

Memorandum to Municipal Clients
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You also should be aware of the proposed Wind Energy Siting Reform Act. The Act was debated in the Legislature in 2010 and is likely to be considered again this year. If passed, the Act could significantly change how wind energy facilities are regulated under zoning. It is thus important to be aware of possible changes in this rapidly developing area.

Green Communities Act

Designation as a "Green Community" under the Green Communities Act, G.L. c. 25A, § 10, involves meeting several minimum requirements, including so-called "Criterion 1," which requires the municipality in its zoning by-law or ordinance to allow as-of-right siting for at least one of the following: renewable or alternative energy generating facilities, renewable or alternative energy research and development ("R&D") facilities, or renewable or alternative energy manufacturing facilities. As-of-right siting requires that the allowed use not be unreasonably regulated or require a special permit. However, the by-law or ordinance can impose reasonable environmental and public health and safety standards, and provide for site plan review, so long as the review is not the equivalent of a special permit.

It is important to note that eligible facilities do not have to be allowed by-right throughout the municipality to meet Criterion 1. According to the most recent information from the DOER, Green Communities Division, website, the "key questions" for qualification are: whether the development is permitted as-of-right in at least one zoning district; whether "construction of the qualifying R&D or manufacturing facility is allowed in the zoning district"; and "whether additional development is feasible in the district." In evaluating if additional development is feasible, DOER will look at: whether "land is available for the construction of a facility or facilities of 50,000 square feet or larger in the aggregate; or [whether] there is enough available vacant space in existing buildings to provide for a facility or facilities of 50,000 square feet or larger in the aggregate, with a minimum of 5,000 square feet per unit; or [whether] the combination of available land for new construction and existing available vacant space in existing buildings can accommodate a facility or facilities of 50,000 square feet or larger in the aggregate"(emphasis added).

The Green Communities Act thus offers a number of options for a municipality to meet the statutory requirements and many communities likely will be able to satisfy Criterion 1 without major changes in zoning requirements. Finally, as the "green energy" area of law develops, the expansion of solar and wind energy generating and R&D facilities presents both economic and environmental advantages to municipalities.

Very truly yours,


Patricia A. Cantor