

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

302 CMR 15.00: CHAPTER 61, FOREST CLASSIFICATION

Section

- 15.01: Purpose and Authority
- 15.02: Definitions
- 15.03: Forest Lands; Criteria
- 15.04: Application for Classification and Forest Management Plan
- 15.05: Procedure for Certification and Classification
- 15.06: Management of Classified Forest Land
- 15.07: Voluntary Addition to and Withdrawal from Certification of Forest Land During Term of Classification
- 15.08: Involuntary Withdrawals from Certification; Procedures for Hearings and Appeals
- 15.09: Inspection
- 15.10: Severability

15.01: Purpose

(1) The purpose of 302 CMR 15.00 is to clarify the procedure for classification of forest land in the Commonwealth of Massachusetts. (A former version of this regulation, 302 CMR 15.00, was found at 304 CMR 8.00.)

15.02: Definitions

Accessory land means land not devoted to the production of forest products and not committed to residential, industrial, or commercial use.

Assessors means the board of assessors for the municipality or municipalities in which the parcel is located.

Authorization of the owner means the power actually given or reasonably presumed to be given by any owner in retaining any party to act in his stead to oversee cutting, harvesting, any other forest land treatment, or to prepare or submit documents concerning the owner's property, even when such party acts to exceed the power actually given by the owner.

Certificate means a form issued by the Department identifying the subject parcel as forest land.

Certification means approval of a forest management plan by the Department in accordance with the provisions of M.G.L. c. 61, and whenever used or defined shall include any subsequent certification or "recertification".

Certified means the status of land upon which a certificate has been issued by the Department and being entitled to the subsequent ministerial act of the assessors to have a lien recorded thereon and be taxed in accordance with the provisions of M.G.L. c. 61.

Classification means the designation of land as forest land for property tax assessment purposes in accordance with M.G.L. c. 61, §2.

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

Classified means the property tax status attaching by operation of law to land certified by the Department as forest land under M.G.L. c. 61 and 302 CMR 15.00, and on which a lien has been recorded in accordance with the provisions of M.G.L. c. 61, §2.

Department means the Massachusetts Department of Conservation and Recreation.

Forest land means land devoted to the growth of forest products.

Forest products means wood, timber, Christmas trees, other tree forest growth, and any other product produced from forest vegetation.

Forestry means the profession that encompasses the science, art, and practice of creating, managing, harvesting, and conserving forest and forest lands for human benefit.

Incompatible with forest production means any activities that would interfere with the production of forest products.

Owner means the person, persons, or other legal entity holding title to a parcel of forest land.

Parcel means land held by the same owner under a deed of title which has no encumbrance incompatible with this chapter.

Regional Office means:

Central East Massachusetts

Route 110
P.O. Box 155
Clinton, Massachusetts 01510
(Worcester, Bristol, Norfolk, Plymouth,
Suffolk, Essex, Middlesex, Barnstable,
Island Counties)

Central West Massachusetts

West Central Region Headquarters
40 Cold Storage Road
P.O. Box 484
Amherst, Massachusetts 01004
(Franklin, Hampden and
Hampshire Counties)

Western Massachusetts

Western Region Headquarters
740 South Street
P.O. Box 1433
Pittsfield, Massachusetts 01202
(Berkshire County)

Same Owner(s) means person or persons, legal entities, or otherwise, who hold present title to a parcel of land covered by a single certification in the same name(s) and in the same capacity, whether as sole owner, tenants in common, joint tenants or tenants by the entirety. In the event the grantee(s) on a deed to any portion of the parcel differs from the grantee(s) on a deed to another portion, one or more deeds must be conveyed into identical ownership before the parcel

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

will qualify under one certification. Change of ownership occurs on the occasion of any change of title on a deed or deeds for classified forest lands including, but not limited to, actual transfer in fee by deed, by inheritance, by eminent domain, by court decree, or by deed transfer for purposes of incorporation, for addition of or removing undivided interests (husband to husband and wife, parent to parents and child, and so on) or for clearing title.

State Forester means the Commissioner of the Department of Conservation and Recreation.

Subject parcel means a parcel of land on which an application for certification has been filed with the Department, or which has or had been certified as forest land by the State Forester, excluding any portions of the parcel that are specifically described and identified in the application or approved forest management plan as excluded from certification and classification.

15.03: Forest Lands; Criteria

- (1) To be eligible for certification and classification, land must meet the following criteria:
 - (a) be a parcel of forest land containing a minimum of ten (10) adjacent or contiguous acres devoted to the growth of forest products;
 - (b) and may consist of access roads, skid trails, log landings, log storage areas, and other areas that are necessary and related to forest management and forest products harvesting activities.
- (2) Accessory land which may include certain permanent or temporary wetlands, water courses, and submerged areas and other nonproductive areas may be included in the calculation of acreage, and certified up to an amount equal to the area certified for the production of forest products.
- (3) All buildings located on land which is valued, assessed, and taxed on the basis of its forest production use in accordance with 302 CMR 15.00 and all land occupied by a dwelling or regularly used for family living shall be excluded from certification and shall be valued, assessed, and taxed by the same standards, methods, and procedures as other taxable property. In the instance of telecommunication or power generating structures, the area excluded shall include the land where the structure is erected along with any land which is deemed incompatible with forest production.

15.04: Application for Classification and Forest Management Plan

- (1) A complete application for classification shall consist of:
 - (a) One (1) original and two (2) copies of an application certificate and one (1) original and two (2) complete copies of a forest management plan, signed by the owner.
 - (b) A map or maps of the parcel to be classified relating to clearly marked and substantially discernible boundaries at least to the extent required in the most recent edition of "Directions for the Preparation of Chapter 61 Management Plans."
- (2) The owner shall prepare a complete forest management plan, outlining a phased ten year

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

program of forest management, in full accordance with the current edition of the "Directions for the Preparation of Chapter 61 Management Plan" written by the Department and available from the Regional Office. The Department will accept no variation from this format. The Department shall notify the land owner and the plan preparer of unacceptable forest management plans and application materials. Submission of an incomplete or unacceptable forest management plan may lead to delay or denial of certification.

(3) Only the owner of the subject parcel or a forester licensed in accordance with M.G.L. c. 132, §§46 et seq., may prepare a forest management plan.

(4) When the parcel to be classified is located in more than one town, a forest management plan may be prepared treating the entire parcel as a single management unit, but proper reference shall be made in each section of the management plan for the portions in each town. The owner shall provide a separate application certificate for each town. The owner shall provide an additional copy of the management plan for each town listed in the management plan.

(5) The current assessor's data will be utilized and it will be assumed to be correct. In the event an owner does not concur with current assessor's data, the owner shall be responsible for reconciling ownership and acreage discrepancies between the assessor's records and the current deed or plan recorded in the Registry of Deeds before completing an application for certification.

15.05: Procedure For Certification and Classification

(1) An owner shall submit to the Department a complete application as defined in 302 CMR 15.04(1) to the appropriate Regional Office no later than 5:00 p.m. on or before June 30 of the year preceding the year for which classification is sought. Applications that are postmarked on or before June 30 will be considered timely filed. The Department may reject any incomplete applications.

(2) The Department shall determine whether the subject parcel described in the application qualifies as forest land and otherwise meets the criteria and requirements set forth under M.G.L. c. 61 and 302 CMR 15.00. The certification of forest management plans beyond the first ten-year certification period requires compliance with the prescribed management practices described in the current certified forest management plan. Circumstances beyond the control of the landowner including, but not limited to, natural disturbance related to weather, fire, insect and disease infestation, or economic conditions related to extreme fluctuation in the forest product markets may preclude the landowner from complying with some or all of the prescribed management practices. Such circumstances would be required to be documented in the new forest management plan and the impact, if any, would be reflected in the prescribed management prescriptions. In the case of recertification, the owner's failure to abide by or perform the treatments set forth in a forest management plan during a prior recertification period may result in denial of recertification.

(3) If the determination is made that the subject parcel qualifies as forest land, the Department shall certify the subject parcel by affixing an authorized signature to the application, and shall return, with a cover letter, the approved, certified application and forest management plan to the

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

owner.

(4) The cover letter of the Department accompanying the certified documents returned to the owner shall contain instructions to complete the application process, including the owner's obligation to pay recording fees, if any, collected by the registry of deeds. These recording fees will be determined by contacting the assessors. The Department shall send a copy of this cover letter to the assessors.

(5) The owner shall deliver three copies of the approved application certificate and one copy of the approved forest management plan to the assessors no later than 5:00 p.m., on or before October 1 of the year preceding the year for which classification is sought.

(6) Upon receipt of the documents set forth above, the assessors shall forthwith record in the appropriate registry of deeds, on a form approved by the Commissioner of Revenue, a statement of the classification, which shall constitute a lien upon the land for taxes levied under the provisions of M.G.L. c. 61. The statement shall include the name of the owner and a description of the parcel adequate for identification. The assessors shall return one copy of the recorded statement, including the date and book and page, to the appropriate Regional Office of the Department and the owner. The assessors shall sign and date the application certificate and return one copy to the appropriate Regional Office and a second copy to the owner.

(7) The assessors may appeal the Department's certification in accordance with 302 CMR 15.08(1)(a), but do not have the unilateral authority to deny, revoke, suspend, delay, amend, or limit classification of the subject parcel.

(8) The certification period shall begin on January 1 of the calendar year in which classification will take effect, and run for a ten year period ending December 31 of the tenth year, unless the land is earlier withdrawn or removed from classification. The classification period shall begin July 1, at the beginning of the fiscal year in which classification is to take effect, and run for a ten year period ending June 30 of the tenth year, unless the land is earlier withdrawn or removed from classification.

(9) The assessors shall, upon the request of the owner, provide the owner in a timely fashion a clear statement of the taxes which would in each tax period be due under the provisions of M.G.L. c. 59 and those actually being levied under M.G.L. c. 61.

15.06: Management of Classified Forest Land

(1) The owner shall not diverge from the approved forest management plan without prior written approval of the Department.

(2) Revisions to the forest management plan within the term of any ten year certification period that involve changes in silvicultural treatment or practices may be allowed at the discretion and only with the written approval of the Department when, in its discretion, such change does not substantially detract from the forest management objectives described in the current forest management plan in accordance with M.G.L. c.61 and regulations.

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

(3) A new owner of classified forest land who elects to continue under the provisions of M.G.L. c. 61 shall submit to the appropriate Regional Office, within ninety (90) days of transfer of title, an amended application certificate and amended forest management plan with updated information. Failure to so file within the 90-day period shall not invalidate certification or constitute grounds for removal from classification if the failure is due to inadvertence or mistake, and the new owner files an amended plan upon notification of such failure within the time set by the Department, and has done nothing on the subject parcel in the interim to otherwise warrant removal from classification.

(4) If a sale of forest land constitutes only a portion of the parcel subject to classification, the new owner shall, within ninety (90) days of the transfer of title, submit an amended application certificate and forest management plan to the appropriate Regional Office. The owner of the remaining portion of the parcel shall within 90 days of transfer of title submit an amended application certificate and forest management plan to the appropriate Regional Office. Failure to so file within the 90-day period shall not invalidate certification or constitute grounds for removal from classification if the failure is due to inadvertence or mistake, and the new owner files an amended plan upon notification of such failure within the time set by the Department, and has done nothing on the subject parcel in the interim to otherwise warrant removal from classification.

(5) At the end of each ten year classification period, an updated forest management plan and application certificate as required above shall be submitted by the owner to the appropriate Regional Office no later than 5:00 p.m., on or before June 30 of the year prior to the year of recertification. Applications postmarked on or before June 30 shall be considered timely filed. The owner's failure to abide by the provisions of 302 CMR 15.00 or the previous forest management plan may result in denial of recertification.

15.07: Voluntary Addition to and Withdrawal from Certification of Forest Land During Term of Classification

(1) The owner may voluntarily add forest land adjacent or contiguous to a subject parcel or subtract from the subject parcel only under the following terms and conditions:

(a) Additional adjacent or contiguous lands may be incorporated into the same application certificate and classification upon:

1. Submission to and approval by the Department of an amended forest management plan and application certificate no later than 5:00 p.m., on or before June 30 of the year preceding the period of desired classification;
2. Submission of the approved amended forest management plan and amended certificate to the assessors no later than 5:00 p.m., on or before September 30 of the year preceding the period of desired classification; and
3. Submission of the amended application certificate providing for classification and taxation of the entire augmented parcel for the balance of the term of the original classification period.

(b) Land in quantities less than that which would reduce the classified parcel to fewer than ten contiguous acres may be voluntarily withdrawn by the owner during the term of classification provided that:

1. application in the form of an amended forest management plan is submitted to the

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

Department no later than 5:00 p.m., on or before June 30 (applications postmarked on or before June 30 shall be considered timely filed);

2. the Department, by approving said amended forest management plan, certifies that the removal of said acreage does not substantially detract from the goals of forest production set forth in the original management plan; and

3. the new certificate and amended forest management plan are submitted to the assessors no later than 5:00 p.m., on or before September 30, together with all applicable registry fees and payment of all penalties, if any, then due for voluntary withdrawal of said land from classification as required under M.G.L. c. 61, §7.

(c) Additional adjacent and contiguous lands shall be subject to the same certification and classification periods as the subject parcel to which they are added, and shall be deemed part of the land originally described in the forest management plan for purposes including, but not limited to, recertification requirements or for calculating penalties for removal or withdrawal from classification.

(2) Contiguous parcels of certified forest land which are contained in separate forest management plans may be combined together into a single forest management plan by filing an amended plan. The amended plan will retain the case number of the most recently certified plan and will be valid for the longer of the remaining certification periods.

(3) If an owner voluntarily seeks to remove all of a subject parcel from certification and classification under M.G.L. c. 61, the owner shall notify the Department and the assessor, whereupon the assessor shall calculate the penalty, if any, for such removal in accordance with M.G.L. c. 61, §7, and the owner shall pay such penalty. Any dispute regarding the amount of the penalty shall be settled between the assessor and the owner, or appealed to the appellate tax board or other body of competent jurisdiction. The assessor shall notify the Department upon removal of the subject parcel from classification under M.G.L. c. 61 and reclassification of the subject parcel under M.G.L. c. 59.

15.08: Involuntary Withdrawals from Certification; Procedures for Hearings and Appeals

(1) The following may initiate an action for denial of, removal from, or orders for M.G.L. c. 61 classification:

(a) The Board of Assessors of the town in which the subject parcel is located may appeal to the Department as follows:

1. if, in their judgment, the land is not entitled to or does not qualify for certification or classification under M.G.L. c. 61;
2. if, in their judgment, the land is not being managed in accordance with an approved forest management plan; or
3. if, in their judgment, the land is being used for purposes incompatible with the forest production.

(b) The Department may initiate a proceeding for declassification on its own initiative when it learns that:

1. the land is not being managed in compliance with the certified management plan;
2. the owner has failed to comply with the law or rules and regulations published pursuant thereto; or

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

3. the land does not otherwise qualify under the provisions of M.G.L. c. 61.
- (2) In the case of an appeal brought by the assessors, the assessors shall, on or before December 1, submit such written appeal to the Department, sent by certified mail to 251 Causeway Street, Boston, MA 02114, in an envelope clearly marked on its face "APPEAL UNDER CHAPTER 61," with a copy to the affected owner, setting forth the reasons for such appeal, the address or location of the subject parcel, the name and address of the current owner of the subject parcel, the assessors map and lot number(s) of the subject parcel, and, if available to the assessors, the certificate number.
 - (3) In the case of a proceeding brought by the Department, the Department shall, on or before December 1, provide written notice of such proceeding, sent by certified mail to the owner, with a copy to the assessors, setting forth the reasons for the proposed removal from classification.
 - (4) The Department shall investigate the appeal of the assessors, or the proceeding for removal brought on its own initiative, and issue a decision denying certification and classification, removing land from certification and classification, or granting or confirming certification and classification, subject to any terms or conditions it deems reasonable, on or before March 1, sending copies by certified mail to the owner and the assessors.
 - (5) The owner or assessor may appeal the Department's decision and request a hearing on or before April 15. Such written appeal shall be submitted to the Department on or before December 1st, sent by certified mail to DCR Headquarters (251 Causeway Street, Boston, MA 02114), in an envelope clearly marked on its face "APPEAL UNDER CHAPTER 61," with a copy to the assessors or the owner, as appropriate, and shall set forth the reasons for such appeal. In the event no appeal is received by the Department from the assessors or the owner on or before April 15 immediately following the date of the issuance of the Department's decision, the Department's decision becomes final and binding on the assessors and the owner.
 - (6) Upon timely receipt of the appeal and request for a hearing, the Department shall take all necessary administrative actions on or before May 15, to constitute a panel that will hear and decide the subject of the appeal. The panel shall consist of three members: one nominated by the Department, one nominated by the assessors, and one selected by the other two in accordance with this section. When so notified in writing by the Department or its nominee, the assessors shall within ten days respond to DCR Headquarters (251 Causeway Street, Boston, MA 02114) in writing with the name of the assessors' nominee. With the administrative assistance of the Regional Office, said two nominees shall meet or otherwise confer and within seven days agree on a third panel member who shall serve as chair of the panel. The chair shall then utilize the administrative services of the Regional Office to set a time and place for the hearing and to properly notify the parties.
 - (7) In the event the assessors fail to nominate a panel member within the ten day period, the Department shall nominate and select that member. If the Department's and assessors' nominees (or, in the event of the assessors' failure to nominate a member, the two nominees of the Department) fail to within seven days agree on and designate a third member to serve as chair, then the Department shall select the third member to serve as chair of the panel. When fully constituted, the panel shall give at least seven days written notice to the parties by certified mail

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

of an established hearing date. The panel shall commence the hearing on or before June 15, or by a date set by mutual agreement of the parties.

(8) No panel member shall serve as witness or in any other capacity at a hearing before the panel of which he/she is a member. The panel shall convene and hold the hearing in accordance with the provisions of M.G.L. c. 30A, may establish its own guidelines, and shall arrange for recording proceedings and preparing and furnishing transcripts as required by law and its own procedures. The Regional Office of the Department shall provide administrative and support services at cost to the party bringing the appeal or requesting said services.

(9) The panel shall issue a final decision:

- (a) denying certification or classification; or
- (b) granting or confirming certification and ordering classification of the subject parcel and recording a lien thereon, imposing such terms and conditions deemed reasonable to carry out the purposes of M.G.L. c. 61; or
- (c) ordering removal of some or all of the subject parcel from classification.

Copies of the final decision shall be sent to the Department, the assessors and the owner, by certified mail, within ten business days after the conclusion of the hearing or any continuation thereof.

(10) Within forty-five (45) days of the final decision, the owner or assessors may petition the superior court in the county in which the subject parcel is located for review of the decision under the provisions of M.G.L. c. 30A, or the appellate tax board under the provisions of M.G.L. c. 58A. Land shall not be classified, and forest land shall not be withdrawn from classification, until the final determination of such petition.

15.09: Inspection

The Department has the authority to enter onto both private land that is the subject of an application for certification, as well as certified forest land for the purpose of making investigations to assure compliance with M.G.L. c. 61 and 302 CMR 15.00.

15.10: Severability

If any provision of 302 CMR 15.00 or the application thereof is held to be invalid, such invalidity shall not affect any provision of the regulations not specifically held to be invalid.

REGULATORY AUTHORITY

302 CMR 15.00: M.G.L. c. 61, § 2.

