses - various options and format
  - Petitions to Supervisor – by requestor, by municipality
- Implementation Issues
  - Keeping track of records requests
  - Electronic documents preference
  - Posting electronic documents



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**MASSACHUSETTS PUBLIC RECORDS LAW (PRL)**

Current PRL: a combination of statutes and regulations

**Public Records**



- G.L. c. 66, §10 (Public Records Requests)
- G.L. c. 4, §7, clause 26 (Exemptions)
- 950 CMR 32.00, et seq. (Public Records Access Regulations)
- Other statutes specifically addressing the public records status of particular records (so-called "Exemption (a)" statutes)

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**CURRENT PRL - REVIEW**

- Must respond within ten calendar days
- When the cost is estimated to exceed \$10.00, that response must include an estimate of the costs of responding, and must identify the reasons for withholding or redacting documents
- Burden is on custodian to assert application of law, justifying redaction or withholding, with specificity
- Response time & cost to comply includes lowest paid person capable of doing the work, regardless of who actually performs the work

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**COMMON PRL EXEMPTIONS**

- Exemption (a) allows withholding of records that are "specifically or by necessary implication exempted from disclosure by statute."
- Examples of "exemption (a)" statutes:
  - CORI (e.g., 803 CMR 2.23; 803 CMR 5.14)
  - Domestic Violence Reports (G.L. c. 41, §97D)
  - Student Records (e.g., 603 CMR 23.07)
  - MCAD documents (aside from the initial complaint and investigative determination) (804 CMR 1.04)
  - Abatement Applications (G.L. c. 59, §60)

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**COMMON PRL EXEMPTIONS**

- **Exemption (c)** allows withholding of "personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy."
- **Exemption (d)** allows withholding of "inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based."

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**COMMON PRL EXEMPTIONS**

- **Exemption (e)** allows withholding of "notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit."
- **Exemption (f)** allows withholding of "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest."

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**COMMON PRL EXEMPTIONS**

- **Exemption (n)** allows a records custodian, who reasonably believes that disclosure is "likely to jeopardize public safety" to withhold records relative to infrastructure within the commonwealth, and now includes **cyber security**
- **Exemption (o)** allows withholding of **personal e-mail** and home address and home telephone number of an employee of a municipality or other governmental entity in the custody of a government agency that maintains records identifying persons as falling within those categories

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### COMMON PRL EXEMPTIONS

- New PRL exempts from disclosure records divulging or tending to divulge names and addresses of those owning, possessing, or licensed to own or possess firearms or ammunition
- New PRL adds personal e-mail addresses to the list of information that may be withheld for a broad range of law enforcement personnel and victims of adjudicated crimes, domestic violence, or of those who provide or training in family planning services

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### RECORDS ACCESS OFFICERS ("RAO")

- Each municipality must designate one or more RAO
  - Municipal clerk or designee automatically a RAO
  - Chief executive officer may designate additional or different RAOs
- Contact information for RAO must be posted in municipal offices and on website
- Duties include assisting requestors and records custodians, and preparing guidelines to enable requestors to make "informed" requests, including a listing of categories of records
- Guidelines must be posted on website no later than July 1, 2017

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### WHO IS THE RAO?

- By default, in a municipality, the RAO is the municipal clerk
- Who is best to serve in that capacity?
  - Does it matter if the municipality is a city or a town?
- Is it a personality "thing" or an office?
- Is it an existing position or a new one?
- Will extra compensation be provided?
- What is the relationship between the RAO and custodians of records?
- What is the relationship between RAOs?
- Is the idea of a Super-RAO a good idea, and what is the function of position?
- What departments should have their own RAO? School? Police? Fire? Ambulance? Why??

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**PUBLIC RECORDS REQUESTS**



- Made to RAO
  - In person
  - By first class mail
  - By e-mail
- Does not specify whether request can be made orally, although Supervisor of Public Records suggests the same is true in the draft regulations; indicates that the requirements of the law would still apply to a verbal request

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**RESPONSES TO PUBLIC RECORDS REQUESTS**

- Must respond within **10 BUSINESS** days; failure to do so means that **NO FEE MAY BE ASSESSED**
- If full response, including provision of records, cannot be made within 10 business days, RAO must respond to the requestor, including the following:
  - Confirming receipt
  - Identifying correct custodian/RAO if not correct
  - Outlining what will be withheld, if known
  - Explaining reason for inability to provide the same within the timeframe
  - When a response is expected



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**RESPONSES**

- Have a total of **25 business days** from date of original request to provide full response
- RAO may, within **20 business days** of receipt of request, petition the Supervisor of Records for additional time, **not to exceed an additional 30 business days** "for good cause shown"

**BEST PRACTICE** – file request for extension early

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**RESPONSES**

- For purposes of the law, "good cause" will be analyzed based upon the following:
    - Amount of time required to search for and redact records
    - Office hours & capacity of office
    - Efforts undertaken to respond to request and previous requests
    - Number of requests, including if part of a series of contemporaneous requests that are frivolous, intended to intimidate or harass
- The Supervisor will also consider the public interest in expeditious disclosure when deciding whether to grant more time to respond

**BEST PRACTICE – file request for extension early**

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**RESPONSES**

- Supervisor must provide response to petition within five business days of receipt
- Supervisor may provide longer response period if determination is made that request is intended to harass or otherwise is not in the public interest OR may "relieve" the municipality/agency of obligation to respond
- Response **SHALL** be provided electronically if possible and available in that format, unless not desired by requestor

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**FEES**

- A reasonable fee may be assessed for production of records other than those "freely available"
- Fees shall not exceed actual cost for reproducing the record:
  - Actual cost of storage device
  - \$.05/page for black and white copies and printouts, one or two sided

**THE \$.05 PER PAGE COPYING FEE IS ALREADY IN EFFECT**

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**FEES**

- Municipalities ≤ 20,000 people
  - May assess a fee for the first two hours of employee time, only if more than two hours is required
- Burden is on the municipality to show that there are less than 20,000 residents
- Municipalities > 20,000
  - May not assess a fee for employee time for the first two hours required to respond to a public records request

population



Potentially significant limits upon charges for segregation and redaction time??

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**FEES**

- "Employee time" is defined as "necessary vendors, including outside legal counsel, technology and payroll consultants or others as needed"
- The hourly rate is capped at \$25.00
- A municipal RAO may petition the Supervisor for a higher hourly rate, or to charge for segregation and redaction time
- The Supervisor must provide a determination within five business days of receipt of the petition
  - Supervisor considers whether response cannot be prudently completed without review and redaction, and the public interest in inexpensive access to records, the ability of the requestor to pay
- The fee must still be reasonable, and cannot be intended to limit, deter or prevent access

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**FEES**

- Police records now subject to same fee schedule as other public records (amending G.L. c. 66, §10)
- As with the current version of the law, the RAO may not ask the requestor the purpose of the request
- However, the RAO can indicate to a requestor elements that would allow a more expedient handling of a request, although it will not toll the time periods to respond
- RAO can also request information to determine whether the request is being made to further a better understanding of government or for news, as compared to a "commercial purpose", defined to mean:
  - Sale or resale of a portion of the record
  - Use of the record to advance strategic business interests

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**APPEALS**

- Requestor –
  - Requestor may appeal response of RAO to Supervisor
  - Supervisor must issue decision within 10 business days of receipt of appeal
  - If requestor is dissatisfied, may appeal to Superior Court
  - Alternatively, the requestor may bypass the Supervisor and go directly to Superior Court
- Attorney General –
  - Supervisor may refer to Attorney General to compel compliance with order
  - Attorney General must identify a single point of contact for the Supervisor

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**APPEALS**

- Superior Court has all remedies at law or in equity
  - De novo review
  - May perform an in camera review of records without waiving attorney-client privilege or work product privilege
  - Presumption that records are public**
  - Municipality/agency must demonstrate by a preponderance of the evidence that record or portion thereof may be withheld

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**ATTORNEYS FEES**

- Presumption in favor of award of attorneys fees and costs IF requestor obtains relief through a judicial order, consent decree, or the provision of the requested documents after the filing of a complaint
- UNLESS municipality establishes:
  - Supervisor found in favor of municipality
  - Municipality relied upon an appellate level court decision with substantially similar facts
  - Municipality relied upon published opinion of the Attorney General
  - Request was designed to harass, intimidate, or was not in the public interest and made for commercial purposes unrelated to disseminating information to the public about actual or alleged government activity

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### PUNITIVE DAMAGES & WAIVER

- Punitive Damages - Superior Court may award punitive damages between \$1,000 and \$5,000 if requestor has obtained judgment in Superior Court and demonstrates municipality failed to act in good faith
- Fee Waiver - If award of attorneys fees and costs is made, Superior Court shall order the municipality to waive any fees in connection with provision of records; even if no award of attorneys fees is made, the court may still require waiver of fees

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### ELECTRONIC RECORDS PREFERENCE

- Preference for electronic record production
- Electronic records posting policy
- Technological infrastructure
- Staff time and ability
- **Posting of certain records required, if "feasible":**
  - final opinions, decisions, orders, or votes from proceedings;
  - annual reports;
  - notices of regulations proposed "under chapter 30A";
  - notices of hearings;
  - winning bids for public contracts;
  - awards of federal, state and municipal government grants;
  - minutes of open meetings;
  - budgets; and
  - any public record information of significant interest that is deemed appropriate to post



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### OTHER ISSUES

- Custodians may contract for "cloud based" or off-site storage
- Must still have access to cloud based or off-site records upon request, and still deemed to have custody
- Electronic record storage systems to be acquired must, to the extent feasible, provide data in commonly available electronic, machine readable format, provide for storage and retrieval that allow for electronic segregation and redaction

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**MAIN DIFFERENCES FOR AGENCIES**

- Agencies have shorter time frames for responding to requests (15 total business days, and may only obtain an additional 20 business days to respond from the Supervisor)
- Agencies may not charge for the first 4 hours of work
- Agencies may not petition the Supervisor for an hourly rate in excess of \$25/hour
- Agencies are required to post certain categories of records on official websites
- Agency RAO guidelines are due January 1, 2017

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**MAIN DIFFERENCES FOR AGENCIES**

Agency RAOs must maintain a public records log, recording certain information:

- the nature of the request and the date on which the request was received;
- the date on which a response is provided to the requestor;
- the date on which a public record is provided to the requestor;
- the number of hours required to fulfill the request;
- fees charged to the person making the request, if any;
- petitions filed with supervisor of records to charge for segregation/redaction time;
- requests appealed to the supervisor of records;
- the time required to comply with supervisor of records' orders on requests appealed to the supervisor; and
- the final adjudication of any court proceedings under G.L. c. 66, §10A(d)

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**MAIN DIFFERENCES FOR AGENCIES**

- There is no statutorily defined "default" RAO in an agency
- Under the proposed regulations, agencies have certain reporting requirements:
  - The RAO, once designated, must report his/her designation to the state Division of Public Records, and must also report the designation of any secondary RAO(s)
  - An agency RAO shall report to the Division of Public Records, by December 31, an annual accounting for the calendar year thus ending, of the information contained in the public records log

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Contact the KP Law Government Information and Access Group with questions about the Public Records and Open Meeting Laws.

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## The New Public Records Law - Municipalities

On June 3, 2016, the Legislature enacted, "An Act to Improve Public Records", Chapter 121 of the Acts of 2016 (<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter121>). Chapter 121 makes significant changes to the Public Records Law, and as a result, public entities throughout the state will need to adjust their public records practices. Importantly, however, the new requirements will not take effect until January 1, 2017. The outline that follows is therefore for general information purposes only.

Note that different requirements and timelines apply to municipalities as compared to other types of entities. At this time, however, it is not clear whether districts and authorities providing municipal services will be treated as municipalities for purposes of the law. We will provide separate guidance to such entities as may be needed.

### (1) Changes to Exemptions

- The new law amends Exemption (n) to allow records to be withheld related to cyber security;
- Exemptions (o) and (p), and other provisions of law relative to the public records status of home addresses and telephone numbers of certain public employees, public safety personnel, victims of adjudicated crimes, and their family members' names and personal information, have been revised to allow withholding of personal e-mail addresses; and
- The names and addresses of persons who own, possess, or are licensed to carry firearms will not be subject to disclosure, other than in particular situations.

### (2) Appointment and Duties of Records Access Officer ("RAO")

- The RAO is the municipal clerk and any others appointed by the "chief executive officer";
- The RAO will assist public records requesters, assist records custodians in maintaining records, and prepare guidelines as to the public records request and response process;
- Contact information for each RAO and the guidelines must be posted to the official website;

### (3) Responses to Requests

- The time to provide an initial written response has increased from 10 calendar days to 10 business days;
- The new law expressly authorizes requests by hand, first class mail and e-mail; the law does not expressly address in person verbal requests and we are uncertain whether the Supervisor's regulations will address this issue;
- If a complete response cannot be provided within the initial time frame, the RAO must still respond to confirm receipt, either explaining why a complete response cannot be provided, directing the requester to a different custodian, outlining what will be withheld if known, and estimating the time for response;

- For municipalities, the law establishes an outside date to provide the requested records not to exceed 25 business days from the date of the initial request, although the requester can agree to more;
- The RAO may ask the Supervisor to grant 30 additional business days for “good cause shown”;
- “Good cause shown” will be evaluated based upon a variety of factors including: time needed to search for and redact the record(s); office hours; capacity of the office; number of requests; and whether the request is part of a series that are frivolous, intended to intimidate or harass;
- The law establishes a preference for electronic copies, unless the requester specifically dictates otherwise, and, to the extent feasible, documents must be posted on the municipal website.

#### **(4) Fees**

- ***A reasonable fee may be assessed*** for production of records other than those “freely available for public inspection” (such as on a website) ***ONLY if the RAO responds to the request within 10 business days;***
- The fee for copies of records shall not exceed the actual cost for reproducing the record, and shall, unless otherwise provided, be calculated as follows: the actual cost of storage device; for black and white photocopies or computer printouts, no more than \$.05/page, whether single or double-sided (the Supervisor’s Public Records Fee Access Regulations are already reflective of this requirement)
- For responses requiring two hours or less, it appears no fee may be assessed for “employee time”;
- If more than two hours of work will be required to look for, compile, segregate, redact or reproduce the record, the prorated hourly fee of the lowest paid person capable of doing the work, capped at \$25.00/hour, can be charged; provided, however, that, in a municipality of more than 20,000 people, no charge may be made for the first two hours;
- Subject to the cap, “employee time” may include that required by employees or “necessary vendors, including outside legal counsel, technology and payroll consultants or others as needed by the municipality”;
- The RAO may petition the Supervisor for permission to charge a higher hourly rate, and the Supervisor has five business days to respond; permission may be granted upon a finding that the request is for a commercial purpose OR that the request cannot be prudently completed without the redaction, and the amount of the fee is reasonable and not intended to limit, deter or prevent access; factors to be considered include public interest in access to the record and financial ability of the requester to pay;
- Unlike now, police records are subject to the same fee schedule as other records;
- The RAO may deny additional requests from requesters that have failed to pay for previous requests, provided that the requester is provided with an accounting of outstanding balances;
- As is the case now, the RAO may not require the requester to specify the purposes for the request; however, under the new law, a request for additional information may be made to determine whether the request is made for a commercial purpose (sale or resale of a portion of the record or use of the information to advance strategic business interests, and not for news purposes or to better understand government operations) or to grant a fee waiver.

## (5) Appeals

- By Requester to Supervisor or Superior Court – Appeals may be made to the Supervisor who shall issue a written decision within 10 business days of receipt of the petition; a requester aggrieved by a decision of the Supervisor may obtain judicial review in Superior Court OR the requester can go directly to court
- By Attorney General – The Attorney General, at the request of the Supervisor, may seek to compel disclosure of records; the Attorney General may also act on its own initiative or intervene in case filed by requester;
- All records are presumed to be public, and burden is on municipality to show, by a preponderance of the evidence, that the record or portion thereof may be withheld;

## (6) Attorneys' Fees

- **Presumption in favor of an award of costs and attorneys' fees** – The new law requires an award to be made in any case in which the requester “obtains relief through a judicial order, consent decree, or the provision of the requested documents after the filing of a complaint”;
  - **To combat the presumption**, the municipality must establish that (1) the Supervisor found in favor of the municipality, (2) the municipality relied upon an appellate level decision or a published opinion of the Attorney General based upon similar facts, or (3) request was designed to harass or intimidate or was not in the public interest and made for commercial purposes unrelated to provision of information to the public; thus, if an exemption is asserted, and the court orders any portion of the records to be released OR any portion of the records are released after the filing of litigation, a presumption exists that the plaintiff will be awarded attorneys' fees and costs;
- **Waiver of Fees** - If attorneys' fees and costs are awarded, the Superior Court shall order the municipality to waive fees assessed for copies of the records; if no such award is made, the court may still require the municipality to waive such fees;
- **Punitive Damages** – The Superior Court may award punitive damages of no less than \$1,000 and no more than \$5,000 if the requester has obtained judgment in Superior Court and has demonstrated that the municipality failed to act in good faith.

**Summary.** This eUpdate identifies certain significant changes to the Public Records Law for your immediate information. It will be important to plan for these changes in the law, including appointment of RAOs. In addition to provision of additional written guidance, this fall we will hold approximately a dozen client training sessions throughout the state. The dates and locations for such training sessions will be announced shortly.

Attorneys Lauren F. Goldberg ([lgoldberg@k-plaw.com](mailto:lgoldberg@k-plaw.com)), Brian W. Riley ([Briley@k-plaw.com](mailto:Briley@k-plaw.com)), Gregg C. Corbo ([gcorbo@k-plaw.com](mailto:gcorbo@k-plaw.com)) or Michele E. Randazzo ([mrandazzo@k-plaw.com](mailto:mrandazzo@k-plaw.com)) are available to assist with any questions on the changes to the Public Records Law. They can be reached at 617.556.0007.

**Disclaimer:** This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. You are advised not to take, or to refrain from taking, any action based on this information without consulting legal counsel about the specific issue(s).

## **THE NEW PUBLIC RECORDS LAW: TOP TEN PRACTICAL AND POLICY ISSUES**

*The new Public Records Law will take effect on January 1, 2017. What will it take to be ready? Here is a list of the top ten practical and policy issues you need to consider now in preparation for implementing the new law.*

1. Who should serve as the **Records Access Officer** (“RAO”)? Is the default appropriate in a particular municipality? For an agency, what makes sense? Should this decision be based upon personality, position, and/or other considerations?
2. Will there be **more than one RAO**, and how will that decision be made? What are the implications for having more than one RAO? What factors are important in making that decision— familiarity with the type and scope of records held by a particular custodian, governance issues, content of records, confidentiality of records?
3. If you chose to have more than one RAO, will one be a “**Super-RAO**”, in charge of all other RAOs? Does this depend on whether a municipality has a charter, a representative form of government or otherwise? Does it depend on the size of the municipality? In an agency, what factors might suggest appointment of one Super-RAO – relative allocation of resources, by function, by size?
4. Who is the **appointing authority** for the RAO? Does that impact the relationship between the RAO and records custodians? If not, how will that relationship be regulated? How will you know what steps to take to address this, and what are the stakes if custodians are not “cooperative”?
5. Will the RAO **coordinate all responses** to requests for public records? If so, will this be a full-time or part-time job? Will a new person be hired or will the responsibilities be added to existing responsibilities? Are there bargaining implications if the position appointed as an RAO is covered by a collective bargaining agreement? What are the implications under the law for making salary changes to reflect additional responsibilities?

6. What is the **electronic records keeping/website posting policy** currently? What are the organization's current abilities and possible capabilities with respect thereto, including but not limited to staffing, IT resources and infrastructure, and financial resources? What are the implications for failing to invest in these capabilities, both technological and otherwise, now?
7. Under what conditions will **exemptions** be asserted to withhold or redact records? What are the implications, from various perspectives, for withholding or redacting records - the amount of time required to respond fully consistent with law, the financial burdens, and overall risk - as compared to the risk of simply disclosing a record in its entirety? How does this look from an overall organizational perspective, from a departmental perspective?
8. How will a realistic set of **internal guidelines** be developed for addressing public records issues, and what will that look like? Will it be a "public records policy" for all departments, for some departments? Will the "policy" address the respective roles of records custodians and the RAO(s), with respect to both requests and responses, and take into account the work that must be done within the first 10 business days following receipt of a request? Who will be responsible for, and have authority to, adopt this policy?
9. Who will develop public records request tracking **forms, checklists and standardized response letters**? Will using standardized materials ensure that requests and responses are easier to track?
10. Will typical "**over the counter**" requests and responses thereto be addressed, monitored, tracked? What will be the appropriate mechanisms to do so?

*If you have any questions regarding the Public Records Law, contact Attorney Lauren Goldberg at 617.556.0007 or [lgoldberg@k-plaw.com](mailto:lgoldberg@k-plaw.com). Please visit our website at [www.k-plaw.com](http://www.k-plaw.com) for information concerning topical issues of importance to municipalities and other public sector entities.*

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The Leader in Public Sector Law

# NEW PUBLIC RECORDS LAW RESPONDING TO A PUBLIC RECORDS REQUEST: MUNICIPAL TIMELINE

Counting begins the business day\* after receipt of request

<p><b>10 BUSINESS DAYS RESPONSE DUE</b></p> <p><i>NOTE: Failure to respond within 10 business days forfeits right to assess fees.</i></p>	<p><b>Last day to:</b></p> <ol style="list-style-type: none"> <li>1. Produce records; or</li> <li>2. Deny request in writing, citing with specificity application of exemptions; or</li> <li>3. Provide detailed written response stating exemptions, and/or need for additional time.</li> </ol> <p>SEE OTHER SIDE FOR REQUIRED ELEMENTS OF WRITTEN DENIAL OR RESPONSE</p>
<p><b>20 BUSINESS DAYS</b></p> <p><i>NOTE: Consider filing petition in connection with response within 10 business days or well in advance of deadline.</i></p>	<p><b>Last day to petition State Supervisor of Records for:</b></p> <ol style="list-style-type: none"> <li>1. Extension of time;</li> <li>2. Charge for "employee time" at rate more than \$25.00/hr.;</li> <li>3. Charge for time spent segregating or redacting</li> <li>4. Relief from frivolous or harassing requests</li> </ol> <p>Supervisor's decision due within 5 days of receipt of petition.</p> <p>SEE OTHER SIDE FOR PETITION CRITERIA</p>
<p><b>25 BUSINESS DAYS</b></p>	<p>Last day to produce records absent Supervisor approved extension (unless requestor agrees to more time).</p>
<p><b>55 BUSINESS DAYS</b></p>	<p>Last day to produce records if Supervisor approves maximum extension.</p>

*\*The term "business day" excludes weekends, legal holidays and unexpected closure of custodian's office.*

## **Initial Written Response/Denial to Requestor - Required Elements (Within 10 Business Days)**

1. Confirm receipt and date of request;
2. Identify requested records or categories of records not within possession or custody of RAO; identify agency, municipality, RAO or custodian with custody, if known;
3. Identify records that RAO intends to withhold and/or redact, *detailing with specificity* reasons therefor and asserting applicable exemptions;
4. Identify records produced or intended to be produced and, if necessary, a detailed statement describing why response time in excess of 10 business days is required;
5. Identify anticipated timeframe for production – cannot exceed 25 business days after receipt of request without extension – and provide detailed explanation of how request unduly burdens other responsibilities, including, magnitude or difficulty of request, size of office, office hours;
6. If more than 25 days response time is anticipated, notify requestor of possible/actual petition to Supervisor for extension of time and include request for requestor's voluntary assent to additional time;
7. Suggest a modification of request if appropriate to reduce estimated response time and cost;
8. Itemized good faith estimate of fees; and
9. Statement of requestor's right to appeal to Supervisor pursuant to G.L. c.66, §10A(a) and/or to Superior Court pursuant to G.L. c.66, §10A(c).

## **Criteria for Petitions to State Supervisor of Records**

Petitions for Extension of Time for "Good Cause" should address:

1. Scope and extent of search for and segregation of records;
2. Scope of redaction necessary to prevent unlawful disclosure;
3. Capacity and normal business hours of RAO or department;
4. Efforts to fulfill current and previous requests;
5. Whether request, individually or as part of series, from the same requestor, is frivolous or intended to harass or intimidate municipality; and
6. Whether public interest is served by expeditious disclosure.

Petitions related to Fees should assert, in good faith:

1. Request is for a commercial purpose; or
2. The request could not prudently be completed without redaction, segregation or fee in excess of \$25 per hour; the fee is reasonable and not designed to limit, deter or prevent access to requested public records; balancing the public interest in disclosure and the requestor's ability to pay.

*\*The term "business day" excludes weekends, legal holidays and unexpected closure of custodian's office.*



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## Updated Public Records Law

On June 3, 2016, Governor Baker signed *An Act to Improve Public Records* into law. Many of the provisions in the new law will take effect on **January 1, 2017**. Please be aware, the current law will remain effective until that time.

Below are a few of the provisions of the new version of the Public Records Law that will become effective next year. It is suggested you consult the complete text of the new law which can be found at:

<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter171>

If you have any questions, please contact the Public Records Division at 617-727-2832 or [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

### New Provisions

#### Records Access Officers

Agencies and municipalities are required to designate 1 or more Records Access Officer (RAO). The contact information for the RAO must be posted conspicuously, including on the agency's or municipality's website, if available.

The RAO has a duty to:

- Coordinate the agency's or municipality's response to requests for access to public records;
- Assist individuals seeking public records in identifying the records requested;
- Assist the custodian of records in preserving public records; and
- Prepare guidelines that enable requestors to make informed requests.

#### Electronic Records

Under the new version of the law, RAOs must provide public records to a requestor in an electronic format *unless* the record is not available in an electronic format or the requestor does not have the ability to receive or access the records in a useable electronic format.

Additionally, as of January 1, 2017, **agency RAOs** will be required to provide on a searchable website electronic copies of commonly requested records, including: final opinions, annual reports, minutes of open meetings and agency budgets. **Municipal RAOs** will also be required to post commonly requested records on their municipal websites, to the extent feasible.

#### Response Time

Under the current law, a records custodian must respond to a request for records in writing within 10 calendar days.

Beginning January 1, 2017, a RAO must permit inspection or furnish a copy of a requested public record within **10 business days** following receipt of the request. RAOs may petition the Supervisor of Records for an extension if they are unable to grant access to the requested public records in this time period.

#### Fees

The Supervisor of Records' Public Access Regulations allowing records custodians to charge **5 cents** for black and white paper copies or computer printouts of public records for both single and double-sided sheets was codified and will remain effective with the new law.

Beginning January 1, 2017, if a response to a public records request requires more than 4 hours of employee time, an **agency RAO** may assess a fee of the hourly rate of the lowest paid employee with the skills necessary to search for, compile, segregate, redact or reproduce a requested record. However, the fee shall not exceed \$25 an hour.

Beginning January 1, 2017, if a response to a public records request requires more than 2 hours of employee time, a **municipal RAO** may assess a fee of the hourly rate of the lowest paid employee with the skills necessary to search for, compile, segregate, redact or reproduce a requested record. However, the fee shall not exceed \$25 an hour, unless approved by the Supervisor of Records. Municipalities with populations of 20,000 people or fewer will be permitted to charge for the first 2 hours of employee time.

#### Administrative Appeals

As of January 1, 2017, if an agency or municipality fails to comply with a requirement of the new law, the requestor may file an appeal with the Supervisor of Records who will then issue a determination on the public status of the records within **10 business days** of receipt of the request for an appeal.

#### Attorney Fees

Under the new Public Records Law, if a requestor prevails in a court action against an agency or municipal RAO, the court may award the requestor attorney fees or costs.

**William Francis Galvin, Secretary of the Commonwealth of Massachusetts**

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# Memo

To: Town Manager  
Board of Selectmen  
Advisory and Finance Committee

From: Lee Hartmann, Dir. of Planning & Development

Date: January 10, 2017

Re: Article 27 – 2017 ATM - Chapter 154 – Soil Removal of the General Bylaws

---

Chapter 154 of the Town's General Bylaw appears to give the Board of Selectmen some level of authority to grant and/or issue cease and desist orders for the removal of soil, loam, sand or gravel. The language is vague and confusing. The bylaw has been on the books for over 40 years and to the best of staff's knowledge, has never been use. Since 1972, the Town has relied on its Zoning Bylaw to regulate the removal of earth in the Town.

In conjunction with the adoption of expanded earth removal regulations proposed in Article 28, the Planning Board voted (5-0) to recommend that the Town strike Chapter 154 from its General Bylaws.

## **Chapter 154- SOIL REMOVAL**

**§ 154-1. Notice to cease activity; application for permit; public hearing.**

**§ 154-2. Hours of operation of soil pits.**

**§ 154-3. Enforcement; violations and penalties.**

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Plymouth 4-16-1974 by Art. 58 as Art. 5, Sec. 5.14 of the 1974 Bylaws. Amendments noted where applicable.]**

**§ 154-1. Notice to cease activity; application for permit; public hearing.**

No person shall, except in conjunction with the construction of a building on the same parcel of land or for continued operation of an existing sand or gravel pit on the same parcel of land, remove any soil, loam, sand or gravel from any land in the town after notice to cease and desist or to refrain from removal thereof has been served upon such

person by delivery in hand or by leaving at the last and usual place of abode of such person or at the usual place of business of such person of written notice, signed by a majority of the Board of Selectmen, forbidding such removal, or any person wishing in advance of such notice to determine rights to remove soil, loam, sand or gravel may at any time apply to said Board for permission to remove such soil, loam, sand or gravel, said Board thereafter to hold a public hearing on the application, notice of filing such application and the date and time of the public hearing to be advertised in a paper published in the town seven days at least prior to the date fixed for such public hearing. The Board of Selectmen shall, within 10 days of completion of such public hearing, grant or deny permission to remove such soil, loam, sand or gravel.

**§ 154-2. Hours of operation of soil pits. [Added 5-13-1981 ATM by Art. 44]**

The hours of operation of licensed soil pits shall be 6:00 a.m. to 7:00 p.m., Monday through Friday, and 6:00 a.m. to 12:00 noon on Saturday.

**§ 154-3. Enforcement; violations and penalties. [Added 11-16-1987 STM by Art. 5]**

The Police Department shall enforce this chapter pursuant to Chapter 1, General Provisions, § 1-3 of this Code, related to noncriminal disposition of bylaw violations under MGL c. 40, § 21D. The fine for any violation of this chapter shall be \$100 for each offense.

REPORT AND RECOMMENDATION OF THE PLANNING BOARD  
ON THE PROPOSED AMENDMENT  
TO THE ZONING BYLAW SECTION 205-18  
NATURAL FEATURES CONSERVATION REQUIREMENTS

DATE OF PUBLICATION OF PUBLIC HEARING: November 23, 2016  
November 20, 2016  
DATE OF PUBLIC HEARING: December 12, 2016  
January 9, 2017

VOTE: On January 9, 2017 the Planning Board voted (5-0) to recommend Town Meeting approve the following article to the April Annual Town Meeting.

NEED & JUSTIFICATION:

It has been the Town’s practice to limit earth removal in residential areas to the **minimum absolutely necessary** to allow an end use to occur. However, the current bylaw is actually worded quite differently. It allows commercial sand and gravel quarries and similar **extractive industries** by special permit in all residential zones with no limitations.

Furthermore the current earth removal language is vague, standards conflict and some standards are unenforceable. For example, the current version requires a Zoning Permit for ALL activities involving removal of 10 cubic yards or more of gravel. Ten cubic yards is a relatively small amount of material and given the size of Plymouth and the amount of construction activity in the Town it is completely unenforceable.

The Earth Removal Bylaw Committee was tasked by the Planning Board to review the current bylaw and draft language that provides a greater level of protection to Plymouth’s residents and the environment. The committee held a total of 23 meetings and met with a range of citizens and professionals. The result of this process is a comprehensive overhaul of Plymouth’s earth removal bylaw.

The major modifications proposed with this amendment include:

- ✓ Expanded definitions and intent sections
- ✓ A PROHIBITION of commercial earth removal operations in residential zones
- ✓ Earth removal in residential zones can only occur if the removal is incidental and needed to construct a valid end use
- ✓ Improved guidance for earth removal activities related to agricultural uses
- ✓ Earth removal associated with FULLY PERMITTED commercial & industrial end uses are exempt from the special permit process
- ✓ Earth removal associated with septic system, foundations, landscaping and normal construction activities are exempt from the zoning permit process
- ✓ Codifies the Town’s current practice of allowing by-right earth removal for cranberry operations provided that there is **NO SALE** of MATERIAL

- ✓ Requires a special permit for "FOR SALE" earth removal related to cranberry operations
- ✓ Greatly expanded enforcement provisions
- ✓ Greatly expanded conditions for operation
- ✓ Limits the length of earth removal operations to a maximum of 5 years

The following table compares some of the major changes proposed to the existing bylaw.

Comparison of Current & Proposed Bylaws		
Item	Current	Proposed
Zoning Permit Conditions	0	10
Special Permit Conditions	10	17
Criteria for Incidental	1	5
Groundwater Depth	None	10'
Buffers	None	100'
Terracing	Not Required	Required
Time Limitation	Open	5
Change in Declared Use	Not Prohibited	5 Year Prohibition
Performance Guarantee	Bond or Cash	Cash Only

EFFECT

The effect of this amendment will be to prohibit commercial earth removal operations in Plymouth's residential zones. It will also provide better guidance to decisions makers and greatly expands the conditions imposed when earth removal does occur.

INTENT:

The intent of this amendment is to further protect the residents and the environment of the Town of Plymouth from the negative impacts of gravel excavation operations. It also seeks to incorporate additional conditions and safeguards into the Natural Features Conservation section of the Zoning Bylaw to reduce the potential for abuses that have occurred with excavation operations in Plymouth.

TOWN OF PLYMOUTH BY:

\_\_\_\_\_  
Timothy Grandy, Chairman

\_\_\_\_\_  
Ken Buechs

\_\_\_\_\_  
Paul McAlduff

\_\_\_\_\_  
Malcolm MacGregor

\_\_\_\_\_  
Robert Bielen

BEING A MAJORITY OF THE PLANNING BOARD

DATE SIGNED BY THE PLANNING BOARD: \_\_\_\_\_

DATE FILED WITH TOWN CLERK: \_\_\_\_\_

cc: Town Clerk  
Board of Selectmen  
Advisory and Finance Committee

January 4, 2017 DRAFT  
STANDARDS DISCUSSED

Review entire bylaw for cross references

**§205-5 Building and zoning permits**

**A. Building and zoning permits required.**

- (1) ~~Except as provided in §205-18, no~~ No building or other structure shall be erected, structurally altered, added to, or moved, nor shall any cutting of trees, clearing of land, or excavation of soil be carried out, whether or not for purposes of construction, nor shall any change of land use be made unless a zoning permit has been issued, and no building permit, as required by the Building Code, shall be issued without an approved zoning permit. The Building Inspector shall issue no permit except for work in conformity with the provisions of this bylaw unless he receives a written order from the Zoning Board of Appeals allowing otherwise as follows hereinafter, § 205-9.

**§205-18 Natural features conservation requirements**

**B. Application of requirements and procedures.**

- (3) Without an approved zoning permit issued by the Building Commissioner, there shall be no excavation or grading of soil or other geological material in excess of 10 cubic yards and no cutting of trees larger than six inches in breast height diameter (diameter at breast height of mature man) and no clearing of trees in excess of three feet tall from any area larger than 3,000 square feet.
- ~~(4) A special permit shall be required from the Board of Appeals for excavation or clearing as described above which is not in preparation for the establishment or construction of specific uses or structures for which a zoning permit is required.~~
- ~~(5) Applications for excavation must include a request for any on-site use of processing equipment and staging areas. The size and location, as well as measures to minimize the impacts of noise, vibrations, and dust generated from such equipment must be detailed. [Added 10-23-2007 FTM by Art. 20]~~

**§ 205-40 Rural Residential**

Delete

~~D(1) Sand and gravel quarries and similar extractive industries, subject to § 205-18.~~

**§ 205-3**

**DEFINITIONS**

Agricultural use – Farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing and harvesting of any agricultural, aquacultural, floriculture, viticulture or other horticultural commodities; growing and harvesting of forest products upon forest land; raising of livestock including horses and the keeping of horses as a commercial enterprise, keeping and raising bees, fur-bearing animals, poultry, swine, cattle and any domesticated animal used for food purposes; any forestry or lumbering operations, performed by a Farmer.

**Farm** – A parcel of land, the principal use of which is Agriculture, having a minimum Area of 5 acres, or, provided it meets the requirements for sources, types and annual sales of products required by G. L. c. 40A, §3, a parcel of land having a minimum area of 2 acres.

**Invasive Vegetation** – Plant materials that have been introduced or spread into native or minimally managed plant systems in Massachusetts and may be detrimental to native vegetation due to their propensity to cause economic or environmental harm by becoming dominant and/or disruptive to systems of native vegetation, including but not limited to those plants listed at <http://www.mass.gov/eea/agencies/agr/farm-products/plants/massachusetts-prohibited-plant-list.html>.

**Native Vegetation**– Plant materials that are endemic or indigenous to Southeastern Massachusetts, consisting of trees, shrubs, grasses and flowering plants that have naturally evolved in the region.

**Earth Removal** - The mining and removal off-site of sand, gravel, clay, mineral deposits or quarried stone that alters the natural topography.

**Cranberry Cultivation Earth Removal:** Earth Removal that is necessary and incidental to:

- a. Preparing a site for cranberry cultivation, including excavation for the purpose of creating wetland resource areas such as ponds, canals, cranberry bogs, and land subject to flooding as defined under the M.G.L. Ch. 131 §40 and as defined in Massachusetts Wetlands regulations 310 CMR 10.00, or
- b. Maintaining or improving contiguous or non-contiguous land for existing cranberry cultivation purposes, but
- c. Excluding earth removal for the purpose of sale or trade.

**Test Pit** - Earth removal with the intention of determining its composition and/or market value.

**Topsoil** - The O and A Soil Horizons which have the greatest amount of organic matter and microorganisms and is the most favorable material for plant growth and ground water filtration.

**Overburden** – The material below topsoil and above sand and gravel deposits exclusive of tree limbs or stumps.

**§ 205-18**

**Delete the current Section 205-18.F in its entirety and insert the following new text.** Subsections below will need to be re-numbered consistent with the Zoning Bylaw.

**F. EARTH REMOVAL REGULATION**

**Intent**

To allow for the reasonable removal of earth necessary for agriculture, residential, commercial and industrial uses, while also protecting the environment.

To assure to the greatest extent as reasonably possible that earth removal activities shall be conducted in a safe manner.

To assure to the greatest extent as reasonably possible that earth removal operations are conducted in a manner that will not cause undue stress to town's natural resources

To prevent detriment to adjacent neighborhoods from earth removal activities: and

To prevent cumulative damage to landscape, aquifer and topography and related valuable and nonrenewable natural resources, while not unreasonably interfering with necessary, desirable, or creative land uses.

**A. Earth Removal Operations Not Requiring a Zoning Permit or a Special Permit**

The following earth removal operations do not require a Zoning Permit under Section 205-5 or a Special Permit under this Section 205-18 (all earth removal occurring under this section shall be conducted in accordance with best practices):

1. Earth removal related to the installation of Title V (septic) systems;
2. Earth removal of up to 100 cubic yards in a calendar year in the course of normal gardening or landscaping;
3. Earth removal of up to 200 cubic yards necessary and incidental to the construction of single family and two-family dwellings;
4. Earth removal of up to 1,000 cubic yards necessary and incidental to construction of multi-family dwellings, commercial uses, and industrial uses;
5. Earth removal of up to 2,500 cubic yards per calendar year necessary and incidental to an agricultural use not related to cranberry cultivation; or
6. Cranberry cultivation earth removal (see definition).

**B. Earth Removal Operations Requiring a Zoning Permit but not a Special Permit**

All earth removal operations not included in Section A of this Section 205-18.F require a Zoning Permit under Section 205-5 but do not require a Special Permit under this Section 205-18, provided that:

1. The Building Commissioner shall forward copies of the zoning permit application and plans to the Planning Board for review. The Planning Board will consider if in their opinion the Earth Removal Operation requires the Special Permit Minimum Conditions and Safeguards set forth in Section C below in addition to the Zoning Permit Minimum Conditions and Safeguards set forth in this Section B. Said

advisory opinion shall be forwarded to the Building Commissioner within 21 days of receipt of said application and plans.

If the Building Commissioner makes a determination that:

- a. The earth removal is;
  - i. Objectively necessary and incidental to an identified lawful principal use, a lawful structure, an approved subdivision road, or lawful utility installation; and
  - ii. Not of such scale or other characteristics as to require special conditioning in order to avoid possible objectionable negative effects (such as heavy equipment noise, vibration, dust or vehicular traffic) to abutting properties, the Town, or the environment; and
  - iii. Is otherwise in compliance with this Bylaw and all other applicable legal requirements.

OR

- b. The earth removal is occurring on property in the Light Industrial and Commercial (GC, AC, LI, AP, MC and HC) Districts and is necessary and incidental to a lawful end use which has received all required local and state permits for the use and which end use has been fully designed.

Then a special permit shall not be required.

For the purposes of Section 205-18(F), incidental shall be defined as meeting all of the following:

1. Is minor in significance to the primary use.
2. Is commonly established as reasonably associated with the primary use.
3. Is necessary to carry out the primary use.
4. Does not conflict with the intent of Section 205-18(F).
5. Is minor in its net effect to that of the principal use, based on the amount of material to be removed and the time period over which it is to be removed and/or the amount of money to be derived from the earth removal operations.

Zoning Permit Minimum Conditions and Safeguards. All earth removal operations included in Section B of this Section 205-18(F) are subject to site plan review per §205-32 and shall comply with the following minimum conditions and safeguards (Note: These conditions and safeguards can be reduced or waived by special permit from the Zoning Board of Appeals):

1. Except for earth removal related to one and two-family dwellings, the maximum depth of the excavation shall be no closer than ten feet above the highest historical groundwater level, except for excavations associated with cranberry cultivation for the purposes of constructing cranberry bogs, irrigation ponds, tailwater ponds, flowage canals, and other like facilities typically associated with cranberry cultivation which may be closer to the water table.
2. A revegetation plan prepared by a professional Landscape Architect or an equivalent qualified professional shall be submitted to and approved by the permit granting authority (the Building Commissioner for Zoning Permits in Section B and the

Zoning Board of Appeals for Special Permits in Section C). The plan shall include Native Vegetation (trees, shrubs and grasses) planted at a density similar to the surrounding areas.

3. Overburden shall be stripped with topsoil and subsoil stored separately on site, and seeded to prevent erosion for use in the restoration of the site.
4. A minimum of six inches of topsoil shall be placed on areas designated to be restored to a natural state (side slopes, open space and areas that are not to be otherwise improved). This minimum depth of topsoil shall be increased to 12 inches in the Aquifer Protection District Zone II.
5. All areas of excavation and access ways to earth removal operations shall be clearly marked with legally posted no trespassing signs. Areas of steep slope or grade, as judged by the permit granting authority (the Building Commissioner for Zoning Permits in Section B and the Zoning Board of Appeals for Special Permits In Section C), shall additionally be fenced and clearly marked "DANGER- KEEP OUT every 150 feet.
6. Excavation or depositing of excavated material shall not be made within 50 feet of any lot line and no excavation depth of greater than 15 feet shall be made within 100 feet of any lot line. For excavation sites in or directly abutting the RR, R40, R25, R-20SL and R-20MF, excavation shall not occur within 200 feet of the project's property lines which shall include a 100 foot vegetated natural buffer. The Board of Appeals may reduce these requirements by Special Permit when the excavation site:
  - a. Is located on a uniquely sloped lot where the change in topography screens the site from abutting uses;
  - b. Abuts a similar use; or
  - c. Such a reduction will not be detrimental to an abutting use.
7. Excavation, trucking and equipment start-up and operation and any related use shall be limited to Monday through Friday and hours of operation shall be limited to 7:00 AM to 4:00 PM, with no excavation activities permitted on State or federal holidays.
8. The Building Commissioner or authorized agent shall have access to the excavation site at all times in order to inspect the site to insure compliance with the approved site plan.
9. Heavy vehicle round trips shall be limited to 40 round trips per day to and from the site.
10. A heavy vehicle route plan sufficient in the opinion of the Building Commissioner shall be established to minimize the negative effects of heavy vehicle.

**C. Earth Removal Operations Requiring a Zoning Permit and a Special Permit from the Zoning Board of Appeals**

A special permit is required for Earth Removal Operations that do not meet the provisions of 205-18(B) and are not otherwise prohibited. A Zoning Permit under Section 205-5 and a Special Permit from the Board of Appeals under this Section 205-18.F is required for all earth removal operations:

1. With side slopes exceeding 3 to 1; or
2. With cuts to the natural topography exceeding 40 feet; or
3. Which are not included in Section A or Section B of this Section 205-18.F.

An applicant for a Special Permit for earth removal shall be required to submit the following information, in addition to the information required by Section 205-9:

1. Identification of all on-site processing equipment proposed to be used, its location while in use or staged, and specific measures to minimize noise, vibration, dust and other negative effects of excavation, processing and related activities.
2. Identification of topsoil and subsoil composition, depth of gravel as well as depth to groundwater. The number, location, sample size and depth of such test pits shall be established by a qualified Professional Engineer.
3. An alternatives analysis and site plan describing alternatives to the location and size of the earth removal operation that would:
  - a. Minimize the amount of earth removed;
  - b. Minimize the area of land disrupted; or
  - c. Reduce the length of the earth removal operation.

The alternatives analysis shall also include a discussion of the advantages and disadvantages of the preferred alternative over the alternatives, and may include a cost comparison with each. The analysis shall be reviewed by the Town's consulting engineers, after which the Board of Appeals shall have the right to require that additional alternatives be considered and evaluated.

Special Permit Minimum Conditions and Safeguards. In addition to the Zoning Permit Minimum Conditions and Safeguards included in Section B, all earth removal operations included in Section C shall also comply with the following minimum conditions and safeguards, unless the Board of Appeals determines that existing conditions are in place to adequately protect the public health and safety (note: these conditions and safeguards can be reduced or waived by the Board of Appeals):

- a. The following conditions shall apply:
  - a. Ten foot wide terraces are required for areas where cuts to the natural topography exceed 40 feet (on slopes exceeding 80 feet, terraces are required each 40 foot cut).
  - b. Side slopes exceeding 3 to 1 grades may be allowed by the Board of Appeals provided that the slopes do not exceed the soil's natural angle of repose and the Board of Appeals finds that the soils are suitable for steeper slopes and adequate revegetation plans are submitted.
  - c. Heavy vehicle round trips: A limit of 40 round trips per day to and from the site. The Board of Appeals may allow an increase in vehicle trips if based on a traffic analysis prepared by a qualified professional demonstrates to the Board's satisfaction that the increased trips will not:
    - i. When added to the existing traffic volume of the streets servicing the project prior to the commencement, exceed 85% of the capacity of the streets serving the project, as determined by a Professional Traffic Operations Engineer (PTOE), and

- ii. When added to the existing traffic, cause the level of service of any traffic approach at any street intersection to fall below a "D" level of service, as defined by the Highway Capacity Manual, 5<sup>th</sup> ed. 2010; or successor editions or professional standard publications. For the purpose of this Section, "intersection" includes at least two of the following: Major or Collector Streets, multilane highways or two-lane rural highways as defined by said Highway Capacity Manual; and
- iii. Significantly impact (noise, vibration, etc.) residents living on the streets serving the excavation project.
- d. Heavy vehicle route: A proposed route plan sufficient to minimize the negative effects of heavy vehicle traffic shall be submitted.
- e. An operation sequencing plan updated quarterly with details on activities to occur over the next three months shall be submitted.
- b. Quarterly inspections and quarterly written certifications from a registered Professional Engineer shall be submitted to the Building Commissioner demonstrating substantial compliance with the Zoning Bylaw, the earth removal Special Permit, and accepted engineering practices.
- c. Permanent stabilization of any portion of the development site not under active construction for a period of 6 months shall be required. No area greater than 5 acres may be disturbed at one time for earth removal, stockpiling, and/or processing, and prior to the commencement of disturbance of any subsequent area, the preceding 5-acre area shall be stabilized, either temporarily or permanently, as required by the Building Commissioner. In areas where vertical cuts exceed 30 feet, the Board of Appeals may allow, at their sole discretion, areas of disturbance in excess of 5 acres, provided that based on documentation prepared by a qualified professional, the Board finds that a larger area will minimize operation hazards or is necessary due to the size and scale of an earth removal operation.
- d. Within 3 months of the reasonably anticipated completion of operations, the applicant shall provide written notice to the Building Commissioner of intent to complete operations and the estimated date thereof, and shall make the premises available for inspection by the Building Commissioner for conformity with the Special Permit, Zoning Permit and all approved Development Plans in advance of the intended date of completion.
- e. The Building Commissioner shall calculate, after consultation with a qualified professional, a cash performance guarantee in an amount reasonably estimated to restore, regrade and revegetate the area under active excavation and other disturbed areas, if any, and shall include an adjustment for projected inflation or other predictable factors affecting cost of restoration over the term of the Earth Removal special permit plus one year. A cash performance guarantee shall be in place prior to the commencement of work.

Time Limitation. Earth removal operations permitted by Zoning Permit or Special Permit shall be limited in time to 3 years from the start of excavation, and the applicant

shall provide written notice to the Building Commissioner prior to the commencement of work.

1. Sixty days prior to the completion of the original 3-year limitation period, the applicant may file a written request to the permit or special permit granting authority for an extension of the excavation period, which shall be granted if determined to be consistent with the intent and purpose of this Section and the Bylaw generally, and may be denied for one or more of the following reasons:
  - a. One or more violations of the conditions of the permit or work not consistent with the approved Zoning Permit or Special Permit;
  - b. Abandonment of the work site, as determined by the Building Commissioner;
  - c. Failure to maintain the required landscaping, dust suppression measures, erosion control measures and proper stabilization measures;
  - d. The presence of any unsafe condition; or
  - e. One or more violations of the approved heavy equipment route plan or other traffic control conditions of the Earth Removal special permit.
2. A maximum of one excavation period extension may be granted for a term not to exceed two years. Additional extensions shall require a modification/reapplication of the Zoning Permit or Special Permit.

Additional Conditions and Safeguards. The Board of Appeals may impose additional conditions and safeguards for earth removal for all earth removal operations included in Section C of this Section 205-18.F if necessary to protect the public health and safety.

Denial of Earth Removal Special Permit. In addition to the special permit conditions of §205-9(B)(1) the Board of Appeals may deny an earth removal Special Permit if it determines that, even subject to the foregoing conditions, the earth removal operation:

- (a) Would not be necessary and incidental to an identified lawful principal use, a lawful structure, an approved subdivision road, or lawful utility installation, or
- (b) Would be excessive in scope or nature to the foregoing end use or structure, or
- (c) Would create unsafe conditions on or off the property, or
- (d) Would be a detriment or nuisance to nearby landowners or to the Town in general by reason of noise, dust, vibration, or other objectionable conditions;
- (e) Would constitute excessive disturbance to the site's natural landscape or
- (f) Is not in compliance with any of the provisions of Section 205-18.F.

#### **D. Prohibited Earth Removal Operations**

Notwithstanding anything in this Section 205-18.F to the contrary, earth removal operations as a principal use is prohibited in all Districts except the LI District.

#### **E. 5 Year Prohibition**

On sites where:

1. Over 10,000 cubic yards of earth are removed by zoning permit per Section 205-18(B) or
2. Earth removal in the RR, R40, R25, R20-SL, R20-MD or R20-MF District is allowed by special permit for an identified lawful principal use;

The site shall not be used for any other principal use until five years from the expiration of the excavation period or any extension thereof.

**F. Segmentation**

If the Building Commissioner determines that an earth removal operation has been impermissibly segmented to avoid the provisions set forth in this section, he may deny a Zoning Permit or take other appropriate steps to enforce this by-law.

ZONING

Table 5

[Amended 3-28-1973 ATM by Art. 71; 4-17-1975 ATM by Art. 68; 4-10-1980 ATM by Art. 64; 5-12-1981 ATM by Art. 32; 5-12-1981 ATM by Art. 34; 5-13-1981 ATM by Art. 36; 5-13-1981 ATM by Art. 37; 4-20-1982 ATM by Art. 52; 4-8-1985 ATM by Art. 55; 4-7-1987 ATM by Art. 69; 4-5-1989 ATM by Art. 30; 4-12-1994 ATM by Art. 22; 4-12-1994 ATM by Art. 24; 11-14-1995 STM by Art. 8; 4-1-2000 STM by Art. 9; 4-6-2000 ATM by Art. 27; 10-24-2000 ATM by Art. 13; 10-27-2003 FATM by Art. 19; 4-6-2004 ATM by Art. 32, 10-25-2005 FATM by Art. 17; Amended 5-20-06 ATM by Art. 30; Amended 4-3-10 SSTM by Art. 18; Amended 10-18-2014 FTM by Art. 28]

District	Intent of District	Allowed Uses	Special Permit Uses <sup>3</sup>	Prohibited Uses	Minimum Lot Size	Minimum Lot Dimensions	Min Side Yard <sup>4,7</sup>	Min Front Yard <sup>2,7</sup>	Min Rear Yard <sup>7</sup>	Max Lot Coverage/Height	Max FAR**	
§ 205-39 WA Wetlands Areas	Wetland restrictions relative to area and yard requirements overlie other zones. See full text.											
§ 205-40 RR Rural Res.	To discourage development in areas remote from public utilities and facilities. To preserve the valuable rural character of the Town by prohibiting scattered small lot development. To permit development of very large, easily accessible sites for large self contained uses.	Single-family dwellings, all wetlands uses, and home occupations	Recreation facilities, day nurseries, recreational campgrounds subject to conditions on High tech PUD on >250 acres, RD, RDD, Transfer of Development Rights § 205-70, TRVD § 205-72	Medium and small residential, commercial, industrial, junkyards, retirement mobile home PUD	120,000 SF density <sup>6</sup> High tech. PUD: 250 acres RD: 6,000 SF; See § 205-59 RDD: 20,000 SF; See § 205-62	Width 200' Depth 200' Width 2,000* Depth 2,000*	30'	70'	50'	15% NA 3 stories 35 feet		
§ 205-41 R-40 Res. Single Family	To provide areas for a particularly spacious residential environment. To permit development of very large, easily accessible site for large self-contained uses.	All uses allowed in RR other than village density development (see Definitions § 205-3)	2-family dwellings, recreation facilities, day nurseries, High tech. PUD on >250 acres, village density development, <sup>5</sup> RD TDR Sec. 205-70	Industrial, General Commercial, Arterial, Commercial, improper storage of vehicles, retirement mobile home PUD	40,000 SF Two-family: 55,000 SF High tech. PUD: 250 acres RD: See § 205-59 RDD: See Sec. 205-62	Width 150' Depth 200'	25'	50'	50'	25% NA 3 stories 35 feet		
§ 205-42 R-25 Res.	To provide areas for a reasonably spacious residential environment.	All uses allowed in R-40	Funeral homes, medical facilities, village density development <sup>1</sup> RD, VOSSD, retirement mobile home PUD	Same as R-40	25,000 SF Two-family: 35,000 SF YOSD: 6,000 SF; See § 205-66 15,000 two family	Width 110' Depth 175' YOSD - varies See § 205-66	15' single 40' total	35'	40'	25% NA 3 stories 35 feet		

# Memo

To: Board of Selectmen  
Advisory and Finance Committee

From: Lee Hartmann, Director of Planning and Development

Re: FY18 Town Promotion Fund – Article 11 – 2017 ATM

Date: January 3, 2017

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The receipts collected through the 6% Hotel/Motel Tax decreased by 3% from last year (\$1,415,072 compared to \$1,458,400 last year). The Town, by a special act, places 45% of the total Hotel/Motel Tax into its Promotion Fund. The total FY18 funding to be approved for the Town Promotions budget is \$636,782 which is \$19,497 less than last year's appropriation.

The Visitor Services Board over sees expenditures from the Promotion Fund.

This year's estimated fixed costs are \$426,638.00 and include:

- The Town Promotions contract with Destination Plymouth is \$310,000
- The Water Street Visitors Information Center operation contract is \$52,360.00
- Public Improvements at \$63,678 (\$10,000 allocated toward the new Town Hall), which is 10% of the budget as required by the Home Rule Petition.
- Salaries (\$600)

Other costs include (\$210,144.00)

- Event Funding and Additional Marketing (\$167,644)
- Distinguished Visitors (\$5,000 last year)
- 2020 Celebrations (\$37,500 last year)

Funds that are not expended (primarily due to event cancellations) remain available. The current unexpended balance is 651.88.

The FY 18 budget is as follows:

Salaries and Wages (Admin. Support).....	\$600
Contractual Services (Promotions and Info Center).....	\$360,820*
Public Improvements .....	\$63,678*
Event Funding, Distinguished Visitors, Special Events, Exhibit Grants & Additional Marketing .....	\$211,685
Total .....	\$636,783

\*Fixed costs

The following is a list of Celebrations (special events and exhibit grants) funding from FY17:

Special Events

Musician's Union Concert Series	\$2,000	Thanksgiving Food Fest	\$8,300
July 4 <sup>th</sup> Parade	\$10,000	Thanksgiving Waterfront Activities	\$5,000
July 4th Fireworks	\$10,000	Christmas in Historic Plymouth	\$500
PA Concert Series & Folk Festival	\$10,000	Myles Standish Road Race	\$2,500
Pilgrims Progress	\$850	Score for A Cure	\$1,100
Downtown Waterfront Festival	\$5,000	Plymouth Restaurant Week	\$3,000
Plymouth Outdoor Trails	\$3000	Barktoberfest	\$3,500
Acoustic Nights Concerts	\$500	July 4 Philharmonic	\$20,000
The Thirsty Pilgrim	\$1,000	Halloween on Main St	\$3,200
Annual Juried Art Show	\$3,700	Saturday Stroll	\$4,000
Plymouth Festival of Cyclo Cross canceled			
Thanksgiving Parade	\$10,000		
Thanksgiving Free Concert	\$5,000		

Misc.

Mayflower II restorations	\$30,000
Destination Plymouth Additional Marketing	\$26,000
2020 Celebrations – Fountain restorations	\$29,719
1820 Courthouse / Municipal Bldg.	\$10,000
America's Hometown Shuttle	\$14,000
Boston to Waterfront Shuttle	\$11,000
Veteran's 50 <sup>th</sup> Anniversary Coin	\$750
Downtown Hanging Planters	\$6,145
Downtown Holiday Decorations	\$7,324
UMass Public Archaeology	\$5,000
Tourism Event Calendar Boards	\$5,000
Pilgrim Path Audio Tour	\$2,700
Harbor Master Website	\$2,800
Lobster Crawl Maps	\$3,100

Thank you.

# Town of Plymouth Fiscal 2018 Budget Presentation

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Melissa Arrighi, Town Manager  
Lynne Barrett, Director of Finance

December 13, 2016

Updated January 18, 2017



# General Fund Operating Budget

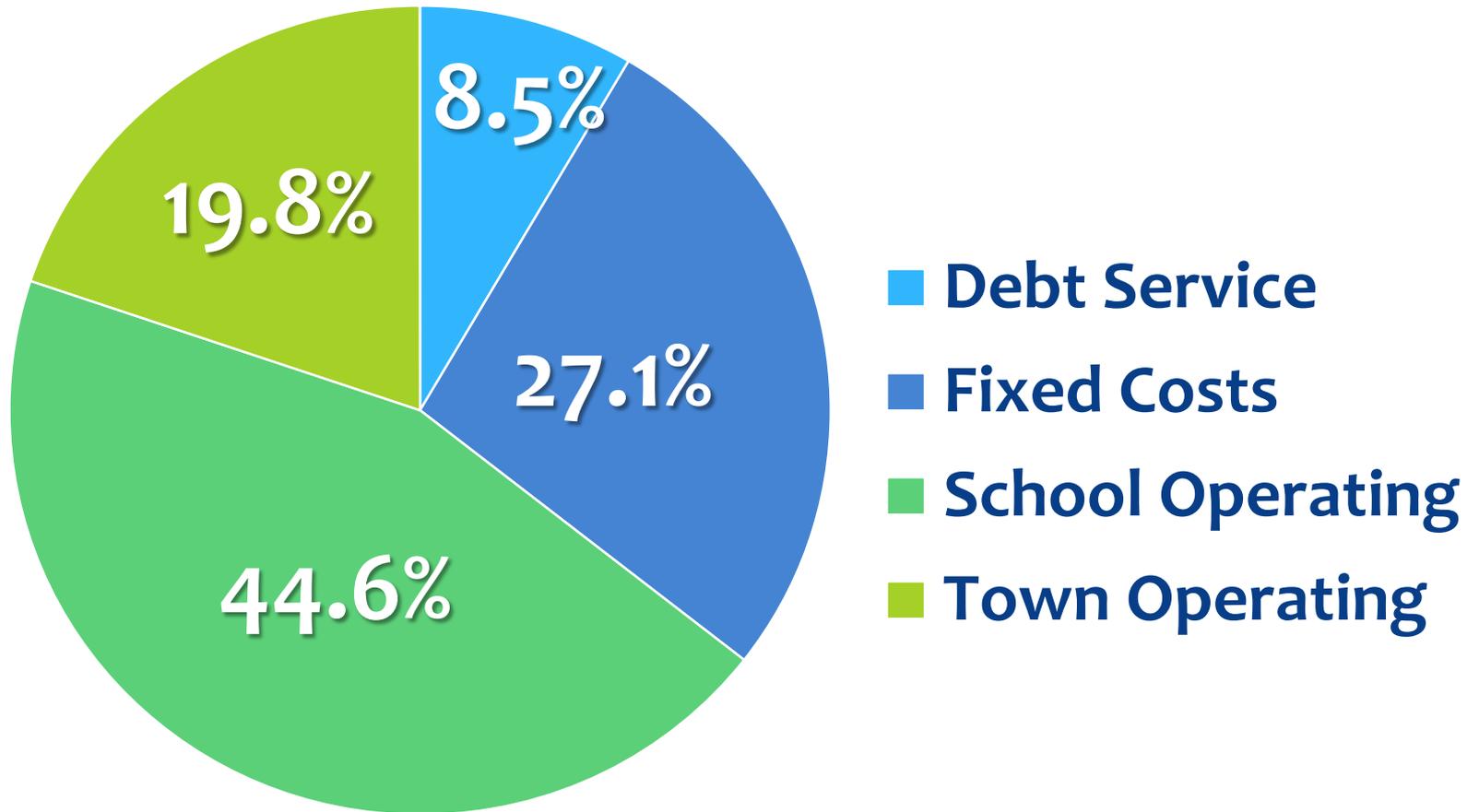
\$211,526,415

## Increase from Fiscal 2017

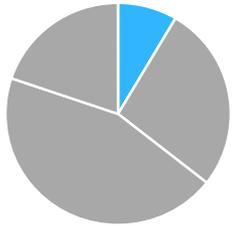
\$13,624,913 million - Overall 6.9%

- Debt Service 32%
- Fixed Costs 4.9%
- School Operating 4.6%
- Town Operating 6.3%

# General Fund



## Debt Service



\$17,914,456

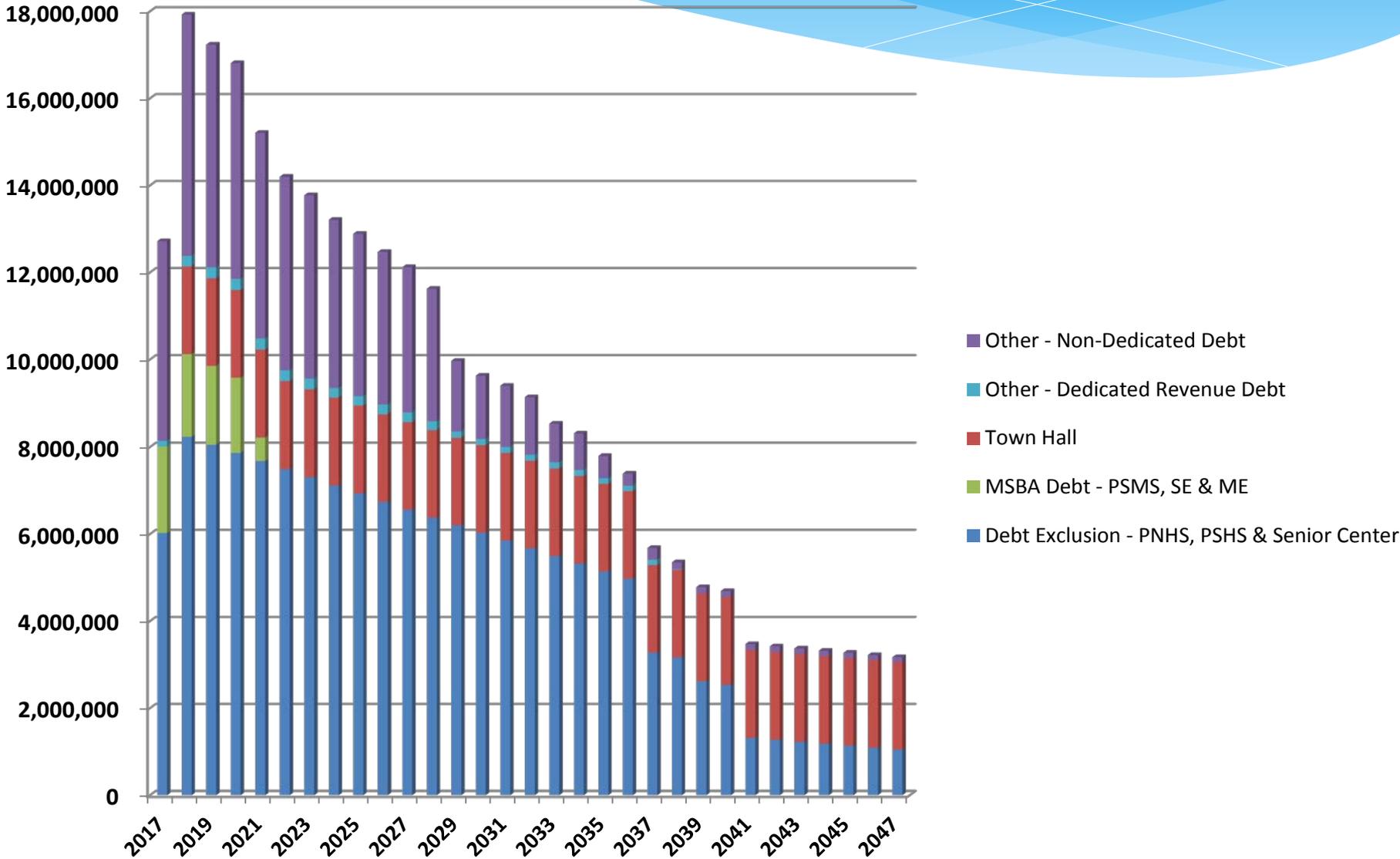
Increase of \$4.35 million, 32%

### Makeup of Increase

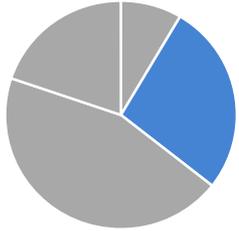
PSHS – Debt Exclusion	\$2,350,000
Town Hall Complex – Meals Tax	\$2,012,920
T-Wharf – Waterways Fund	\$ 96,250
Other Projects	\$1,230,760
Debt Falling Off	(\$1,340,405)
Total Increase	\$4,349,525

Scheduled Bond Issue – Spring 2017 Based on Estimated Needs;  
any changes to be adjusted at FATM 2017

# Fiscal 2018



## Fixed Costs



\$57,416,883

Increase of \$2.67 million, 4.9%

- **Fuel & Utilities** Decreasing \$103k
- **Member Benefits** Increasing \$522k
- **Pension** Increasing \$885k
- **Member Insurance** Increasing \$789k
- **OPEB Trust** Increasing \$142k
- **Town Insurance** Increasing \$168k

# School Operating



\$94,211,170

Increase of \$4.1 million, 4.6%

## Salaries

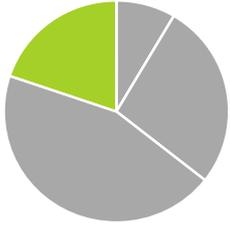
- 79% of school budget
- Increasing \$3.3M to \$74M

## Contracted Services

- 17% of school budget
- Increasing \$798k to \$20.15M  
((\$432k new transportation contract & SPED transportation))

**School Committee Budget Hearing & Vote: December 19**

## Town Operating



\$41,983,906

Increase of \$2.5 million, 5.9%

### Salaries

- 85% of town budget
- Increasing \$1.97M to \$35.6M

### Other Expenses

- 15% of town budget
- Increasing \$525k to \$6.35M

	TOWN	SCHOOL
COLA	\$980 k	\$2.1 M
Other	\$660 k	\$1.5 M
	\$1.6 M	\$3.6 M

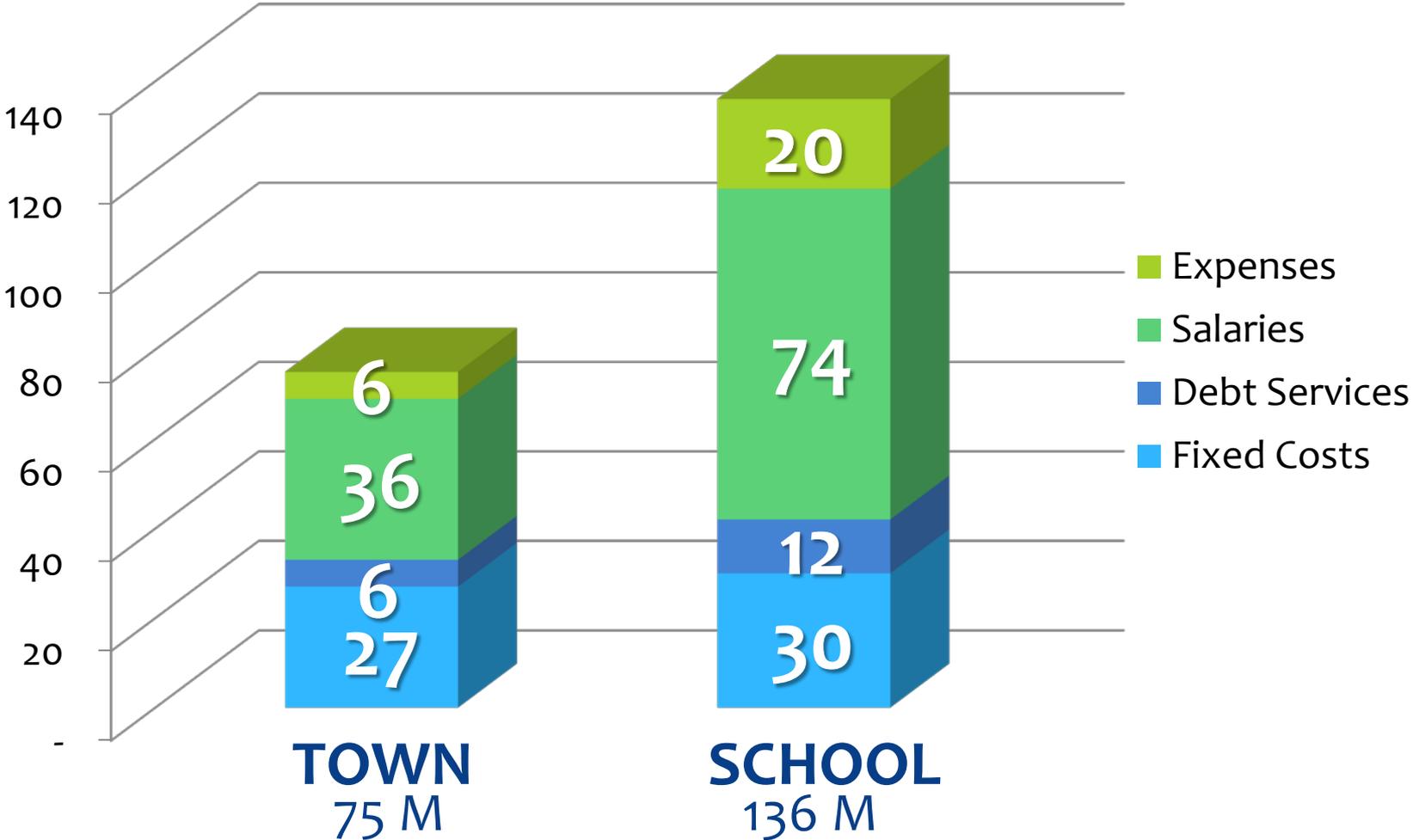
## PEC Agreement

- Savings in 2018 over \$2.1 Million
- Continued Savings into FY19 and beyond for a 75% / 25% split

# Town Manager Recommendations

- Facility Manager
- Parks: Assistant Superintendent
- Parks: Seasonal Laborers
- IT: Application Manager
- Records Access Officer/Archivist
- COA: Full Time Receptionist
- DPW: Billing Coordinator

# Town & School Budgets



# Sources of Funding

## State Aid

Level Funded except for the estimate for ADK \$1,020,443

## Local Receipts

3% Increase due to Economic Growth - \$508K

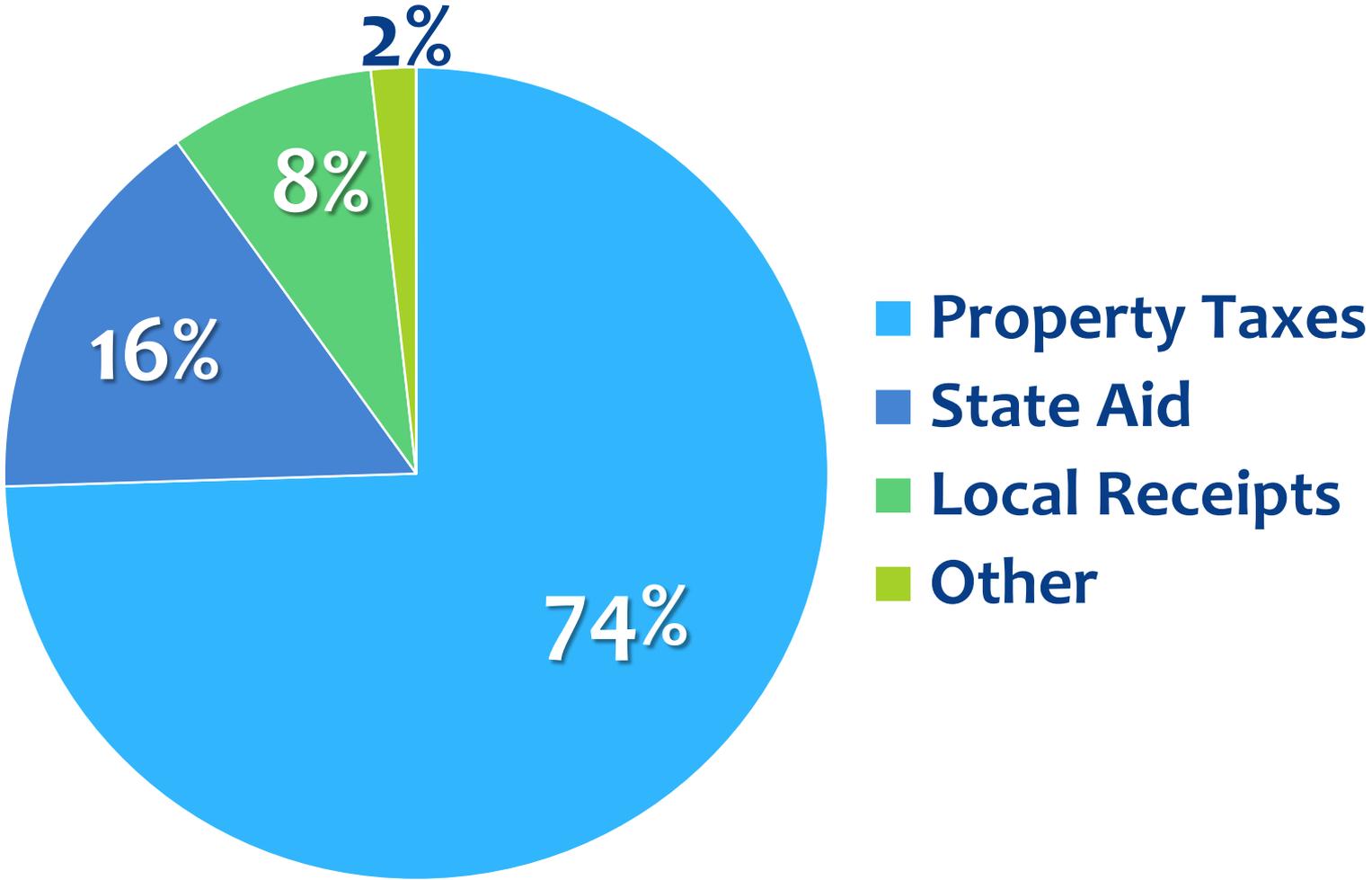
- Licenses & Permits
- Motor Vehicle Excise & Other

## Property Taxes

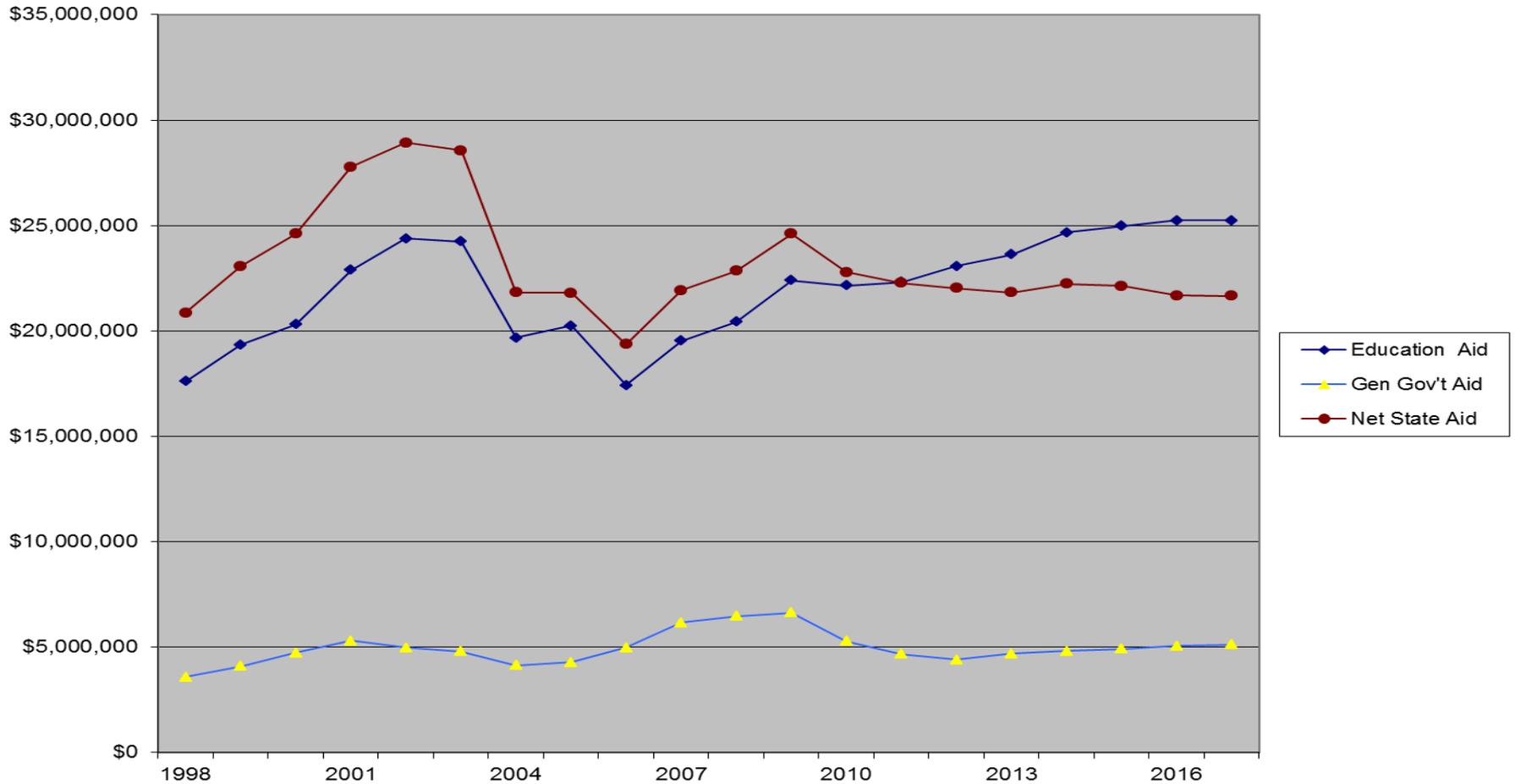
6.87% Increase - \$10.8 M:

- New Growth Estimate           \$2.5 M
- 2.5% Levy Growth             \$3.9 M
- Debt Exclusion                 \$2.1 M
- Excess Levy Capacity         \$2.3 M

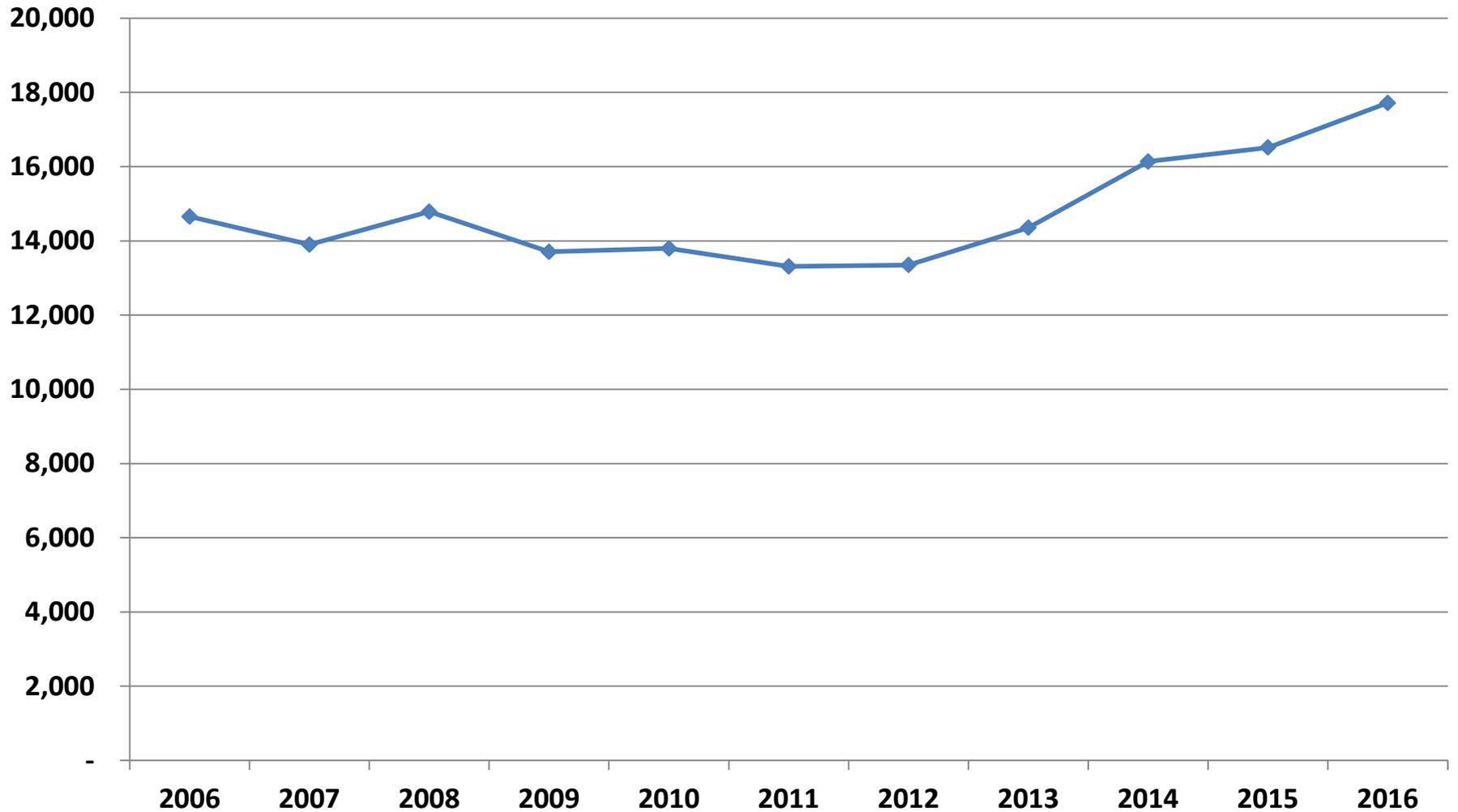
# General Fund Revenues



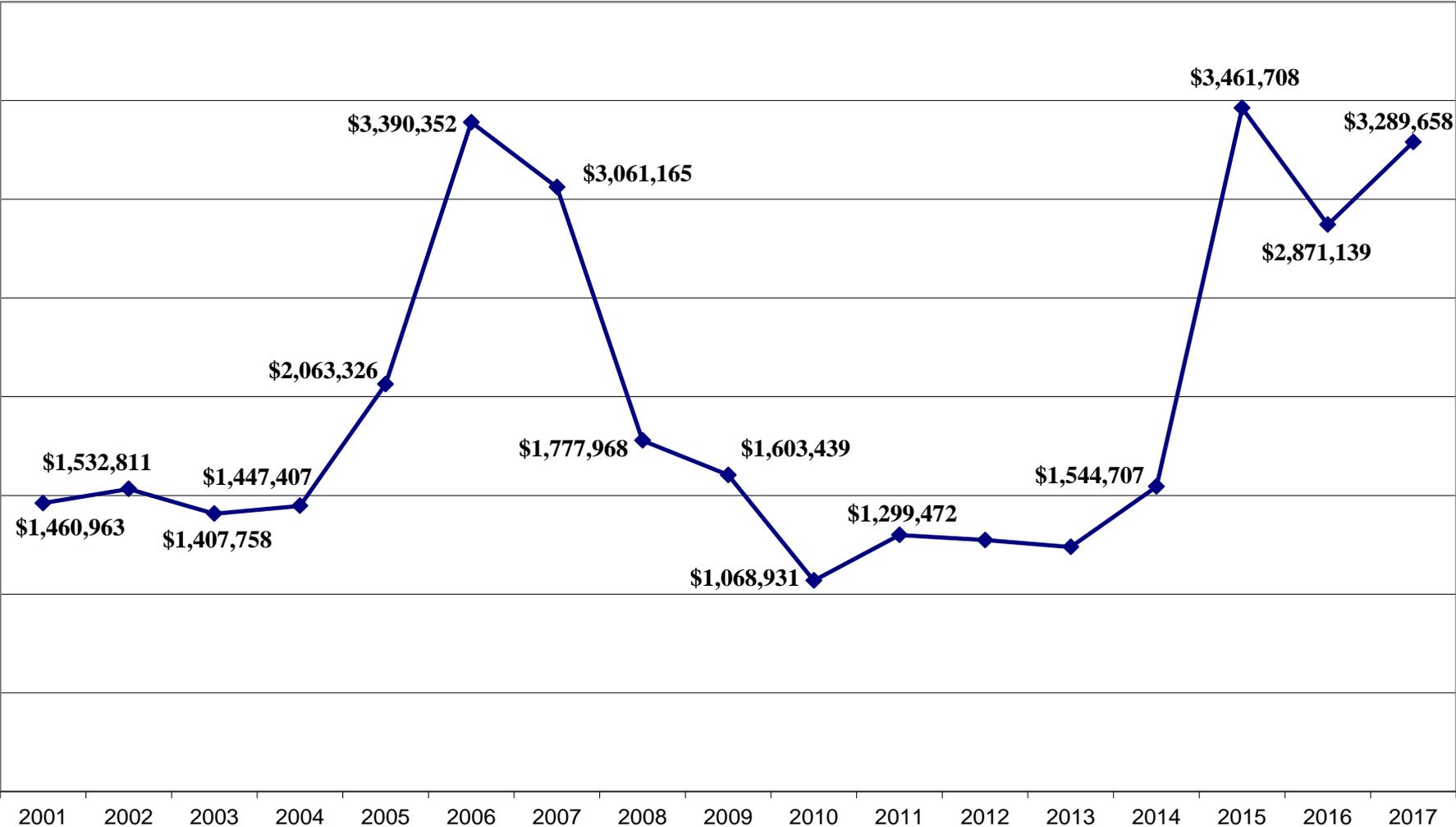
# State Aid



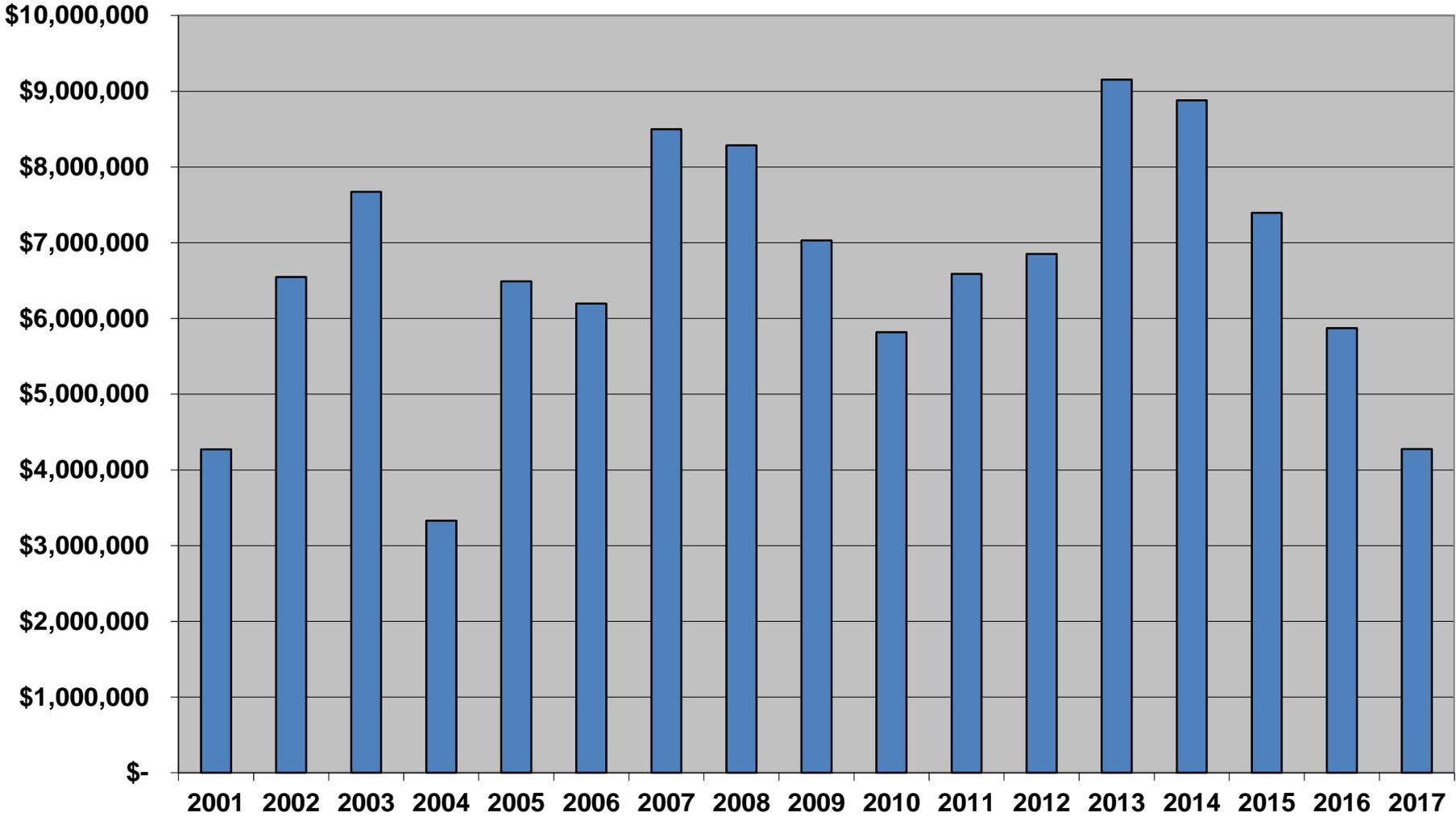
# Local Receipts



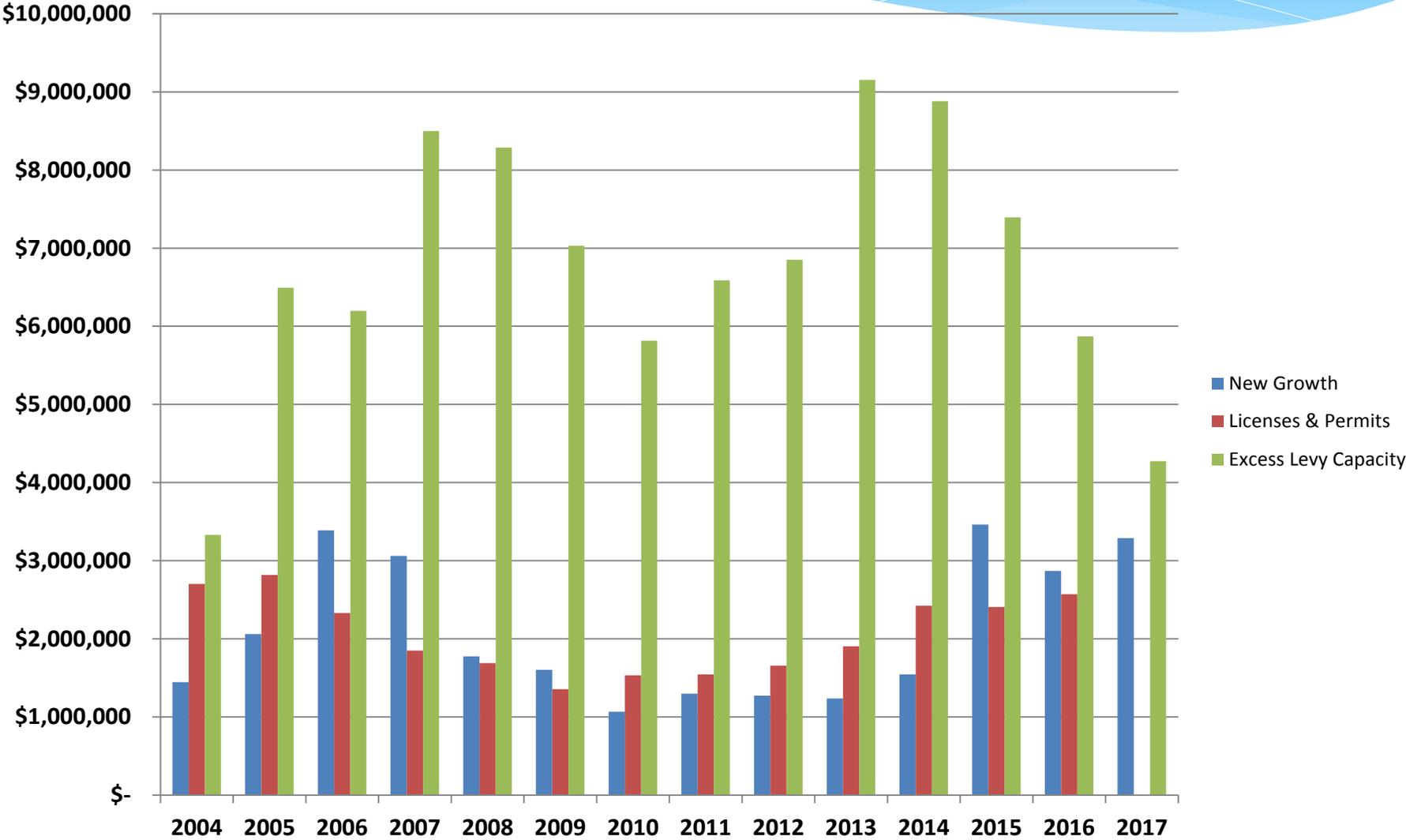
# New Growth Trends



# Excess Levy Capacity

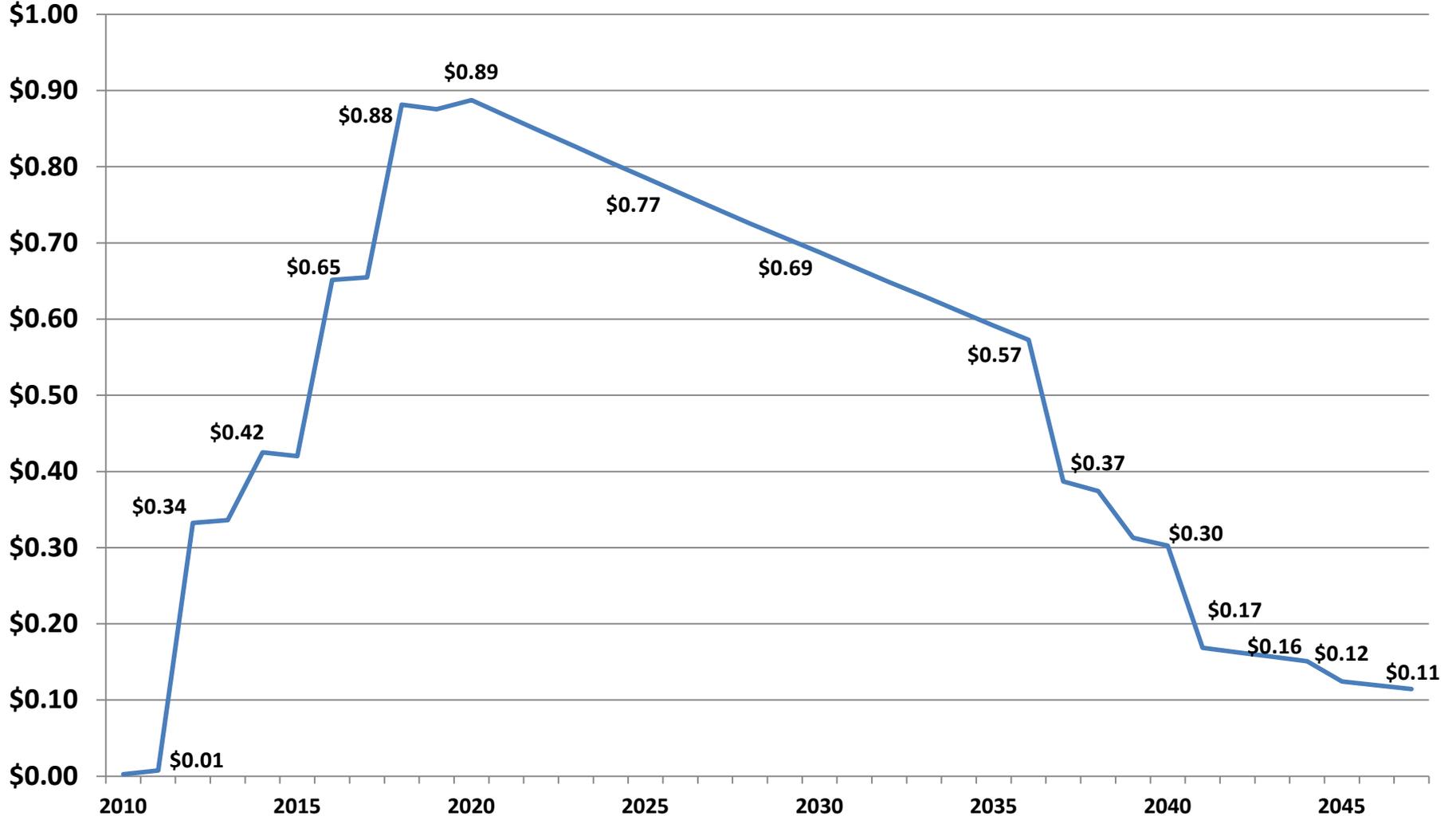


# Growth Trend Comparison



# Debt Exclusion Projection

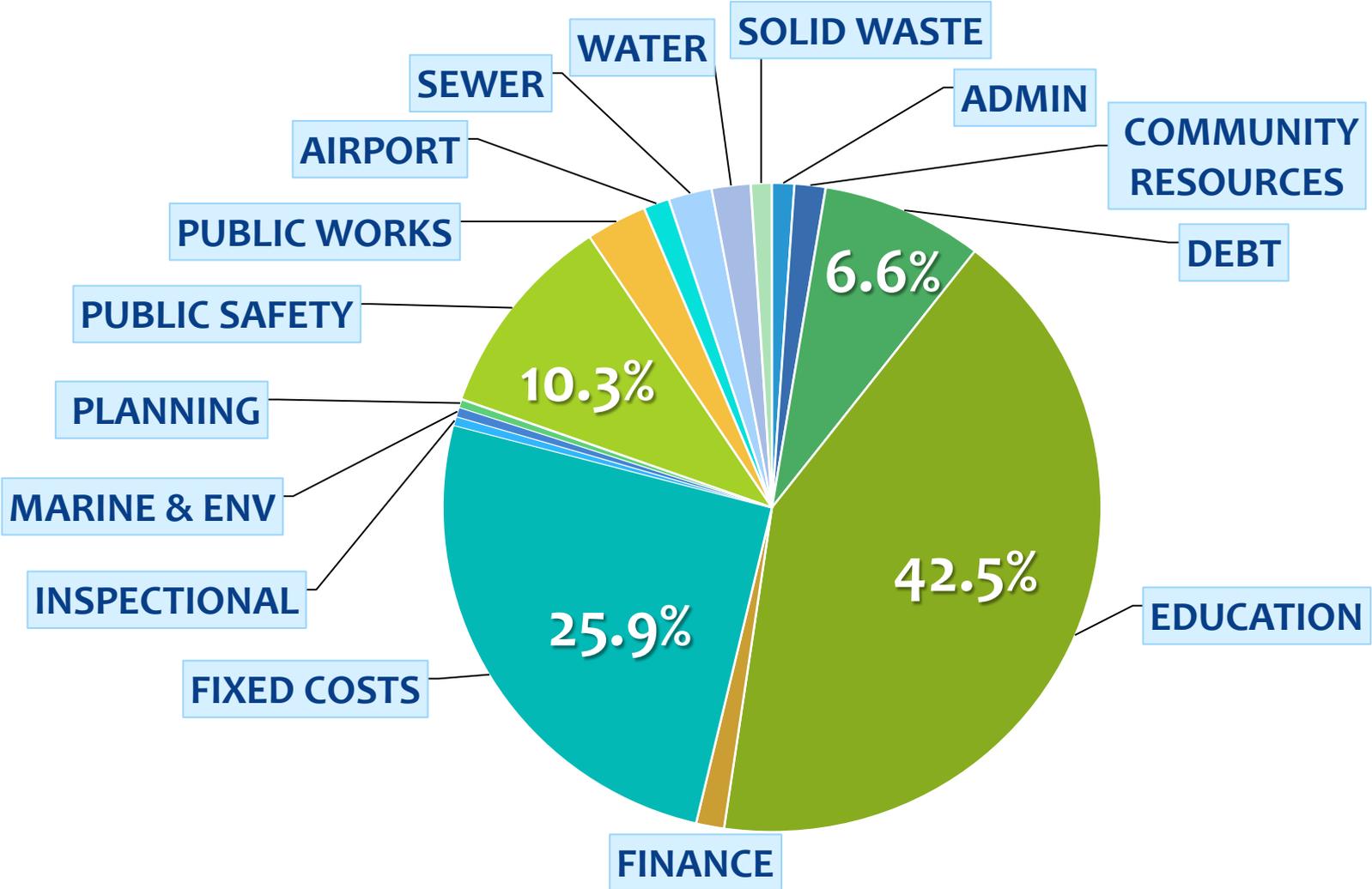
PNHS, PSHS & Senior Center – Annual Effect on Tax Rate



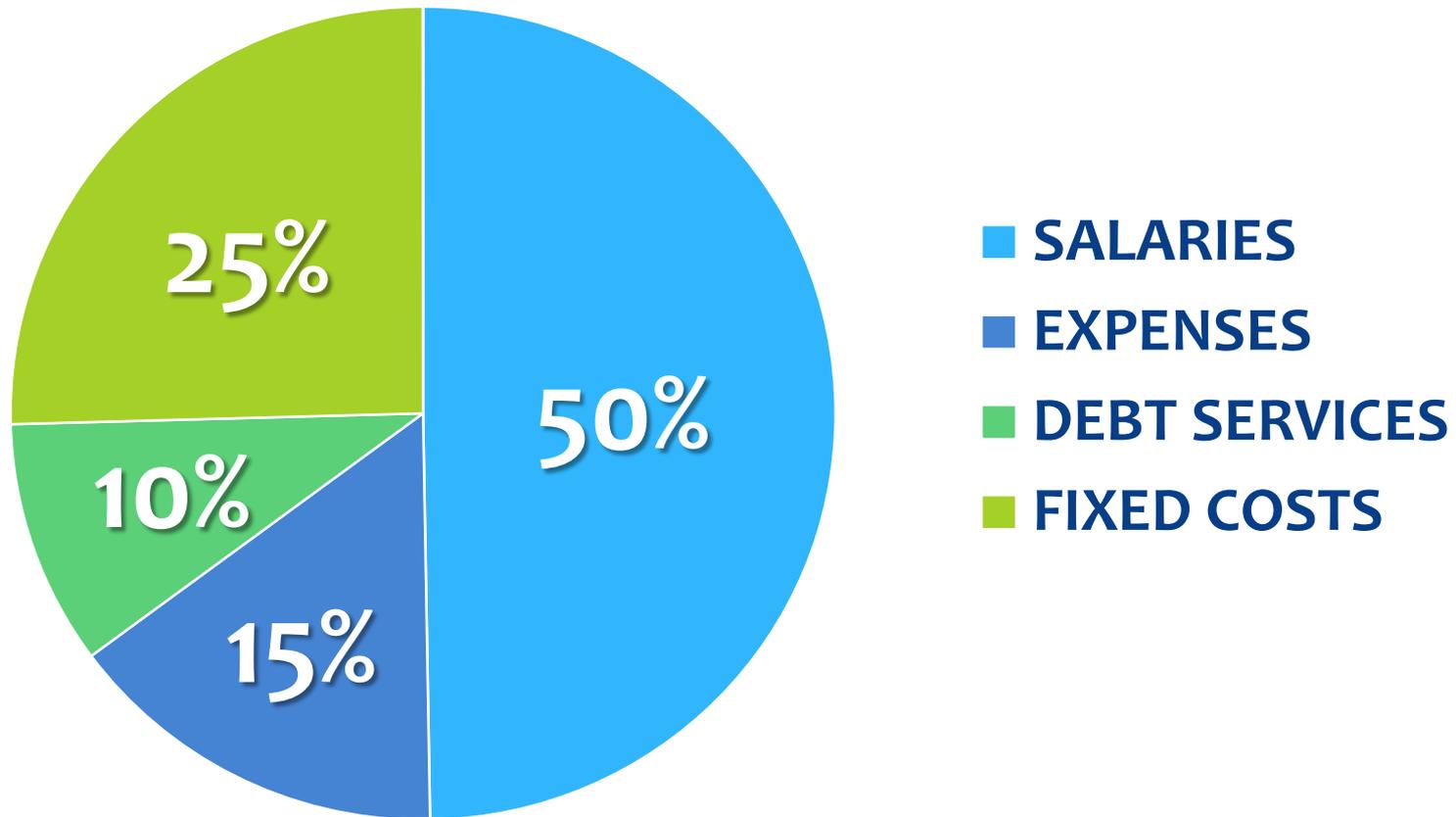
# Enterprise Fund Budgets

	2018	\$ Increase	% Increase
<b>Airport</b>	<b>\$2.9 M</b>	<b>\$264 k</b>	<b>10.1 %</b>
<b>Sewer</b>	<b>\$4.8 M</b>	<b>\$345 k</b>	<b>7.7 %</b>
<b>Water</b>	<b>\$4.3 M</b>	<b>\$826 k</b>	<b>23.8 %</b>
<b>Solid Waste</b>	<b>\$2.3 M</b>	<b>\$112 k</b>	<b>5 %</b>
	<b>\$13.9 M</b>	<b>\$1.5 M</b>	<b>12 %</b>

# All Funds



## Budget Makeup - All Funds



## Preliminary Estimate to Tax Payer

Fiscal 2018 General Fund Budget: \$211,526,415

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Based on 2017 Estimated Values:

- Increase of \$1.11 on Tax Rate
  - .22 Cents is for PSHS – Debt Exclusion

For Average Home Value of \$322,156:

- Average Tax Increase of \$356.65

## **Other Recommendations:**

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### **OPEB Trust Investment:**

- Methodology based on contribution rate of 1% of Covered Payroll
- \$944,313 FY 2018 contribution from all Funds – GF & Enterprise
- Current Balance \$2.4 M; bringing total to \$3.34 M
- Invested through a Plymouth Retirement Board Strategy

### **Nuclear Mitigation Stabilization:**

- Invest \$1 Million for a total of \$4.7 Million

## Other Recommendations:

### Start a Pavement Management Plan Fund

- Funding to pay for P & I of the annual PMP
- Initial investment of \$1,019,741 from Excess Motor Vehicle Excise receipts from prior year
- Annually budget accordingly so that we allocate a portion of MVE to Roads
- Town meeting vote to transfer funds into fund and to transfer funds out

### Pay off Winter 2015 Snow Deficit a year earlier

- \$244K from FEMA/MEMA & \$356K from Free Cash

Questions?