



January 20, 2011

MEMORANDUM TO MUNICIPAL CLIENTS

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**BOARD OF SELECTMEN**

TO: BOARD OF SELECTMEN/MAYOR/TOWN AND CITY COUNCIL  
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY  
PLANNING BOARD  
ZONING BOARD OF APPEALS

Re: Siting Solar and Wind Energy Facilities Under the State Zoning Act  
and the Green Communities Act

With the growing interest in renewable and alternative energy, many communities are considering applications for solar and/or wind energy projects. Additionally, under the state's Green Communities Act, G.L. c.25A, §10, one criterion for designation as a Green Community is a local zoning by-law or ordinance that allows "as-of-right siting" for renewable or alternative energy generating, research and development, and manufacturing facilities. This Memorandum addresses the applicability of the State Zoning Act, G.L. c.40A, to solar and wind energy facilities and the Green Communities Act's by-right zoning requirement for eligibility as a Green Community.

The Zoning Act, G.L., c.40A, §1A, defines "Solar energy system" as:

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 generating, or water heating.

General Laws, c.40A, §3, provides, regarding solar energy:

No zoning ordinance or by-law 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.

This statutory language is different from other provisions in c.40A, §3, such as those regulating agricultural or religious and certain educational uses (see below), in that the statute does not flatly state that a special permit may not be required for the solar energy use. The statute also does not expressly state that solar facilities must be permitted anywhere in a community.

The Zoning Act is silent on wind energy. Thus, a special permit requirement could be applied to a wind energy project, subject to the Green Communities eligibility factors. No case law yet interprets the c.40A provisions regarding solar energy or zoning issues associated with wind energy.