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June 8, 2026

Katrin Kaminsky, Town Clerk
Town of Worthington
P.O. Box 247
Worthington, MA 01098

**Re: Worthington Special Town Meeting of February 24, 2026 -- Case # 12184
Warrant Articles # 6, 7, 8, and 9 (Zoning)¹**

Dear Ms. Kaminsky:

Article 6 - Under Article 6, the Town voted to amend its zoning by-laws to add a new Section 8.9, “Temporary Moratorium on Large-Scale Ground-Mounted Solar Photovoltaic Installations and Battery Energy Storage Systems.” Section 8.9.2, “Moratorium,” imposes a temporary moratorium on the “construction or installation of a Large-Scale, Ground-Mounted Solar Photovoltaic Installation (as defined in Section 8.5 of the Zoning Bylaw) [“large solar installations”] or a Battery Energy Storage System [“BESS”] greater than 600 kWh, whether standalone or co-located.” Section 8.9.3, “Term,” provides that the moratorium will be in effect until June 30, 2027 “unless ended earlier by a vote of Town Meeting or extended by a subsequent vote of Town Meeting.”

Solar and related uses such as BESS are Dover amendment protected uses under G.L. c. 40A, § 3. Because the proposed moratorium lacks any articulated public health, safety, or welfare justification sufficient to justify the moratorium (even for a short amount of time), Article 6 violates G.L. c. 40A, § 3’s prohibition against unreasonably regulating or prohibiting solar and related uses.² For this reason, we must disapprove Article 6, as explained in detail below.

This decision describes the by-law; discusses the Attorney General’s standard of review

¹ We will issue our decision regarding Articles 7, 8, and 9 from the February 24, 2026 Worthington Special Town Meeting under separate cover.

² We have previously disapproved moratoriums of solar or BESS uses. See decisions issued to the Towns of: 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).

of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we disapprove Article 6.

Our analysis of Article 6 is substantially influenced by the Supreme Judicial Court's decision in Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775, 781 (2022) (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"). However, we note that our disapproval 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 v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

I. Summary of Article 6

Under Article 6, the Town voted to amend its zoning by-laws to adopt a new Section 8.9, "Temporary Moratorium on Large-Scale Ground-Mounted Solar Photovoltaic Installations and Battery Energy Storage Systems." The proposed new Section 8.9 provides in its entirety as follows:

8.9.1 Purpose

In order to allow adequate time for the Planning Board, with input from other Town boards and the public, to study, hold public forums, and propose permanent zoning amendments regarding the siting, design, construction, operation, and decommissioning of large-scale ground-mounted solar photovoltaic installations and battery energy storage systems (BESS), including but not limited to consideration of public health and safety, water resource protection, fire safety, visual impacts, and the Town's rural and scenic character, a temporary moratorium on the submission and acceptance of applications for special permits, site plan review, or building permits for such facilities is hereby established.

8.9.2 Moratorium

For the effective period of this bylaw, no board, commission, or official of the Town of Worthington shall accept, process, or act upon any application for a special permit, site plan approval, building permit, or any other permit or approval related to the construction or installation of Large-Scale Ground-Mounted Solar Photovoltaic Installation (as defined in Section 8.5 of the Zoning Bylaw) or a Battery Energy Storage System greater than 600 kWh, whether standalone or co-located.

8.9.3 Term

This moratorium shall expire on June 30, 2027, unless ended earlier by a vote of Town Meeting or extended by a subsequent vote of Town Meeting.

Section 8.9.4 Severability

If any portion of this bylaw is declared invalid, the remainder shall continue in full force and effect.

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

Our review of Article 6 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 6, 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 6 Violates G.L. c. 40A, § 3

The new Section 8.9 (adopted under Article 6) prohibits the Town from “accept[ing], process[ing], or act[ing] upon any application...[for] the construction or installation” of a large solar installation or BESS over 600 kWh during the moratorium period. See Section 8.9.2. Therefore, the moratorium results in a prohibition on large solar installations and BESS over 600 kWh, 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. For this reason, the proposed moratorium conflicts with G.L. c. 40A, § 3 and we must disapprove Article 6. See Tracer Lane II Realty, 489 Mass. at 781.

The reason provided for the proposed moratorium is to “allow adequate time for the Planning Board...to study, hold public forums, and propose permanent zoning amendments” related to large solar and BESS. Section 8.9.1. Among the zoning considerations the Town states it needs time to study are “consideration of public health and safety, water resource protection, fire safety, visual impacts, and the Town’s rural and scenic character...” Id. The Town provides no additional information to justify the need for the 16-month moratorium on *all* large solar installations and BESS over 600 kWh everywhere in the Town.

Given that large solar installations and BESS are uses protected under G.L. c. 40A, § 3, a need to pause these uses to give the Town more time to study the uses and then adopt

“permanent zoning amendments,” regulating these uses, 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. 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 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. Cty. 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 164, 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, Land Court Misc Case No. 23 Misc 000643 (June 23, 2025 (Reznick, J.), 2025 WL 1743026, * 16 (2025) (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 Worthington’s proposed moratorium, we determine that the moratorium violates G.L. c. 40A, § 3.³ The bylaw amendments propose to completely prohibit the construction or installation of large solar installations and BESS over 600 kWh in all zoning districts until June 30, 2027 (an approximately 16 month long period), and leaves open the possibility of an even longer moratorium period if “extended by a subsequent vote of Town Meeting,” without any actual evidence of a public health, safety or welfare concern sufficient to justify the impact on these protected uses.

As detailed above, the only justification provided in Article 6 for the moratorium is that the Town needs “adequate time...to study, hold public forums, and propose permanent zoning amendments,” related to these uses.”⁴ See Section 8.9.1 In addition, Section 8.9.1 provides that

³ Section 8.9.2 provides that an “application” includes an application for a “special permit, site plan approval, building permit, or any other permit or approval related to the construction or installation of” large solar installations or BESS over 600 kWh.

⁴ The Town’s current zoning by-laws regulate large scale solar installations. See Section 8.5, “Large-Scale Ground Mounted Solar Photovoltaic Installations (LSGMSPI)” at: <https://worthington-ma.us/wp-content/uploads/2024/08/Worthington-ZBL-5-4-24.pdf>. Section 8.5, adopted in 2017, imposes regulations on LSGMSPI, defined as those with a minimum capacity of 250 KW DC, and allows such use with site plan review in the Town’s single zoning district. See Section 8.5.2 (B); see also Section 3.1, “Establishment of Districts” (“...the entire Town of Worthington is hereby designated as a Residential-Agricultural District, with three overlay districts: Flood Plain District, Westfield River Protection District, and the Water Supply Protection District.”). In addition, Section 8.5.4 (B), “Appurtenant Structures,” regulates “[a]ll appurtenant structures to LSGMSPIs...” and imposes vegetative screening requirements. Lastly, we note that Section 8.4, “Flexible Development,” Section 8.4.6 (J), “Additional Considerations,” promotes solar use in other developments of the Town, providing in Subsection (J)(3), “Renewable

the Town’s consideration of “permanent zoning amendments” will include regulations relating to the “siting, design, construction, operation, and decommissioning” of these uses and that during the moratorium period the Town will consider public health and safety, water resource protection, fire safety, and visual impacts. *Id.* Based on this, Section 8.9.2 imposes a moratorium on all applications related to the “construction or installation” of large solar installations or BESS over 600 kWh until June 30, 2027. Sections 8.9.2 and 8.9.3.

We appreciate the reasons given in Section 8.9.1 that the Town would like additional time to study and discuss these G.L. c. 40A, § 3 protected uses and thereafter “propose permanent zoning amendments.” We further recognize that the text of Section 8.9.1 asserts general concerns related to “consideration of public health and safety, water resource protection, fire safety, visual impacts, and the Town’s rural and scenic character,” to justify the proposed moratorium. However, even the most generous reading of Section 8.9.1 reflects only that the Town is generally concerned with the impacts of these uses and wants to ensure that they have “permanent zoning amendments” in place that address the “siting, design, construction, operation, and decommissioning” of these uses, 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.

Given the strong statutory protections for solar installations and related structures including BESS, in G.L. c. 40A, § 3, 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 16 months) to the construction and installation of large solar installations and BESS over 600 kWh in all the Town’s zoning districts while the Town decides how to regulate these uses, would be sanctioned as a legitimate public health, safety, or welfare concern to justify the moratorium where specific evidence of those concerns is absent.⁵ 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 the construction and installation of large solar installations and BESS over 600 kWh in all zoning districts – even for a limited time – because the record reflects no evidence of public health, safety or welfare concerns sufficient to justify the ban. See also Kearsarge

Energy,” a requirement that a flexible development to employ certain renewable energy techniques to the maximum extent practicable including laying out streets and roads and orienting homes and buildings to maximize solar gain; providing solar access for all buildings; and having homes and buildings use renewable energy sources as feasible.

⁵ 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 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.

Walpole, LLC v. Lee, Land Court Misc. Case No. 21 Misc 000449 (Oct. 4, 2022) (Smith, J.), 2022 WL 4938498 at *6 (“[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 Land Court determined in Summit Farm Solar v. Planning Board for Town of New Braintree, Land Court Misc. Case No. 18 Misc 000367 (Feb. 18, 2022) (Speicher, J.), 2022 WL 522438, “the better, and correct view of the limits of local regulation of solar energy facilities allowed by G.L. c. 40A, § 3, is that such local regulation may not extend to prohibition except under the most extraordinary circumstances.” *Id.* at * 10 (rejecting visual impact of solar array as a legitimate public health, safety, or welfare concern).

For this reason, we conclude that Article 6 violates G.L. c. 40A, § 3, and we therefore disapprove it.

IV. Article 6 Imposes an Unlawful Moratorium on Large Solar Installations and BESS Over 600 kWh in all Zoning Districts in the Town

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 v. Chilmark, 380 Mass. 246, 252-253 (1980). 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 v. Hadley, 442 Mass. 511, 520-21 (2004), 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).⁶

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.

As discussed above in Section III, the Town Meeting record filed with this Office reflects no reasonable need for the moratorium that is grounded in evidence of specific public health,

⁶ 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.

safety, or welfare interests. Instead, the information contained in Article 6 indicates only that the temporary moratorium of these protected uses is needed to give the Town time to “study, hold public forums and propose permanent zoning amendment.” See Section 8.9.1. 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 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 these reasons, we disapprove Article 6.

V. Article 6 Also Conflicts with the Recent Legislative Changes Regarding Solar Installations and Battery Energy Storage Systems

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”).⁷ Among other provisions, the Act establishes permitting requirements for “small clean energy generation facilities”⁸ and “large clean energy infrastructure facilities”⁹ that took

⁷ The Act can be found here: <https://malegislature.gov/Laws/SessionLaws/Acts/2024/Chapter239>

⁸ 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.”

⁹ Large Clean Energy Infrastructure Facilities are defined in Section 57 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).

effect in March of 2026.

As part of this new legislation, DOER has drafted Regulations (that became final on February 27, 2026); Guidance (that is still pending in draft form); and model by-laws.¹⁰ 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. Because the moratorium proposed under Article 6 would prohibit the Town from accepting, processing or acting upon any application for a permit application for the construction of large solar installations until June 30, 2027, the moratorium further conflicts with the Act that will required the Town to accept a consolidated local permit application beginning on October 1, 2026. For this additional reason, we disapprove Article 6.

Although we disapprove Article 6, we offer the following additional information to assist the Town with its stated intention to amend its zoning by-laws to “propose permanent zoning amendments” regarding large solar installations and BESS over 600 kWh. As the Town develops further zoning amendments, we encourage the Town to consult with Town Counsel and the DOER regarding the provisions and requirements of the Act to ensure that any future by-law amendments are consistent with the Act, including the permitting requirements for “small clean energy generation facilities” and “large clean energy infrastructure facilities.” Notably, Section 23 (b) of the Act requires DOER to establish standards, requirements and procedures governing the siting and permitting of small clean energy infrastructure facilities by local governments, including, among other provisions, (1) uniform public health, safety, environmental and other standards; (2) zoning criteria that local governments shall require for the issuance of permits for small clean energy infrastructure facilities; and (3) standards for applying site suitability guidance to evaluate the social and environmental impacts of proposed small clean facilities. Importantly, Section 23 (b) of the Act provides that “[l]ocal governments acting in accordance with the standards established...pursuant to this subsection shall be considered to have acted consistent with the limitations on solar facility and small clean energy storage facility zoning under section 3 of chapter 40A.” The Act allows a proponent of a small clean energy infrastructure facility 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.

Lastly, the DOER is offering technical assistance to municipalities. See 229 CMR 29.11, “Technical Assistance,” (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 may wish to consult with Town Counsel and the DOER with any questions about these

¹⁰ The final Regulations and draft Guidelines are available at: <https://www.mass.gov/info-details/clean-energy-siting-permitting-regulations>; and the model by-laws are available at: <https://www.mass.gov/doc/doer-draft-solar-model-bylaw/download> (solar) and <https://www.mass.gov/doc/doer-draft-battery-energy-storage-systems-bess-model-bylaw/download> (BESS).

legislative and regulatory changes regarding solar installations and BESS should it undertake any amendments to its zoning by-laws regarding these uses.

VII. Conclusion

In the circumstances presented here, we conclude that Section 8.9.2's proposed moratorium on "accept[ing], process[ing], or act[ing] upon any application for a special permit, site plan approval, building permit, or any other permit or approval related to the construction and installation of" large solar installations and BESS greater than 600 kWh (whether standalone or co-located) in all zoning districts in the Town, violates G.L. c. 40A, § 3's prohibition against unreasonable regulation of solar and related uses 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.

For this reason and the additional reasons articulated above, we disapprove and delete the Section 8.9, "Temporary Moratorium on Large-Scale Ground-Mounted Solar Photovoltaic Installations and Battery Energy Storage Systems," adopted under Article 6. 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,

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