STATE OF MICHIGAN
IN THE COURT OF APPEALS

In the matter, on the Commission's own motion, to open a docket to implement the provisions of Public Act 233 of 2023

PSC Case No. U-21547

_____/

ALMER CHARTER TOWNSHIP, et al.,

Court of Appeals No. 373259

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee.

_____/

BRIEF OF PROPOSED *AMICI CURIAE* CLARA AND LEONARD OSTRANDER, TERESA HIMES, AND KEVIN HEATH

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BASIS OF JURISDICTION[1]

This Court has jurisdiction over this appeal under MCL 462.26.

STATEMENT OF QUESTION INVOLVED

Have Appellants proven that they have a compelling need for a preliminary injunction when they have not satisfied any of the mandatory four elements of the requirements for a preliminary injunction?

Appellants' Answer: Yes.

Appellee's Answer: No.

Amici's Answer: No.

INTERESTS OF *AMICI CURIAE*

Amici Curiae are private landowners and farmers who wish to exercise their property rights to host solar and wind energy facilities on their properties.

Clara and Leonard Ostrander

The Ostranders live in Milan Township in Monroe County. Their family owns two centennial farmsteads, including the home they live in, which has been in their family for over 154 years.

Clara's parents were full-time farmers. Her father farmed about 500 acres in the Township, raising corn, soybeans, wheat, and oats. Being raised on a family farm, she learned hard work and dedication—values she has continued to hold for her entire life. She attended Michigan State University, where she earned a Bachelor of Science degree in Animal Sciences. Her family continues to raise and show livestock to this day.

[1] Counsel for proposed *Amici Curiae* authored this brief in whole. No party or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

In her opinion, farming is one of the most difficult careers. Over the years, she has attended many auctions where farmers have been forced to sell their equipment because of bankruptcy. Being a farmer is a gamble. One year can bring a tremendous crop, and the next year can bring staggering losses. In recent years, the cost of fertilizer, fuel, and seed have only made the economics of farming more difficult.

For her family, the challenging economics of farming hit home in the 1990s when her mother fell severely ill. In order to pay her mother's rising healthcare bills, her father was forced to sell part of the farm. Her mother's hospital bills were over half a million dollars, even with health insurance. Today, Clara and Leonard are facing medical issues of their own. Their greatest fear is that they, too, will be forced to sell off land to pay for medical expenses, and they are keenly aware of the real possibility that they could lose the rest of the farm—the family's heritage—instead of being able to pass it on to the next generation.

Fortunately, Clara and Leonard found an opportunity that would help keep the farm in the family: they could earn lease payments by hosting a solar facility, which would use their land to harvest the sunlight and generate clean power. At first, they were hesitant, so they conducted significant research. They reached out to experts at Michigan State University and the University of Michigan. Clara thought about her late parents and grandparents and sought guidance from them in her prayers. After deep contemplation, she is confident that her father would be happy that she and Leonard found a way to hold on to the rest of their land by signing up to host solar on the farm. If he were still alive, she believes that he would be smiling and saying, "This is what we need!"

When the Ostranders signed their lease, the Township had recently passed an ordinance that allowed solar facilities on agricultural land like theirs, with common sense regulations. That

ordinance gave them the confidence to move forward as part of the project. Unfortunately, as the project developer began doing outreach in the community, a few loud voices began to spread falsehoods and misinformation about the project. They criticized landowners and families who had served the Township for years. They filed retaliatory recall petitions against local officials who did not support their agenda, and, when the Township supervisor tragically passed away, they pressured his replacement to amend the ordinance to ban solar facilities on the Ostranders land—effectively putting the project on hold.

People in the Township were spun into a frenzy by lies about the project. These lies were being disseminated by people who, for the most part, simply did not want to see solar panels on the Ostranders property or any other properties in the Township; these people wanted to see only plants and crops on those properties. The reality, however, is that the individuals who have tried to block solar in the Township do not own the Ostranders' land, nor do they own any rights to their views of the Ostranders' land. This is land that the Ostranders have tended, preserved, and paid taxes on for generations. Local opponents who prefer to see only plants on the Ostranders' land should not get to decide what the Ostranders grow or harvest—including harvesting the sun for electricity.

When the Ostranders found that their appeals to reason were falling on deaf ears at the Township level, they realized that their only option was to start reaching out to members of the Michigan House of Representatives and Senate for help. The Ostranders and a few other landowners in the Township started sending emails. They emailed every representative and senator—Democratic or Republican—to explain how excessive local restrictions were impeding their property rights. They continued to push forward and speak with anyone who was willing to listen and help. They became acquainted with the Michigan Sierra Club and attended rallies at

the Capital fighting for landowner rights. All of this led the Ostranders to see how big of an issue they were dealing with—not only a property rights issue, but also an environmental issue.

As the Ostranders continued to attend meetings and reach out to legislators, House Bill 5120 was introduced. The bill would provide meaningful opportunities for local governments to participate in the siting process, while stopping them from enacting *de facto* bans on wind and solar projects. Importantly, it would allow farmers—like the Ostranders—to lease land and diversify their incomes, while guaranteeing that the host communities would also receive significant economic benefits.

For the Ostranders, this was a critical turning point in their hopes of being able to use their land for solar. They quickly saw the need to fight for this bill to pass. Clara testified before both the House and Senate Committees, and, once the legislation passed, she spoke at the signing of the bill with Governor Gretchen Whitmer. Through all of this, Clara has learned more about how the government works than she ever dreamed she would know.

Ultimately, the Ostranders believe that farmers like themselves should be allowed to diversify their incomes by leasing land for solar and wind, which can be essential to keeping that land in the family.

Teresa Himes

Teresa Himes lives in Napoleon Township in Jackson County, and she owns family land in Milan Township. She believes that there is no one-size-fits-all answer to farming. She wants to have a solar facility on her property because of her deep desire to keep the land that her parents worked so hard for and made so many sacrifices for, and also to help the planet for future generations.

As described above, Milan Township recently had a commonsense ordinance in place that allowed solar facilities on farmland. However, after several residents spread misinformation and caused a frenzy, a new ordinance was adopted that stripped landowners like Teresa of their rights to lease out farmland for solar projects. To punish local officials who had supported upholding the property rights of landowners like Teresa, opponents initiated recalls. They also resorted to harassment at public meetings and other venues. One official who faced harassment was Teresa's late brother, Philip (Phil) Heath, who was the Township Supervisor. Despite recusing himself from all decisions related to the solar ordinance, Phil was made a target. Phil died unexpectedly in October 2022 at only 67 years old, a death that Teresa attributes in large part to the stress of the harassment that he faced in connection with the solar ordinance.

Teresa believes that if a farmer is financially struggling, she or he should not have to go bankrupt; rather, the farmer should be allowed to participate in a solar or wind project that makes productive use of the land while providing a guaranteed income for 25 or 30 years. Teresa believes that many of the most aggressive opponents of solar development in the Township are people who moved to the countryside from the cities and suburbs and never needed to rely on income from farming. She believes that they do not understand that farming is a business and that farmers need to be allowed to provide for their families, including by making new and productive uses of their land. Teresa further believes that when someone moves into a new home in an agricultural area, they should not be able to dictate what the existing farmers and landowners are allowed to do with their land.

At a personal level, it is important to Teresa that her children, grandchildren, and future descendants be able to continue to own a part of the family farm.

Kevin Heath

Kevin Heath, the younger brother of Teresa Himes and the late Phil Heath, lives in Milan Township in Monroe County. He signed up with the solar company because the lease income gave him the opportunity to maintain ownership of his share of the family's farmland.

In 2015, Kevin was forced to put up his share of the family farm as security when refinancing a home loan and a farm loan.

In 2016, Kevin's siblings, Teresa and Phil, both said that they wanted to sell some land—land that had been in the family for many years. Kevin wanted to purchase that land from his siblings to keep it in the family. However, the lender who handled Kevin's refinancing would not even consider lending him any more money. He eventually found another lender who was willing to finance the purchase, but the terms of the loan put him in a situation where he needed non-farm income just to pay for the land. He was forced to sell off some farmland just to help him make loan payments.

While all of Kevin's 500 acres is leased to a solar company, the company can only install panels on 150 to 200 acres of the property. This gives him the opportunity to pay off the farmland and keep it in the family for future generations. In addition, because of the fact that the land will remain suitable for farming at the end of the solar lease, Kevin believes that the solar project is helping to preserve farmland from residential sprawl.

INTRODUCTION

Appellants seek a preliminary injunction against a routine order of the Public Service Commission ("PSC") that set forth application instructions and procedures under MCL 460.1221 to MCL 460.1232, as added by 2023 PA 233 ("PA 233"). However, Appellants cannot satisfy any of the four elements required by the Michigan Supreme Court to obtain a preliminary

injunction. They have no likelihood of prevailing on the merits, will not be irreparably harmed if denied an injunction, and the harm to others and to the public interest vastly outweighs any harm to them.

The Motion for Preliminary Injunction should be denied.

STATEMENT OF FACTS

A. Background To The Enactment Of PA 233.

Appellants provide no context about why PA 233 was adopted. The context is that for the previous ten years dozens of municipalities across the State had been implementing exclusionary zoning measures that made it impossible to build renewable energy projects in many parts of the State. These restrictions, like banning utility-scale solar on agricultural land in predominately agricultural counties, were *de facto* bans on development. For example, as of December 31, 2023, at least seven townships in Michigan had adopted ordinances that prohibited utility-scale solar development from agricultural zoning districts. Eisenson et al., *Opposition to Renewable Energy Facilities in the United States: June 2024 Edition*, Sabin Center for Climate Change Law (June 2024). In one—LaSalle Township (Monroe County)—a local ordinance adopted in 2022 restricted utility-scale solar to the township's industrial districts. *See* LaSalle Township Zoning Ordinance, § 5.59(c)(2) (version adopted September 28, 2022) (as discussed *infra*, this ordinance was subsequently amended on November 29, 2024, and replaced with a restrictive overlay district). At the time, LaSalle Township's industrial districts comprised only 89 acres out of approximately 17,000 acres in the township, and almost half of those 89 acres was already developed. The Township's agricultural zoning districts, by comparison, comprised approximately 14,000 acres. Thus, the provision restricting solar to industrial districts was a *de*

facto ban that deprived landowners of the opportunity to make a reasonable and productive use of their land.

These unreasonably burdensome local restrictions also made it very difficult for the State to meet its renewable energy targets.

For context, Michigan's 2023 Clean Energy Legislation requires that any electric provider in the State must achieve a portfolio of 50% renewable energy by 2030 and 60% by 2035. *See* MCL 460.1028(1)(b)–(c), as added by 2023 PA 235. As of 2023, the State only received approximately 11% of its electricity from renewable sources. *See* U.S. Energy Information Administration, *Michigan: Profile Overview*, https://www.eia.gov/state/?sid=MI (accessed December 1, 2024). In addition, as described above, before the enactment of PA 233, the property rights and economic security of landowners who sought to participate in wind and solar projects persistently in jeopardy. In particular, without guardrails on local restrictions, local opponents and the local governments they dominated effectively held veto power over wind and solar projects.

B. Developments Since The Enactment Of PA 233.

In their Statement of Facts, Appellants paint a very misleading picture of what was happening at the township level between the passage of PA 233 in November 2023 and the issuance of the PSC's application instructions and procedures for implementing PA 233 in October 2024.

Appellants argue that "many Appellants adopted CREOs [Compatible Renewable Energy Ordinances] based on the statutory definition of that term in PA 233," and that "many Appellants have spent most of 2024 preparing, reviewing, and adopting CREOs," including by hosting public hearings that lasted "several hours." Appellants' Br, pp 17–18. They want the Court to believe

that they had been doing their best to faithfully comply with the new law and that they have been investing significant resources into those efforts. They also want the Court to believe that the PSC then pulled the rug out from underneath them by issuing a brand-new definition of CREO that was inconsistent with the statutory definition.

The reality, however, is that Appellants were never trying to comply with the text or intent of the law. They were developing new ways to evade PA 233 and continue to block solar and wind energy projects.

For example, the statute provides that a CREO cannot include requirements that are "more restrictive than the provisions included in section 226(8)." MCL 460.1221(f), as added by 2023 PA 233. Many of the provisions that Appellants were trying to incorporate into their new ordinances were patently more restrictive than the provisions included in Section 226(8). *See* MCL 460.1226(8), as added by 2023 PA 233. For example, zoning restrictions recommended by the Planning Commission in Deerfield Township, Lenawee County, included a prohibition on siting renewables more than 1,250 feet away from existing transmission lines, as well as a prohibition on siting solar on farmland enrolled in the PA 116 program. *See* Deerfield Township Draft Ordinance Nos. 20-24-1, 20-24-2, & 20-24-3 (June 27, 2024) (Ex 1). These measures, which effectively prohibit renewable energy development in broad swaths of land, are far more restrictive in nature than many of the restrictions set out in Section 226(8), such as the requirement that solar panels and their components not exceed 25 feet in height, *see* MCL 460.1226(8)(a)(iii), as added by 2023 PA 233, or the requirement that a solar energy facility not generate more than 55 decibels of noise, *see* MCL 460.1226(8)(a)(iv), as added by 2023 PA 233.

ARGUMENT

APPELLANTS FAIL TO MEET ANY—LET ALONE ALL—OF THE STANDARDS FOR A PRELIMINARY INJUNCTION

I. THE HIGH STANDARDS FOR PRELIMINARY INJUNCTIVE RELIEF.

Appellants inaccurately set forth the high standards for preliminary injunctive relief, *see* Appellants' Br, pp 19–20, and do not meet any—let alone all—of those standards as required by law. We here correctly describe those standards.

A. A Preliminary Injunction Is Extraordinary Relief Issued Only Upon A Showing Of A Compelling Need.

Preliminary injunctive relief is a form of extraordinary relief, *Mich Coalition of State Employee Unions v Mich Civil Serv Comm*, 465 Mich 212, 219; 634 NW2d 692 (2001), issued only where there is a *compelling* need, *Mich Consol Gas Co v Mich Pub Serv Comm*, 389 Mich 624, 641; 209 NW2d 210 (1973). These high standards mean that preliminary injunctions are rarely granted.

B. Appellants Have The Burden Of Proving That All Four Elements Of The Four-Element Test Are Met In Order To Obtain A Preliminary Injunction.

In determining whether to issue a preliminary injunction, a court must apply the four-element test under Michigan law for granting injunctive relief, assessing whether: (1) "the moving party showed that it is likely to prevail on the merits"; (2) "the moving party made the required demonstration of irreparable harm"; (3) "the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party"; and (4) "there will be harm to the public interest if an injunction is issued." *Detroit Fire Fighters Ass'n IAFF Local 344 v Detroit*, 482 Mich 18, 34; 753 NW2d 579 (2008). The moving parties, here the Appellants, have the burden of proving all of these elements. *See id*; *see also, e.g.*, *People v Taylor*, 510 Mich 112, 131; 987

NW2d 132 (2022) (citing *Detroit Fire Fighters Ass'n* for the proposition that the moving party has the burden of proof); MCR 3.310(A)(4).

These mandatory elements are not mere "guidance" for a court, as Appellants incorrectly assert. *See* Appellants' Br, p 20. The Michigan Supreme Court has repeatedly held that a party seeking a preliminary injunction must *prove all four elements*. *See, e.g.*, *Detroit Fire Fighters Ass'n*, 482 Mich at 34 (the moving party "bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction"); *Stone Age Props v 800 Golf Drive LLC*, 511 Mich 1046; 992 NW2d 285 (2023) (remanding to the Court of Appeals for it to consider all of the four elements, citing *Detroit Fire Fighters Ass'n*).

C. Appellants Must Prove That They Are Likely To Prevail On The Merits.

Desperate to avoid having to prove that they are likely to prevail on the merits, Appellants claim that they merely have to show that there is a "real and substantial question between the parties," citing, as their only support, an outdated 73-year old Michigan Supreme Court case, *Niedzialek v Journeymen Barbers, Hairdressers & Cosmetologists' Int'l Union*, 331 Mich 296; 49 NW2d 273 (1951). *See* Appellants' Br, p 20.

However, *Niedzialek* is not the current law of Michigan on the application of the four-element test—*Detroit Fire Fighters Ass'n* is, and *Detroit Fire Fighters Ass'n* requires that Appellants prove that they are likely to prevail on the merits. *See Detroit Fire Fighters Ass'n*, 482 Mich at 34. The Michigan Supreme Court has repeatedly reaffirmed that holding of *Detroit Fire Fighters Ass'n*. *See, e.g.*, *Miller v Genesee Co Bd of Comm'rs*, 511 Mich 866, 866; 983 NW2d 914 (2023) ("[t]o be entitled to preliminary injunctive relief, a party must show, among other things 'that it is likely to prevail on the merits,'" citing *Detroit Fire Fighters Ass'n*); *Stone Age Props*, 511 Mich at 1046 (citing *Detroit Fire Fighters Ass'n*).

D. Appellants Must Make A Particularized Showing That They Are Subject To An Imminent, Concrete, And Irreparable Harm Or Injury, Not One That Is Speculative, Conjectural, Or Could Occur In The Future.

Appellants fail to correctly describe the "irreparable injury" element. *See* Appellants' Br, pp 19, 30.

As to the required element of irreparable harm, "a particularized showing of irreparable harm . . . is . . . an indispensable requirement to obtain a preliminary injunction." *Mich Coalition of State Employee Unions*, 465 Mich at 225–226. There must be "concrete irreparable harm or injury." *Id* at 225. The danger of irreparable injury must be "imminent" and "[t]he mere apprehension of future injury or damage cannot be the basis for injunctive relief," *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8–9; 753 NW2d 595 (2008). Moreover, "it is well settled that an injunction will not lie . . . where the threatened injury is speculative or conjectural." *Id* at 9 n 15 (quotation marks and citation omitted). Absent a particularized showing of concrete irreparable harm, "the extraordinary nature of a preliminary injunction would be trivialized." *Id* at 11. Finally, the required particularized, concrete, and non-economic irreparable harm must be to each party before the court. *See Mich Coalition of State Employee Unions*, 465 Mich at 225.

II. APPELLANTS MEET NONE OF THE HIGH STANDARDS FOR A PRELIMINARY INJUNCTION.

A. Appellants Cannot Prove Any Of The Elements Of The Four-Element Test, Let Alone All Of Them.

1. Appellants Cannot Demonstrate That They Are Likely To Prevail On The Merits Of Any Of Their Claims.

a. The Administrative Procedures Act Claim.

Appellants assert that the issuance of the Order violated the APA because it is "a rule by another name," not promulgated as an APA rule. Am Compl, ¶¶ 4.a, 15–16; Br, pp 20–22.

This claim is wrong for at least two reasons.

First, the text of PA 233 expressly allows the PSC to create "application filing requirements . . . by commission rule or order." MCL 460.1224(1). Thus, the PSC need not follow the APA rulemaking procedures in issuing the "Application Filing Instructions and Procedures." Contrary to Appellants' argument, an order of this type need not arise in a contested case, *see* Appellants' Br, p 21, because MCL 460.1224(1) does not require that the order arise out of a contested case, or it would have so stated. Moreover, the PSC frequently issues orders on instructions, procedures, forms, and the like on its own motion without a contested case, as it did here. *See, e.g.*, Case No. U-18238 (2024) (revising rate application filing forms and instructions); Case No. U-18238 (2023) (revising rate application filing forms and instructions); Case No. U-18461 (2017) (approving instructions and filing requirements for Integrated Resource Plans).

Appellants' APA argument fails for a second reason. The APA specifically excepts from its requirements:

> A form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory.

MCL 24.207(h); *see also, e.g.*, *O'Halloran v Secretary of State*, ___ Mich ___, ___; ___ NW2d ___ (2024) (Docket Nos. 166424 & 166425); slip op at 22 (applying MCL 24.207(h)'s exceptions to forms issued by the Secretary of State). The "Application Filing Instructions and Procedures" are exempt from the APA under MCL 24.207(h).

b. The PA 233 Claims.

Appellants argue that the definitions of "Compatible Renewable Energy Ordinance" ("CREO"), "Affected Local Unit" ("ALU"), and "Hybrid Facility" in the Order exceed the PSC's authority and/or are unreasonable. Am Compl, ¶¶ 17–38; Appellants' Br, pp 22–30. All of these

claims fail and do not remotely meet the requirement that Appellants are likely to prevail on any of them.

The Definition Of "Compatible Renewable Energy Ordinance" ("CREO")

In the Order, the PSC adopted a definition of a CREO. The PSC interpreted MCL 460.1221(f)'s language that a CREO can only have "requirements . . . which are no more restrictive than the provisions included in section 226(8)" to mean that a CREO "may only contain [the] . . . requirements expressly outlined in Section 226(8)." PSC Order, p 18. Appellants argue that that definition exceeds the PSC's authority and is unlawful and unreasonable because nothing in PA 233 "prohibits local units [of government] from imposing additional reasonable regulations on energy facilities." Am Compl, ¶¶ 21–24.

This argument fails because the definition is both lawful and reasonable. In adopting that definition, the PSC was adhering to several recognized canons of statutory interpretation.

First, and most importantly, the PSC reasonably found that "[t]he plain language" of the statute "demonstrates that a CREO may only contain those requirements expressly outlined in Section 226(8) of Act 233." PSC Order, p 17. As the PSC explained:

> Had the Legislature intended to permit local units to include additional requirements beyond those identified in Section 226(8) of Act 233, it would not have restricted the Commission's authority to site energy facilities, in part, on the basis that a local unit denied an application for reasons beyond "the requirements of section 226(8)."

Id. In particular, the statute provides that an electric provider may submit an application to the PSC if "[t]he application complies with the requirements of section 226(8), but an affected local unit denies the application." *See* MCL 460.1223(3)(c)(ii), as added by 2023 PA 233. If the PSC can assume jurisdiction over any application that is rejected for reasons beyond the requirements of section 226(8), then it logically follows that a CREO—which a local government must adopt

to retain jurisdiction and prevent the PSC from stepping in—also cannot include restrictions beyond those requirements.

Second, the PSC appropriately followed the "whole text" canon of statutory interpretation required by this Court's decision in *TruGreen Ltd Partnership v Dep't of Treasury*, 338 Mich App 248; 979 NW2d 739 (2021), *lv den* 511 Mich 945; 989 NW2d 234 (2023):

> Rather than plucking words from the statute, we focus on the whole textual landscape. We endeavor to harmonize *all* the words, thereby cultivating a coherent reading that promotes the Legislature's goals.
>
> "[T]he meaning of statutory language, plain or not, depends on context." *King v St Vincent's Hosp*, 502 US 215, 221; 112 S Ct 570; 116 L Ed 2d 578 (1991). "Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used." *Id.* (cleaned up). Our Supreme Court stressed in *TOMRA*, 505 Mich at 349, that "'[c]ontext is a primary determinant of meaning . . . .'" (Citations omitted; alteration in original.)
>
> This focus on the big picture echoes a primary canon of statutory construction: the individual, discrete words of a statute must be read holistically "with a view to their place in the overall statutory scheme." *Davis v Mich Dep't of Treasury*, 489 US 803, 809; 109 S Ct 1500; 103 L Ed 2d 891 (1989); see also Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 167 ("[T]he whole-text canon . . . calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts."); *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 367-368; 917 NW2d 603 (2018) ("However, we do not read statutory language in isolation and must construe its meaning in light of the context of its use."); *TOMRA*, 505 Mich at 351 ("This interpretation reflects a holistic reading of the statutory text and gives each provision its appropriate meaning and function.").

Id at 257–258. The application of this canon is evident in the Order where the PSC carefully considered several related statutory phrases in interpreting MCL 460.1221(f) and adopting its definition of CREO. *See* PSC Order, pp 17–18. As *TruGreen* requires, that definition accomplishes the legislative goal of preempting local regulation of energy facilities unless local ordinance requirements "do not exceed" PA 233's requirements:

> Generally speaking, the MPSC certification process preempts local regulation of those facilities, although a local government with an ordinance whose requirements do not exceed the bill's certification standards can act as a permitting authority in some circumstances.

House Legislative Analysis, HB 5120 (February 5, 2024), p 1.

Third, the PSC's CREO definition also appropriately gives PA 233 the liberal construction required of a remedial statute. There is no doubt that PA 233 fits the definition of a remedial statute. Remedial statutes or amendments are those that are "designed to correct an existing oversight in the law, [that] redress an existing grievance, [that] introduce regulations conducive to the public good, or [that are] intended to reform or extend existing rights." *Nelson v Assoc Fin Servs Co of Ind, Inc*, 253 Mich App 580, 590; 659 NW2d 635 (2002), *lv den* 468 Mich 896; 661 NW2d 238 (2003). Remedial statutes or amendments also include those that

> abridge superfluities of former laws, remedying defects therein, or mischiefs thereof implying an intention to reform or extend existing rights, and having for their purpose the promotion of justice and the advancement of public welfare and of important and beneficial public objects, such as the protection of the health, morals, and safety of society, or of the public generally.

Spencer v Clark Twp, 142 Mich App 63, 68; 368 NW2d 897 (1985) (*per curiam*), *quoting Rookledge v Garwood*, 340 Mich 444, 453; 65 NW2d 785 (1954), *quoting* 50 Am Jur, Statutes, § 15, pp 33–34.

The Michigan Supreme Court has held that remedial statutes such as PA 233 must be liberally construed:

> Of such statutes [remedial], as distinguished from penal statutes, more especially is it said that they are to be construed liberally, to carry out the purpose of the enactment, suppress the mischief and advance the remedy contemplated by the Legislature; *i.e.*, and this is all that liberal construction consists in—they are to be construed "giving the words . . . the largest, the fullest, and most extensive meaning of which they are susceptible."
>
> Remedial statutes are liberally construed to suppress the evil and advance the remedy. . . .

> What is called a liberal construction is ordinarily one which makes the statutory rule or principle apply to more things or in more situations than would be the case under a strict construction.

Birznieks v Cooper, 405 Mich 319, 331 n 12; 275 NW2d 221 (1979), *quoting* Enlich, Interpretation of Statutes, § 107, p 142, *then quoting* 3 Sutherland, Statutory Construction, § 60.01, p 29.

Finally, the definition also comports with the statutory construction canon that statutes be interpreted to avoid their evasion. *See, e.g.*, *People v McIntosh*, 23 Mich App 412, 417–418; 178 NW2d 809 (1970).

Appellants are plainly intent on evasion of the strict requirements of PA 233 so that they can continue to block the construction of energy facilities. For example, as recently as June 27, 2024, the Planning Commission in Deerfield Township, Lenawee County, voted to recommend adopting new restrictions on renewable energy development that would (i) limit utility-scale wind and solar projects to within 1,250 feet of one existing transmission line; and (ii) prohibit utility-scale solar projects from any properties enrolled in the PA 116 program. *See* Deerfield Township Draft Ordinance Nos. 20-24-1, 20-24-2, & 20-24-3 (June 27, 2024) (Ex 1). Both of these restrictions could place a significant amount of land off-limits to development; the prohibition on the use of land enrolled in the PA 116 farmland and open space preservation program is also inconsistent with a state law that explicitly allows PA 116 land to be used for solar development. *See* MCL 324.36104e, as added by 2023 PA 230. Likewise, on November 29, 2024, the LaSalle Township Board of Trustees adopted a new ordinance that replaced the Township's September 2022 ban on siting utility-scale solar projects in agricultural zoning districts, discussed *supra*, with a restrictive overlay district that limits utility-scale solar

development to the area between the Detroit Line of the Norfolk Southern Railway and Interstate 75. *See* LaSalle Township Zoning Ordinance, § 5.59(d)(8).

The PSC's CREO definition will prevent these evasions of PA 233's promotion of energy facility siting.

The CREO definition is also reasonable. Under the statute governing this appeal, Appellants must "show by clear and satisfactory evidence that the order . . . complained of is . . . unreasonable." MCL 462.26(8). "Unreasonable" has been defined as a PSC order that is "arbitrary, capricious, an abuse of discretion, or not supported by the record." *Mich Exch Carriers Ass'n v Mich Pub Serv Comm*, 210 Mich App 681, 692; 534 NW2d 234 (1995) (*per curiam*). The CREO definition is amply supported by the record, *see* PSC Order, pp 12–18, and because it comports with several canons of statutory construction, it is not arbitrary, capricious, or an abuse of discretion.

For all of these reasons, Appellants cannot demonstrate that they are likely to prevail on their claims that the CREO definition is unlawful or unreasonable.

The Definition Of "Affected Local Unit" ("ALU")

The Legislature defined an ALU as "a unit of local government in which all or part of a proposed energy facility will be located." MCL 460.1221(a), as added by 2023 PA 233. The Order clarifies that ALUs are those local units of government "exercising zoning authority" where the proposed energy facility is to be located. PSC Order, p 10. Appellants claim that this definition exceeds the PSC's jurisdiction, rendering it unlawful as well as unreasonable. Am Compl, ¶¶ 28–31.

Appellants' objections fail and they cannot demonstrate they are likely to prevail for the same reasons they cannot succeed in their CREO definition challenge.

In developing its ALU definition, the PSC was again applying the "whole text" canon of statutory interpretation. In its Order, the PSC explained how the added language would help to harmonize the ALU definition with other PA 233 provisions and interrelated laws. PSC Order, pp 6–10. The PSC explained, for example, that the additional language was necessary to make clear that, consistent with the Michigan Zoning Enabling Act, the "zoning jurisdiction of a county does not include areas subject to a township ordinance." *Id* at 6. In effect, the clarification simply reflects the fact that it is "impossible for a county to have an applicable CREO if a township has enacted a CREO." *Id* at 6–7.

The PSC was also plainly giving PA 233, a remedial statute, the required liberal construction to achieve its purposes and creating a ALU definition that helps prevent evasion of PA 233. *See supra* at 15–16. Moreover, the ALU definition is reasonable because it is supported by the record, *see* PSC Order, pp 6–10, and is not arbitrary, capricious, or an abuse of discretion since several canons of statutory construction sustain it. *See supra* at 17–18.

For all of these reasons, Appellants cannot demonstrate that they are likely to prevail on their claim that the ALU definition is unlawful or unreasonable.

The Definition Of "Hybrid Facility"

In the Order, the PSC adopted a definition of "hybrid facility" subject to PA 233. PSC Order, pp 5–6. Appellants claim that this definition illegally exceeds the PSC's jurisdiction. Am Compl, ¶¶ 36–38. Appellants cannot demonstrate that they are likely to prevail on the merits of this claim.

This definition simply recognizes that the statutory definitions of "solar energy facility" and "wind energy facility" *already include* "energy storage facilities." *See* MCL 460.1221(w), as added by 2023 PA 233 (definition of solar energy facility); MCL 460.1221(x), as added by

2023 PA 233 (definition of wind energy facility). Even Appellants acknowledge this. *See* Am Compl, ¶ 34. Thus, this is nothing more than creating a new label for wind and solar energy facilities that also include energy storage, which are already subject to the PSC's jurisdiction at the same size thresholds under the statutory definitions set out in as PA 233. This is not at all an illegal expansion of the PSC's jurisdiction because it plainly falls within the express statutory provisions of MCL 460.1221(w) and (x).

2. Appellants Cannot Demonstrate That They Will Suffer Irreparable Harm Absent A Preliminary Injunction.

Not only do Appellants fail to demonstrate that they are likely to prevail on the merits, but they also cannot prove that they will suffer irreparable harm if denied a preliminary injunction. Their argument consists of speculation and conjecture, nothing concrete or imminent as to each of them.

First, there is nothing but speculation and conjecture in the Amended Complaint and Brief. Appellants cannot point to a single developer who has initiated the PA 233 process. The only example Appellants give is Fremont Township, where they say that a developer "*could* start the PA 233 process." *See* Appellants' Br, p 31 (emphasis added). That is neither concrete nor imminent, but purely conjectural and speculative. They claim that harm might eventually materialize "*if* a developer applies to the PSC," *id* at 31–32 (emphasis added), but they can point to no actual application. Similarly, there is no multiple ALU project before the PSC, *see id* at 32, so all of the speculation about harm is just that—speculation. All they offer is conjecture about the future. That is not sufficient to prove concrete and imminent irreparable harm. *See Mich Coalition of State Employee Unions*, 465 Mich at 225; *Pontiac Fire Fighters Union*, 482 Mich at 8–9 & n 15.

Second, Appellants' theory of harm appears to be based almost entirely on the alleged "usurpation of their rights—granted by the Legislature—to retain local control over the siting of alternative energy facilities." *See* Appellants' Br, p 30. However, it is hornbook law that the local governments' right to local control is subject to legislative restriction. *See, e.g.*, Const 1963, art 7, § 22. That is precisely what the Legislature has done in PA 233—it has restricted local control over certain energy facilities, and the PSC has a duty to carry out that legislative mandate. Doing so does not harm Appellants in any legally cognizable way, and certainly not irreparably.

Finally, the law is clear that there must be concrete, imminent irreparable harm *to each party before the Court* in order to obtain a preliminary injunction. *See, e.g.*, *Mich Coalition of State Employee Unions*, 465 Mich at 225. All Appellants have offered is speculation as to one of them—Fremont Township, *see* Appellants' Br, p 31—and hearsay about some unnamed developers who have approached some unnamed Appellants, *see id* at 30. That is woefully short of the *proving by evidence*—not lawyers' arguments in a brief—that there will be *irreparable harm to each Appellant* if a preliminary injunction is denied.

Finally, Appellants will have ample opportunity in the future to protect themselves from any alleged harm in contested case proceedings brought before the PSC concerning individual applications. They have suffered no harm now, and certainly no irreparable harm.

3. The Balance Of Harm Clearly Weighs Against Appellants.

Appellants also fail the third element of the required four-element standard for a preliminary injunction, the balance of harms, on which they spend less than a perfunctory page in their brief. *See* Appellants' Br, pp 33–34. As demonstrated *supra*, Appellants cannot prove that they are harmed, let alone irreparably, by the denial of preliminary injunctive relief. But there will be significant harm to others if that relief is granted.

For example, Appellants ignore the substantial harm to *Amici* private landowners and thousands of others like them who want to exercise their property and contract rights to have energy facilities on their land. Appellants want to deny them the ability to exercise those rights.

As described above, *Amici* Ostranders own two centennial farms in Monroe County that have been in their family for 154 years. Farming is very challenging, and the Ostranders' livelihood is dependent on many factors that are outside of their control, including: the weather; the cost of fertilizer, fuel, and seeds; and the price they can get for their crops. The Ostranders are concerned that they may be forced to sell off their farm to pay off medical bills, especially if they are prevented from participating in a solar energy project that would provide them with a consistent income throughout the life of the project. However, their local government, like other Appellants, changed the zoning ordinance to block solar development. As a result, they became supporters of the legislation enacted as PA 233, which will protect their rights as farmers and landowners to use their land in the best of their judgment, including by hosting a solar energy facility. PA 233 and the PSC process at issue in this case will enable that facility to proceed, but the injunction sought by Appellants will stop it, economically harming the Ostranders and thousands like them.

Siblings Teresa Himes and Kevin Heath have similar stories. Like the Ostranders, Kevin chose to host a solar energy facility to stay afloat financially—both to pay everyday expenses and keep the farm in the family. After refinancing residential loans and farm loans and being forced to sell off some land, Kevin decided to lease his farmland to a solar company. Not only would the lease help to keep the farm in the family, but it would preserve the land for future use as farmland, as opposed to other forms of development. Likewise, Kevin's sister Teresa has a deep desire to keep the farmland that her parents cultivated and made great sacrifices for. She

wants her children and grandchildren not only to be able to keep the farm, but to further grow it using new measures and techniques, including renewable energy.

Appellants also myopically ignore the many other harms a preliminary injunction will cause. For example, they falsely claim that the PSC will not be harmed by an injunction. *See* Appellants' Br, pp 33–34. They mischaracterize the PSC's "primary interest" as the "enforcement of political renewable energy goals." *See id* at 34. Renewable energy goals are not political—they are state policy enshrined in law that the PSC is tasked to enforce. The PSC will be harmed by an injunction that prevents it from carrying out its statutory duty.

Thus, while there is no legally cognizable harm to Appellants if the injunction is denied, there is the significant harm to the State's renewable energy goals, the authority of the PSC, and the rights of private landowners, such as *Amici*, if an injunction is granted.

The balance of harm weighs heavily against Appellants.

4. The Public Interest Will Not Be Served By A Preliminary Injunction.

Appellants' cursory public interest arguments merely regurgitate erroneous arguments they make elsewhere in their brief. They are as meritless here as they were when previously asserted.

First, if the injunction is granted and the PSC cannot process applications under PA 233, the State will struggle to meet its ambitious renewable energy goals, as local governments continue to obstruct and adopt *de facto* bans on renewable energy facilities. Appellants argue that the public interest in "clean, renewable energy sources" will not be harmed because, even if the injunction is issued, it still will be theoretically possible to build some unspecified amount of renewables in some part of the State. *See* Appellants' Br, p 35. This is completely disconnected from the reality of how much renewable energy development is needed for electric providers to

achieve 50% renewable energy by 2030 and 60% by 2035. *See* MCL 460.1028(1)(b)–(c), as added by 2023 PA 235. For context, Michigan obtained only 11% of its net electricity from renewables in 2023. *See* U.S. Energy Information Administration, *Michigan: Profile Overview*, https://www.eia.gov/state/?sid=MI (accessed December 1, 2024). Absent the PSC siting process to review projects proposed in townships and counties that have adopted unlawfully restrictive ordinances, Michigan will not achieve its renewable energy goals.

Second, as demonstrated *supra*, the PSC has *not* exceeded its authority. Moreover, it is in the public interest to sustain its authority, not to undercut it based on meritless legal arguments.

Third, repeating the erroneous shibboleth of local control does not advance the public interest. Appellants have only such local control as the Legislature allows, and that control has been legally circumscribed by PA 233 and its enforcement by the PSC here. Notably, Appellants do not challenge the validity of PA 233 itself.

Finally, it is in the public interest to enforce PA 233, sustain the PSC's authority, and prevent harm to thousands of private landowners, such as *Amici*, who seek to exercise their property rights to host solar and wind energy facilities.

CONCLUSION AND RELIEF SOUGHT

For the reasons stated, *Amici Curiae* urge the Court to deny the Motion for Preliminary Injunction.

Respectfully submitted,

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Dated: December 2, 2024

Certificate of Compliance

I certify that this brief complies with the word volume limitation set forth in MCR 7.212(B)(1) and with the format requirements of MCR 7.212(B)(5). I am relying on the word count of the word-processing system used to produce this document. The word count is 7,484.

Respectfully submitted,

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Proof of Service

The undersigned certifies that on December 2, 2024, the foregoing instrument(s) electronically filed the foregoing papers with the Clerk of the Court using the Electronic Filing System, which will send notification of such filing to all attorneys of record.

/s/ Rowan Conybeare
Rowan Conybeare

EXHIBIT 1

Special Planning Commission Meeting and Public Hearing

Deerfield Township Lenawee County

Agenda for June 27, 2024 7:00 PM

1. Call to order
2. Pledge of Allegiance
3. Roll Call
4. Public comment – non agenda items - 3 minutes max
5. Open Public Hearing re add new section 7.27 to the Township Zoning ordinance – battery storage system. Public comment on this item – 3 minutes max
6. Move to close Public Hearing-roll call vote
7. Open Public Hearing re add subparagraph (3) to 7.23 (k) to the Township Zoning ordinance – wind energy systems. Public comment on this item – 3 minutes max
8. Move to Close Public Hearing-roll call vote
9. Open Public Hearing re add subsection (4) to 7.26 of the Township Zoning ordinance – solar energy system. Public comment on this item – 3 minutes max
10. Move to close Public Hearing-roll call vote
11. Consideration of CREO items / recommendations
12. Other business
13. Next regular meeting July 2, 2024 7 pm
14. Adjournment

DEERFIELD TOWNSHIP

ORDINANCE NO. 20-24-1

AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO REGULATE UTILITY-SCALE BATTERY ENERGY STORAGE SYSTEMS

Deerfield Township ordains:

Section 1. Add New Section 7.27 of the Zoning Ordinance

The Zoning Ordinance to amended to add new 7.27, which reads as follows in its entirety:

Section 7.27 Utility-Scale Battery Energy Storage Facilities

1. Definitions

a. *Battery management system*: An electronic regulator that manages a Utility-Scale Battery Energy Storage System by monitoring individual battery module voltages and temperatures, container temperature and humidity, off-gassing of combustible gas, fire, ground fault and DC surge, and door access and capable of shutting down the system before operating outside safe parameters.

b. *Utility-scale battery energy storage facilities*: One or more devices, assembled together, capable of storing energy in order to supply electrical energy, including battery cells used for absorbing, storing, and discharging electrical energy in a Utility-Scale Battery Energy Storage System ("BESS") with a battery management system ("BMS").

c. *Utility-scale battery energy storage system*: A physical container providing secondary containment to battery cells that is equipped with cooling, ventilation, fire suppression, and a battery management system.

2. General Provisions.

All Utility-Scale Battery Energy Storage Systems are subject to the following requirements:

a. All Utility-Scale Battery Energy Storage Systems must conform to the provisions of this Ordinance and all county, state, and federal regulations and safety requirements, including applicable building codes, applicable industry standards, and NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems."

b. The Township may enforce any remedy or enforcement, including but not limited to the removal of any Utility-Scale Battery Energy Storage System pursuant to the Zoning Ordinance or as otherwise authorized by law if the Utility-Scale Battery Energy Storage System does not comply with this Ordinance.

c. Utility-Scale Battery Energy Storage Systems are permitted in the Township as a special use in ~~_____~~ the Northeast quadrant of Section DE0-225

and no closer than 700 feet from the centerline of Carroll Road nor closer than 175 feet from the centerline of Pieh Hwy.

3. Application Requirements.

The applicant for a Utility-Scale Battery Energy Storage System must provide the Township with all of the following:

a. Application fee in an amount set by resolution of the Township Board.

b. A list of all parcel numbers that will be used by the Utility-Scale Battery Energy Storage System; documentation establishing ownership of each parcel; and any lease agreements, easements, or purchase agreements for the subject parcels.

c. An operations agreement setting forth the operations parameters, the name and contact information of the operator, the applicant's inspection protocol, emergency procedures, and general safety documentation.

d. Current photographs of the subject property.

e. A site plan that includes all proposed structures and the location of all equipment, as well as all setbacks, the location of property lines, signage, fences, greenbelts and screening, drain tiles, easements, floodplains, bodies of water, proposed access routes, and road right of ways. The site plan must be drawn to scale and must indicate how the Utility-Scale Battery Energy Storage System will be connected to the power grid.

f. A copy of the applicant's power purchase agreement or other written agreement with an electric utility showing approval of an interconnection with the proposed Utility-Scale Battery Energy Storage System.

g. A written plan for maintaining the subject property, including a plan for maintaining and inspecting drain tiles and addressing stormwater management, which is subject to the Township's review and approval.

h. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the Utility-Scale Battery Energy Storage System, including evidence of proposed commitments with property owners to ensure proper final reclamation, repairs to roads, and other steps necessary to fully remove the Utility-Scale Battery Energy Storage System and restore the subject parcels, which is subject to the Township's review and approval.

i. Financial security that meets the requirements of this Section, which is subject to the Township's review and approval.

j. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the Utility-Scale Battery Energy Storage System, which is subject to the Township's review and approval.

k. A plan for managing any hazardous waste, which is subject to the Township's review and approval.

l. A fire protection plan, which identifies the fire risks associated with the Utility-Scale Battery Energy Storage System; describes the fire suppression system that will be implemented; describes what measures will be used to reduce the risk of fires re-igniting (i.e., implementing a "fire watch"); identifies the water sources that will be available for the local fire department to protect adjacent properties; identifies a system for continuous monitoring, early detection sensors, and appropriate venting; and explains all other measures that will be implemented to prevent, detect, control, and suppress fires and explosions.

m. A transportation plan for construction and operation phases, including any applicable agreements with the Sanilac County Road Commission and Michigan Department of Transportation, which is subject to the Township's review and approval.

n. An attestation that the applicant will indemnify and hold the Township harmless from any costs or liability arising from the approval, installation, construction, maintenance, use, repair, or removal of the Utility-Scale Battery Energy Storage System, which is subject to the Township's review and approval.

o. Proof of environmental compliance, including compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act; (MCL 324.3101 et. seq.; Part 91, Soil Erosion and Sedimentation Control (MCL 324.9101 et. seq.) and any corresponding County ordinances; Part 301, Inland Lakes and Streams, (MCL 324.30101 et. seq.); Part 303, Wetlands (MCL 324.30301 et. seq.); Part 365, Endangered Species Protection (MCL324.36501 et. seq.); and any other applicable laws and rules in force at the time the application is considered by the Township.

p. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative.

4. System and Location Requirements.

The site development requirements shall meet or exceed all of the requirements in the Industrial district and all of the following:

a. *Lighting.* Lighting of the Utility-Scale Battery Energy Storage System is limited to the minimum light necessary for safe operation. Illumination from any lighting must not extend beyond the perimeter of the lot(s) used for the Utility-Scale Battery Energy Storage System. The Utility-Scale Battery Energy Storage System must not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads.

b. *Security Fencing.* Security fencing must be installed around all electrical equipment related to the Utility-Scale Battery Energy Storage System. Appropriate warning sings must be posted at safe intervals at the entrance and around the perimeter of the Utility-Scale Battery Energy Storage System.

c. *Noise.* The noise generated by a Commercial Utility-Scale Battery Energy Storage System must not exceed 45 dBA Lmax, as measured at the property line of any adjacent parcel.

d. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Utility-Scale Battery Energy Storage System to any building or other structure must be located underground at a depth that complies with current National Electrical Code standards, except for power switchyards or the area within a substation.

e. *Drain Tile Inspections.* The Utility-Scale Battery Energy Storage System must be maintained in working condition at all times while in operation. The applicant or operator must inspect all drain tile at least once every three years by means of robotic camera, with the first inspection occurring before the Utility-Scale Battery Energy Storage System is in operation. The applicant or operator must submit proof of the inspection to the Township. The owner or operator must repair any damage or failure of the drain tile within sixty (60) days after discovery and submit proof of the repair to the Township. The Township is entitled, but not required, to have a representative present at each inspection or to conduct an independent inspection.

f. *Fire Protection.*

i. Before any construction of the Utility-Scale Battery Energy Storage System begins, the Township's fire department (or fire department with which the Township contracts for fire service) will review the fire protection plan submitted with the application. The fire chief will determine whether the fire protection plan adequately protects the Township's residents and property and whether there is sufficient water supply to comply with the fire protection plan and to respond to fire or explosion incidents. If the fire chief determines that the plan is adequate, then the fire chief will notify the Township Supervisor of that determination. If the fire chief determines that the plan is inadequate, then the fire chief may propose modifications to the plan, which the applicant or operator of the Utility-Scale Battery Energy Storage System must implement. The fire chief's decision may be appealed to the Township Board, and the Township Board will hear the appeal at an open meeting. The Township Board may affirm, reverse, or modify the fire chief's determination. The Township Board's decision is final, subject to any appellate rights available under applicable law.

ii. The applicant or operator may amend the fire protection plan from time-to-time in light of changing technology or other factors. Any proposed amendment must be submitted to the fire department for review and approval under subsection (a).

iii. The Utility-Scale Battery Energy Storage System must comply with the fire protection plan as approved by the fire chief (or as approved by the Township Board in the event of an appeal).

g. *Insurance.* The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount of at least $5 million per occurrence.

h. *Permits.* All required county, state, and federal permits must be obtained before the Utility-Scale Battery Energy Storage System begins operating. A building permit is required for construction of a Utility-Scale Battery Energy Storage System, regardless of whether the applicant or operator is otherwise exempt under state law.

i. *Decommissioning.* If a Utility-Scale Battery Energy Storage System is abandoned or otherwise nonoperational for a period of one year, the property owner or the operator must notify the Township and must remove the system within six (6) months after the date of abandonment. Removal requires receipt of a demolition permit from the Building Official and full restoration of the site to the satisfaction of the Zoning Administrator. The site must be filled and covered with top soil and restored to a state compatible with the surrounding vegetation. The requirements of this subsection also apply to a Utility-Scale Battery Energy Storage System that is never fully completed or operational if construction has been halted for a period of one (1) year.

j. *Financial Security.* To ensure proper decommissioning of a Commercial Utility-Scale Battery Energy Storage System upon abandonment, the applicant must post financial security in the form of a security bond, escrow payment, or irrevocable letter of credit in an amount equal to 125% of the total estimated cost of decommissioning, code enforcement, and reclamation, which cost estimate must be approved by the Township. The operator and the Township will review the amount of the financial security every two (2) years to ensure that the amount remains adequate. This financial security must be posted within fifteen (15) business days after approval of the special use application.

k. *Extraordinary Events.* If the Utility-Scale Battery Energy Storage System experiences a failure, fire, leakage of hazardous materials, personal injury, or other extraordinary or catastrophic event, the applicant or operator must notify the Township within 24 hours.

l. *Annual Report.* The applicant or operator must submit a report on or before January 1 of each year that includes all of the following:

i. Current proof of insurance;

ii. Verification of financial security; and

iii. A summary of all complaints, complaint resolutions, and extraordinary events.

m. *Inspections.* The Township may inspect a Utility-Scale Battery Energy Storage System at any time by providing 24 hours advance notice to the applicant or operator.

n. *Transferability.* A special use permit for a Utility-Scale Battery Energy Storage System is transferable to a new owner. The new owner must register its name and business address with the Township and must comply with this Ordinance and all approvals and conditions issued by the Township.

o. *Remedies.* If an applicant or operator fails to comply with this Ordinance, the Township, may pursue any remedy or enforcement, including but not limited to the removal of any Utility-Scale Battery Energy Storage System pursuant to the Zoning Ordinance or as otherwise authorized by law. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

5. Utility-Scale Battery Energy Storage Systems under PA 233

On or after November 29, 2024, once PA 233 of 2023 is in effect, the following provisions apply to Utility-Scale Battery Energy Storage Systems with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours of more. To the extent these provisions conflict with the provisions in subsections 1-4 above, these provisions control as to such Utility-Scale Battery Energy Storage Systems. This subsection does not apply if PA 233 of 2023 is repealed, enjoined, or otherwise not in effect, and does not apply to Battery Energy Storage Systems with a nameplate capacity of less than 50 megawatts. All provisions in subsections 1-4 above that do not conflict with this subsection remain in full force and effect.

a. *Setbacks.* Utility-Scale Battery Energy Storage Systems must comply with the following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

Setback Description	**Setback Distance**
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

b. *Installation.* The Utility-Scale Battery Energy Storage System must comply with the version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems" in effect on the effective date of the amendatory act that added this section or any applicable successor standard.

c. *Noise.* The Utility-Scale Battery Energy Storage System must not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of

the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

d. *Lighting.* The Utility-Scale Battery Energy Storage System must implement dark sky-friendly lighting solutions.

e. *Environmental Regulations.* The Utility-Scale Battery Energy Storage System must comply with applicable state or federal environmental regulations.

f. *Host community agreement.* The applicant shall enter into a host community agreement with the Township. The host community agreement shall require that, upon commencement of any operation, the Utility-Scale Battery Energy Storage System owner must pay the Township $2,000.00 per megawatt of nameplate capacity. The payment shall be used as determined by the Township for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.

Section 3. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 4. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

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DEERFIELD TOWNSHIP

ORDINANCE NO. 20-24-2

AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO REGULATE WIND ENERGY SYSTEMS IN ACCORDANCE WITH PA 233 OF 2023

The Township of Deerfield ordains:

Section 1. Purpose

The Township adopts this Ordinance to render certain wind energy zoning regulations compatible with Public Act 233 of 2023 ("PA 233"), while retaining local control over matters of regulation that are not governed by PA 233, and to promote the public health, safety, and welfare of Township residents. This Ordinance also modifies the areas in the Township where wind energy systems are permitted.

Section 2. Additional of subparagraph (3) to Section 7.23(k)

Section 7.23(k) of the Township Zoning Ordinance is amended to add new subparagraph (3), entitled "Wind Energy Systems under PA 233," which reads as follows in its entirety:

3. Wind Energy Systems under PA 233.

On or after November 29, 2024, once PA 233 of 2023 is in effect, then the following provisions apply to Wind Energy Systems with a nameplate capacity of 100 megawatts or more. To the extent these provisions conflict with the provisions in subsections 7.23(k)(1)-(2) above, these provisions control as to such Wind Energy Systems. This subsection does not apply if PA 233 of 2023 is repealed, enjoined, or otherwise not in effect, and does not apply to Wind Energy Systems with a nameplate capacity of less than 100 megawatts. All provisions in subsections 7.23(k)(1)-(2) above that do not conflict with this subsection remain in full force and effect.

a. *Setbacks.* Wind Energy Systems must comply with the following minimum setback requirements, with setback distances measured from the center of the base of the wind tower:

Setback Description	Setback Distance
Occupied community buildings and dwellings on nonparticipating properties	2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Residences and other structures on participating properties	1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Nonparticipating property lines	1.1 times the maximum blade tip height
Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way

Overhead communication and electric transmission, not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height to the center line of the easement containing the overhead line

b. *Shadow Flicker.* Each wind tower must be sited such that any occupied community building or nonparticipating residence will not experience more than 30 hours per year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling.

c. *Height.* Each wind tower blade tip must not exceed the height allowed under the Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR part 77.

d. *Noise.* The Wind Energy Conversion System must not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

e. *Lighting.* The Wind Energy Conversion System must be equipped with a functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, is implemented. The Township may grant a temporary exemption from the requirements of this subparagraph if installation of appropriate light-mitigating technology is not feasible. A request for a temporary exemption must be in writing and state all of the following:

a. The purpose of the exemption.

b. The proposed length of the exemption.

c. A description of the light-mitigating technologies submitted to the Federal Aviation Administration.

d. The technical or economic reason a light-mitigating technology is not feasible.

e. Any other relevant information requested by the Township.

f. *Radar Interference.* The Wind Energy Conversion System must meet any standards concerning radar interference, lighting (subject to subparagraph (v)), or other relevant issues as determined by the Township.

g. *Environmental Regulations.* The Wind Energy Conversion System must comply with applicable state or federal environmental regulations.

h. *Host community agreement.* The applicant shall enter into a host community agreement with the Township. The host community agreement shall require that, upon commencement of any operation, the Wind Energy Conversion System owner must pay the Township $2,000.00 per megawatt of nameplate capacity. The payment shall be used as determined by the Township for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.

Section 3. Amendment of Section 7.23(3)(k) (Introductory Paragraph)

The introductory paragraph of Subsection (3)(k) of Section 7.23 of the Zoning Ordinance is amended to read as follows (not including its subsections), with deleted text shown in strikethrough and new text indicated with boldfaced font:

> In addition to the information required by Section 7.23.3.c, site plans submitted for any Wind Energy Generation Facility or Utility Scale WES may be permitted within the~~-~~ area within 1,250 feet² from the centerline of the transmission line that transects Deerfield Township Sections DE0-222, 223, 224, 225 as of the date of adoption of this ordinance~~, AA – Agricultural District~~ as a Conditional Use pursuant to Section 7.21 and this subsection and shall include the following information:

Section 4. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 5. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

DEERFIELD TOWNSHIP

ORDINANCE NO. 20-24-3.

AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO REGULATE SOLAR ENERGY SYSTEMS IN ACCORDANCE WITH PA 233 OF 2023

The Township of Deerfield ordains:

Section 1. Purpose

The Township adopts this Ordinance to render certain solar energy zoning regulations compatible with Public Act 233 of 2023 ("PA 233"), while retaining local control over matters of regulation that are not governed by PA 233, and to promote the public health, safety, and welfare of Township residents. This Ordinance also modifies the areas in the Township where solar energy systems are permitted.

Section 2. Amendment of Section 7.26 to Add Subsection (4)

Section 7.26 of the Township Zoning Ordinance is amended to add new subsection (4), entitled "Large Solar Energy Systems under PA 233," which reads as follows in its entirety:

4. Large Solar Energy Systems under PA 233.

On or after November 29, 2024, once PA 233 of 2023 is in effect, the following provisions apply to Large Solar Energy Systems with a nameplate capacity of 50 megawatts or more. To the extent these provisions conflict with the provisions in subsections 1-3 above (regulating Solar Energy Facilities), the provisions below control as to such Large Solar Energy Systems. All provisions in subsections 1-3 above that do not conflict with this subsection remain in full force and effect. This subsection does not apply if PA 233 of 2023 is repealed, enjoined, or otherwise not in effect, and does not apply to Large Solar Energy Systems with a nameplate capacity of less than 50 megawatts.

a. *Setbacks.* Large Solar Energy Systems must comply with the following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

Setback Description	**Setback Distance**
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

b. *Fencing.* Fencing for the Large Solar Energy System must comply with the latest version of the National Electric Code as November 29, 2024, or as subsequently amended.

c. *Height.* Solar panel components must not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.

d. *Noise.* The Large Solar Energy System must not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

e. *Lighting.* The Large Solar Energy System must implement dark sky-friendly lighting solutions.

f. *Environmental Regulations.* The Large Solar Energy System must comply with applicable state or federal environmental regulations.

g. *Host community agreement.* The applicant shall enter into a host community agreement with the Township. The host community agreement shall require that, upon commencement of any operation, the Large Solar Energy System owner must pay the Township $2,000.00 per megawatt of nameplate capacity. The payment shall be used as determined by the Township for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.

Section 3. Amendment of Section 7.26(1)(a)

Subsection (1)(a) of Section 7.26 of the Zoning Ordinance, entitled "Location," is amended to read as follows, with deleted text shown in strikethrough and new text indicated with boldfaced font:

> Location. All large solar energy facilities (Solar Farms) are limited to ~~the~~ the area within 1,250 feet² from the centerline of the transmission line that transects Deerfield Township Sections DE0-222, 223, 224, 225 as of the date of adoption of this ordinance ~~Agricultural (AA) and Industrial (I) and districts Deerfield Township.~~ Large solar energy facilities are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program.

Section 4. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 5. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

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