

June 30, 2016

BY ELECTRONIC MAIL

Kaitlin Kelly
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
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Re: Considering Farmland in Development of New Solar Incentive Program

Dear Ms. Kelly:

Thank you for the opportunity to provide comments on the development of a new solar incentive pursuant to Chapter 75 of the Acts of 2016. Given the opportunities and challenges associated with solar development and farmland protection, Conservation Law Foundation is commenting specifically on the need to develop this solar incentive in a manner that is compatible with agriculture and protection of farmland that is vital to the Commonwealth.

Conservation Law Foundation (CLF) is a nonprofit environmental organization committed to conserving natural resources, protecting public health, and promoting thriving communities throughout New England. CLF has long supported the promotion of solar and other renewable development, the protection of farmland, and the viability of farming in Massachusetts and throughout New England.

Solar development is currently viewed by many in the land conservation and agricultural fields as a serious threat to farmland in New England. With the Commonwealth's dual goals of substantial solar development and farmland protection, it is critical that moving forward we find a way to provide incentives for solar projects without jeopardizing the land base that supports agriculture in the Commonwealth. Indeed, increased renewable deployment and maintaining/increasing our farmland base are both critical to achieving our greenhouse gas reduction targets under the Commonwealth's Global Warming Solutions Act. G. L. c. 21N.

In formulating the new solar incentive program, and assessing how it will address farmland, the following basic principles for the siting of solar arrays on agricultural land should be followed:

- Solar developments that serve only to support operations on the farm are acceptable.

- Commercial solar development should never be permitted on land that is currently under permanent protection if the terms of the conservation restriction (CR) or agricultural preservation restriction (APR) do not allow commercial solar.
- Agricultural land use should be maintained and prime and important farmland should be preserved for such use wherever possible. In order to avoid displacing agriculture, commercial solar facilities should be designed, installed, and be subject to mandatory decommissioning and restoration requirements that protect agricultural soils and accommodate the continued use of the land for agricultural purposes, both during and after the land is co-used for solar purposes.

Criteria for agricultural land protection are needed to guide DOER decision-making as to whether a particular solar project is eligible for this new solar incentive program. Given the potential for solar development to result in lost farmland, when solar projects are proposed on agricultural land there is a need for a case by case determination of whether, on balance, a particular solar facility meets the criteria for agricultural land protection and therefore is eligible for an incentive. For instance: Will the facility provide power off the farm? If it is commercial, will farming be able to continue among the solar arrays during their tenure? Will it be possible to fully farm the land in the future, after the arrays are removed? These are questions that bear on agricultural assessment as much as energy, and therefore there is a need for agricultural expertise in assessing specific parcels and proposals. DOER should partner with the Massachusetts Department of Agricultural Resources (MDAR) when determining whether solar projects on farmland should be eligible for state incentives.

In developing these criteria and other parameters for the program, there are many well-designed examples around the world, including in the United States, that DOER and MDAR can look to which demonstrate the potential for compatibility between commercial solar developments and livestock grazing as well as crop maintenance.¹ Further, the Massachusetts Department of Agriculture recently announced a grant program that can be deployed to pilot and study the dual use of farmland for solar and crops.² Data from these pilot projects should be used to assist the Commonwealth in determining criteria for siting and system design that maximizes benefits for both solar and continuous agriculture.

¹ See e.g., Edgar Meza, "Solar Farms Increasingly Popular with UK Farmers," PV Magazine (September 11, 2014) http://www.pv-magazine.com/news/details/beitrag/solar-farms-increasingly-popular-with-uk-farmers_100016390/#axzz3meuEJS2S; BRE "Agricultural Good Practice Guidance for Solar Farms," ed. Jonathan Scurlock (2014) http://www.bre.co.uk/filelibrary/nsc/Documents%20Library/NSC%20Publications/NSC_-_Guid_Agricultural-good-practice-for-SFs_0914.pdf; Melody Bodette, "As Farmers Embrace Solar, Concerns About Loss of Farmland Remain," Vermont Public Radio (October 27, 2015) <http://digital.vpr.net/post/farmers-embrace-solar-concerns-about-loss-farmland-remain#stream/0>.

² <http://www.mass.gov/eea/agencies/agr/about/divisions/ener-special-projects.html>.

A concept proposed by American Farmland Trust also offers a potential solution for ensuring that commercial solar projects proposed for farmland adequately protect farmland. This concept would require the approval of a CR or APR for the agricultural land that includes specific requirements pertaining to solar. The CR or APR would guarantee that, while solar of a determined scale is permitted, farmland soils must be protected during construction, operation, and decommissioning of the solar facility. The CR or APR would also guarantee that the land can be expected to be devoted to agricultural purposes at a level that satisfies the thresholds in G.L. c. 61A. And the CR or APR structure would allow for oversight to ensure that these terms are met over time. This approach wisely relies on existing CR and APR structures and programs as a means of ensuring that solar is allowed only in a manner that is tailored to a particular site and protects both agricultural soils and the ongoing agricultural land use itself.

A “one size fits all” model is not possible for assessing whether commercial solar is appropriate on farmland. While solar development is of the utmost importance, farmland in the Commonwealth is also a precious resource that must be carefully protected. It will take further assessment by DOER, which should occur in partnership with both MDAR and key stakeholders, to determine precisely how parcels and projects are evaluated to determine whether a given solar facility that impacts farmland should be eligible for this incentive program. What CLF recommends is that DOER work to find the right process to allow smart and informed decisions about solar projects on farmland, and use great care to protect the valuable farmland we have left in Massachusetts.

Thank you for the opportunity to provide comments on this important program. Conservation Law Foundation is eager to assist in this process and remain engaged as the program is further developed.

Sincerely,



Jennifer K. Rushlow
Senior Attorney
Director of Farm & Food Initiative
Conservation Law Foundation

Cc: Secretary Matthew Beaton, EOEEA
Commissioner John Lebeaux, MDAR
Jesse Robertson-DuBois, American Farmland Trust