

Essex County Assessors Association

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****This presentation represents the opinions of presenter and is for informational and training purposes only.**



Agenda

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- **Classified Land**
 - Constitutional Authority
 - Qualifying Land
 - Application Procedure
 - Current Use Valuation
 - Right of First Refusal
 - Penalty Taxes
 - Renewable Energy Installations
 - **Optional Additional Exemption**
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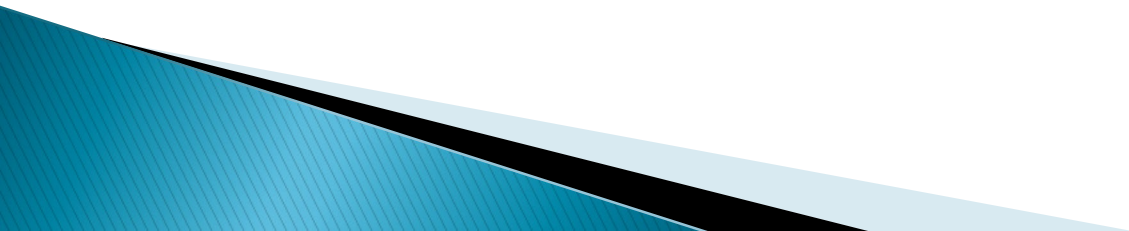
Classified Land

Massachusetts Constitution

History of property taxation at other than constitutional requirement of uniform proportional assessments

- **1912** – Art. 41 – Taxation of **forest resources**
 - 1922 – G.L. Chapter 61 enacted
- **1972** – Art. 99 – Taxation of **agricultural and horticultural (farm) land**
 - 1973 – G.L Chapter 61A enacted
- **1978** – Art. 110 – Taxation of wild or forest land and land for **recreational uses** (replaced Art. 41)
 - 1979 – G.L. Chapter 61B enacted

Application



Qualifying Land Uses

c. 61 Forest	c. 61A Agricultural/Horticultural	c. 61B Recreational
<ul style="list-style-type: none"> • <u>10</u> contiguous acres - same ownership • “Actively devoted” to forest production • 2 prior years compatible use • 10-year forest management plan certified by <u>State Forester</u> • <u>Only</u> State Forester determines if land is “forest land” 	<ul style="list-style-type: none"> • <u>5</u> 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, can qualify 	<ul style="list-style-type: none"> • <u>5</u> 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

Excluded Land

c. 61 Forest	c. 61A Agricultural/Horticultural	c. 61B Recreational
<ul style="list-style-type: none">• State Forester determines• Land under buildings or structures or accessory to their use• Land used by house and residential living purposes• Site of utility structures if incompatible with forest production	<ul style="list-style-type: none">• Land under and associated with buildings not related to the farm production is excluded• Land under a house• Land around house regularly used for residential living purposes and <u>not</u> actually used for qualifying forest, farm or recreational uses	<ul style="list-style-type: none">• Land under and associated with buildings or improvements interfering with environmental benefits of land as open and undeveloped, e.g., paved parking areas and roads• Land under a house• Land around house regularly used for residential living purposes and <u>not</u> actually used for qualifying forest, farm or recreational uses

Application Procedure

c. 61 Forest	c. 61A A/H Farm	c. 61B Recreational
<p>Apply to <u>State Forester</u> by <u>5 pm, June 30 before FY</u> (302 CMR 15.05(1))</p> <p>On or before <u>December 1</u> Apply to <u>Assessors</u> Form CL-1 with certificate & approved forest plan</p>	<p>On or before <u>December 1 before FY</u> apply to <u>Assessors</u> – Form CL-1</p> <p>Revaluation year filing extension – <u>On or before abatement application deadline - 1st actual payment due date</u> (61A:8; 61B:5) - For purpose of statute, <u>each year</u> is revaluation year</p>	
<p>Assessors take action – Form CL-2 (Allow/Disallow) Assessors need to 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>allowed</u> if no assessor action in 3 months</p>

Classification Allowed

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<ul style="list-style-type: none">• JAN 1 – land classified• 10-year classification according to forest management plan period• JULY 1 - taxation under c. 61 begins• Annual application <u>not</u> required – forest plan recertification through State Forester required <u>every 10 years</u>	<ul style="list-style-type: none">• JAN 1 – land classified• 1-year classification• JULY 1 - taxation under c. 61A begins• <u>Annual</u> application required	<ul style="list-style-type: none">• JAN 1 – land classified• 1-year classification• JULY 1 - taxation under c. 61B begins• <u>Annual</u> application required

FY25 (7/1/2024–6/30/2025) Example

c. 61 Forest	c. 61A Farm	c. 61B Recreation
<ul style="list-style-type: none">• June 30, 2023 - application for 10-year forest management plan to State Forester• December 1, 2023 – CL-1 application for classification with Forester’s certificate and approved pan to Assessors• January 1, 2024 – FY25 assessment date – land classified as c. 61• If CL-1 late, classified as of January 1, 2025 for FY26• July 1, 2024 – FY 25 begins• FY35 – assessed at full value as of January 1, 2034 unless applications for another 10 years to State Forester by June 30, 2033 and assessors by December 1, 2033	<ul style="list-style-type: none">• December 1, 2023 – FY 25 CL-1 application to assessors• January 1, 2024 – FY25 assessment date – land classified as c. 61A or 61B• July 1, 2024 – FY 25 begins• FY25 revaluation year late applications due 1st actual FY 25 tax payment due date• FY 26 – assessed at full value as of January 1, 2025 unless new application to assessors by December 1, 2024	

Classification Disallowed

c. 61 Forest	c. 61A Farm	c. 61B Recreation
<ul style="list-style-type: none"> • FEBRUARY 1 (on or before) - Assessors (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 being used in manner inconsistent with plan • MARCH 1 - Forester issues decision on appeal • JUNE 15 - Appeal of Forester's decision to 3-person panel • Within <u>45 days</u> of notice of panel's decision - appeal to Appellate Tax Board (ATB) or Superior Court • Forester may also initiate removal by DECEMBER 1 any year 		<ul style="list-style-type: none"> • Within <u>30 days</u> of notice of Assessors' decision - landowner appeal to Assessors to modify decision (Form CL-7 - Application to Modify Decision/Abate a Tax) • Within <u>30 days</u> of notice of Assessors' decision on application to modify, or 3 months of application, whichever is later - further appeal to ATB

Property Taxes

Annual Property Taxes

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	
Assessed at FOREST “USE” VALUE Values published annually by Farmland Valuation Advisory Commission (FVAC) used as a guide Commercial rate (class 3) applied to Forest Use value	Assessed at A/H (Farm) “USE” VALUE Values published annually by FVAC used as a guide Commercial rate (class 3) applied to A/H Use value	Assessed at RECREATIONAL “USE” VALUE May not exceed 25% of fair cash value Commercial rate (class 3) applied to Rec Use value
Buildings, residences and land accessory to their use taxed at fair cash value Open space rate (class 2) applied to use value by local acceptance		

FVAC Values

Farmland Valuation Advisory Commission (FVAC) valuation ranges are guides and used with assessors' appraisal knowledge and judgment about local forest and farm values.

Assessors must only consider indicia of value about use value and appraisal data limited to that specific to crop or product being raised

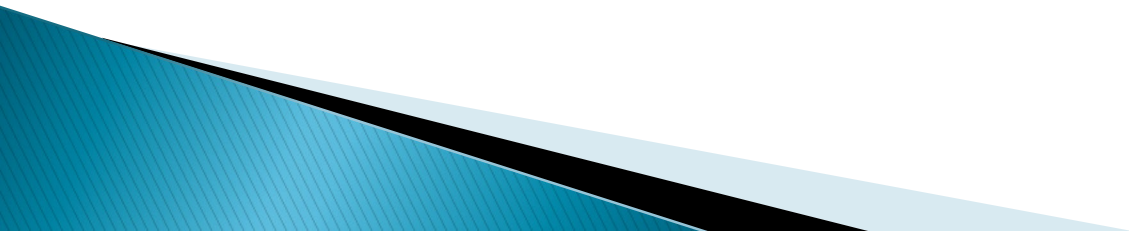
Adoption of values outside FVAC ranges must be supported by "specific and objectively identifiable reasons"

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

Property Tax Appeal

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

Change in Use



Change to Disqualifying Use

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

Right of First Refusal

Right of First Refusal (ROFR)

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<p>Municipality has ROFR (right of first refusal / option to purchase) when landowner converts (changes) or sells 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		

ROFR Exceptions

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<p>Statutory exceptions - ROFR does <u>not</u> apply if landowner:</p> <ul style="list-style-type: none">(1) just 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 <p>(61:8; 61A:14; 61B:9)</p>		

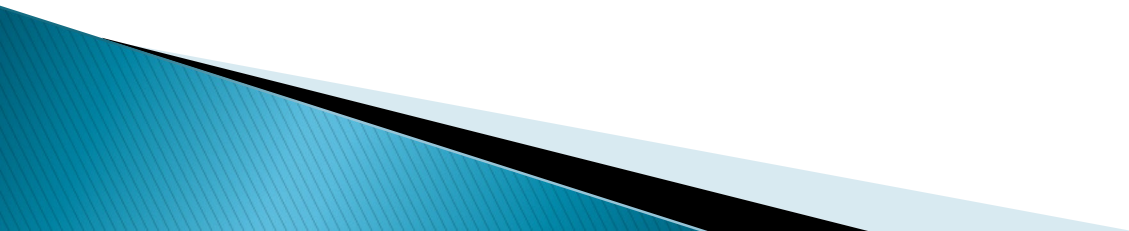
ROFR Procedure

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<p>When ROFR triggered, landowner and municipality must follow specific statutory procedure</p> <ul style="list-style-type: none">• Landowner gives notice to municipality – specific statutory content, manner of delivery and recipients (includes assessors)• Municipality has 120 days to exercise option or may assign option to Commonwealth, another municipality or conservation organization<ul style="list-style-type: none">• Municipality must match bona fide offer in Purchase & Sale(agreement (if sale) or pay fair market value per appraisal (if to be converted / developed by landowner)• If notice from landowner defective, municipality must notify landowner within 30 days <p>✓ Consult municipal to ensure municipality's rights are protected in what is a real estate transaction</p>		

ROFR Procedure (continued)

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<ul style="list-style-type: none">• If decide to exercise option must:<ul style="list-style-type: none">• Give notice to the landowner by certified mail• Exercise and close transaction within 90 days of decision• Notice to landowner with Purchase and Sale Agreement• Notice recorded at Registry of Deeds within 120-day period• Must schedule Council/Town Meeting to authorize the purchase within 120-day period• If decide <u>not</u> to exercise, must send notice to landowner by certified mail		

Penalty Taxes



Penalty Taxes

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<ul style="list-style-type: none">• Upon a <u>change</u> in the use of classified land to a <u>non-qualifying use</u>, a landowner is assessed 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 <u>not</u> qualify under the definitions of G.L. c. 61, 61A or 61B		

Conveyance Tax

c. 61 Forest

c. 61A Farm

c. 61B Recreational

Assessed when land sold for or converted to non-qualifying use within **10 years** of the landowner's acquisition (or continuous use as forest/A/H, if earlier)

Tax = price/value x conveyance tax rate

Conveyance Tax Rate = 10% to 1%
(rate declines 1% per year of ownership)

Assessed when land sold for or converted to non-qualifying use within **10 years** of first c. 61B classification

Tax = price/value x conveyance tax rate

Conveyance Tax Rate = 10% in first 5 years, 5% in years 6-10

Conveyance tax is assessed only if more than roll-back tax

“Grandfather” exemption for landowner in program from FY2008
See also statutory Exemptions (61:6)

See statutory exemptions (61A:12)

See statutory exemptions (61B:7)

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 land 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>

Penalty Tax Exceptions

ROFR statutory exemptions likely applied by court and ATB to penalty tax when land sold for or converted to a personal residence for:

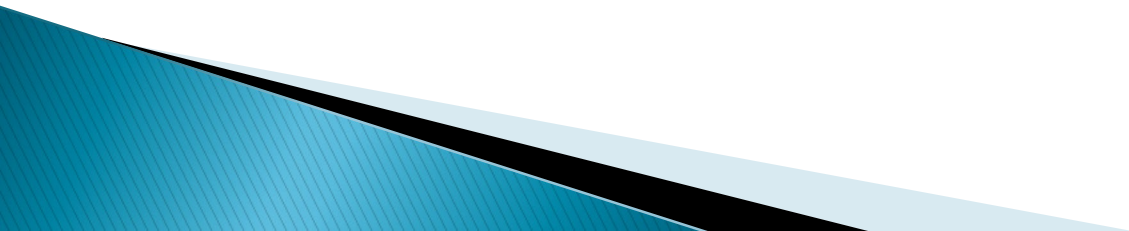
- Landowner, landowner's spouse, parent, grandparent, child, grandchild, brother or sister, or surviving spouse of those relatives, **OR**
- An employee working full-time in the use and care of the property for its classified use

See Adams v. Assessors of Westport, 76 Mass. App. 180 (2010), further appellate review denied, 456 Mass. 1106 (2010) (Classified A/H land converted to personal residence for landowner); *Ross v. Assessors of Ipswich*, ATB docket #F239496, November 21, 2000 (Classified A/H land sold to landowner's child to convert for personal residence)

Penalty Tax Appeal

c. 61 Forest	c. 61A Farm	c. 61B Recreational
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Renewable Energy Installations



Installation Impact

c. 61 Forest	c. 61A Farm	c. 61B Recreational
<ul style="list-style-type: none">• As general rule, development or installation of renewable energy generating facilities:<ul style="list-style-type: none">• Makes land ineligible for classification• If land classified, constitutes change in use triggering ROFR and penalty tax• EXCEPTION for some facilities located on classified c. 61A land only under two provisions (61A:2A; 61A:13)		

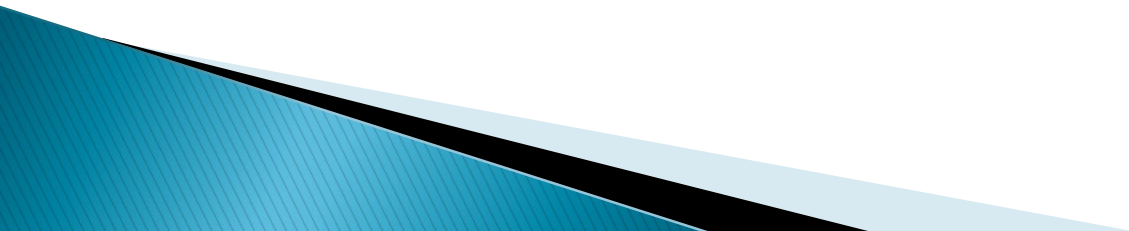
Renewable Energy Sources

- Land used for A/H where renewable energy generating source of certain scale and purpose located eligible for classification (c. 61A:2A(a))
 - Renewal energy source defined in c. 25A:11F(b) includes wind as well as solar installations
 - Source cannot produce **more** than 125% of energy needs of farm and land on which located
 - Site includes contiguous and non-contiguous land owned or leased by farm owner
 - Roll-back penalty tax when land on which source located converted or sold for residential, commercial or industrial use at usual 5-year tax savings recovery

Dual Use Solar Installations

- Land used for A/H where renewable energy qualifying for Department of Energy Resources (DOER) **solar** incentive program eligible for classification (c. 61A:2A(b), 61A:13)
 - Solar energy source cannot impede continued farm use
 - Site includes contiguous and non-contiguous land owned or leased by farm owner
 - Solar energy source qualifies when DOER issues final “Statement of Qualification” under [225 Code of Massachusetts Regulations \(CMR\) 20.06](#)
- Roll-back penalty tax when dual use land converted or sold for residential, commercial or industrial use increased to **10-year** tax savings recapture

Optional Additional Exemption



Optional Additional Exemption

- Local option G.L. c. 59, § 5C½ provides additional exemption up to 100% of granted personal exemption
 - Applies to all personal exemption clauses listed in 1st paragraph of G.L. c. 59, § 5
 - Cannot reduce tax owed below tax owed last year
 - Cannot reduce tax owed below tax on 10% of assessed valuation
- City or town must vote to accept statute and establish additional exemption percentage before July 1 beginning of fiscal year that percentage 1st applies
 - Percentage applies until another voted before July 1 beginning of a later fiscal year it will 1st apply
- See **DLS IGR 15-210** and **Course 101 Handbook, Chapter 7 Table 8** for how exemption works

Exemption Calculation

Assumes Adopted for First Use in FY2024 at 100%

Impact on **Existing** Personal Exemption Recipients

	FY 2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
Assessed Tax	\$1000	\$1050	\$1075	\$1100	1200	1300	1400	1500
Personal Exemption (Clause 22)	(400)	(400)	(400)	(400)	(400)	(400)	(400)	(400)
Net Tax After Exemption	600	650	675	700	800	900	1000	1100
Additional Exemption Voted (100%)		400	400	400	400	400	400	400
Additional Exemption Allowed		(50)	(75)	(100)	(200)	(300)	(400)	(400)
Amount Due	600	600	600	600	600	600	600	700

Exemption Calculation

Impact on **New** Personal Exemption Recipients

	FY 2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
Assessed Tax	\$1000	\$1050	\$1075	\$1100	1200	1300	1400	1500
Personal Exemption (Clause 22)	0	(400)	(400)	(400)	(400)	(400)	(400)	(400)
Net Tax After Exemption	1000	650	675	700	800	900	1000	1100
Additional Exemption Voted (100%)		400	400	400	400	400	400	400
Additional Exemption Allowed		(0)	(25)	(50)	(150)	(250)	(350)	(400)
Amount Due	1000	650	650	650	650	650	650	700