

New Mass. AG continues hard line against local bylaws that hinder battery energy storage systems

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On March 1, 2023, Massachusetts Attorney General Andrea Joy Campbell's Municipal Law Department [issued a decision](#) (pdf) disapproving two sections of the Town of Wendell's amended zoning bylaw, one of which prohibited stand-alone battery energy storage facilities in all districts. As previewed in our [blog post last month](#), based on a footnote in the former AG's disapproval of the Town of Carver's zoning moratoria on battery storage systems, Attorney General Campbell has taken the position that [M.G.L. c. 40A, § 3](#) (colloquially known as the Dover Amendment) protects battery storage systems as "structures that facilitate the collection of solar energy"—even as stand-alone systems.

In the case of Wendell, the proposed bylaw amendment, which allowed battery storage in conjunction with solar installations but prohibited commercial or industrial-scale battery storage, was not, in the Attorney General's view, "grounded in articulated evidence of public health, safety or welfare concerns sufficient to justify the prohibition." There was no evidence in the record of any particular purpose or rationale for such a prohibition.

The Attorney General also struck down as preempted by the statute a bylaw provision prohibiting pesticide and herbicide application at solar facilities, but left in place some remaining provisions that limit larger solar uses to certain districts and impose special permit requirements. However, this latter approval came with the admonition that if these remaining requirements "are used to deny solar projects, or otherwise *applied* in ways that make it impracticable or uneconomical to build solar energy systems, *such application would run a serious risk of violating G.L. c. 40A, § 3.*" (emphasis added). This is a clear warning to municipalities that, even if solar energy regulations on their face pass muster under the *Tracer Lane II* standard, they may still violate the Dover Amendment if applied in a manner that effectively prohibits solar development. (A similar warning appeared in the AG's [March 23, 2023 decision](#) (pdf) approving the Town of New Marlborough's imposition of design, setback, and screening requirements, as well as special permit requirements, for solar facilities in the town's residential districts).

Finally, the Attorney General left in place Wendell's provision requiring large-scale solar developers to protect Indigenous Cultural Resources on development sites.

National Law Review, Volume XIII, Number 108

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