RENEWABLE ENERGY
Development Partners, LLC

via email: DOER.SMART@mass.gov

October 27, 2021

Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: Revised ASTGU Guidelines

Dear Commissioner Woodcock and DOER staff,

Thank you for the opportunity to comment on the Department's proposed revisions to the Guideline Regarding the Definition of Agricultural Solar Tariff Generation Units ("ASTGU Guideline"). As background, Renewable Energy Development Partners, LLC ("REDP") is a locally owned and managed project development firm focused on commercial-scale solar and other renewable energy projects in Massachusetts and throughout New England, with projects developed in partnership with public and private sector entities including municipalities, water and school districts, public educational facilities as well as farmers and agricultural landowners. We developed 40 MW of solar PV under the SREC I and SREC II programs, and are currently operating, constructing and developing a substantial portfolio under the SMART program.

REDP has been active in the development of "dual use" projects since the inception of the SMART program in 2018. Indeed, REDP has been working with farmers and agricultural landowners in southeastern Massachusetts since the inception of our firm in 2010, and our understanding of their long-term land use goals and economic challenges led us to focus on a partnership with them to capitalize on the opportunities and benefits presented by the dual use concept as articulated in the SMART regulations. To their credit, and thankfully for the rest of us, farmers are loathe to surrender their valuable land to non-farming activities unless they are compelled to do so to sustain the viability of the farm. Traditional solar arrays on farmland have always been a painful tradeoff, and the dual use concept offers a win-win opportunity. As a locally owned and managed firm, with an extensive network of local resources and in-house financing capabilities, our firm is uniquely positioned to solve the numerous challenges facing the "new" idea of dual use solar and agriculture, and in partnership with several local farmers we became one of the handful of early adopters of dual use projects. In fact, we recently constructed one of the small handful of dual use projects that have been approved to date by DOER.

As a stakeholder with a significant investment in dual use, and with a long-term strategic plan of owning and operating a portfolio of dual use projects, we fully support a well-regulated dual use program with clear and objective guidelines. Likewise, we understand DOER's desire to ensure that the program is not abused by bad actors. In that vein, we would like to offer our comments on the proposed revisions to the ASTGU Guidelines.

I. The proposed revisions add further ambiguity and subjectivity to a program already fraught with regulatory uncertainty

A number of the proposed revisions to the ASTGU Guideline serve to make the Guideline less objective and less clear than it currently is. Such changes will further frustrate solar developers and farmers from partnering to invest in dual use projects since there will be additional uncertainty and risk associated with the initial qualification and ongoing eligibility of the project.

For example, the proposed revisions include the requirement to demonstrate "Compatible Sunlight Needs" (Section 3.b.iii*):"applicant shall provide documentation that the project's proposed solar design's for the dual use project sunlight amount and sunlight reduction is compatible with the proposed agricultural crops and productivity over the project's lifetime."* How is this to be established by the applicant, and evaluated by the Department? No objective reference or standard is established in the proposed revision. Based on our experience to date, "compatible" sunlight is not a term that is readily agreed upon, even between farmers! What is the measurement of sunlight – direct sunlight only or photosynthetically active radiation? How does the applicant take into account the needed variation in crops over the project's lifetime, and the fact that some crops may fare better or worse under the same sunlight conditions? And how does this provision take into account the paucity of real world data regarding crop yields in varying sunlight conditions?

Another example is the proposed Waiver for Decreased Yields (Section 6.i.). This provision would require the farmer to seek a waiver for <u>any</u> decrease in yield from the previous year, or from the yields projected in the agricultural plan. Furthermore, a waiver could not be sought for two consecutive years. Given the capricious nature of farming in general, including normal variations in weather and growing conditions, and the routine challenges of disease and pests, variations in yield are a fact of life in farming. A requirement to seek the Department's subjective approval for what is normal and customary will be untenable to a farmer, and simply unfinanceable to a solar developer. Assuming the addition of such a requirement - by what objective standard would good cause be established? Would the farmer get credit for years in which the yields were greater than expected? What about a prolonged drought or other climatic event that suppresses yields for more than one growing season? What about a change to a crop that was not anticipated in the farming plan, but that is now commercially valuable?

REDP would recommend removing both of these provisions as they lack clear, objective standards necessary for compliance and will serve to further disincentivize these critical projects.

II. The proposed revisions prohibit or severely discourage the conversion of existing land to productive farmland, and discourage new farmers from participating in the program

The SMART regulations require ASTGUs to be sited on Land In Agricultural Use or Prime Agricultural Farmland. In many instances, farmers own Land in Agricultural Use that is serving an agricultural purpose related to or supporting the production at the farm. An example in southeastern MA would be cranberry growers who own uplands adjacent to their bogs; these uplands are used as source of sand for bog maintenance and improvement. These areas are often

well suited for conversion into productive farmland, and the ASTGU incentive facilitates the substantial investment often required to rehabilitate the land to make it suitable for long term productivity. Not only does this investment support the development of the ASTGU for the tariff term, but it provides necessary long-term investment in the lands to allow the farmer to continue to diversify its operations and potentially expand into new agricultural operations to keep the farm economically viable.

Several of the proposed revisions seemingly discourage or outright prohibit the use of Land in Agricultural Use for this adder. For instance, in a new section entitled Eligible Farmland (Section 4.ii), an eligibility requirement is imposed on "newly created farmland" requiring that *it has been in active agricultural use and managed as a commercial enterprise by the farm applicant for not less than three consecutive years* prior to application. To comply with this requirement, a farmer interested in pursuing dual use on land not currently in productive agricultural use would have needed to anticipate this requirement three years ago and made a substantial at-risk investment (land, equipment, seed, fertilizer, etc.) to convert and commence farming the land in the hopes that he would be eligible today, or he must find a development partner or bank willing to help him fund the conversion now in the hopes that the site will be eligible for the dual use program in 3 years, provided that it still exists. This runs counter to the whole purpose of the ASTGU incentive, which allows solar developers to provide farmers with a guaranteed revenue stream separate from crops to help farmers invest in their land, keep land in farming and sustain the economic viability of their farms.

In a state that has seen a significant loss of farmland (and farmers!) in the past 20 years, why would the Department discourage the creation or conversion of new productive farmland from land that is already Land in Agricultural Use? And why would the Department limit access to newly created farmland only to existing farmers? The Department should be encouraging projects that help address the longstanding inequities in access to farmland that are only exacerbated by high land costs and start-up costs for new farmers.

As another example, in Section 5.ii, the proposed revisions for Important Agricultural Farmland state that *"applicants must demonstrate a history of production of their proposed agricultural commodity on the proposed ASTGU site for not less than three years immediately preceding the date of application to the SMART program."* This new requirement will certainly frustrate the ambitions of a new generation of farmers willing to take on the challenge of dual use farming, and will thereby suppress the innovation and creativity this program should be fostering. What about the farmer struggling with a succession plan for his farm? Or the farmer who decides, based on her experience and expertise, to grow a new crop in the dual use area to diversify her farming plan? Or the farmer who wishes to renew farming in a field that has gone fallow? As above, these farmers would now need to commit to a "dual use" crop three years in advance of applying to the program, and then hope that a) the ASTGU incentive was still available and b) that their site would be eligible. Few farmers are in a position to take that risk in the face of such uncertainty.

III. Revising the ASTGU Guidelines at this time to make them more restrictive is premature and will inevitably suppress widespread and timely adoption of dual use projects

Currently, nearly three years after the dual use program was created under SMART, there are only 11 MWs of ASTGUs approved. This represents less than 0.3% of the overall 3,200 MW SMART program goal. Only a fraction of these approved projects have actually been constructed, and none have been in operation long enough to generate consensus on lessons learned or best practices for dual use farming. Indeed, there are so few projects that there is not yet even standardization on the suite of necessary arrangements that must be made just to enable these types of projects to get financed & built, including lease and operating terms between farmers and solar facility owners, financial underwriting requirements, insurance and risk allocation, crop specific operating concerns between solar facility owners and the farmers, and on and on. Furthermore, the dual use program has to date received lukewarm interest from the market, in part due to regulatory uncertainty.

While we support the expansion and clarification of the maximum eligible ASTGU system size for reasons noted by numerous stakeholders, we do not support the addition of the numerous restrictive measures and subjective compliance requirements at this time. Revising the Guidelines in this fashion now will send the signal to developers and farmers alike that the program is unstable and unpredictable, and will further suppress interest and innovation in this critical component of the SMART program.

Absent a clear and compelling reason to introduce new restrictions and compliance measures at this time, we would encourage the Department to delay revising the Guideline until a sufficiently large and diverse portfolio of dual use projects is up and running, so that any changes to the Guideline can be informed by experience gained from the development and operation of these projects. The Department has indicated previously that the dual use program would be re-visited after 80 MW of projects have been qualified. While 80 MW would represent just 2.5% of the overall SMART program goal, that milestone could be an appropriate trigger for revisiting and revising the Guidelines.

When the Guidelines are re-visited to incorporate lessons learned and best practices, we would encourage the Department to form a working group of stakeholders including representatives from the solar industry, agricultural associations, conservation groups, UMass, state ffficials and farmers themselves to review the program and recommend improvements.

In closing, we would like to reiterate our support for a well-regulated, clear and predictable dual use program. Furthermore, given the considerable value of the dual use incentive, we acknowledge that the ASTGU Guidelines must be designed to prevent systematic abuse and gamesmanship by bad actors. While we commend DOER and MDAR staff for their efforts in revising the ASTGU Guidelines to achieve these goals, we have significant concerns with the consequences of the proposed revisions as indicated in this letter. If revisions are indeed necessary at this time, as a committed stakeholder in the dual use market we would welcome and appreciate the opportunity to meet with DOER and MDAR staff as part of the working group contemplated above to identify

the underlying goals and objectives of these revisions. With that knowledge in hand, working collaboratively with other stakeholders we may be able to offer alternative revisions that might mitigate or avoid the negative and likely unintended consequences of the revisions currently proposed. Thank you again for the opportunity to comment on the restructuring of this important program.

Regards,

Hank Ouimet
Managing Partner