



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

Workshop A
Tax Administration
Classified Forest, Farm and Recreation Lands
Chapters 61, 61A, 61B

Chapter Lands

AGENDA

- History of Classification Laws
- Eligibility for Classification
- Application Process and Appeals of Classification Determinations
- Taxation
- Assessment Appeals
- Change in Use
 - Right of First Refusal
 - Penalty Tax (Conveyance Tax and Roll-back Tax)
 - Appeals of Penalty Tax
- Agricultural Preservation Restrictions
- Discussion Questions

Massachusetts Constitution

Amendments Allowing Chapter Lands Classification

- **1912** – Art. 41 – taxation of **forest resources**
 - 1922 - Chapter 61 added
- **1972** – Art. 99 – taxation of **farm land**
 - 1973 - Chapter 61A added
- **1978** – Art. 110 – taxation of wild or forest land & land for **recreational uses** (replaced Art. 41)
 - 1979 – Chapter 61B added

Qualification

c. 61 Forest	c. 61A Agricultural/Horticultural	c. 61B Recreational
<ul style="list-style-type: none"> • 10 contiguous acres - same ownership • 10-year forest management plan certified by <u>state forester</u> • Recertified every 10 years • State forester has <u>sole</u> responsibility for determining qualification as “forest land” 	<ul style="list-style-type: none"> • 5 contiguous acres - same ownership • “Actively devoted” to A/H • 2 prior years A/H use • Gross sales - \$500 for initial 5 acres, \$5 per extra acre, and .50 for forest land/wetland • Additional, contiguous and non-productive land may qualify, but only up to 100% of productive land • Forest land, certified by state forester, will qualify 	<ul style="list-style-type: none"> • 5 contiguous acres - same ownership • <u>Either</u>: <ul style="list-style-type: none"> (1) <u>Condition</u> - natural, wild, open, landscaped, or pastured or managed forest condition under certified forest management plan; or (2) <u>Use</u> - devoted to recreational use listed in the statute and open to the general public or members of a non-profit

Application Process

c. 61 - Forest	c. 61A - A/H Farm	c. 61B - Recreational
<p>Apply to <u>state forester</u> by 5 pm, June 30 (302 CMR 15.05(1))</p> <p><u>On or before October 1,</u> Apply to Assessors Form CL-1 with certificate & approved forest plan</p>	<p><u>Annual</u> application <u>on or before October 1</u> Apply to Assessors – Form CL-1</p> <p>Revaluation year filing extension - 30 days after actual tax bills mailed (61A:8; 61B:5) For purpose of statute, each year is revaluation year</p>	
<p>Assessors take action – Form CL-2 (Allow/Disallow) Before taking action, assessors should view property to verify qualifying use, etc.</p>		
<p>Assessors <u>must</u> allow application if documents in order</p>	<p>Application <u>allowed</u> if no assessor action in 3 months</p>	<p>Application <u>disallowed</u> if no assessor action in 3 months</p>

Application Process (continued)

c. 61- Forest	c. 61A - Farm	c. 61B - Recreational
<p>If allowed:</p> <ul style="list-style-type: none"> • JAN 1 – land classified • 10-year classification consistent with period forest management plan • JULY 1- taxation under c. 61 commences • Annual application not required – forest plan recertification through state forester every 10 years 	<p>If allowed:</p> <ul style="list-style-type: none"> • JAN 1 – land classified • 1-year classification • JULY 1- taxation under c. 61A commences • Annual application required 	<p>If allowed:</p> <ul style="list-style-type: none"> • JAN 1 – land classified • 1-year classification • JULY 1- taxation under c. 61B commences • Annual application required

Appeals of Classification Determination

c. 61 - Forest	c. 61A Farm	c. 61B Recreation
<ul style="list-style-type: none"> • DECEMBER 1 (on or before) - assessor (or landowner) appeal to state forester if <ul style="list-style-type: none"> ✓ Disagree with forester's certificate / approval of forest management plan or ✓ Previously classified forest land is being used in a manner inconsistent with plan • MARCH 1 - forester issues decision on appeal • APRIL 15 - appeal of forester's decision to 3 - person panel • MAY 15 - panel hearing • Within 45 days of notice of panel's decision - appeal panel decision to ATB or Superior Ct. <p>Note: State forester, on its own, may initiate removal of land from classification.</p>		<ul style="list-style-type: none"> • Within 30 days of notice - landowner may appeal assessor's determination to Board of Assessors (Form CL-7 - Application to Modify Decision/Abate a Tax) • Within 30 days of notice of decision or 3 months of application, whichever is later - further appeal to Appellate Tax Board

Taxation

c. 61 - Forest	c. 61A - Farm	c. 61B - Recreational
On approval		
Assessors record lien CL-3	On approval of 1 st application, after lapse in classification or if new landowner, assessors record lien – CL-3	
<p>Assessed at FOREST “USE” VALUE</p> <p>Values published annually by FVAC, used as a guide</p> <p>Commercial rate (class 3) applied to Forest Use value</p>	<p>Assessed at A/H (Farm) “USE” VALUE</p> <p>Values published annually by FVAC, used as a guide</p> <p>Commercial rate (class 3) applied to A/H Use value</p>	<p>Assessed at RECREATIONAL “USE” VALUE</p> <p>May not exceed 25% of full & fair cash value</p> <p>Commercial rate (class 3) applied to Rec Use value</p>
<ul style="list-style-type: none"> Buildings, residences and land accessory to their use taxed at <u>full value</u> Open space classification of classified land (class 2) by local option 		



FVAC CHAPTER LAND RECOMMENDED VALUE for FISCAL YEAR 2019

Per Acre Range of Values

Chapter Land 61 and 61A Use Categories	Productivity Based on Dominate Soil Ratings*			
	Use Code	Below Average	Average	Above Average
Cropland Harvested: Vegetables, Tobacco, Sod and Nursery	711, 712, 719	\$766	\$958	\$1150
Cropland Harvested: Dairy, Beef and Hay; Tillable forage cropland, etc.	713	\$154	\$192	\$230
Cropland Harvested: Orchards, Vineyards, and Blueberries	714	\$766	\$958	\$1150
Christmas Trees	602, 715	\$108	\$108	\$108
Nonproductive Land: Wetland, scrub land, rock land	720	\$48	\$48	\$48
Cropland pastured; Permanent pastured; Necessary and Related land—farm roads, ponds, etc.	716, 718	\$154	\$192	\$230
Productive Woodland; Land Use Categories – Chapter 61 Forest Land or 61A land with a Forest Management Plan West of the Connecticut River	601, 717	\$79	\$99	\$119
Productive Woodland; Land Use Categories – Chapter 61 Forest Land or 61A land with a Forest Management Plan East of the Connecticut River	601, 717	\$62	\$78	\$94

Use Code	Cranberry: Range of Production/ Barrels per Acre				
710	<89	89≤125	125≤160	160<195	>195
Cranberry Values	\$828	\$1248	\$1665	\$2080	\$2500

- **Cropland Harvested** – This land represents the highest use of land in the agricultural enterprise. All land from which a crop was harvested or hay was cut, in the current year falls into this category. This includes the land in vegetables, sod, nurseries, orchards, vineyards, other perennial plantings, and greenhouses.
- **Dairy, Beef and Hay; Cropland Pastured, Other Cropland & Permanent Pasture** – Cropland used for pasture or grazing or land considered as tillable but is elected to be fallow or in cover crops. It can and often is used to produce crops, but its maximum income may not be realized in a particular year. This category also includes land planted in crops, which were to be harvested after the census year, and land is typically not tillable, best suited for grazing or possibly part of an erosion control program, plus necessary and related lands.
- **Nonproductive Land** – The land on the farm which is nonproductive primarily due to slope, drainage capacity, soil type or topography.

FVAC Values

If a valuation of classified A/H (farm) land for real estate tax purposes departs from the Farmland Valuation Advisory Commission (FVAC) guidelines, the value should be supported by “specific and objectively identifiable reasons.”

Mann v. Board of Assessors of Wareham,
387 Mass. 35 (1982). G. L. c. 61A, §§ 10-11

CHAPTER 61, 61A, 61B PROPERTY

Forest, Agricultural/Horticultural and Recreational lands valued according to M.G.L. Chapters 61, 61A, 61B are not specifically included in any of the four major classifications. The commercial property tax rate, however, is the applicable rate for land under these chapters.

CODE 6

Forest Land

- 601..... All land designated under Chapter 61
- 602..... Christmas Trees

CODE 7

Agricultural/Horticultural

All land that has been designated under Chapter 61A. (Land devoted to this use must be in excess of 5 acres and meet other requirements of the law.)

71 Productive Land (Including Necessary and Related Land)

- 710..... Cranberry Bog
- 711..... Tobacco, Sod
- 712..... Truck Crops - vegetables
- 713..... Field Crops - hay, wheat, tillable forage cropland etc.
- 714..... Orchards - pears, apples, grape vineyards etc.
- 715..... Christmas Trees
- 716..... Necessary Related Land-farm roads, ponds, Land under farm buildings
- 717..... Productive Woodland - woodlots
- 718..... Pasture
- 719..... Nurseries

72 Non-Productive Land

- 720..... Wet land, scrub land, rock land

CODE 8

Recreational Land

All property that has been designated under Chapter 61B. (If an area has more than one use according to the codes below, use the code which represents the primary use of the land).

- 801 Hiking - trails or paths
- 802 Camping - areas with sites for overnight camping
- 803 Nature Study - areas specifically for nature study or observation
- 804 Boating - areas for recreational boating and supporting land facilities
- 805 Golfing - areas of land arranged as a golf course
- 806 Horseback Riding - trails or areas
- 807 Hunting - areas for the hunting of wildlife
- 808 Fishing Areas
- 809 Alpine Skiing - areas for "downhill" skiing
- 810 Nordic Skiing - areas for "cross-country" skiing
- 811 Swimming Areas
- 812 Picnicking Areas
- 813 Public Non-Commercial Flying - areas for gliding or hand-gliding
- 814 Target Shooting - areas for target shooting such as archery, skeet or approved fire-arms
- 815 Productive Woodland - woodlots

23 Open Land in an Industrial Area

- 230..... Industrial Vacant Land (acreage without site improvements and not in commercial or industrial use)
- 231..... Underwater Land or Marshes not under public ownership located in industrial area

Chapter 61, 61A, 61B Property Being Classified as Open Space

Forest, Agricultural/Horticultural and Recreational lands valued according to M.G.L. Chapters 61, 61A 61B and is being classified as open space. (Without an Open Space Classification they must be placed in Codes 6, 7 or, see page 8.)

26 Forest Land

- 261..... All land designated under Chapter 61
- 262..... Christmas Trees

27 Agricultural/Horticultural

All land that designated under Chapter 61A. (Land devoted to this use must be in excess of 5 acres and meet other requirements of the law and is being classified as open space.) Note Non-Productive land is being coded as 29.

Productive Land

- 270..... Cranberry Bog
- 271..... Tobacco, Sod
- 272..... Truck Crops - vegetables
- 273..... Field Crops - hay, wheat, tillable forage cropland etc.
- 274..... Orchards - pears, apples, grape vineyards etc.
- 275..... Christmas Trees
- 276..... Necessary related land-farm roads, ponds, land under farm buildings
- 277..... Productive Woodland - woodlots
- 278..... Pasture
- 279..... Nurseries

Non-Productive Land

- 290..... Wet land, scrub land, rock land

28 Recreational Land

All property designated under Chapter 61B. (If an area has more than one use according to the codes below, use the code which represents the primary use of the land and is being classified as open space.)

- 280..... Productive woodland -woodlots
- 281..... Hiking - trails or paths, Camping - areas with sites for overnight camping, Nature Study - areas specifically for nature study or observation
- 282..... Boating - areas for recreational boating and supporting land facilities
- 283..... Golfing - areas of land arranged as a golf course
- 284..... Horseback Riding - trails or areas
- 285..... Hunting - areas for the hunting of wildlife and Fishing Areas
- 286..... Alpine Skiing - areas for "downhill" skiing and Nordic Skiing - areas for "cross-country" skiing
- 287..... Swimming Areas and Picnicking Areas
- 288..... Public Non-Commercial Flying - areas for gliding or hand-gliding
- 289..... Target Shooting - areas for target shooting such as archery, skeet or approved fire-arms

Appeals of Assessment Determination

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<ul style="list-style-type: none">• ABATEMENT - Landowner may apply for abatement to Board of Assessors within 30 days of notice of tax (Form CL-7 - Application to Modify a Decision/Abate a Tax)• APPEAL to ATB - Further appeal to Appellate Tax Board within 30 days of notice of decision or 3 months of application, whichever is later		

Change to Disqualifying Use

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<p>What rights does a municipality have when the landowner changes the use of classified land or decides to sell for another use?</p> <p>Depending on the circumstances:</p> <ul style="list-style-type: none">• The municipality may have a right of first refusal (ROFR) / option to purchase the classified land; and/or• A penalty tax may be due the municipality		

Right of First Refusal (ROFR)

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<p>Municipality has a ROFR (right of first refusal / option to purchase) when landowner converts (changes) or decides to sell classified land for <u>residential, commercial or industrial development or use</u> during:</p> <ul style="list-style-type: none">(1) any fiscal year the land is classified, or(2) the fiscal year after the year the land was last classified		

Right of First Refusal (ROFR)

**c. 61
Forest**

**c. 61A
Farm**

**c. 61B
Recreational**

Statutory exceptions - ROFR does not apply if landowner:

- (1) simply discontinues the classified use, i.e., leaves the land undeveloped, or
- (2) sells or converts for a residence for the landowner, the landowner's spouse, parent, grandparent, child, grandchild, brother or sister, or the surviving spouse of those relatives, or an employee working full-time in the use and care of the property for its classified use

(61:8; 61A:14; 61B:9)

Right of First Refusal (ROFR)

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<p>When ROFR is triggered, a complex notice and response procedure begins:</p> <ul style="list-style-type: none">• Landowner gives notice to municipality – specific statutory content, manner of delivery and recipients• Municipality has 120 days to exercise option or may assign option to commonwealth, another municipality or conservation org.<ul style="list-style-type: none">• Municipality must match bona fide offer in P&S (if sale) or pay FMV (if to be converted / developed by landowner)• If notice from landowner defective, municipality must notify landowner within 30 days <p>✓ To ensure municipality's rights are protected, consult municipal counsel as soon as possible</p>		

Penalty Taxes

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<ul style="list-style-type: none">• Generally, upon a <u>change</u> of use of classified land to a <u>non-qualifying use</u>, a landowner must pay one of two “penalty” taxes<ul style="list-style-type: none">• Conveyance tax or• Roll-back tax• A “<u>non-qualifying use</u>” means a use or condition that would not qualify under the definitions of either c. 61, c. 61A or c. 61B <p>(Some exceptions apply)</p>		

Conveyance Tax

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<p>Imposed when sold for or converted to non-qualifying use within 10 years of landowner's <u>acquisition</u> (or continuous use as forest/A/H, if earlier)</p> <p>Tax = price/value x conveyance tax rate</p> <p>C.T. rate = 10% to 1% (rate declines 1% per year of ownership)</p>		<p>Imposed when sold for or converted to non-qualifying use within 10 years of <u>first classification</u></p> <p>Tax = price/value x conveyance tax rate</p> <p>C.T. rate = 10% within first 5 years, 5% within years 6-10</p>
Only assess if conveyance tax applies and is <u>more</u> than roll-back tax		
<p>“Grandfather” exemption for landowner in program from FY 2008</p> <p>See also statutory exemptions (61:6)</p>	<p>See statutory exemptions (61A:12)</p>	<p>See statutory exemptions (61B:7)</p>

Roll-back Tax

c. 61 Forest	c. 61A Farm	c. 61B Recreational
Roll-back recovery period = 5 years, with simple interest at 5%		
<p>Roll-back tax for each year: c. 59, full value taxes - <u>c. 61, forest “use” taxes</u> = the difference</p> <p>Statutory Exemption: Acquisitions for natural resource purpose by city/town or nonprofit, but if nonprofit changes use to residential, commercial, or industrial within 5 years, roll-back will apply (61:7)</p>	<p>Roll-back tax for each year: c. 59, full value taxes - <u>c. 61A, A/H “use” taxes</u> = the difference</p> <p>Exemption from interest on roll-back for parcel classified as of FY 2007 & owned by same landowner or relatives</p> <p>Same statutory exemptions as for Forest Land (61A:13)</p>	<p>Roll-back tax for each year: c. 59, full value taxes - <u>c. 61B, rec. “use” taxes</u> = the difference</p> <p>Same statutory exemptions as for Forest Land (61B:8)</p>

Case Law – Penalty Tax Exceptions

- Adams v. Assessors of Westport, 76 Mass. App. 180 (2010), further appellate review denied, 456 Mass. 1106 (2010)
 - Appeals Court applied ROFR exception to conveyance tax when classified A/H land being converted to a personal residence for landowner
- Ross v. Assessors of Ipswich, ATB docket #F239496, November 21, 2000
 - Appellate Tax Board applied ROFR exception to roll-back tax when classified A/H land sold to landowner's child for purpose of a personal residence

Case Law – Penalty Tax Exceptions

Result of Adams and Ross decisions:

ROFR exceptions will likely be applied by court and ATB to penalty tax when classified land is sold for or converted to a personal residence for:

- landowner, landowner's spouse, parent, grandparent, child, grandchild, brother or sister, or surviving spouse of those relatives, or
- an employee working full-time in the use and care of the property for its classified use

Appeal of Penalty Tax

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<p>ABATEMENT: Apply to Board of Assessors</p> <ul style="list-style-type: none">• Within 30 days of notice of tax• Form CL-7 - Application to Modify a Decision/Abate a Tax <p>APPEAL TO ATB:</p> <ul style="list-style-type: none">• Within the later of 30 days of notice of decision or 3 months of application		

Agricultural Preservation Restrictions

G.L. c. 20, § 26 - land under an agricultural preservation restriction (APR), while “actively devoted to” A/H (farm) use as defined in c. 61A, §§ 1-5, shall be assessed at values used for land classified under c. 61A

Result

- For classified valuation, APR land must meet size, use and gross sales requirements of c. 61A, §§ 1-5 and landowner must demonstrate eligibility to assessors. (Usually shown by taxpayer submitting completed form CL-1, although form not required.)
- Annual application for classification, lien recording, penalty tax and ROFR requirements of c. 61A do not apply

35 Public Service Properties (see Code 9 for Exempt Public Service Properties)

- 350..... Property Used for Postal Services
- 351..... Educational Properties
- 352..... Day Care Centers, Adult (see also Code 140)
- 353..... Fraternal Organizations
- 354..... Bus Transportation Facilities and Related Properties
- 355..... Funeral Homes
- 356..... Miscellaneous Public Services - professional membership organizations, business associations, etc.

36 Cultural and Entertainment Properties

- 360..... Museums
- 361..... Art Galleries
- 362..... Motion Picture Theaters
- 363..... Drive-In Movies
- 364..... Legitimate Theaters
- 365..... Stadiums
- 366..... Arenas and Field Houses
- 367..... Race Tracks
- 368..... Fairgrounds and Amusement Parks
- 369..... Other Cultural and Entertainment Properties

37 Indoor Recreational Facilities

- 370..... Bowling
- 371..... Ice Skating
- 372..... Roller Skating
- 373..... Swimming Pools
- 374..... Health Spas
- 375..... Tennis and/or Racquetball Clubs
- 376..... Gymnasiums and Athletic Clubs
- 377..... Archery, Billiards, other indoor facilities

38 Outdoor Recreational Properties (excluding those classified under General Laws 61B)

- 380..... Golf Courses
- 381..... Tennis Courts
- 382..... Riding Stables
- 383..... Beaches or Swimming Pools
- 384..... Marinas - including marine terminals & associated areas primarily for recreational marine craft
- 385..... Fish and Game Clubs
- 386..... Camping Facilities - accommodations for tents, campers or travel trailers
- 387..... Summer Camps - children's camps
- 388..... Other Outdoor facilities - e.g., driving ranges, miniature golf, baseball batting ranges, etc.
- 389..... Structures on land classified under Chapter 61B Recreational Land

39 Vacant Land - Accessory to Commercial parcel or not specifically included in another class

- 390..... Developable Land
- 391..... Potentially developable Land
- 392..... Undevelopable Land
- 393..... Agricultural/Horticultural Land not included in Chapter 61A

Discussion Question 1

What are the minimum acreage requirements for classification

- Under c. 61 – Forest Land?
- Under c. 61A - Farm Land?
- Under c. 61B – Recreational Land?

61:2, 61A:3, 61B:1; FAQ 4

Discussion Question 1

What are the minimum acreage requirements for classification

- Under c. 61 – Forest Land? **10 acres**
- Under c. 61A - Farm Land? **5 acres**
- Under c. 61B – Recreational Land? **5 acres**

61:2, 61A:3, 61B:1; FAQ 4

Discussion Question 2

What action should assessors take on an application if a parcel does not meet the minimum acreage requirements?

- Under c. 61 – Forest Land?
- Under c. 61A - Farm Land?
- Under c. 61B – Recreational Land?

61:2, 61A:9, 61B:6; FAQ 11

Discussion Question 2

What action should assessors take on an application if a parcel does not meet the minimum acreage requirements?

- Under c. 61 – Forest Land? **Appeal to the State Forester**
- Under c. 61A - Farm Land? **Disapprove application**
- Under c. 61B – Recreational Land? **Disapprove application**

61:2, 61A:9, 61B:6; FAQ 11

Discussion Question 3



Does the following parcel meet the eligibility requirements for classification under c. 61A - Farm Land?

Mary has 4.75 acres of land.

Her application states she has been raising sheep on the parcel for the past two years.

The parcel contains fields where she grows hay for the sheep to forage, a barn where she houses the sheep and farm roads providing access throughout the farm.

Mary's submitted tax returns and receipts show she has sold lambs for the past two years with gross sales of more than \$500 each year.

61A:3; FAQs 4B, 7B



Discussion Question 3



Does the following parcel meet the eligibility requirements for classification under c. 61A - Farm Land?

Mary has 4.75 acres of land.

Her application states she has been raising sheep on the parcel for the past two years.

The parcel contains fields where she grows hay for the sheep to forage, a barn where she houses the sheep and farm roads providing access throughout the farm.

Mary's submitted tax returns and receipts show she has sold lambs for the past two years with gross sales of more than \$500 each year.

Answer – No, the parcel does not meet the 5-acre minimum size requirement.

61A:3; FAQs 4B, 7B



Discussion Question 4

What if Mary's parcel is exactly 5 acres in size?

Does the land under the barn and roads count toward the 5-acre minimum required for classification under c. 61A - Farm Land?

61A:1; FAQs 4B, 7B



Discussion Question 4

What if Mary's parcel is exactly 5 acres in size?

Does the land under the barn and roads count toward the 5-acre minimum required for classification under c. 61A - Farm Land?

Answer – Yes. To count toward the 5-acre minimum requirement, the land must be “actively devoted” to agricultural or horticultural use – used primarily and directly in raising animals or growing food or in a manner related or necessary to their production or preparation for market.

Farm roads and land under farm buildings count as they are related and necessary land. So - Mary's parcel will meet the five-acre minimum.



61A:1; FAQs 4B, 7B

Discussion Question 5



What part of the land involved in cranberry production will count toward the 5-acre minimum required for classification under c. 61A - Farm Land?
61A:2, 4; FAQs 4B, 7B; Opinion 2009-734



Land under
Storage Barn/Staging Area



Land used for
Bee-keeping



Land under Juice Factory



Farm Roads



Land under Pump House



Sand Pits



Land under Company HQ



Adjacent Woodland



Bogs, Irrigation Ponds

Discussion Question 5



What part of the land involved in cranberry production will count toward the 5-acre minimum required for classification under c. 61A - Farm Land?
61A:2, 4; FAQs 4B, 7B; Opinion 2009-734



Land under Storage
Barn/Staging Area - **Yes**



Land used for
Bee-keeping - **Yes**



Land under Juice Factory - **No**



Farm Roads - **Yes**



Land under Pump House - **Yes**



35 Sand Pits - **Yes**



Land under
Company HQ- **No**



Adjacent Woodland – **No. But**
may be classified as contiguous
non-productive land up to 100 %
of amount of classified
productive land



Bogs, Irrigation Ponds
- **Yes**

Discussion Question 6

What if Mary's sheep farm is 4.9 acres, but she adds the adjacent 4-acre sheep farm that she owns with her son John?

Would the combined parcel meet the eligibility requirements for classification under c. 61A - Farm Land?

61A:4; FAQ 6



Discussion Question 6

What if Mary's sheep farm is 4.9 acres, but she adds the adjacent 4-acre sheep farm that she owns with her son John?

Would the combined parcel meet the eligibility requirements for classification under c. 61A - Farm Land?

Answer – No. The land must not only be contiguous, it must be under the “same ownership.”

Here, one parcel is owned by Mary and the other parcel is owned by Mary and John. This is not the “same ownership.” Neither parcel alone meets the 5-acre minimum.



61A:4; FAQ 6

Discussion Question 7

Mary's sheep farm is 5 acres and meets the requirements of c. 61A – Farm Land.

Mary places solar panels in her pasture and her sheep graze under them. Is the land still eligible for classification?

61A:2A; FAQs 15C – 20, 19 (Example 2)



Discussion Question 7

Effective FY18, land under a solar facility will count as A/H land and toward the 5-acre minimum needed for c. 61A Farm Land classification if:

1. The solar facility:
 - i. Produces energy for exclusive use of the land & farm on which it is located (including contiguous & non-contiguous land owned or leased by owner or in which owner has an interest) and
 - ii. Does not produce > 125% of the annual energy needs of such land and farm; and
2. The land under the solar facility is simultaneously being used for A/H production.

G.L. c. 61A, § 2A

Answer – Although Mary's solar facility meets requirement #2 above, assessors will need to determine if the facility meets the purpose and size requirements of # 1 above. (Note - no similar provision for solar facilities under c. 61 Forest or c. 61B Recreation.)



Discussion Question 8

What if the solar facility placed on Mary's pasture is on a concrete platform that prevents forage from growing and the sheep from grazing?

Is the land still eligible for classification?

61A:2A; FAQs 15C - 20, 19 (Example 3)



Discussion Question 8

What if the solar facility placed on Mary's pasture is on a concrete platform that prevents forage from growing and the sheep from grazing? Is the land still eligible for classification?

61A:2A; FAQs 15C - 20, 19 (Example 3)

Answer – No.

In this case, the solar facility prevents the simultaneous use of the land for the raising of sheep, so it does not comply with the requirements of G.L. c 61A, § 2A. So, the land under the solar facility will not count toward the 5-acre minimum requirement for land actively devoted to A/H use and Mary's land will not be eligible for classification.



Discussion Question 9

Mary's placement of a solar facility with a concrete platform on her pasture (preventing the forage from growing and the sheep from grazing) has caused the land under and associated with the solar facility to be ineligible for classification.

Does this action also trigger a penalty tax or the ROFR?

61A:2A, 12-14; FAQ 21



Discussion Question 9



Mary's placement of a solar facility with a concrete platform on her pasture (preventing the forage from growing and the sheep from grazing) has caused the land under and associated with the solar facility to be ineligible for classification. Does this action also trigger a penalty tax or the ROFR? 61A:2A, 12-14; FAQ 21

Yes. The installation of a solar facility that does not meet the requirements of G.L. c. 61A, § 2A will trigger a penalty tax (conveyance tax or roll-back tax) and a municipality's ROFR.

But - if the solar facility meets the size and purpose requirements of G.L. c. 61A, § 2A and the land on which the facility is located is simultaneously used for the grazing of the sheep (farm production) - then no penalty tax or ROFR is triggered under G.L. c. 61A, § 13. (Amendment effective FY18.)

Discussion Question 10

Mary is ready to retire and does not timely file an application for classification of her sheep farm. Instead, she notifies the assessors that she will be giving her sheep to her son John and will be taking it easy in her retirement. She has no plans to do anything with her land.

What should the assessors do?

61A:12-14; FAQ 13, 14



Discussion Question 10

Mary is ready to retire and does not timely file an application for classification of her sheep farm. Instead, she notifies the assessors that she will be giving her sheep to her son John and will be taking it easy in her retirement. She has no plans to do anything with her land.

What should the assessors do?

61A:12-14; FAQ 13, 14

Answer: Nothing. There is no penalty tax (roll-back or conveyance tax) or ROFR unless there is a change of use to a “disqualifying” use – a use or condition that would not qualify under the definitions of either c. 61, c. 61A or c. 61B.

But, as of the next January 1, the parcel should not be classified and should be assessed at full and fair cash value for the upcoming fiscal year.



Discussion Question 11



501(c)(3) nonprofit *Friends of the Trees*, owns a 10-acre, nine-hole golf course and submits an application for classification of the parcel under c. 61B – Recreational Land. On page 2 of the CL-1 form, under “Recreational,” #2 is checked.

The application states the land:

- is used primarily for golfing 8 months of the year by many people;
- is not open to the general public; and
- is restricted to use by members of the *Hoity-Toity Exclusively Private Golf Club for the Rich and Famous*.

Under “C – Lessee Certification,” the President of *Hoity-Toity* signs as lessee, certifying the leased property is being used as stated in the application. **Is this land eligible for classification?**

61B:1; FAQs 4C, 9; Opinions 96-709, 2003-57, *Cape Cod Five Cents Savings, et al v. Assessors of Harwich & Brewster*, ATB F277365 (July 17, 2009)



Name of City or Town _____

61	61A	61B
Assessors' Use only		
Date Received _____		
Application No. _____		

**Fiscal Year _____ Application for
Forest-- Agricultural or Horticultural -- Recreational Land Classification
General Laws Chapter 61, §§ 1 & 2 – Chapter 61A, § 6 – Chapter 61B, § 3**

INSTRUCTIONS: Complete all sections that apply. Please print or type.

A. IDENTIFICATION. Complete this section fully.

Name of Applicant(s): _____				
Mailing Address: _____				
No. Street _____		City/Town _____		Zip Code _____
Property Covered by Application: _____				
Location	Parcel Identification (Map-Block-Lot)	Deed Reference (Book & Page/Cert. No.)	Total Acres	Acres to be Classified

B. TYPE OF CLASSIFICATION. Check the classification you are seeking and provide the required information.

FOREST ☐ Attach State Forester's Certificate and Approved Forest Management Plan.

AGRICULTURAL or HORTICULTURAL ☐

1. Current use of land. List by classes established by the Farmland Valuation Advisory Commission, if applicable.

Land Use by Class	No. of Acres	Specific Use, Crops Grown
a. Vegetables, Tobacco, Sod and Nursery Cropland		
b. Dairy, Beef and Hay Cropland		
c. Orchards, Vineyards and Blueberries Cropland		
d. Cranberries		
e. Christmas Trees		
f. Productive Woodland (Attach copy of State Forester's Certificate and Approved Management Plan if initial application, or new/revised plan)		
g. Cropland Pasture, Permanent Pasture and Necessary and Related Land		
h. Contiguous Non-productive Land		
i. Other Agricultural or Horticultural (Specify)		

2. Statement of income in preceding year. Supporting documentation, including copies of your federal and state tax income returns, may be requested to verify your income.

a. Gross sales from agricultural or horticultural use.....\$ _____
 b. Amount received under MA or US Soil Conservation or Pollution Abatement Program.....\$ _____
 Total (Provide a detailed description of the source of the farm income listed above).....\$ _____

3. Previous use of land. Was the land valued, assessed and taxed as classified agricultural or horticultural land under c. 61A for the prior 2 fiscal years? Yes ☐ No ☐

If no, was the use of the land during the prior 2 fiscal years the same as the current use described above? Yes ☐ No ☐

If no, describe in detail the use of the land during the prior 2 fiscal years _____

If no, was your farm income during either of the prior 2 fiscal years less than the amount reported above?

Yes ☐ No ☐

If yes, list the income for the year \$ _____ Fiscal year _____

RECREATIONAL ☐ Land may qualify based on its condition or recreational use.1. Is the land retained in substantially a natural, wild or open condition? Yes ☐ No ☐Is the land in a landscaped or pasture condition or managed forest condition? Yes ☐ No ☐

If managed forest, attach copy of State Forester's Certificate and Approved Management Plan if initial application, or new/revised plan.

Does the land allow to a significant extent the preservation of wildlife and other natural resources? Yes ☐ No ☐

If yes, indicate which natural resources are preserved:

Ground Water/Surface Water <input type="checkbox"/>	Clean Air <input type="checkbox"/>	Vegetation <input type="checkbox"/>
Rare/Endangered Species <input type="checkbox"/>	Geologic Features <input type="checkbox"/>	Scenic Resources <input type="checkbox"/>
High Quality Soils <input type="checkbox"/>	Other (specify) _____	Other (specify) _____

2. Is the land used primarily for recreational use? Yes ☐ No ☐

If yes, indicate for which recreational activity:

Archery <input type="checkbox"/>	Picnicking <input type="checkbox"/>	Camping <input type="checkbox"/>	Nature Study & Observation <input type="checkbox"/>
Fishing <input type="checkbox"/>	Golfing <input type="checkbox"/>	Hang gliding <input type="checkbox"/>	Non-commercial Youth Soccer <input type="checkbox"/>
Hiking <input type="checkbox"/>	Target Shooting <input type="checkbox"/>	Hunting <input type="checkbox"/>	Private Non-commercial Flying <input type="checkbox"/>
Boating <input type="checkbox"/>	Skiing <input type="checkbox"/>	Swimming <input type="checkbox"/>	Horseback Riding <input type="checkbox"/>
			Commercial Horseback Riding & Equine Boarding <input type="checkbox"/>

How often is the land used for recreational activities? _____

How many people use the land for those activities? _____

Is the land open to the general public? Yes ☐ No ☐

If no, to whom is its use restricted? _____

Is the land used for horse racing, dog racing or any sport normally undertaken in a stadium, gymnasium or similar structure? Yes ☐ No ☐**C. LESSEE CERTIFICATION.** If any portion of property is leased, the following statement must be signed by each lessee.

I hereby certify that the property I lease is being used as described in this application and that I intend to use the property in that manner during the period to which the application applies.

Lessee

Date

D. SIGNATURE. All owners must sign here to complete the application.

This application has been prepared or examined by me. Under the pains and penalties of perjury, I declare that to the best of my knowledge and belief, it and all accompanying documents and statements are true, correct and complete. I also certify that I have signed and attached a Property Owner's Acknowledgement of Rights and Obligations under classified forest, agricultural or horticultural or recreational land programs, as part of this application.

Owner

Date

If signed by agent, attach copy of written authorization to sign on behalf of taxpayer.

DISPOSITION OF APPLICATION (ASSESSORS' USE ONLY)

Ownership <input type="checkbox"/>	All <input type="checkbox"/>	GRANTED	Date Voted/Denied _____
Min. Acres <input type="checkbox"/>	Part <input type="checkbox"/>		Date Notice Sent _____
Use/Condition <input type="checkbox"/>	Deemed <input type="checkbox"/>		Board of Assessors
Gross Sales <input type="checkbox"/>	All <input type="checkbox"/>	DENIED	_____
	Part <input type="checkbox"/>		_____
	Deemed <input type="checkbox"/>		Date _____

Discussion Question 11



Law: Chapter 61B – Recreational Land (5-acre minimum):

- Option 1- Retained in one of the following conditions in a manner that preserves wildlife or other natural resources - substantially natural, wild or open condition, landscaped or pasture condition; or
- Option 2- Devoted to a qualifying recreational use in a manner that does not materially interfere with the environmental benefits derived from the land and must be open to public or members of a non-profit organization
- Qualifying recreational use includes golfing

61B:1; FAQs 4C, 9; Opinions 96-709, 2003-57, *Cape Cod Five Cents Savings, et al v. Assessors of Harwich & Brewster*, ATB F277365
(July 17, 2009)



Discussion Question 11



Answer: Land is not eligible for classification under c. 61B under either Option 1 or Option 2

Option 1- Land is not retained in one of the following conditions in a manner that preserves wildlife or other natural resources - substantially natural, wild or open condition, landscaped or pasture condition

Option 2- Although devoted to a qualifying recreational use (golf), the land is not open to public or to members of a non-profit organization

61B:1; FAQ 4C, 9; Opinions 96-709, 2003-57
Cape Cod Five Cents Savings, et al v. Assessors of Harwich & Brewster, ATB F277365
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