A Publication of the Massachusetts Department of Revenue's Division of Local Services

City & Town

Supporting a Commonwealth of Communities

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DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

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Division of Local Services

The Division of Local Services is pleased to announce it is providing state and local officials with multiple free copies of our new *Municipal Bulletin 39*, "*Laws Relating to Municipal Finance and Taxation.*"

Bulletin 39 editions are mailed directly to every municipality in the Commonwealth. This publication is a compilation of those sections of the Massachusetts General Laws and Acts and Resolves that are of particular relevance to local government. *Bulletin 39* has been updated through February, 2017 and incorporates the significant changes made to municipal finance statutes that were included in the Municipal Modernization Act (Chapter 218 of the Acts of 2016). Communities can anticipate the arrival of the publication immediately.

City & Town Reader Survey

***City & Town* Editorial Board**

City & Town is once again asking you, the readers, for your feedback through a brief online survey. Your responses will help us improve both the delivery and content of the publication.

Previous survey results have prompted the addition of a table of contents, a new layout, the increased use of graphics, and the introduction of recurring features highlighting data and frequently asked questions.

We ask you to take a moment to answer the survey's eight questions. Your responses will be received anonymously and the results will be reported back in an upcoming edition. Your opinions matter and we thank you for helping to shape and improve *City & Town*. To take the survey, please click here.

Ask DLS: Solar on Classified Land

This month's *Ask DLS* features questions relating to the impact of installing solar or wind farms on land classified under Chapters 61 (Forest Land), 61A (Farm Land) or 61B (Recreational Land). For more information on the Classified Lands, please see the Chapter Lands FAQs posted on the Municipal Finance Law Bureau page on the Division of Local Services (DLS) website. Please let us know if you have other areas of interest or send a question to cityandtown@dor.state.ma.us. We would like to hear from you.

Note: These FAQs relate only to the impact of placing solar or wind facilities on classified land. They do not relate to the taxation of the solar or wind facility itself.

1. Does the development or installation of solar or wind farms or facilities on classified land impact the classification of the land under Massachusetts General Laws Chapters 61, 61A or 61B?

As a general rule, development or installation of solar or wind farms or facilities on classified land will constitute a change in use and trigger a municipality's right of first refusal (ROFR) and penalty tax assessment. However, there is an exception to this general rule for certain solar or wind facilities located on land classified under Chapter 61A (Farm Land).

A.) Forest Land (Chapter 61)

To be classified as forest land under Chapter 61, the land has to be "actively devoted" to the growth of forest products. M.G.L. c. 61, §§ 1, 2 and 3. Under M.G.L. c. 61, § 2, *"[b]uildings and structures and the land on which they are erected and which is accessory to their use shall not be entitled to be classified as forest land."* (Emphasis added.) As a result, the land on which a solar or wind farm or facility is located does not appear to qualify for classification. Assessors, however, may not deny or remove land from classification under Chapter 61 solely by their own action. The State Forester of the MA Department of Conservation and Recreation determines whether land qualifies for inclusion in a certified forest management plan and classification under Chapter 61. Assessors may, however, initiate action by the State Forester to remove land from classification if they believe the land is not being used for purposes compatible with the growth of forest products. (For more information on the Forest Land classification, appeal and removal process

under Chapter 61 and the role of the State Forester, please see the Chapter Lands FAQs posted on the Municipal Finance Law Bureau page on the DLS website. Also see the State Forester's regulations, 302 Code of Massachusetts Regulations (CMR) 15.00.)

B.) Recreational Land (Chapter 61B)

To be classified as recreational land under Chapter 61B, the land must be: (1) retained in a substantially natural, wild or open condition, landscaped or pasture condition or forest condition under a forest management plan certified by the State Forester, in a manner that preserves wildlife or other natural resources and be open to the public or held as private, undeveloped land; *or* (2) devoted primarily to certain qualifying recreational uses in a manner that does not materially interfere with the environmental benefits derived from the land and be open to the public or members of a non-profit organization. M.G.L. c. 61B, §1.

Land on which a solar or wind farm or facility is located is not eligible for classification under the first option because it would not qualify as undeveloped land being retained in a substantially natural, wild or other permitted condition. Nor would the land qualify under the second option for classification because the land would not be devoted to a qualifying recreational use. It would be devoted to the generation of power instead. Moreover, for operational and security reasons, there would be limited access to the land that would prevent it from being open to the public or the non-profit membership organization and available for the qualifying recreational use – a requirement under the second option for classification. Therefore, land used for the siting of solar or wind farms or facilities is not eligible for classification under Chapter 61B (Recreational Land). The ineligible land would include the land under the solar arrays or 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.

C.) Farm Land (Chapter 61A)

To be classified as farm land under Chapter 61A, the land must be "actively devoted" to agricultural or horticultural use. Actively devoted means: (1) the land, which includes a minimum of five acres, must be used: (a) primarily and directly for agricultural production (raising animals or a product derived from animals for the purpose of sale in the regular course of business) or horticultural production (raising fruits, vegetables, etc. for human consumption, feed for animals, nursery or greenhouse products, for

the purpose of sale in the regular course of business or raising forest products under a certified forest management plan) *or* (b) in a manner necessary and related to that production, i.e., in a manner that directly supports or contributes to the production, e.g., farm roads, irrigation ponds, land under farm buildings; *and* (2) annual gross sales of the farm produced in the regular course of business must equal or exceed a specified amount that depends on the size of the farm. M.G.L. c. 61A, §§ 1, 2, 3 and 4.

Effective beginning in FY 2018, a new section 2A was added to Chapter 61A. (See Sections 172 – 174 of Chapter 218 of the Acts of 2016, Municipal Modernization Act (the Act).) Under that section, land in agricultural use (M.G.L. c. 61A, § 1) and land in horticultural use (M.G.L. c. 61A, § 2) *"*may, *in addition to being used primarily and directly for agriculture or horticulture*, be used to site a renewable energy generating source*,"* (emphasis added) which includes a source that generates electricity using solar or wind energy. (See full definition of "renewable energy generating source" in FAQ No. 2 below.) However, the renewable energy generating source must meet the following purpose and size requirements:

(i) It must produce energy for the *exclusive* use of the land and farm on which it is located, and
(ii) It cannot produce more than 125% of the annual energy needs of the land and farm on which it is located.
The land and farm on which the 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.

These changes do *not* apply to land classified under Chapter 61 (Forest Land) or Chapter 61B (Recreational Land).

2. What is a "renewable energy generating source" under M.G.L. c. 61A, § 2A?

A "renewable energy generating source" is one that generates electricity from several identified sources, including solar photovoltaic or solar thermal electric energy or wind energy. (**Note**: We believe the legislature meant to cite to the definition in M.G.L. c. 25A, § 11F(b), as there is no M.G.L. c. 25, §11F.)

3. Can a landowner change the use of *all* of the owner's agricultural and horticultural land to the production of electricity through solar or wind and still qualify for classification under Chapter 61A (Farm Land)?

No. The clear language of M.G.L. c. 61A, § 2A requires that the agricultural use under M.G.L. c. 61A, § 1 or the horticultural use under M.G.L. c. 61A, § 2 must continue.

First, M.G.L. c. 61A, § 2A(a) states that the use of the land to site a renewable energy generating source is "in addition to [the land] being used primarily and directly for agriculture or horticulture."

Second, M.G.L. c. 61A, § 2A(a) requires that the renewable energy generating source: "(i) produce energy for the exclusive use of the land *and farm* upon which it is located… and (ii) not produce more than 125 per cent of the annual energy needs of the land *and farm* upon which it is located…." (Emphasis added.)

Third, M.G.L. c. 61A, § 2A(b) states:

"Land used primarily and directly for agricultural purposes pursuant to section 1 or land used primarily and directly for horticultural purposes pursuant to section 2 shall be deemed to be in agricultural or horticultural use pursuant to this chapter if used to *simultaneously site* a renewable energy generating source pursuant to subsection (a)." (Emphasis added.)

Finally, Mass. Const. Amend. Article 99, which provides the constitutional authority to value and tax agricultural and horticultural land according to its agricultural or horticultural uses, states:

"Article XCIX. Full power and authority are hereby given and granted to the general court to prescribe, for the purpose of developing and conserving agricultural or horticultural lands, that such lands shall be valued, for the purpose of taxation, according to their agricultural or horticultural uses; provided, however, that no parcel of land which is less than five acres in area or which has not been actively devoted to agricultural or horticultural uses for the two years preceding the tax year shall be valued at less than fair market value under this article." (Approved by the General Court in 1969 and 1970 and by the voters on November 7, 1972. In 1973, M.G.L. c. 61A was added.)

4. How can assessors verify that a solar or wind facility meets the purpose and size requirements of M.G.L. c. 61A, § 2A?

When a solar or wind facility is located on land classified or to be classified under Chapter 61A, assessors will need to determine: (1) whether the solar or wind facility is producing electricity for the exclusive use of the land and farm where located and (2) that the

amount of electricity produced by the facility is not more than 125% of the annual energy needs of the land and farm where located. As indicated in FAQ No. 1 above, the land and farm where the facility is located includes contiguous or non-contiguous land that is owned or leased by the landowner claiming classification, or in which the owner holds an interest. Landowners must demonstrate that their land qualifies for classification and assessors should request documentation to establish that the facility meets these requirements.

5. If the solar or wind facility falls within the purpose and size requirements of M.G.L. c. 61A, § 2A, will the land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind facility (e.g., access roads) be included for purposes of determining compliance with the minimum five-acre and the gross sales requirements of M.G.L. c. 61A, § 3? And how will that land be valued?

It depends.

Note: The following examples are related to cranberry production, but M.G.L. c. 61A, § 2A applies equally to land used for other qualifying horticultural and agricultural uses.

Example 1: A solar facility located on a cranberry bog provides electricity only for the irrigation pumps and farm buildings used in cranberry production. This is similar to land under farm buildings, irrigation ponds and ditches and farm roads. The land is primarily and directly used in a related manner that is incidental to the growing or production of cranberries, i.e., in a manner that directly supports or contributes to the production and represents a customary and necessary use in raising the products and preparing them for market. M.G.L. c. 61A, § 2. As a result, the land under the solar facility is included in determining whether a farm meets the five-acre minimum requirement of M.G.L. c. 61A, § 3. (Please see FAQ No. 4(B) and No. 7(B) of the Chapter Lands FAQs posted on the Municipal Finance Law Bureau page on the DLS website.) That land will also be included when determining the gross sales requirement under M.G.L. c. 61A, § 3 and will be classified and valued as actively devoted to cranberry production. (See the Farmland Valuation Advisory Commission (FVAC) recommended values.)

Example 2: A solar facility is located over a sand pit that is part of a cranberry farm. The land (sand pit) is used primarily and directly in

a manner that directly supports or contributes to the cranberry production and represents a customary and necessary use in raising cranberries and preparing them for market. M.G.L. c. 61A, § 2. The solar facility does not interfere with the use of the land for the production of cranberries and the land continues to be used in the production of cranberries. i.e., the sand from the sand pit is still accessible and is still used by the farmer in raising and preparing the cranberries for market. Although the solar or wind facility does not produce electricity *only* for the use of farm buildings, field irrigation, etc., it does comply with the purpose and size requirements of M.G.L. c. 61A, § 2A.

Because the solar facility is located on land (the sand pit) that is "simultaneously" being used primarily and directly in a manner that directly supports or contributes to the cranberry production and represents a customary and necessary use in raising cranberries and preparing them for market under M.G.L. c. 61A, § 2, then the land under the solar facility (the sand pit) is included within the minimum five-acre requirement of M.G.L. c. 61A, § 3 and will be classified and valued as actively devoted to cranberry production. (See the Farmland Valuation Advisory Commission (FVAC) recommended values.) The land is also included when determining the gross sales requirement under M.G.L. c. 61A, § 3.

Example 3: A solar facility that complies with the purpose and size requirements of M.G.L. c. 61A, § 2A is placed over a cranberry bog in a manner that prevents the "simultaneous" use of that land for the production of cranberries, e.g., a concrete platform is constructed on the land under the solar panels or the panels are placed so low to the ground that the land can no longer be accessed or used for cranberry production. In this case, the placement of the solar facility prevents the "simultaneous" use of the land for the production of cranberries and the land under the solar facility will not be included when determining compliance with the minimum five-acre requirement of M.G.L. c. 61A, § 3 and will not be classified or valued as actively devoted to the production of cranberries. The land will be taxed based on its fair cash valuation under M.G.L. c. 59, §§ 2 and 38. (**Note**: The *same* result will occur if the farmer *voluntarily discontinues* "simultaneous" use of the land under the solar facility for cranberry production.)

Example 4: A solar facility that complies with the purpose and size requirements of M.G.L. c. 61A, § 2A is installed on a field of grass located next to an active cranberry bog owned by the same farmer. The grass field is or may be classified as contiguous non-productive land, i.e., land "contiguous" to the land actively devoted to cranberry

production under M.G.L. c. 61A, § 4. (For more information on contiguous, non-productive land, please see FAQ No. 4(B) of the Chapter Lands FAQs posted on the Municipal Finance Law Bureau page on the DLS website.) Because it is non-productive land and not actively devoted to cranberry production, the land cannot be included to meet the minimum five-acre requirement of M.G.L. c. 61A, § 3. It is also not included when determining the gross sales requirement under M.G.L. c. 61A, § 3. However, the land could be classified and valued as non-productive contiguous land under M.G.L. c. 61A, § 4. Once five or more acres of land qualify as land actively devoted to horticultural use (here, cranberry production), up to the same amount of contiguous non-productive land under the same ownership may be classified in addition to the productive land. (See the Farmland Valuation Advisory Commission (FVAC) recommended values for non-productive land.)

6. What if the solar or wind facility does not meet the purpose, size and other requirements of M.G.L. c. 61A, § 2A?

If the solar or wind facility does not meet the requirements of M.G.L. c. 61A, § 2A, then the land under the solar arrays or 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 M.G.L. c. 59, §§ 2 and 38. The development of the facility will also be subject to a penalty tax. See FAQ No. 7 below.

7. Will the development or installation of solar or wind farms or facilities that comply with the requirements of M.G.L. c. 61A, § 2A on land classified under Chapter 61A (Farm Land) trigger a penalty tax under M.G.L. c. 61A, § 12 (conveyance tax) or M.G.L. c. 61A, § 13 (roll-back tax) or a municipality's right of first refusal (ROFR) under M.G.L. c. 61A, § 14?

No. Effective beginning in FY 2018, M.G.L. c. 61A, § 13 provides that the installation of a solar or wind farm or facility that meets the requirements of M.G.L. c. 61A, § 2A on classified land under Chapter 61A (Farm Land) will not trigger a roll-back tax. (See Section 174 of Chapter 218 of the Acts of 2016.

Although similar amendments were not made to the conveyance tax under M.G.L. c. 61A, § 12 or a municipality's ROFR under M.G.L. c. 61A, § 14, the Appellate Tax Board or a court could hold that when classified land under Chapter 61A (Farm Land) is converted to an eligible renewable energy generating source under

M.G.L. c. 61A, § 2A, no change of use has occurred to trigger the alternative conveyance tax, See *Adams v. Assessors of Westport*, 76 Mass. App. 180 (2010) and *Ross v. Assessors of Ipswich*, (ATB docket #F239496, November 21, 2000), or a municipality's ROFR.

However, development or installation of solar or wind farms or facilities that do *not* meet the requirements of M.G.L. c. 61A, § 2A on classified land under Chapter 61A (Farm Land), *will* be subject to a penalty tax under M.G.L. c. 61A, § 12 (conveyance tax) or M.G.L. c. 61A, § 13 (roll-back tax) and a municipality's ROFR under M.G.L. c. 61A, § 14.

Therefore, the development of the solar or wind facilities described in FAQ No. 5 in Examples 1, 2 and 4 above will not be subject to a penalty tax or a municipality's ROFR. However, the development of the facilities described in in FAQ No. 5 in Example 3 and in FAQ No. 6 above will be subject to a penalty tax and a municipality's ROFR.

July Municipal Calendar

1	Assessors	**Real Estate Tax Exemption Eligibility Date** Assessors determine eligibility as of this date for real estate tax exemptions under M.G.L. c. 59, § 5 based on taxpayer applications received. [Refer to April 1 in this calendar.]
1	Collector	**Mail Annual Preliminary Tax Bills** This date applies for all quarterly communities and for semiannual communities that issue annual preliminary bills under M.G.L. c. 59, § 57C. The 1st and 2nd quarter bills may be included a single mailing.
15	Accountant	**Submit Balance Sheet for Free Cash Certification** The Accountant closes all accounts within two weeks of the fiscal year-end and submits the resulting balance sheet and supplemental documentation to BOA for certification of free cash.
15	Accountant	**Report CPA Fund Balance (recommended date)** After closing the fiscal year and before the October 31 deadline, the Accountant submits the CPA fund balance report (Form CP-2 in Gateway) to BOA and gives notice to the Community Preservation Committee. CPA fund balances may be appropriated any time after the report.
15	Pipeline Company	**Deadline for Appealing Commissioner's Pipeline Company Valuations to the ATB**
15	Telephone and Telegraph Company	**Deadline for Appealing Commissioner's Telephone and Telegraph Company Valuations to the ATB**
20	BLA	**Notification of Changes in Proposed EQVs (even-numbered years only)**
31	State Treasurer	**Notification of Monthly Local Aid Distributions** - see IGR 17-17 for more cherry sheet payment information

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