



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND
ENVIRONMENTAL AFFAIRS
Department of Agricultural Resources
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TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

DOUGLAS W. PETERSEN
Commissioner

November 18, 2008

Brian Nelson
PO Box 4778
35 Skiff Avenue
Vineyard Haven, MA 02568

Re: Wind Turbines, Commercial Agriculture, and M.G.L. 40A, §3

Dear Mr. Nelson:

After meeting with you on Martha's Vineyard and speaking with my staff about your wind turbine project that you have proposed, I enthusiastically extend my full support for your efforts. I also offer the Department's opinion on the applicability of Massachusetts General Law c. 40A, §3 as it relates to wind turbines used for commercial agriculture.

You have described a project involving two farms: Thimble Farm located in Oak Bluffs and Northern Pines Farm located in Tisbury. Thimble Farm has sought to erect a wind turbine but because of its proximity to an airport is unable to. Northern Pines Farm also seeks to erect a wind turbine. The two farms have begun discussing a collaborative effort in which Northern Pines erects the wind turbine to supply electricity to both farms.

The proposal seems most fitting. It consolidates the electricity generation to a single farm with a single wind turbine. It fits into the Green Communities Act because of the alternative energy production and the opportunities of such alternatives, and it fits into the Governor's and Secretary's objectives of supply energy from alternative sources.

You are also aware of the protections afforded agriculture under Massachusetts General Laws c. 40A, §3 (Section 3). In essence, Section 3 prevents a local general or zoning by-law from prohibiting, unreasonably regulating, or requiring a special permit for activities on land used for commercial agriculture. Specifically:

"No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the

primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture....”

Under Section 3 a wind turbine falls into the category of a structure that would receive the protections of Section 3 provided that its primary purpose is commercial agriculture. The question that arises, however, is how to determine whether the primary purpose of a wind turbine on a farm is commercial agriculture as opposed to its use for the primary purpose of being used on a farm as simply a guise for a power company.

In general our approach is to identify the energy needs of the farm. If the size of the wind turbine has a reasonable relationship with the energy needs of the farm operations, then its primary purpose is commercial agriculture. As you know, wind turbines must often be oversized for any specific use because the wind is not always blowing. To achieve the average output sought, a larger turbine is necessary as is the ability to net meter. With the Green Communities Act, such advances are close at hand.

Sizing a wind turbine requires critical planning. Such planning includes farm growth considerations in addition to the average output sought. In the case of this proposed project between Thimble Farm and Northern Pines Farm even greater planning required. Further still, this project falls outside the normal circumstance where the wind turbine is sized for only the Northern Pines Farm. To size the wind turbine for both Thimble and Northern Pines will require a wind turbine that is far bigger than that desired by Northern Pines.

This project falls into the category of erecting a wind turbine that may be outside what would be considered the normal range and is as such to have the ability to sell electricity to another farm, Thimble Farm. Is Northern Pines a farm or an electric generator? If an electric generator, would that exclude Northern Pines Farms from the protections of Section 3?

The answers are yes and no. Yes they would become an electric generator to supply electricity to Thimble Farm. No they would not lose the protections of Section 3. The wind turbine has a primary purpose of commercial agriculture. Section 3 is silent as to whether the purpose of commercial agriculture is constrained to the farm on which the turbine is located. In the same that farm stands may sell products produced on land other than which the stand is located, so too may a wind turbine sell electricity to another farm. The key is whether the end user of the electricity advances the primary purpose of agriculture.

In this instance then, my staff concludes that as long as the electricity generated on the farm by the wind turbine is used for commercial agriculture without regard to location of end use, the structure generating the electricity is an agricultural structure and enjoys the protections of Section 3.

On a final note, my staff also concludes that being able to net meter at reasonable terms between purchase and sale of electricity is critical to your proposed project. The Green Communities Act

provides a powerful vehicle in this regard. Your project provides a clear example of how important it is for agricultural entities to engage and participate in the current procedural process pertaining to net metering convened by the Department of Public Utilities (DPU) to ensure the new provisions reflect the needs of our agricultural community.

My staff and I will assist in any way that we can with your project. Please contact me, Gerry Palano, or Bob Ritchie with any questions or concerns.

Sincerely,

A handwritten signature in purple ink, appearing to read "Douglas W. Petersen", is written over a light blue horizontal line.

Douglas W. Petersen

Cc: Thimble Farm
Northern Pines Farm
Ronald Rappaport, Tisbury Town Counsel
Martha's Vineyard Commission
Kenneth Kimmell, General Council, EOEEA
Robert Sydney, General Council, DOER
Kelli Gunagan, Asst. Attny General