CHAPTER 61 ADVICE ON SOLAR OR WIND FARMS
- Irene Del-Bono, MA Division of Conservation Services

Does the development or installation of solar or wind farms or facilities on land classified under Chapters 61, 61A or 61B constitute a change in use making the land ineligible to continue classification?

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 and a penalty tax assessment, i.e., a conveyance or roll-back, whichever is applicable.

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. MGL c. 61, secs. 1, 2 and 3. The initial decision on classification is made by the state forester. Under the state forester's current regulations, the land must be used to grow forest products and may not include any land where structures are erected or that is accessory to the use of the structures. 304 CMR 8.03(3). The land on which the solar or wind farm or facility is sited does not appear to qualify under those regulations. In that case, the assessors can initiate action by the state forester if they believe land is no longer being used for purposes compatible with the growth of forest products.

Farm Land (Chapter 61A)- To be classified as farm land under Chapter 61A, the land has to be "actively devoted" to agricultural or horticultural use. Actively devoted means the land must be used (1) primarily and directly for agricultural or horticultural production, or (2) 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. MGL c. 61A, secs. 1, 2, and 3.

Therefore, if the solar panels, wind turbines and related structures are integral to farm production, e.g., intended to supply power on-site in order to irrigate the fields, then the land would continue to be considered necessary and related land. However, if used for other power generation purposes, then it no longer qualifies for classification. The ineligible land would include 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.

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) be devoted to certain 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. MGL c. 61B, sec. 1.

Land on which a solar or wind farm or facility is sited is not undeveloped land being retained in a natural or other permitted condition. It is being used to generate power, a commercial or industrial use and for operational and security reasons, will have limited access, i.e., will not be available for use by the public or a membership organization for one of the permitted recreational uses. Therefore, the land used for power generation purposes would no longer qualify for classification. As with classified farm land, the ineligible land would include 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.