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August 13, 2026

Lynne Girouard, Town Clerk
Town of Sturbridge
308 Main Street
Sturbridge, MA 01566

**Re: Sturbridge Special Town Meeting of April 27, 2026 -- Case # 12267
Warrant Article # 63 (Zoning)**

Dear Ms. Girouard:

Article 63 - Under Article 63, the Town voted to amend its zoning by-laws to add a new Article XXI, "Temporary Moratorium Large Scale Standalone Battery Energy Storage Systems." Section 300-21.2, "Duration," provides that the "moratorium shall be in effect through December 1, 2026 or the date on which the Town adopts amendments to the by-law concerning Battery Energy Storage Systems, whichever first occurs."

Solar and related uses such as Battery Energy Storage Systems ("BESS") are Dover amendment protected uses under G.L. c. 40A, § 3. The proposed moratorium seeks to temporarily prohibit BESS, but it lacks any articulated public health, safety, or welfare justification sufficient to justify the moratorium (even for a short amount of time). For this reason, Article 63 violates G.L. c. 40A, § 3's prohibition against unreasonably regulating or prohibiting solar and related uses and we therefore must disapprove Article 63, as explained in detail below.¹ See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law); see also Sunpin Energy Services, LLC. v. Zoning Board of Appeals of Petersham, 497 Mass. 794, 795-96 (2026) ("a town must provide reasonable opportunities to build solar energy systems and may not deny a special permit for such a project unless doing so is necessary to protect public health, safety, or welfare.").

¹ We have previously disapproved moratoriums of solar or BESS uses. See decisions issued to the Towns of: *Becket* on June 22, 2026 in Case # 12196; *Worthington* on June 8, 2026 in Case # 12194; *Southwick* on April 24, 2026 in Case # 12184; *Blandford* on March 11, 2026 in Case # 12153; *Northfield* on October 30, 2024 in Case # 11346; *Ware* on March 15, 2023 in Case # 10725 and *Carver* on November 14, 2022 in Case # 10526. In addition, we have disapproved zoning by-laws that prohibit "stand alone" BESS. See decisions issued to the Towns of *Wareham* on April 22, 2024 in Case # 11191; *Leyden* on April 16, 2024 in Case # 10919; *Pelham* on December 4, 2023 in Case # 11057; *Spencer* on May 30, 2023 in Case # 10804; and *Wendell* on March 1, 2023 in Case # 10721. These decisions can be found on the Municipal Law Unit's website at www.mass.gov/ago/munilaw (decision lookup link).

In addition, we disapprove Article 63 because the proposed moratorium is not limited in scope, and therefore conflicts with state law. See Zuckerman v. Hadley, 442 Mass. 511, 520-21 (2004) (invalidating a rate of development by-law of unlimited duration). Lastly, we disapprove Article 63 because the proposed moratorium conflicts with the recent legislative changes regarding solar installations and BESS that require the Town to accept a consolidated local permit application beginning on October 1, 2026.

We note that our disapproval of Article 63 in no way implies agreement or disagreement with any policy views that may have led to the passage of the moratorium. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst, 398 Mass. at 795-96, 798-99.

This decision describes the by-law; discusses the Attorney General's standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we disapprove Article 63.

I. Summary of Article 63

Under Article 63, the Town voted to amend its zoning by-laws to adopt a new Article XXI, "Temporary Moratorium Large Scale Standalone Battery Energy Storage Systems." The proposed new Article XXI provides in its entirety as follows:

Section 300-21.1 Purpose and Intent

Large Scale Standalone Battery Energy Storage Systems are defined as a system consisting of one or more battery modules for storing electrical energy with an aggregate energy capacity of 250 kWh or greater, and any equipment needed to support the safe and proper function or usage of the battery modules, and one or more physical containers providing secondary containment to any of the above. This shall not apply to storage systems accessory to residential uses or ancillary to other commercial uses.

The purpose of this temporary moratorium is to allow sufficient time to engage in a planning process to address the effects of the construction of large-scale standalone Battery Energy Storage Systems and uses in the Town including environmental, fire, health and safety standards of these systems, including but not limited to standards for the placement design and construction, operation, monitoring, modification, and removal of such systems that addresses public safety, minimize the impacts on the scenic, natural and historic resources and to provide adequate financial assurance for the decommissioning of such installations.

Additionally, the moratorium will allow sufficient time to study the impacts of such systems and develop appropriate zoning bylaws that will ensure that the installation of such systems will occur in such a way as to ensure the protection of groundwater and other natural and environmental resources, and the health and welfare of the residents of the Town of Sturbridge. The Town has a significant watershed protection zone and this moratorium would allow time to see if there are fire suppression options that would allow these systems to be safely allowed in this zone. Presently the Town has no zoning bylaw expressly governing the placement and use of these Systems.

During the time of this moratorium the Planning Board will work to develop and enact Bylaws in a manner consistent with sound land use planning goals and objections.

Section 300-21.2 Duration

This moratorium shall be in effect through December 1, 2026 or the date on which the Town adopts amendment to the bylaw concerning Battery Energy Storage Systems, whichever first occurs.

II. Attorney General's Standard of Review of Zoning Bylaws

Our review of Article 63 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”). “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass. 136, 154 (1973).

Article 63, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). “If the reasonableness of a zoning bylaw is even ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.’” Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Article 63’s Temporary Prohibition of BESS Violates G.L. c. 40A, § 3

Although Article 63 does not articulate the specific nature of the moratorium (as discussed further below in Section IV), the new Article XXI prohibits, in some respect, Large Scale Standalone BESS until December 1, 2026. As such, that the by-law prohibits BESS during the moratorium period and therefore results in a temporary prohibition of the use, with no articulated evidence of an important municipal interest, grounded in protecting the public health, safety, or welfare, that is sufficient to outweigh the public need for solar energy systems. See Sunpin, 497 Mass. at 795 (“[A] town must provide reasonable opportunities to build solar energy systems and may not deny a special permit for such project unless doing so is necessary to protected public health, safety, or welfare.”) As explained below, for this reason, the proposed

moratorium conflicts with G.L. c. 40A, § 3 and we disapprove Article 63. See Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775, 781 (2022).²

The Town's justification for the proposed moratorium is to provide the Town with time to amend its zoning by-laws, stating in Section 300-21.2 that "[t]he purpose of this temporary moratorium is to allow sufficient time to engage in a planning process..." and "this moratorium will allow sufficient time to study the impacts of such systems and develop appropriate zoning bylaws..." The Town states that during the moratorium it will consider how to address the effect of BESS on "environmental, fire, health and safety standards" as well as "ensur[ing] the protection of groundwater and other natural and environmental resources, and the health and welfare of the residents..." However, given that BESS are a G.L. c. 40A, § 3 protected use, the need for time to consider how to regulate the use does not constitute a sufficient municipal interest grounded in protecting the public health, safety, or welfare, that is sufficient to justify the moratorium, as explained below.

Solar energy facilities and related structures have been protected under Section 3 for almost 40 years, since 1985 when the Legislature passed a statute codifying "the policy of the commonwealth to encourage the use of solar energy." St. 1985, c. 637, §§ 7, 8; see also id. § 2. Section 3's solar provision grants zoning protections to solar energy systems and the building of structures that facilitate the collection of solar energy as follows:

No zoning...bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

In adopting Section 3, the Legislature determined that certain land uses are so important to the public good that the Legislature has found it necessary "to take away" some measure of municipalities' "power to limit the use of land" within their borders. Attorney General v. Dover, 327 Mass. 601, 604 (1950) (discussing predecessor to G.L. c. 40A, § 3); see Cnty. Comm'rs of Bristol v. Conservation Comm'n of Dartmouth, 380 Mass. 706, 713 (1980) (noting that Zoning Act as a whole, and G.L. c. 40A, § 3, specifically, aim to ensure that zoning "facilitate[s] the provision of public requirements"). To that end, the provisions of Section 3 "strike a balance between preventing local discrimination against" a set of enumerated land uses while "honoring legitimate municipal concerns that typically find expression in local zoning laws." Trustees of Tufts Coll. v. City of Medford, 415 Mass. 753, 757 (1993). Over the years, the Legislature has added to the list of protected uses, employing different language -- and in some cases different methods --to limit municipal discretion to restrict those uses.

In codifying solar energy and related structures as a protected use under Section 3, the Legislature determined that local preferences should not dictate whether solar energy systems and related structures are constructed in sufficient quantity to meet the public need. See Newbury

² Our analysis of Article 63 is substantially influenced by the Supreme Judicial Court's decision in Tracer Lane II, 489 Mass. at 781 (the determination whether a by-law facially violates Section 3's prohibition against unreasonable regulation of solar installations will turn in part on whether the by-law "restricts rather than promotes the legislative goal of promoting solar energy in the Commonwealth").

Junior Coll. v. Brookline, 19 Mass. App. Ct. 197, 205, 207-08 (1985) (discussing educational-use provision of Section 3); see also Petrucci v. Bd. of Appeals, 45 Mass. App. Ct. 818, 822 (1998) (explaining, in context of childcare provision, that Legislature’s “manifest intent” when establishing Section 3 protected use is “to broaden ... opportunities for establishing” that use). Indeed, the fundamental purpose of Section 3 is to “facilitate the provision of public requirements” that may be locally disfavored. Cnty. Comm’rs of Bristol, 380 Mass. at 713.

The Supreme Judicial Court reaffirmed this principle in Tracer Lane II. In ruling that Section 3’s protections required Waltham to allow an access road to be built in a residential district for linkage to a solar project in Lexington, the Court explicitly noted that “large-scale systems, not ancillary to any residential or commercial use, are key to promoting solar energy in the Commonwealth.” Id. at 782 (citing Executive Office of Energy and Environmental Affairs, Massachusetts 2050 Decarbonization Roadmap, at 4, 59 n.43 (Dec. 2020) (“the amount of solar power needed by 2050 exceeds the full technical potential in the Commonwealth for rooftop solar, indicating that substantial deployment of ground-mounted solar is needed under any circumstance in order to achieve [n]et [z]ero [greenhouse gas emissions by 2050]”)). The Court explained that whether a by-law facially violates Section 3’s prohibition against unreasonable regulation of solar systems and related structures will turn in part on whether the by-law promotes rather than restricts this legislative goal. Id. at 781. While municipalities do have some “flexibility” to reasonably limit where certain forms of solar energy may be sited, the validity of any restriction ultimately entails “balanc[ing] the interest that the...bylaw advances” against “the impact on the protected [solar] use.” Id. at 781-82.

By statute, BESS qualify as “solar energy systems” and “structures that facilitate the collection of solar energy” and are protected by G.L. c. 40A, § 3. General Laws Chapter 16A, Section 1, defines “energy storage system” as “a commercially available technology that is capable of absorbing energy, storing it for a period of time and thereafter dispatching the energy.” See also NextSun Energy LLC v. Fernandes, No. 19 MISC 000230 (RBF), 2023 WL 3317259, at *14 (Mass. Land Ct. May 9, 2023), amended, No. 19 MISC 000230 (RBF), 2023 WL 4156740 (Mass. Land Ct. June 23, 2023), judgment entered, No. 19 MISC 000230 (RBF), 2023 WL 4145901 (Mass. Land Ct. June 23, 2023) (finding that battery energy storage system is entitled to Section 3 solar protections); see also Duxbury Energy Storage, LLC. vs. Town of Duxbury Zoning Board of Appeals, No. 23 Misc. 000643, 2025 WL 1743026, *16 (Mass. Land Ct. June 23, 2025) (Reznick, J.), (Court concluded that “applying the Bylaw’s definition of structures and the usual and accepted meanings of facilitate and collection” the proposed stand alone “ESF Project involves the building of structures that facilitate the collection of solar energy” and therefore the BESS project is protected by G.L. c. 40A, § 3 and cannot be prohibited or unreasonably regulated except where necessary to protect the public health, safety or welfare.).

Applying this analysis to Sturbridge’s proposed moratorium, we determine that the moratorium that seeks to prohibit BESS (though the scope of the moratorium is not articulated) violates G.L. c. 40A, § 3. The by-law amendment would prohibit either the submission of a permit application; the construction of; or the use of land for BESS, and therefore the effect of the moratorium is to completely pause this use in the entire Town until December 1, 2026, or whenever the Town adopts a zoning by-law, whichever occurs first (an approximately 7 month long period), without any actual evidence of a public health, safety or welfare concern sufficient

to justify the impact on these protected uses. Sunpin, 497 Mass. at 805 (“[B]ecause the town is ninety-seven percent forested, denying the application if it causes significant tree cutting has the essential effect of creating a blanket prohibition on large-scale ground-mounted solar systems in all but three percent of the town. In Tracer Lane...we likewise concluded that such an ‘outright ban’ violates” G.L. c. 40A, § 3, paragraph nine).

The main justification provided in Article 63 provides that the moratorium is needed because the Town “[p]resently...has no zoning bylaw expressly governing the placement and use of these Systems” and therefore the Town needs time to “develop and enact Bylaws in a manner consistent with sound land use planning goals and objectives.” Section 300-21.1. The Town states that it needs time to consider the effects of BESS on such things as the environment, fire, and health and safety so that the Town can impose standards on the use related to “placement design and construction, operation, monitoring, modification, and removal of such systems that address public safety, minimize the impacts on the scenic, natural and historic resources and [] provide adequate financial assurance for the decommissioning of such installations.” Id. The Town further states that it needs time to develop “appropriate zoning bylaws” that will ensure the “protection of groundwater and other natural and environmental resources, and the health and welfare of the residents” as well as to consider whether there are “fire suppression options that would allow these systems to be safely allowed in” the watershed protection zone. Id. For these reasons, during the moratorium period, the Town provides that it will “work to develop and enact Bylaws in a manner consistent with sound land use planning goals and objectives.” Id.

We appreciate the reasons given in Section 300-21.1 that the Town would like additional time to determine how to best regulate BESS, as well as its contention that its existing zoning does not “expressly govern[] the placement and use of these Systems.” Id. We further recognize that the text of Article 63 asserts general concerns that the Town would like time to consider including impacts related to the environment, fire suppression, and to the Town’s watershed protection zone, to justify the proposed moratorium. However, the record reflects only that the Town is generally concerned with the impacts of BESS, but the Town does not articulate *specific* evidence of an important municipal interest, grounded in protecting the public health, safety, or welfare, necessary to justify the moratorium’s prohibition. See Tracer Lane II Realty, 489 Mass. at 781; see also Sunpin, 497 Mass. at 807 (“This dual analysis will inform whether the denial of the special permit is necessary to protect the public health, safety, or welfare of this particular location as provided by paragraph nine or reflective of a general prohibition or unreasonable regulation of solar energy systems that is precluded by the rest of paragraph nine.”)

Given the strong statutory protections in G.L. c. 40A, § 3, for solar installations and related structures including BESS, and the Tracer Lane II Court’s recognition that “large-scale systems...are key to promoting solar energy in the Commonwealth,” Tracer Lane II, 489 Mass. at 782, it is unlikely that putting a stop (even a temporary one for approximately 7 months) to BESS, while the Town decides how to further regulate their use, would be considered the type of legitimate public health, safety, or welfare concern sufficient to justify the moratorium where specific evidence of those concerns is absent.³

³ The Attorney General has similarly disapproved a temporary moratorium in connection with other G.L. c. 40A, § 3 uses. See decision to the Town of Wareham issued on May 28, 2025 in Case # 11711 disapproving a proposed moratorium on the permitting of G.L. c. 40A, § 3 Protected Use Accessory

Just as the Tracer Lane II court found Waltham’s “outright ban of large-scale solar energy systems in all but one to two percent of [Waltham’s] land area...is impermissible under [G.L. c. 40A, § 3, ¶ 9],” id. at 782, so too is the Town’s proposed complete ban on BESS, in the entire town – even for a potentially limited time – because the record reflects no evidence of public health, safety or welfare concerns sufficient to justify the ban. See also Kearsarge Walpole, LLC v. Lee, No. 21 Misc. 000449, 2022 WL 4938498 at *6 (Mass. Land Ct. Oct. 4, 2022) (Smith, J.) (“[A]bsent a finding of a significant detriment to the interests of public health, safety or welfare, the town cannot prohibit a large-scale ground-mounted solar facility in a Rural Residential zone.”). Further, as the Supreme Judicial Court held in Sunpin, in reviewing an application to build solar energy systems, the town may not deny the project unless doing so is necessary to protect public health, safety, or welfare and “[t]his requires individualized and site-specific reasons for” the denial. Sunpin, 497 Mass. at 795-96.

For this reason, we conclude that Article 63 violates G.L. c. 40A, § 3, and we therefore disapprove it.

IV. Article 63’s Is an Unlawful Moratorium in Conflict with State Law

In general, a town has the authority to “impose reasonable time limitations on development, at least where those restrictions are temporary and adopted to provide controlled development while the municipality engages in comprehensive planning studies.” Sturges, 380 Mass. at 252-253. At least in the context of land uses *not* protected by G.L. c. 40, § 3, and in the appropriate circumstances, a town’s expressed need for time to undertake a planning process can qualify as a legitimate zoning purpose for a temporary moratorium. W.R. Grace, 56 Mass. App. Ct. at 569 (City’s temporary moratorium on building permits in two districts was within City’s authority to zone for public purposes). But the Supreme Judicial Court’s decision on a land use moratorium, Zuckerman, 442 Mass. at 520-21, made clear that a municipality’s authority to adopt a moratorium is limited: “Except when used to give communities breathing room for periods reasonably necessary for the purposes of growth planning generally, or resource problem solving specifically, as determined by the specific circumstances of each case, such [moratorium] zoning ordinances do not serve a permissible public purpose, and are therefore unconstitutional.” Id., at 520-21 (citing Sturges, 380 Mass. at 257).⁴

Dwelling Units. In addition, the Attorney General has previously disapproved proposed moratoriums that would otherwise frustrate a state law. See decisions to the Towns of Ashland issued on May 30, 2023 in Case # 10810 and Millbury issued on November 15, 2023 in Case # 10973 proposing a temporary moratorium on multi-family uses despite both Town’s status as an MBTA community under G.L. c. 40A, § 3A that requires the Town to allow at least one district of reasonable size where multifamily housing is permitted as of right.

⁴ We have approved such temporary moratoriums on a variety of land uses only where the record reflects that the proposed moratorium is for a limited period necessary for a town to conduct a legitimate planning process, as required by Sturges. However, there are no appellate level decisions analyzing whether the Sturges/Zuckerman test is the appropriate one to determine a municipality’s power to adopt a temporary moratorium on solar uses and related structures such as BESS that enjoy the protections of G.L. c. 40A, § 3.

However, in the solar and BESS context, the Tracer Lane II decision further clarifies the record evidence necessary to uphold any prohibitions or restriction on solar uses and BESS uses (including, presumably, a temporary prohibition as proposed here): “In the absence of a reasonable basis grounded in public health, safety, or welfare, such a prohibition [or restriction] is impermissible under [G.L. c. 40A, § 3].” Id. at 782.

The Town Meeting record filed with this Office reflects no reasonable need for the moratorium that is grounded in evidence of *specific* public health, safety, or welfare interests. Instead, the information contained in Article 63 indicates only that the temporary moratorium of this protected use is needed to “allow sufficient time to engage in a planning process to address the effects of the construction of large-scale standalone Battery Energy Storage Systems and uses in the Town...” See Section 300-21.1. While courts in other contexts have upheld temporary moratoriums on non-protected land uses based on the municipality’s need for “study, reflection and decision on a subject matter of [some] complexity[,]” W.R. Grace, 56 Mass. App. Ct. at 569, Tracer Lane II makes clear that any regulation that “restricts rather than promotes the legislative goal of promoting solar energy” must have “a reasonable basis grounded in public health, safety, or welfare.” Tracer Lane II, 489 Mass. at 782. The general stated need to put a hold on new, proposed, or anticipated projects simply to study potential impacts or to consider zoning regulations -- absent any evidence of an actual project impact on health, safety, or welfare prompting the need for study -- does not by itself qualify as “a reasonable basis grounded in public health, safety, or welfare.” Tracer Lane II, 489 Mass. at 782. For this additional reason, we disapprove Article 63.

In addition, as part of our review of Article 63, we have also considered whether the scope of the proposed moratorium complies with state law including whether the moratorium is temporary and limited in its scope. See Zuckerman, 442 Mass. at 518; see also Sturges v. Chilmark, 380 Mass. 246, 259 (1980) (upholding rate of development by-law that articulated a “limited restriction on development.”). Here, we conclude that Article 63’s proposed moratorium is not limited in scope, and therefore, it conflicts with state law.

The proposed moratorium under Article 63 lacks specificity as to its scope stating only that it is a “moratorium.” Because Article 63 does not articulate exactly what is prohibited during the moratorium period, it could lead to potential arbitrary or discretionary enforcement by the Town. In other words, does the moratorium prohibit, for example, the construction and installation of BESS; or the submittal of an application for a permit for a BESS installation; or the use of land or structures for BESS; or something else entirely? Because the scope of the moratorium is not articulated, it allows the Town discretion to determine, potentially on a case-by-case basis, whether certain proposed conduct during the moratorium period is subject to the terms of the moratorium. This may result in arbitrary or discriminatory enforcement of the by-law. Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339, 363-64 (1973) (“Such vagueness would permit untrammelled [administrative] discretion and arbitrary and capricious decisions...”).

For this additional reason, we conclude that the moratorium adopted under Article 63 conflicts with state law and we therefore disapprove it. See Zukerman, 442 Mass. at 520-521 (internal citations omitted) (“Except when used to give communities breathing room for periods reasonably necessary for the purposes of growth planning generally, or resource problem solving

specifically, as determined by the specific circumstances of each case...such zoning ordinances do not serve a permissible public purpose...”).

V. Article 63 Conflicts with the Recent Legislative Changes Regarding Solar Installations and BESS

A. Summary of the Recent Legislative Changes

On November 20, 2024, Governor Healey signed into law Chapter 239 of the Acts of 2024, “An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers,” (the “Act”) codified at G.L. c. 21A, § 30 and G.L. c. 25A, § 21.⁵ Among other provisions, the Act establishes permitting requirements for “small clean energy generation facilities”⁶ and “large clean energy infrastructure facilities”⁷ that took effect in March of 2026.

As explained by the Supreme Judicial Court in Sunpin, 497 Mass. at 807, n. 7, “[t]he 2024 Climate Act directs the Department of Energy Resources (DOER) to, among other things, promulgate standards for siting and permitting of solar energy projects to evaluate the social and environmental impacts of ground-mounted solar installations, which DOER did earlier this year.” The DOER has promulgated Regulations (that became final on February 27, 2026);

⁵ The Act can be found here: <https://malegislature.gov/Laws/SessionLaws/Acts/2024/Chapter239>.

⁶ Section 23 of the Act defines “Small Clean Energy Generation Facility” and “Small Clean Energy Storage Facility” respectively as follows:

Small Clean Energy Generation Facility: “energy generation infrastructure with a nameplate capacity of less than 25 megawatts that is an anaerobic digestion facility, solar facility or wind facility, including any ancillary structure that is an integral part of the operation of the small clean energy generation facility or, following a rulemaking by the department in consultation with the energy facilities siting board in which the facility type is added to the regulatory definition of a small clean energy generation facility, any other type of generation facility that produces no greenhouse gas emissions or other pollutant emissions known to have negative health impacts; provided, however, that the nameplate capacity for solar facilities shall be calculated in direct current.”

Small Clean Energy Storage Facility: “an energy storage system as defined in section 1 of chapter 164 with a rated capacity of less than 100 megawatt hours, including any ancillary structure that is an integral part of the operation of the small clean energy storage facility.”

⁷ Large Clean Energy Infrastructure Facilities are defined in Section 57 of the Act as “a large clean energy generation facility, large clean energy storage facility or large clean transmission and distribution infrastructure facility.” A “Large Clean Energy Generation Facility is defined in relevant part as “energy generation infrastructure with a nameplate capacity of *not less than 25 megawatts* that is an anaerobic digestion facility, solar facility or wind facility, including any ancillary structure that is an integral part of the operation of the large clean energy generation facility...” A “Large clean energy storage facility”, is defined as “an energy storage system as defined under section 1 with a rated capacity of *not less than 100 megawatt hours*, including any ancillary structure that is an integral part of the operation of the large clean energy storage facility. (emphasis added).

Guidelines (that became final on May 22, 2026); and draft model by-laws.⁸ The Act allows the proponent of a small clean energy infrastructure facility to elect to submit a consolidated small clean energy infrastructure facility permit application seeking a single permit consolidating all necessary local permits and approvals. See Section 23 (c) of the Act. Thereafter, the local government will issue a “single, final decision on a consolidated small energy infrastructure facility permit application. See Section 23 (d)(1) of the Act. As part of the Consolidated Local Permit process, DOER’s Regulations incorporate the Executive Office of Energy and Environmental Affairs’ (“EEA”) site suitability guidance, which are designed to allow decisionmakers “to evaluate the social and environmental impacts of,” among other things, ground-mounted solar facilities that generate “less than 25 megawatts of electricity.”⁹ See G.L. c. 25A, § 21(b).

The Act does not require a Town to adopt any new by-laws regarding the consolidated permit application process, but it may, as long as the by-laws are consistent with the Regulations and Guidelines. See 225 CMR 29.04 (1), “Applicability,” (“225 CMR 29.00 applies to the local siting and permitting of Small Clean Energy Infrastructure Facilities by Local Governments upon the election of an Applicant to submit a Consolidated Local Permit Application.”) An applicant may choose whether to proceed under a Consolidated Local Permit or the Town’s local by-laws. See 225 CMR 29.04 (1) (“Nothing in 225 CMR 29.00 shall be construed to disallow an Applicant from seeking local approvals on an individual basis outside of the 225 CMR 29.00 consolidated permitting process.”).¹⁰ The Town should consult with Town Counsel with any

⁸ The promulgated Regulations, Guidelines, and draft model by-laws are available at: <https://www.mass.gov/info-details/clean-energy-siting-permitting-regulations#regulations-guidelines-and-model-by-laws>.

⁹The Regulations, 225 CMR 29.00, “establish standard conditions, criteria, requirements, and procedures for the efficient and appropriate siting and permitting of Small Clean Energy Infrastructure Facilities by Local Governments.” See 225 CMR 29.01, “Purpose.” Among other provisions, the Regulations: (1) define terms used therein [Section 29.02]; provide that they apply “to the local siting and permitting of Small Clean Energy Infrastructure Facilities by Local Governments upon the election of an Applicant to submit a Consolidated Local Permit Application” [Section 29.04]; and (3) establish public health, safety, and environmental standards [Section 29.06]. The Regulations further detail the application of site suitability guidance [Section 29.07]; pre-filing requirements [Section 29.08]; the Consolidated Local Permit application [Section 29.09] and review process [Section 29.10].

¹⁰ As this Office explained in our amicus letter to the Supreme Judicial Court in Sunpin, DOER’s standards (which incorporate EEA’s site suitability guidance) can apply in at least two ways. First, a developer can elect to apply for approval of a solar or BESS facility with the recently created consolidated permit application. 225 CMR 29.04(1). Doing so requires the developer to, among other things, submit a Site Suitability Report as required by the Act. Id. § 29.07(2)(b). Second, a Town may elect to adopt DOER’s standards (including EEA’s site suitability guidance) into their local by-laws for projects where the developer does not elect to proceed under the consolidated permit application process. Doing so would allow the Town to choose to require that an applicant for a special permit to construct a solar or BESS facility submit a Site Suitability Report, if the Town includes such a provision in its local by-laws. See Amicus Letter from Seth Schofield, Senior Appellate Counsel, Office of the Attorney General, to Maura A. Looney, Esq., Clerk for the Supreme Judicial Court (Mar. 31, 2026), https://www.ma-appellatecourts.org/pdf/SJC-13860/SJC-13860_10_Amicus_Commonwealth_Brief.pdf.

questions on the recent changes adopted under the Act.¹¹

B. Article 63 Conflicts with these Changes

Under the Regulations, 225 CMR 29.05, “Concurrency and Transition Periods,” a Town may accept (but is not required to accept) a consolidated local permit application during the time period July 1, 2026 through September 30, 2026; however, beginning on October 1, 2026, a Town *must* accept a consolidated local permit application.

Although the scope of the moratorium is not clearly articulated, it would, in some fashion, prohibit “Large Scale Standalone” BESS until December 1, 2026, or the date on which the Town adopts an amendment to its bylaws concerning BESS, whichever occurs first. Therefore, the moratorium would be in place at least during the time period of October 1, 2026 through December 1, 2026, and could therefore prevent an applicant from filing a consolidated permit application beginning on October 1, 2026 (the deadline for municipalities to start accepting consolidated local permit applications).

Although the Town states as a reason for the moratorium that “[p]resently the Town has no zoning bylaw expressly governing the placement and use of” BESS (Section 300-21.1), as noted above, the Town is not required to adopt any new by-laws under the Act; instead, the Town can undertake a consolidated local permit application utilizing the Regulations and Guidelines. See 225 CMR 29.04 (1), “Applicability,” (“225 CMR 29.00 applies to the local siting and permitting of Small Clean Energy Infrastructure Facilities by Local Governments upon the election of an Applicant to submit a Consolidated Local Permit Application. Nothing in 225 CMR 29.00 shall be construed to disallow an Applicant from seeking local approvals on an individual basis outside of the 225 CMR 29.00 consolidated permitting process...”); see also DOER’s Guideline on Public Health, Safety, Environmental, and Other Standards (“In accordance with 225 CMR 29.00...[DOER]...is issuing the following baseline standards on Public Health, Safety, Environmental, and Other Standards... The Baseline Standards apply throughout the design, construction, operation, maintenance, and decommissioning of a Small Clean Energy Infrastructure Facility...”).

The proposed moratorium would therefore impede an applicant’s right to file a consolidated local permit application beginning on October 1, 2026. For this additional reason, we disapprove Article 63.

With regards to the Town’s stated intent that it plans to develop new zoning by-laws regarding BESS, we suggest that the Town consult with Town Counsel and DOER with any questions regarding the consolidated local permit process under 225 CMR 29.00 as well as any proposed new by-laws regarding BESS. In addition, we refer you to this Office’s amicus submission in Sunpin, which discusses the 2024 Act and DOER’s Regulations. See footnotes # 10 and 11. Lastly, we highlight that DOER is also offering technical assistance to municipalities to assist with the consolidated permit process. See 229 CMR 29.11, “Technical Assistance,”

¹¹ For a more detailed discussion of the significant changes stemming from the Act, please refer to the Attorney General’s amicus letter to the Supreme Judicial Court in Sunpin, *supra*.

(DOER “shall be available to assist Local Governments and Applicants apply 225 CMR 29.00, applicable sections of M.G.L. c. 25A, and Department Guidelines.”). The Town should consult with Town Counsel with any questions.

VI. Conclusion

In the circumstances presented here, we conclude that Article XXI’s proposed moratorium on BESS violates G.L. c. 40A, § 3’s prohibition against unreasonable regulation of solar and related uses such as BESS because the proposed moratorium lacks any specific articulated public health, safety, or welfare justification sufficient to justify the prohibition. See Tracer Lane II, 489 Mass. at 781-82. In addition, we conclude that Article 63 conflicts with state law because it is an unlawful moratorium and is not limited in scope. Lastly, Article XXI conflicts with the recent legislative changes regarding solar installations and BESS.

For the reasons articulated above, we disapprove and delete Article XXI, “Temporary Moratorium Large Scale Standalone Battery Energy Storage Systems,” adopted under Article 63. We encourage the Town to consult with Town Counsel with any questions.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute.

Very truly yours,

ANDREA JOY CAMPBELL
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