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Massachusetts Division of Local Services Releases Responses to FAQ on Siting a Renewable Energy Generating Source on Agricultural or Horticultural Land

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On December 21, 2022, the Massachusetts Department of Revenue's Division of Local Services ("DLS") published its revised "FAQs on Classified Forest, Agricultural/Horticultural and Recreational Land G.L. c. 61, 61A and 61B" ("DLS FAQ") to clarify when land assessed, valued and taxed as agricultural or horticultural use under G.L. c. 61A may be used to site a renewable energy generating source without causing a change in use triggering a municipality's right of first refusal and penalty tax assessment. This does not apply to land classified under M.G.L. c. 61 (Forest Land) or M.G.L. c. 61B (Recreational Land).

The DLS FAQ explains that under G.L. c. 61A, § 2A(a) a renewable energy generating source on agricultural or horticultural land may produce energy only for the exclusive use of the land and farm on which it is located, and no more than 125% of the annual energy needs of the land and farm upon which it is located. "The land and farm on which the renewable energy generating source is located includes contiguous or non-contiguous land that is owned or leased by the land and farm owner or in which the owner holds an interest."

The DLS FAQ observes that "[w]hile the clear language of G.L. c. 61A, § 2A requires that the agricultural use under G.L. c. 61A, § 1 or . . . must continue, G.L. c. 61A, § 2A(b) does not contain G.L. c. 61A, § 2A(a)'s restrictions concerning the scale of the renewable energy generating source." Consequently, all of the owner's classified 61A land may be available for dual renewable energy use under G.L. c. 61A, § 2A(b). However, "[t]he renewable energy use must accord "with a solar incentive program for agriculture or horticulture sectors developed by the department of energy resources."

If the solar or wind facility does not meet the requirements of G.L. c. 61A, § 2A(a) or (b), then the land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind farm or facility (e.g., access roads) or impacted by its operation will not be eligible for classification under Chapter 61A (Farm Land) and will be taxed based on its fair cash valuation under G.L. c. 59, §§ 2 and 38.

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