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PRESS RELEASE
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Conservation groups and municipal boards ask Massachusetts Supreme Judicial Court to protect local zoning powers

Municipalities concerned Court will undermine local land use control in case challenging Waltham building inspector's use of zoning power to regulate industrial uses

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Plymouth Massachusetts based [Save the Pine Barrens](#), joined by seven municipal bodies and six conservation groups filed a legal brief with the [Massachusetts Supreme Judicial Court \(SJC\)](#) on February 14, 2022, asking the state's highest court to protect the powers of municipal governments to control land uses in their communities. The municipal boards represent the Western Massachusetts towns of Buckland, Pelham, Shutesbury and Wendell. In the case before the SJC, a private developer is challenging the City of Waltham (MA) building inspector's authority to decide what is and is not an industrial use. The building inspector denied a permit for a large industrial solar project in a residential area and the developer, Tracer Land Realty, LLC sued. The groups support the City of Waltham building inspector's zoning decision as reasonable and legal and say courts should not overrule such local decisions.

The "friend of the court" brief says that the Commonwealth's long history of [home rule](#) under the Massachusetts Constitution and [local zoning](#) guarantee communities the right to use local laws to protect public health, safety and welfare and that industrial energy facilities should not be allowed to evade these laws. The case before the SJC, [Tracer Lane II Realty, LLC v. City of Waltham \(SJC-13195\)](#), involves a thirty-five year old zoning law that says municipalities cannot "[unreasonably regulate](#)" [solar energy systems](#). The groups say the law does not protect industrial solar from zoning. They argue local boards and officials know local conditions and community values and their powers should not be undermined by the outdated solar law.

The Tracer Lane solar project is subsidized by the [Massachusetts SMART solar program](#). Developers like Tracer Lane use the outdated zoning law to claim these industrial solar generating facilities subsidized by SMART should be allowed anywhere in a city or town, regardless of zoning restrictions limiting uses to certain districts, such as residential, commercial and industrial. The groups say the misuse of the outdated solar law is harming the environment, real estate values, water, and Indigenous rights. [Mass Audubon reports 4,000 acres of forested lands](#) have been replaced with large industrial solar. Under the [state's climate plan](#), another 158,000 acres of forest will be replaced by ground mounted industrial solar. The group's brief says if a [city or town wants to protect its forests](#) instead of having them cut down for solar, they should be able to decide that, not the courts.

The groups also state that [large solar is being done in a way](#) that harms the fight against the climate crisis and efforts to reduce greenhouse gas emissions. They say they want the option to [protect forests to help the climate crisis](#). **Professor William Moomaw** of the climate center at the Fletcher School at Tufts University, lead author of five Intergovernmental Panel on Climate Change reports, and visiting scholar at the [Woodwell Climate Research Center](#) issued a statement supporting the groups:

"We need to add more solar energy but removing forests releases a mass of carbon dioxide following cutting, and we lose the benefit of free carbon accumulation, reduced flooding from intensified storms by evaporative cooling that also cools surrounding areas. There are sufficient roof tops, brownfields and degraded lands, rights of way of powerlines, roads and railroads suitable for solar panels. Zoning to protect these values is one policy tool for assuring that forests do not become solar array sites."

Chair of the [Pelham \(MA\) Planning Board](#), **Judith Eiseman**, stated,

"The SMART program recognized the need to place restrictions on ground mounted solar, but state protections haven't gone far enough. Failing to stop forest fragmentation is unsound policy that may enrich a few but will bankrupt all of us ecologically. Industrial solar must be incentivized so it is placed where it does the least damage: on rooftops, brownfields, and parking lots. It may be cheaper right now to cut down the forest for solar, but doing so will result in even higher monetary and environmental costs later."

Members of the [Herring Pond Wampanoag Tribe](#) from Plymouth and [Aquinnah Wampanoag](#) submitted testimony to the SJC on the impacts to archeological sites and Native American culture from [excavating vast acreage for land for ground mounted solar](#).

Janet Sinclair of [Save Massachusetts Forests](#), one of the conservation groups participating in the brief lives in [Buckland](#). She stated,

"We passed solar bylaws in my town almost unanimously. That says that the residents of Buckland agreed with them. I think it would be very difficult for us to think that our bylaws could be pretty much tossed out the window if challenged by a deep pocketed developer, even though what passed here was approved by the Attorney General's Office. But that is what is happening to towns all across the Commonwealth."

The SJC will hear oral arguments for the case on [March 7, 2022, at 9 a.m](#) (SJC calendar). It is open to the public on video: [instructions on how to watch](#). Search the [SJC website](#) using the case number "SJC 13195" for current information on the case.

For more information from Save the Pine Barrens on the case and to see the group's brief, click [here](#).

LET'S PUT LARGE SOLAR ARRAYS WHERE THEY BELONG



END



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