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STATE OF MICHIGAN

COURT OF APPEALS

DTE ELECTRIC COMPANY,

Plaintiff/Counterdefendant-Appellee,

and

PORTSIDE SOLAR, LLC,

Intervening Plaintiff-Appellee,

v

ST. CLAIR COUNTY, ST. CLAIR COUNTY BOARD OF COMMISSIONERS, and ST. CLAIR COUNTY HEALTH DEPARTMENT,

Defendants/Counterplaintiffs-Appellants.

FOR PUBLICATION
November 17, 2026
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No. 379632
St. Clair Circuit Court
LC No. 25-001332-CZ

Before: MURRAY, P.J., and PATEL and FEENEY, JJ.

MURRAY, P.J.

This appeal involves a St. Clair County Health Department regulation, approved by the county board of commissioners, which attempts to regulate many details regarding the construction and operation of solar and energy facilities. Although it recognizes it has no authority to enact zoning regulations, the Health Department and its aligned parties[1] argue that because the issue is one of public health, the regulation was validly enacted under its authority to protect the health and welfare of county residents. The trial court did not buy that argument, and neither do we. Under governing Michigan law, the Health Department regulation is invalid as it is a de facto zoning ordinance, which the Health Department has no power to enact. And even if the Health Department had the power to enact the regulation, it would be preempted by state law. Regulation 25-01 is therefore invalid and unenforceable. As a result, we affirm the trial court's order granting

[1] Defendants/counterplaintiffs St. Clair County and the St. Clair Board of Commissioners (BOC).

summary disposition in favor of plaintiff/counterdefendant, DTE Electric Company, and intervening plaintiff, Portside Solar, LLC, pursuant to MCR 2.116(C)(9) and (10).

I. BACKGROUND

In September 2023, Portside submitted an application to Fort Gratiot Township for a special land use permit to develop a large solar energy system. Litigation over the initial denial of the application ensued. The following year, Portside, Fort Gratiot Township, and the Fort Gratiot Township Planning Commission entered into a consent judgment permitting Portside to develop and construct a large solar energy system in accordance with the consent judgment and the terms outlined in an amended site plan. The trial court ordered that the consent judgment constituted an approved special use permit and site plan approval required under the township's zoning ordinance.

During Portside's building process, the Legislature passed 2023 PA 233 that added Part 8, Wind, Solar, and Storage Certification, to the Clean, Renewable, and Efficient Energy Act, MCL 460.1001 *et seq*, *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 373259); slip op at 2, the purpose of which was to promote the development and use of clean and renewable energy resources, MCL 460.1001(2). At the same time, the Legislature amended MCL 125.3205(1)(d) of the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq*., to provide that a zoning ordinance is subject to "Part 8 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1221 to 460.1232."

In response to this legislative action, the BOC adopted regulations recommended by the Health Department, and Regulation 25-01 went into effect on May 1, 2025. The regulation requires any company planning on constructing an energy facility[2] in a rural area of St. Clair County to obtain prior authorization to do so from the Health Department. The regulation further requires energy developers and owners of all energy facilities to maintain and operate them pursuant to all applicable laws and "at least the minimum standards required in this Regulation."

With respect to the requirement that the owner, operator, or developer of an energy facility request authorization from the Health Department before beginning construction, Regulation 25-01, §7, requires, in part, the following to be included in the authorization request:

> (c) A description of the Energy Facility, including a detailed site plan, which depicts, at a minimum: (*i*) the layout of all proposed and existing structures; (*ii*) property boundaries and dimensions; (*iii*) existing and proposed landscaping and fencing; (*iv*) the location of all existing and proposed utilities; (*v*) all existing and proposed drainage systems; (*vi*) the topography of the property; (*vii*) all existing and proposed roads and means of access; (*viii*) all existing and proposed easements;

[2] Regulation 25-01 defines an energy facility as "[a] Solar Energy Facility and/or a Battery Energy Storage Facility which is: (*i*) located or proposed to be located all or in part in St. Clair County; and (*ii*) which is located or proposed to be located, in whole or in part, in or adjacent to a Rural Area."

(*ix*) a scale and legend; and (*x*) distances to the nearest structures located on all adjacent properties.

* * *

(k) A soil and economic survey report under section 60303 of the natural resources and environmental protection act, 1994 PA 451, § MCL 324.60303.

(l) If the proposed site of the Energy Facility is undeveloped land, a description of feasible alternative developed locations, including, but not limited to, vacant industrial property and brownfields, and an explanation of why such sites were not selected.

(m) A stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts at the expense of the owner or operator.

(n) A fire response plan and an emergency response plan.

(o) A decommissioning plan that is consistent with agreements reached between the applicant and other landowners of participating properties and that ensures the return of all participating properties to their useful natural condition similar to that which existed before construction, including removal of all above-surface and below-surface facilities and infrastructure. The decommissioning plan shall include, but is not limited to, financial assurance in the form of a surety bond or an irrevocable standby letter of credit, in the amount of at least $100,000 per megawatt nameplate capacity of the Energy Facility, as adjusted annually for inflation based upon the CPI-U from the date of this Regulation. To be acceptable, a surety bond must be posted and maintained by a surety authorized to do business in Michigan and which is rate A+ or better by A.M. Best. To be acceptable, an irrevocable standby letter of credit must be issued and maintained by a bank authorized to do business in Michigan with a 1 rating pursuant to the CAMELS rating system. St. Clair County shall be identified as named beneficiary on such surety bond or irrevocable letter of credit.

* * *

(s) All agreements with the owner(s) of the premises where the Energy Facility is proposed to be located.

The regulation also contains requirements and standards once an energy facility is granted authorization to build and operate:

Section 8: Health Department Review of Request for Authorization

* * *

After completing its review, the Health Department shall issue a written determination as follows: (*i*) granting Authorization to construct the proposed

Energy Facility, with or without conditions; or (*ii*) denying Authorization to construct or operate the proposed Energy Facility with specified reasons supporting the denial. If the Authorization is granted, all conditions detailed in the Authorization, if any must be fully complied with and all other required permits and permissions must be obtained prior to construction and operation of the Energy Facility. . . .

* * *

Section 9: Minimum Standards Applicable to Energy Facilities

To be eligible to receive an Authorization, Energy Facilities must meet or exceed the following Minimum Standards. Regardless of whether the Authorization was received, all Energy Facilities are required to operate and be maintained in such manner which meets or exceeds the below Minimum Standards.

(a) Noise Mitigation. An Energy Facility shall be designed, operated and maintained such that when operating at full power output, as measured at any point at or beyond a nonparticipating property line of a parcel with an existing residential dwelling, it does not produce measurable Tonal Noise, and the broadband noise level from the Energy Facility does not exceed 45 decibels A-weighted averaged over a 10 minute period (dB(A) Leq).

(b) Visual Pollution Mitigation. An Energy Facility shall be designed, operated and maintained such that it is obscured from view from adjacent roadways and from all points on adjacent non-participating properties including from all occupied stories of included buildings, including use of opaque gating or fencing at points of vehicular access, perimeter berms, or a buffer of at least 25' in ground depth consisting of sufficiently dense natural healthy vegetation including deciduous trees, or a combination, thereof, which is sufficient to obscure the Energy Facility from view.

(c) Decommissioning. An Energy Facility shall enter into a decommissioning agreement that ensures the return of all participating properties to their useful natural condition similar to that which existed before construction, including removal of all above-surface and below-surface facilities and infrastructure. The decommissioning plan shall include, but is not limited to, financial assurance in the form of a surety bond or an irrevocable standby letter of credit, in the amount of at least $100,000 per megawatt nameplate capacity of the Energy Facility, as adjusted annually for inflation based upon the CPI-U from the date of this Regulation. To be acceptable, a surety bond must be posted and maintained by a surety authorized to do business in Michigan and which is rate A+ or better by A.M. Best. To be acceptable, an irrevocable standby letter of credit must be issued and maintained by a bank authorized to do business in Michigan with a 1 rating pursuant to the CAMELS rating system. St. Clair County shall be identified as named beneficiary on such surety bond or irrevocable letter of credit.

Two months later DTE filed a complaint seeking a declaratory judgment that Regulation 25-01 is a zoning ordinance that the Health Department had no power to adopt or enforce. DTE asserted that, as a leading producer of and investor in renewable energy, it was developing plans for solar and energy storage projects in St. Clair County. In particular, DTE intended to apply for a permit for a solar energy project in Greenwood Township, located in St. Clair County, and if left undisturbed, Regulation 25-01 would have a direct impact on its plans. Portside later filed an intervening complaint. Defendants filed a counterclaim against DTE, asking the trial court to declare that Regulation 25-01 was properly adopted as a health and safety regulation by the Health Department within its authority granted by the Public Health Code, MCL 333.1101 *et seq*., and that Regulation 25-01 was neither a zoning ordinance nor preempted by the MZEA. The trial court granted DTE's and Portside's motions for summary disposition, concluding that Regulation 25-01 was a de facto zoning ordinance that exceeded the Health Department's authority.

II. ANALYSIS

A. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings. *Slater v Ann Arbor Pub Sch Bd of Ed*, 250 Mich App 419, 425; 648 NW2d 205 (2002). "[T]he trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim." *Id*.

Summary disposition is appropriate under MCR 2.116(C)(10) if, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A court reviewing a motion under MCR 2.116(C)(10) must consider the substantively admissible evidence offered in opposition to the motion. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). "If, after careful review of the evidence, it appears to the trial court that there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2)." *Cadillac Rubber & Plastics, Inc v Tubular Metal Sys, LLC*, 331 Mich App 416, 422; 952 NW2d 576 (2020).

Whether a state law has preempted a local regulation is a question of statutory interpretation that we review de novo. *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 502 Mich 695, 702; 918 NW2d 756 (2018).

B. REGULATION 25-01

As noted earlier, the principal question on appeal is whether Regulation 25-01 can be enforced by the Health Department. Because Regulation 25-01 is nothing short of an attempt to create a zoning ordinance to regulate the construction and operation of solar and energy facilities by an entity that is not empowered to do so, we hold that the regulation is invalid and unenforceable. And, even if the Health Department had the authority to enforce Regulation 25-01, it is preempted by 2023 PA 233.

Turning first to the Health Department's authority to act in this field, we begin with a proposition not contested by any party: The Health Department is not authorized to enact a zoning ordinance. This holds true because "[l]ocal governments have no inherent power to regulate land use;" instead, the Legislature must grant local governments the power to zone for any of the broad purposes identified in the MZEA, MCL 125.3201(1). *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561, 577; 983 NW2d 798 (2022). The problem for the Health Department is that the MZEA defines a "local unit of government" as a county, township, city, or village, MCL 125.3102(o), and a county health department is none of those.

Recognizing its inability to create a zoning ordinance, defendants argue that Regulation 25-01 is not a zoning ordinance, but is rather a health and safety regulation that the department is allowed to enact under the public health code. To resolve this issue, we must consider what a zoning ordinance entails, and what powers the public health code grants to health departments.

We first look to what constitutes a zoning ordinance. A zoning ordinance is "an ordinance which regulates the use of land and buildings according to districts, areas, or locations." *Square Lake Hills Condo Ass'n v Bloomfield Twp*, 437 Mich 310, 323; 471 NW2d 321 (1991). Whether "a particular ordinance is a zoning ordinance may be determined by a consideration of the substance of its provisions and terms, and its relation to the general plan of zoning in the city." *Id*. The MZEA provides the sole authority for a local government to exercise zoning authority. *Maple BPA, Inc v Bloomfield Twp*, 302 Mich App 505, 515; 838 NW2d 915 (2013).

Looking at the substance of Regulation 25-01, we readily conclude that it is for all intents and purposes a zoning ordinance. Much like the Fort Gratiot solar energy system ordinance under which Polstar obtained approval to construct its facility, Regulation 25-01 regulates the use of land and buildings according to the area. See *Square Lake Hills Condo Ass'n*, 437 Mich at 323. Regulation 25-01 states that it regulates renewable energy facilities in rural areas.[3] As already detailed, the regulation also requires any energy facility to submit to the health department, amongst other things: (1) a detailed site plan covering drainage systems, landscaping, roads, easements, scales and legends, and the layout of proposed and existing structures; (2) a soil and economic survey report; (3) feasible alternative locations; (4) a stormwater assessment; (5) a fire and emergency response plan; and (6) a decommissioning plan. The regulation also contains minimum standards covering noise mitigation and visual pollution mitigation for energy facilities. The Fort Gratiot Township Ordinances that Portside complied with contain many similar requirements for applications and standards for operation of these same facilities. See Fort Gratiot Ordinances, § § 38-46(4) (detailed site plan requirements), 38-636(d)(4) (screening and

[3] Regulation 25-01 defines an energy facility as "[a] Solar Energy Facility and/or a Battery Energy Storage Facility which is: (*i*) located or proposed to be located all or in part in St. Clair County; and (*ii*) which is located or proposed to be located, in whole or in part, in or adjacent to a Rural Area." The regulation defines a rural area as "[a] 2020 US Census tract which has a population density of 500 people or less per square mile." Although defendants argue that "rural area" was only included because people that live in rural areas were more vulnerable to potential dangers posed by the energy facilities, the simple fact is that Regulation 25-01 only applies to rural areas of the county.

landscaping standards), (12) (sound pressure level standards) and (14) (decommissioning plan requirements). Ironically, St. Clair County's existing zoning ordinance also covers many of these same matters. See St. Clair Co Code of Ordinances, § 5.6 (visual screening requirements) and § 10.6 (imposing certain noise restrictions).

The requirements and standards contained within Regulation 25-01 regulate the use of property, not the activities on the property. Each criteria relates to how the property can be used—such as the extent of setbacks, the layout of any facility on the property, the type of landscape, whether there are other locations for this type of use, how to decommission the property, etc. These requirements and standards go to the heart of traditional zoning concerns, a fact recognized by Fort Gratiot Township, the entity granted the power to enact zoning ordinances for this exact type of facility. See MCL 460.1223 and MCL 125.3201.

As DTE argues, the Health Department explicitly acknowledged that it was attempting to place more stringent requirements on energy facilities to remedy the perceived failures of the standards contained within PA 233. See BOC Finding No. 3. And that purpose, coupled with the subject matter, content, and geographic area covered by Regulation 25-01, compel the conclusion that Regulation 25-01 is a de facto zoning ordinance.

Now to the asserted authority under the public health code. Defendants argue that the Health Department was empowered to create and enforce the regulation under the public health code, which allows county health departments to "adopt regulations to properly safeguard the public health and to prevent the spread of diseases and sources of contamination." MCL 333.2435(d). In addressing this issue, it is important to recall that the distinction between a zoning ordinance and a regulatory ordinance cannot depend on whether the purpose is to promote the public good, because both types of ordinances may have that purpose. *Natural Aggregates Corp v Brighton Twp*, 213 Mich App 287, 298-299; 539 NW2d 761 (1995). Although the powers granted under the public health code are to be liberally construed, we cannot conclude that MCL 333.2435(d) authorizes the Health Department to enact Regulation 25-01.

No party disputes the authority of public health departments to issue regulations that are designed to protect the public health, as the Legislature has granted them that exact power. MCL 333.2435(d). See generally *McNeil v Charlevoix Co*, 484 Mich 69, 77-78; 772 NW2d 18 (2009). But despite this general provision, none of the powers or duties bestowed upon a public health department relate to issuing broad-based zoning requirements. In fact, when addressing a department's involvement with physical facilities, the Legislature granted departments the power to "[a]dvise other local agencies and persons as to the location, drainage, water supply, disposal of solid waste, heating, and ventilation of buildings." MCL 333.2435(b). We take this to mean that when it comes to addressing "the location, drainage, water supply, disposal of solid waste, heating, and ventilation of buildings," and other similar matters, public health departments should provide advice to the responsible entity on what is best for the public health, and then that entity can utilize that advice to enact proper ordinances. Here, that is clearly the township, which has been given the undisputed power to enact zoning regulations, MCL 125.3102(o), and to enact compatible renewable energy ordinances under 2023 PA 233. MCL 460.1221(a), (f), and (n). And, once Fort Gratiot Township enacted a zoning ordinance addressing solar and energy facilities, the county could not delve into the area. See *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App at ___; slip op at 13 n 6, citing MCL 125.3209 and MCL 125.3102(x). In light of this,

we cannot conclude that the general authority granted under MCL 333.2435(d) allows a public health department to circumvent the long-standing power of local units of government to enact zoning regulations on the use of property within their jurisdiction. The duties delegated to public health departments support this conclusion, as none pertain to regulating the use of land. See MCL 333.2433.[4]

In the end, because Regulation 25-01 regulates the "use" of land, not just isolated "activities" on the land, it is not a proper regulation enacted by the public health department. Instead, it is properly classified as a zoning law. See *Natural Aggregates*, 213 Mich App at 300-301. In more plain terms, when Regulation 25-01 looks and acts like a zoning ordinance, calling it something else does not make it so. *Boyd v Layher*, 170 Mich App 93, 99; 427 NW2d 593 (1988) ("We wholeheartedly agree with the circuit court's conclusion that '[l]anguage is not dispositive of the issue. If something walks like a duck, quacks like a duck and swims, covering it with chicken feathers will not make it into a chicken.' ") (alteration in original).[5]

Defendants have agreed that the Health Department is not a local unit of government empowered to regulate land use. MCL 125.3201(1); MCL 125.3102(o). Accordingly, the trial court properly ruled that Regulation 25-01 is a de facto zoning ordinance impermissibly attempting to regulate the use of land and buildings.[6] Furthermore, the BOC and St. Clair County did not have jurisdiction to adopt a zoning ordinance regulating solar energy systems because "[a] county's zoning jurisdiction does not include areas subject to a township ordinance" pursuant to MCL 125.3209. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App at ___;

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[4] For examples of public health department regulations that impact activities on the land, not the use of the land, see *McNeil*, 484 Mich at 75-78 (regulation addressed smoking in buildings) and OAG, 1989-1990, No. 6665 (November 15, 1990) (addressing public health department's regulation of tobacco sales to minors, and the placement of tobacco vending machines in certain buildings).

[5] "The 'duck test' has received wide support from the courts." *BMC Indus, Inc v Barth Indus, Inc*, 160 F3d 1322, 1337 n 28 (CA 11, 1998). See also *Lane v United States*, 286 F3d 723, 730 (CA 4, 2002) ("If something looks like a duck, walks like a duck, and talks like a duck, and the district court determines it to be a duck, it is not our place on review to call it something else."); *In re Sorah*, 163 F3d 397, 401 (CA 6, 1998); *Quave v Progress Marine*, 912 F2d 798, 800 n 4 (CA 5, 1990); and *Dole v Williams Enterprises, Inc*, 278 US App DC 1, 3 n 2; 876 F2d 186 (1989) (embracing "the now-infamous 'duck test,' dressed up in appropriate judicial garb . . ."). We don't endorse this as a "test" to be used for statutory interpretation, but invoke it only to make the simple point that the Health Department's attempt at distancing the regulation from a zoning ordinance was poorly disguised. See *Gun Owners of America, Inc v Bondi*, 168 F4th 813, 823 (CA 6, 2026).

[6] For these same reasons, the MZEA preempts Regulation 25-01 because the Health Department attempted to regulate land use without the authority granted by the MZEA. Through MCL 125.3210, the Legislature expressly provided that the authority to regulate land-use development that the MZEA extended to local units of government is exclusive. *Mich Gun Owners, Inc*, 502 Mich at 702.

slip op at 13 n 6. Defendants therefore engaged in an ultra vires activity, *Richardson v Jackson Co*, 432 Mich 377, 387; 443 NW2d 105 (1989), and exceeded their authority by adopting and enacting Regulation 25-01. The trial court properly granted DTE's and Portside's motions for summary disposition and denied defendants' motion for summary disposition pursuant to MCR 2.116(I)(2).

C. PREEMPTION BY 2023 PA 233

Our conclusion above resolves this appeal. However, should a higher court conclude that the Health Department had the power to implement Regulation 25-01, we would still affirm the trial court order because that court did not err by ruling that Regulation 25-01 is preempted by 2023 PA 233. Indeed, through 2023 PA 233 the Legislature has occupied the field of energy facility regulation by setting controlling standards and conclusively stating that any local ordinance attempting to regulate these facilities must not be more restrictive than what is provided by state law. And, as discussed briefly below, Regulation 25-01 clearly is more restrictive, a fact admitted to by the BOC.

"Field preemption applies if the state statutory scheme pre-empts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation." *Mich Gun Owners, Inc*, 502 Mich at 703; (quotation marks and citation omitted). The state can preempt a local regulation "expressly or by implicaton[.]" *Id*. at 702. A court must first determine "whether state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive . . . ." *Id*. at 703 (quotation marks and citation omitted). If the statute does not expressly preempt local regulations, a court must consider certain factors to determine whether the Legislature impliedly occupied the field. *Id*. at 704-705.

> Implied preemption can occur when the state has occupied the entire field of regulation in a certain area (field preemption) or when a local regulation directly conflicts with the state law (conflict preemption). In the context of conflict preemption, a direct conflict exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits. [*DeRuiter v Byron Twp*, 505 Mich 130, 140; 949 NW2d 91 (2020) (quotation marks and citations omitted).]

Preemption may also be implied by a statute's legislative history. *Mich Gun Owners, Inc*, 502 Mich at 704. However, "[o]nly where the statutory language is ambiguous may a court properly go beyond the words of the statute to determine legislative intent." *Id*. at 706 (quotation marks and citation omitted).

"Conflict preemption applies if the ordinance is in direct conflict with the state statutory scheme." *DeRuiter*, 505 Mich at 140 (quotation marks, citation, and alteration omitted). To determine whether the ordinance conflicts with the statutory scheme, a court must examine the relevant sections of both. *Id*. at 140-141.

In Part 8, the Legislature provides that a "proposed energy facility does not present an unreasonable threat to public health or safety," MCL 460.1226(7)(g), if it complies with the

standards set forth in MCL 460.1226(8). MCL 460.1226(8)(a)(*i*), (*ii*), and (*iii*) provide setback requirements, fencing requirements, and a 25-foot above-ground maximum height for solar panels. MCL 460.1226(8)(a)(*iv*) dictates that a solar energy facility "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." The statute also requires "dark sky-friendly lighting solutions." MCL 460.1226(8)(a)(*v*). Finally, a solar energy facility is required to comply with "any more stringent requirements adopted by the commission." MCL 460.1226(8)(a)(*vi*).

In Resolution No. 25-13, the BOC specifically stated:

> The restrictions/requirements detailed in PA 233 related to noise, Visual Pollution and decommissioning do not adequately protect the public from risks and dangers to the public health created by Energy Facilities that are granted state certification under PA 233. Further, PA 233 does not restrict, limit or measure Tonal Noise created by Facilities.

Regulation 25-01, § 9(a), requires that a solar energy facility

> be designed, operated, and maintained such that when operating at full power output, as measured at any point at or beyond a non-participating property line of a parcel with an exisiting residential dwelling, it does not produce measurable Tonal Noise, and the broadband noise level from the Energy Facility does not exceed 45 decibels A-weighted averaged over a 10 minute period (dB(A) Leq).

Regulation 25-01, § 9(b) also provides for visual pollution mitigation:

> (b) Visual Pollution Mitigation. An Energy Facility shall be designed, operated and maintained such that it is obscured from view from adjacent roadways and from all points on adjacent non-participating properties including from all occupied stories of included buildings, including use of opaque gating or fencing at points of vehicular access, perimeter berms, or a buffer of at least 25' in ground depth consisting of sufficiently dense natural healthy vegetation including deciduous trees, or a combination, thereof, which is insufficient to obscure the Energy Facility from view.

Regulation 25-01 is in direct conflict with Part 8, and the inconsistent regulation must fall to the controlling state law. MCL 460.1230(3). In its resolution, the BOC concluded that Part 8 does not adequately protect the public from the health risks associated with energy facilities, yet in stark contrast, the Legislature determined that a "proposed energy facility *does not* present an unreasonable threat to public health or safety," if it complies with the standards set forth in MCL 460.1226(8). MCL 460.1226(7)(g) (emphasis added). Additionally, Regulation 25-01, § 9(a), regulates tonal noise, in addition to providing a more restrictive noise level than MCL 460.1226(8)(a)(*iv*). Regulation 25-01 also requires visual pollution mitigation not required by MCL 460.1226(8). In the case of noise mitigation, Regulation 25-01 impermissibly attempts to prohibit what the statute permits. *DeRuiter*, 505 Mich at 140. Upon examining MCL 460.1226(7)(g) and (8) in comparison to Regulation 25-01 and Resolution 25-13, it is clear that a direct conflict exists because Regulation 25-01 and Resolution 25-13 restrict what Part 8 permits.

The Legislature determined that if a local unit of government[7] creates a compatible renewable energy ordinance, that ordinance can be no more restrictive than what is contained in PA 233. See *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App at ___; slip op at 3, quoting MCL 460.1221(f). Clearly the Legislature has made the policy choice that energy facilities can function, consistent with the health and safety of Michigan residents, so long as the statutory standards are met, and that no local unit of government can impose stricter or additional restrictions on these facilities. Because Regulation 25-01's conflicting provisions do exactly that, the regulation is invalid. *DeRuiter*, 505 Mich at 140. The trial court properly granted summary disposition to DTE and Portside.

Affirmed.

/s/ Christopher M. Murray
/s/ Sima G. Patel
/s/ Kathleen A. Feeney

[7] A local unit of government does not include a county health department. See MCL 460.1221(f).