CHAPTERLANDS FAQS

Classified Forest, Agricultural/Horticultural and Recreational Land FAQS
G.L. c. 61, 61A and 61B

Application Procedures / Deadlines FAQs
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Examples Updated May 2016

1. What is the procedure and deadline for applying for classification of forest land for local tax purposes under G.L. c. 61?

The application process begins more than a year before the start of the fiscal year for which taxation as classified forest land under G.L. c. 61 is sought. However, once approved, classification of the land continues for a full 10 year period.

A) The landowner must file an application, including a forest management plan, with the State Forester (within the Department of Conservation and Recreation) on or before July 1 of the year before the beginning of the fiscal year for which classification is sought. G.L. c. 61, § 2. The application must comply with all rules and regulations established by the State Forester.

> *For example, a landowner seeking classification of the land for the 10 years starting in fiscal year 2017, which begins on July 1, 2016, must submit an application to the State Forester on or before July 1, 2015.*

B) If the land qualifies for forest land classification, the State Forester will certify it and return the approved application certification and the forest management plan to the landowner. G.L. c. 61, § 2.

C) The landowner then must complete Form CL-1, *Application for Forest – Agricultural or Horticultural – Recreational Land Classification*, and submit it, along with the State Forester's certificate and approved management plan, to the local board of assessors on or before October 1 of the year before the fiscal year in which taxation as classified forest land is to begin. G.L. c. 61, § 2. If the application is timely and in order, the assessors must value and tax the land based on its forestry use as of the next January 1 assessment date for the following fiscal year.

> *For example, a landowner applying for classification of the land for the 10 years starting in fiscal year 2017, which begins on July 1, 2016, must submit Form CL-1 with the State Forester's certificate and approved management plan, to the assessors on or before October 1, 2015. If timely and in order, the land will be classified as of January 1, 2016, the assessment date for fiscal year 2017.*

D) If the land is being classified by the applicant for the first time, the assessors must also record a statement at the Registry of Deeds that includes the name of the landowner and a description of the land (*Form CL-3, Classified Forest – Agricultural or Horticultural –*

Recreational Land Tax Lien). The statement constitutes a lien on the land for all taxes due under G.L. c. 61. The landowner must pay all applicable recording fees. G.L. c. 61, § 2.
E) The certified management plan and forest land classification are effective for 10 years without further action. Unless the State Forester decertifies the land for non-compliance, classified status expires on December 31 of the 10th year. In order to continue to have the land classified and taxed under G.L. c. 61, the landowner must have applied to the State Forester for recertification with an updated forest management plan and submitted Form CL-1 with the recertified plan by the deadlines explained above. Otherwise the land must be removed from G.L. c. 61 classification upon expiration of the certification and taxed thereafter at fair cash value under G.L. c. 59.

> *For example, the certification for land classified as of January 1, 2016 for the 10 years beginning in fiscal year 2017 expires on December 31, 2025. The land will be assessed at fair cash value as of January 1, 2026 for fiscal year 2027 unless the landowner applies to the State Forester for recertification on or before June 30, 2025 and if obtained, applies to the assessors for classification on or before October 1, 2025.*

2. What is the procedure and deadline for applying for classification of agricultural or horticultural land for local tax purposes under G.L. c. 61A? Recreational land under G.L. c. 61B?

Application for taxation of land as classified agricultural or horticultural land under G.L. c. 61A or classified recreational land under G.L. c. 61B must be made annually. The landowner must complete Form CL-1, *Application for Forest – Agricultural or Horticultural – Recreational Land Classification* and should submit it to the assessors on or before October 1 of the year before the beginning of the fiscal year for which classification is sought. G.L. c. 61A, § 6; G.L. c. 61B, § 3. Upon approval, the assessors will value and tax the land based on its farm or recreational use as of the next January 1 assessment date for the following fiscal year. If the land is being classified by the applicant for the first time, the assessors must also record a statement at the Registry of Deeds that includes the name of the landowner and a description of the land (*Form CL-3, Classified Forest – Agricultural or Horticultural – Recreational Land Tax Lien*). The statement constitutes a lien on the land for all taxes due under G.L. c. 61A or c. 61B. The landowner must pay all applicable recording fees. G.L. c. 61A, § 9; G.L. c. 61B, § 6.

> *For example, a landowner applying for classification of the land for fiscal year 2017, which begins on July 1, 2016, should submit Form CL-1 to the assessors on or before October 1, 2015 in order to receive a fiscal year 2017 actual tax bill based on the reduced current use valuation of the land.*

However, a landowner who misses the October 1 deadline has up to 30 days after the actual tax bills are mailed for the fiscal year to file the application. The application deadline is extended until that time in a revaluation year. G.L. c. 61A, § 8; G.L. c. 61B, § 5. Because all boards of assessors must review their valuations and consider interim year adjustments in the years between triennial certification years, every year is a revaluation year for purposes of the statutory deadline extension.

For example, in a community that mails its fiscal year 2017 actual tax bills on December 31, 2016, a landowner applying for classification of the land for that year may submit Form CL-1 to the assessors on or before January 30, 2017.

3. What happens if a landowner obtains timely certification of a forest management plan from the State Forester, but does not file Form CL-1 with the assessors by October 1? Can that deadline be extended in a revaluation year?

No. The extended application deadline for revaluation years is not available to applicants for classified forest land under G.L. c. 61. However, a landowner who misses the October 1 deadline can apply on or before the following October 1 and obtain the preferential taxation of the land for the remaining nine years of the certification period.

Eligibility FAQs
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4. What are the basic requirements for land to be classified as forest, farm or recreational land for local tax purposes?

A) Forest Land (Chapter 61) - The land must (1) consist of at least 10 acres of contiguous land under the same ownership, (2) be "actively devoted" to growing forest products during the fiscal year for which classification is sought and not used for incompatible purposes during the previous two fiscal years, and (3) be managed under a 10 year forest management plan approved and certified by the State Forester (within the Department of Conservation and Recreation). G.L. c. 61, §§ 1, 2 and 3. The State Forester alone determines whether the land is devoted to growing forest products and has issued regulations that define the criteria applied to determine the land included in the certified management plan. G.L. c. 61, § 2; 304 Code of Massachusetts Regulations (CMR) 8.03.

B) Farm Land (Chapter 61A) - The land must (1) consist of at least five acres of contiguous land under the same ownership and (2) be "actively devoted" to agricultural or horticultural use during the fiscal year for which classification is sought and the previous two fiscal years. Actively devoted means (1) the land must be used primarily and directly in raising animals or growing food, animal feed, plants, shrubs or forest products or in a manner related or necessary to their production or preparation for market, e.g., farm roads, irrigation ponds or land under farm buildings, and (2) annual gross sales of the farm products in the regular course of business must equal or exceed a specified amount that depends on the size of the farm. G.L. c. 61A, §§ 1, 2, 3 and 4. Once five or more acres qualify as land actively devoted to agricultural or horticultural uses, up to the same amount (100%) of contiguous, non-productive land under the same ownership may be classified in addition to the productive land. G.L. c. 61A, § 4.

C) Recreational Land (Chapter 61B) - The land must (1) consist of at least five acres of contiguous land under the same ownership and (2) be retained in one of the following conditions in a manner that preserves wildlife or other natural resources: a substantially natural, wild or open condition, landscaped or pasture condition or forest condition under a forest management plan certified by the State Forester, or be devoted to a qualifying

recreational use in a manner that does not materially interfere with the environmental benefits derived from the land. To be classified based on use for a qualifying recreational purpose, the land must be open to the public or members of a non-profit organization. No public access is required if classification is sought based on the condition of the land. It can be open to the public or maintained as private undeveloped land. G.L. c. 61B, § 1.

5. What does contiguous land mean?

Contiguous land abuts and is separated only by a public or private way or waterway, e.g., land across the road that would touch but for the road. For farmland under Chapter 61A, it also includes land connected to other land by an easement for water supply, e.g., bog land and upland reservoir. G.L. c. 61A, § 4. Contiguous land may cross municipal boundaries.

6. What does same ownership mean?

Same ownership means that legal title to all of the land must be held in the same name(s) and in the same capacity. The ownership of the land must be identical.

> *For example, John Jones is the sole owner of record of two abutting parcels of 3 acres each. The 6 acres are under the same ownership. They are not under the same ownership, however, if John Jones is the sole owner of one parcel and owns the other with his spouse.*

7. How is the minimum acreage requirement computed?

The minimum acres required for classification as forest, farm or recreational land must be contiguous and under the same ownership.

A) Forest Land (Chapter 61) - The State Forester determines the qualifying acreage. Under current regulations, the following land is excluded from the calculation of the minimum 10 acres: (1) land where buildings or structures are located or accessory to their use and (2) the minimum house lot size under the community's zoning code if there is a house on the land. 304 CMR 8.03(3); G.L. c. 61, § 4.

B) Farm Land (Chapter 61A) - Land area under farm buildings such as barns and farm sheds count toward the minimum five acres as necessary and related land. Any land under and associated with other buildings that are not related to the farm production is excluded. If there is a house on the land, the following is also excluded: (1) the land under the house and (2) the land around the house that is regularly used for residential living purposes and not actually being used for a qualifying forest, farm or recreational use under Chapters 61, 61A or 61B. G.L. c. 61A, § 15.

C) Recreational Land (Chapter 61B) - Any land under and associated with buildings or improvements so as to interfere with the environmental benefits of the land as open and undeveloped, such as paved parking areas and roads, are excluded. If there is a house on the land, the following is also excluded: (1) the land under the house and (2) the land around the house that is regularly used for residential living purposes and not actually being used for a qualifying forest, farm or recreational use under Chapters 61, 61A or 61B. G.L. c. 61B, § 10.

8. What are qualifying agricultural and horticultural land uses under Chapter 61A?

"Agricultural" use means the land is primarily and directly used to raise animals or products derived from them for sale in the regular course of business. Animals would include, but not be limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals. It also includes land areas that are primarily and directly used in a related manner and are necessary to raising the animals or preparing them or a product derived from them for market. G.L. c. 61A, § 1.

"Horticultural" use means the land is primarily and directly used to grow fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for sale in the regular course of business or grow forest products under a forest management plan certified by the State Forester. It also includes land areas that are primarily and directly used in a related manner and are necessary to raising the products or preparing them for market. G.L. c. 61A, § 2.

9. What are qualifying recreational land uses under Chapter 61B?

To be classified under Chapter 61B based on a qualifying recreational use rather than condition of the land, the land must be (1) open to the public or members of a non-profit organization and (2) used for one of the following purposes: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery, target shooting and commercial horseback riding and equine boarding. It may not be used for horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure. G.L. c. 61B, § 1.

10. How is the annual gross sales requirement under Chapter 61A calculated?

Chapter 61A provides local property tax incentives for land that is commercially productive farm land, i.e., produces farm products for sale in the regular course of business. Therefore, gross sales from the land must meet a minimum productivity standard for the fiscal year the land is being classified and the prior two fiscal years. For the first five acres of actively devoted farmland, the annual gross sales requirement is $500. The requirement is increased by $5.00 for each additional acre of productive land, except in the case of woodland or wetland which is increased by $.50 per acre. Contiguous, non-productive land in not considered when determining the gross sales amount. Amounts received under the Massachusetts and United States soil conservation or pollution abatement programs count toward meeting the required gross receipts for the year. G.L. c. 61A, § 3. The landowner must establish the gross sales requirement is met with documents maintained in the regular course of business, e.g., sales receipts with standard information such as date of sale, quantity, unit price and total payment or copies of federal or state income tax returns reporting the sales income.

In some years, however, the farmland may not generate sales for agriculturally related reasons, such as the animals or crops require several years to reach maturity or natural conditions or disasters prevent or destroy an annual harvest. Where the land is being managed in order to achieve the required sales within the normal product development

time period, it is deemed to meet the annual gross sales requirements. The Farmland Valuation Advisory Commission (FVAC) determines the product development time periods and under its current *Crop Development Time Period* guidelines, that period represents the approximate time it takes from planting to harvest of the crop. Activities before cultivation of the land, such as planning, permitting, tree and brush clearing, are not part of the normal product development period.

> *For example, a crop of Christmas trees may require 8 years from planting to maturity, cutting and sale. So long as the land is cultivated and managed for that purpose during that time, it will meet the gross sales requirement because it is within the 8 year development period established by the FVAC for that crop.*

For land under an approved forest management plan, the schedule of timber cuttings approved by the State Forester establishes the "product development time period" and the annual gross sales requirement is met in years for which no cutting is scheduled. In order to remain classified, however, the landowner must cut when the timber crop is mature as provided in the plan.

Appeal Procedure FAQs
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11. What is the procedure to appeal the denial of an application for classification of land as forest, farm or recreational land under Chapters 61, 61A or 61B?

A) Forest Land (Chapter 61) – If the State Forester determines land qualifies for classification as forest land, the landowner submits the State Forester's certificate and approved forest management plan for the land to the assessors with an application for classification on or before October 1. If the assessors believe that any land included within the State Forester's certification and approved management plan does not qualify for classification under G.L. c. 61 (or if previously classified land is not being managed under the approved management plan or is being used in a manner incompatible with forest production), they may appeal in writing to the State Forester by December 1 and request denial of the application for classification (or removal of the land from classification). The assessors must send the appeal and a copy to the landowner by certified mail. The State Forester must notify the assessors and landowner of the decision on the appeal by March 1 of the following year. The assessors or landowner may appeal that decision by notifying the State Forester by April 15. The State Forester must then convene a 3 person regional panel to hear the appeal by May 15. Notice of the panel's decision must be given to the assessors and landowner within 10 days after the hearing ends. Within 45 days of notice of the panel's decision, the assessors or landowner may appeal to the Appellate Tax Board or Superior Court. The State Forester may also initiate the removal of land from classification upon knowledge that the land is not being managed according to the approved forest management plan or does not otherwise qualify for classification. The same procedures and deadlines apply to that removal procedure. G.L. c. 61, § 2.

B) Farm Land (Chapter 61A) **–** The assessors have 3 months to act on a timely filed application to determine whether the land qualifies for classification as agricultural or horticultural land under G.L. c. 61A. If the assessors do not act within that time, the application is deemed allowed. The assessors must send a written notice of the allowance or disallowance of the application within 10 days of the action. The notice, Form CL-2, *Notice of Action on Application for Forest-Agricultural or Horticultural-Recreational Land Classification,* sets forth the reasons for any disallowance and explains the landowner's appeal rights. It must be sent by certified mail. G.L. c. 61A, § 9.

A landowner denied classification of all or part of the land may apply to the assessors for a modification of their action on the application for classification. The landowner must apply for the modification within 30 days of the notice of denial. *Form CL-7, Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land*. If the assessors refuse to modify their determination, or they do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessors' decision, or within 3 months of the date of the application for modification, whichever is later. G.L. c. 61A, § 19.

C) Recreational Land (Chapter 61B) – The assessors have 3 months to act on a timely filed application to determine whether the land qualifies for classification as recreational land G.L. c. 61B. If the assessors do not act within that time, the application is deemed disallowed. The assessors must send a written notice of the allowance or disallowance of the application within 10 days of the action. The notice, Form CL-2, *Notice of Action on Application for Forest-Agricultural or Horticultural-Recreational Land Classification,* sets forth the reasons for any disallowance and explains the landowner's appeal rights. It must be sent by certified mail. G.L. c. 61B, § 6.

A landowner denied classification of all or part of the land may apply to the assessors for a modification of their action on the application for classification. The landowner must apply for the modification within 30 days of the notice of denial. *Form CL-7, Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land*. If the assessors refuse to modify their determination, or they do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessors' decision, Form CL-8, *Notice of Action on Application to Modify a Decision or Abate a Tax, Classified Forest, Agricultural-Horticultural –Recreational Land*, or within 3 months of the date of the application for modification, whichever is later. G.L. c. 61B, § 14.

12. What is the procedure to contest the assessment of a property, roll-back or conveyance tax assessed a landowner whose property is classified under Chapters 61, 61A or 61B?

A landowner aggrieved by the assessment of a tax on land classified under G.L. c. 61, c. 61A or c. 61B may apply for abatement of the tax to the assessors within 30 days of notice of the assessment. *Form CL-7, Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land*. If the landowner disagrees with the assessors' decision, or the assessors do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessors' decision, Form CL-8, *Notice of Action on Application to Modify a Decision or Abate a Tax, Classified Forest, Agricultural-Horticultural –Recreational Land*, or within 3 months of the

date of the application for abatement, whichever is later. If the appeal relates to the annual property tax on the classified land, the tax must be paid for the Appellate Tax Board to hear the appeal. G.L. c. 61, § 3; G.L. c. 61A, § 19; G.L. c. 61B, § 14.

Sale / Change in Use FAQs
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13. What rights in land classified under Chapters 61, 61A or 61B does a municipality have when the landowner changes its use or decides to sell it for another use?

The classified land statutes provide preferential property tax benefits to landowners who make a long-term commitment to using their land for qualifying forest, farm or recreational uses. In exchange for providing those benefits, a municipality has a right of first refusal (ROFR) or option to purchase the land in certain cases where a change of use is planned by the landowner or a new owner after a sale.

Specifically, a municipality has a ROFR when a landowner converts, or decides to sell, classified land for residential, commercial or industrial development or use during (1) any fiscal year the land is classified or (2) the fiscal year after the year the land was last classified. G.L. c. 61, § 8; G.L. c. 61A, § 14; G.L. c. 61B, § 9.

> *For example, John Jones owns 100 acres that are classified and assessed property taxes on the basis of their classified use for fiscal years 2002-2015. The municipality has a ROFR if he enters into a purchase and sales agreement to sell for, or he decides to change the use to, a residential, commercial or industrial use, at any time during those fiscal years (July 1, 2001 to June 30, 2015) and the following fiscal year July 1, 2015 to June 30, 2016).*

Under the ROFR, the land cannot be sold or converted unless the landowner gives the municipality advance notice of the sale or conversion and the municipality notifies the landowner that it will not exercise option. The content and manner of notices must comply with specific requirements. Upon receipt of a notice that complies with the applicable requirements, the municipality has the option to buy the property or assign its option to the Commonwealth, another political subdivision or a non-profit conservation organization. If the landowner is selling the property, the municipality must match a bona fide offer the landowner received. If the landowner is converting the use, the municipality must pay fair market value, which is determined by an impartial appraisal. The option must be exercised within 120 days of (1) compliance with the notice requirements in the case of a sale or (2) agreement of the consideration in the case of a conversion.

The ROFR does not apply if the landowner (1) simply discontinues the classified use, i.e., leaves the land undeveloped, or (2) sells or converts the land for a residence for the owner; the owner'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.

Whenever local officials receive any notice indicating the landowner's intent to sell or convert classified land, or believe a notice should be given, they should consult municipal counsel for guidance on the municipality's rights and the procedures it must follow.

14. What tax benefits provided a landowner may be recaptured by a municipality when classified land under Chapters 61, 61A or 61B is sold or its use changed?

As a general rule, a landowner must pay one of two "penalty" taxes, a roll-back or conveyance tax, when classified land is sold for or converted to another use. No penalty tax is assessed, however, when the classified land is being sold for or converted to a residence for the owner; the owner'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. See Adams v. Assessors of Westport, 76 Mass. App. 180 (2010)(conveyance tax); Ross v. Assessors of Ipswich, (ATB docket #F239496, November 21, 2000)(roll-back tax), both of which involved classified farm land and extended the same exemption from the ROFR to the penalty taxes.

A) Roll-back Tax – A roll-back tax is assessed when classified land is changed to a non-qualifying use. A non-qualifying use means (1) land retained as open space as mitigation of a development or (2) any other use or condition that does not qualify for classification as forest land under Chapter 61, agricultural or horticultural land under Chapter 61A or recreational land under Chapter 61B. The tax is assessed to the owner of the land when the change to the non-qualifying use occurs. G.L. c. 61, § 7; G.L. c. 61A, § 13; G.L. c. 61B, § 14.

The roll-back tax provides for recapture of the property tax savings on the land for the immediately preceding five year period. If the non-qualifying change in use occurs in a fiscal year the land is classified, the five year period includes the current year and immediately preceding four years. If it occurs in a fiscal year the property is not classified, the recapture period is the immediately preceding five year period. If there were tax savings received under the program for any of the years in the five year recapture period, the savings and interest on those savings for each year are totaled and assessed as the roll-back tax. The amount saved for each year is simply the difference between the tax assessed on the classified land under the program and the tax that would have been assessed on the fair cash value of the land if not classified. The interest on the amount saved each year is calculated at the rate of 5% from the dates interest accrued on unpaid tax installments under the payment system the municipality used for that fiscal year until the date the roll-back tax is paid. *(Note that interest is not added as part of a roll-back assessed on land classified under Chapter 61A if the land was classified as of July 1, 2006 and been continuously owned since that date by the July 1, 2006 owner, or that owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any of those deceased relatives. G.L. c. 61A, § 13.)*

B) Conveyance Tax – A conveyance tax is assessed as an alternative to a roll-back tax when classified land is sold for or converted to a use or condition that does not qualify for classification under any of the three chapters within a certain time period, but only if greater than the roll-back tax. G.L. c. 61, § 6; G.L. c. 61A, § 12; G.L. c. 61B, § 7.

Specifically, a conveyance tax must be computed, compared to the roll-back tax and assessed if greater when (1) a landowner is selling or converting classified forest or farm land under Chapters 61 or 61A to a non-qualifying use within 10 years after the date the owner acquired the land or began the continuous use of the land for the classified use, whichever is earlier; or (2) a landowner is selling classified recreational land under Chapter 61B for a non-qualifying use within 10 years from the beginning of the fiscal year in which it was first classified. The seller is not assessed a conveyance tax if the buyer files an affidavit with the assessors that the classified use will be continued after the sale. If that new owner does not continue that use, or another use that would qualify for classification under any of the three chapters, for at least five years, the new owner is assessed the tax that would have been due when the property was sold. The conveyance tax does not apply to a number of deeds or transfers, including but not limited to, mortgage deeds; deeds that correct, modify, supplement or confirm a previously recorded deed; deeds between spouses or a parent and child with no consideration, foreclosures of mortgages and conveyances by the foreclosing parties; and property transferred as a result of death. (*Note that a conveyance tax also does not apply to a seller who owned forest land classified under Chapter 61 in or before fiscal year 2008. St. 2006, c. 394, § 51.).*

The conveyance tax is computed by multiplying the applicable conveyance tax rate to the sales price of the classified land in the case of a sale, or the fair market value as determined by the assessors in the case of a change to a non-qualifying use by the landowner. The conveyance tax rate is set on a descending basis over the initial 10 years of ownership or classification. Under Chapters 61 and 61A, the rate is 10% in the first year of ownership, 9% in the second, 8% in the third, and down to 1% in the tenth. Under Chapter 61B, the rate is 10% for the first five years of classification and 5% for the sixth through tenth year of classification.

> *For example, Mary Smith acquired 50 acres in 2001 and had the land classified beginning in fiscal year 2003. In fiscal year 2016, she enters into a purchase and sales agreement with a developer to sell the land for residential development. No conveyance tax applies because Mary has owned the classified land (or had the land classified under Chapter 61B) for over 10 years. However, if Mary had owned the land, or the land was classified under Chapter 61B, for only 8 years, the conveyance tax would be assessed if it was greater than the roll-back tax.*
>
> *The roll-back is assessed based on Mary's tax savings in fiscal years 2012-20156 during which there were savings in all 5 years. However, if Mary's land was last classified in fiscal year 2013, the roll-back would be based on tax savings in fiscal years 2011-2015, during which there were savings in only 3 of the 5 years.*

15. Does the development or installation of solar or wind farms or facilities on classified land impact the classification of land under Chapters 61, 61A or 61B?

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 ROFR and penalty tax assessment.

A) 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. G.L. c. 61, §§ 1, 2 and 3. The initial decision on classification is made by the state forester in the 10 year application process. 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.

B) 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. G.L. c. 61A, §§ 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.

C) Recreational Land (Chapter 61B) - To be classified as recreational land under Chapter 61B, the land must be: (1) retained 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. G.L. c. 61B, § 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.