

Forestry Stewardship and the Farmland Assessment Act

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The recent promulgation of the long-awaited Forest Stewardship Regulations provides new flexibility for those paying reduced property taxes for forest land under the Farmland Assessment Act, New Jersey's primary mechanism to encourage private land owners to retain land in agricultural or horticultural use. Now, the 5,700 owners of the 234,000 acres of "non-appurtenant" forest land property qualifying for reduced assessments-and, hence, reduced property taxes-have an alternative to the requirement to sell forest products. If they elect the option of the Forest Stewardship Plan, they would no longer need to earn and document sales of at least \$500 of forest products (i.e., saw timber, firewood, maple syrup, etc.) for the first five acres of land and 50 cents per acre for each additional acre of forest land.

The new option relieves the burden of generating income from the sale of forest products from land that might otherwise contain immature timber, be on steep slopes, or primarily consist of wetlands. However, these woodland property owners would still retain the significant benefit of having their property taxed based on its value as woodland (established by regulation to be between \$78 and \$181 per acre depending on the local soil rating), thereby reducing their tax bill from potentially several thousand dollars per acre to typically less than \$10 per acre per year.

Enacted in 1964, after an enabling amendment to the State Constitution, the Farmland Assessment Act allows land "actively devoted to agricultural or horticultural use" to be taxed on its use value rather than on full market value. In the early years of the program, the significant reduction on property taxes and the attendant impact on local tax revenue resulted in municipal assessors carefully scrutinizing applications for farmland assessment relief for property which was entirely wooded and the only crop grown being forest products.

This tension was addressed by a 1986 amendment to the Farmland Assessment Act, which required that woodlands not part of or adjacent to a traditional open field or pasture farm ("non-appurtenant woodlands") must have, in addition to the monetary income requirements, a New Jersey Department of Environmental Protection (NJDEP) approved Woodland Management Plan. The annual certification by an NJDEP approved forester that the applicant landowner was following the Woodland Management Plan significantly reduced the instances of municipal assessors challenging the legitimacy of growing trees as qualifying as "actively devoted to agricultural or horticultural use" under the act.

In 2009, the legislature recognized the multiple ecological, wildlife, meteorological, recreational and aesthetic benefits of forest land by establishing a Forest Stewardship program. Woodland owners could manage and enhance the benefits flowing from their lands without the need to generate annual or periodic income from the sale of forest products. After several years of delay, the regulations were proposed and adopted last year. Property owners have until Dec. 31, 2018, to gain NJDEP approval of their Forest Stewardship Plans for tax year 2019.

The regulations specify in considerable detail the requirements for a Forest Stewardship Plan. These 10-year plans must be prepared by a forester on the NJDEP's list of approved foresters.

The goals of these plans are determined by the property owners but must include active management to sustain and enhance forest productivity and scheduled measurement, recordkeeping and monitoring of same. The active management must include periodic activity in accordance with acceptable silvicultural systems and, where applicable, Best Management Practices published by the department.

NJDEP, in response to comments on the proposed regulations, was cognizant that Forest Stewardship Plans must demonstrate that the woodland is "actively devoted to agricultural or horticultural use." In the adoption notice, it rejected any suggestion that mere passive management of woodlands was sufficient activity to gain preferential tax treatment. Rather, active management, which enhances productivity and the yield of ecological services, is essential to any Forest Stewardship Plan.

The certifications of both the property owner and the approved forester that the plans adhere to these requirements is verified and approved by the NJDEP, thus ensuring the compliance with the goals of the act. Thus, those submitting Forest Stewardship Plans for approval should expect the NJDEP reviewers to be evaluating the sufficiency of Forest Stewardship Plans against the standards articulated in the adoption notice.

Members of the preservationist community, which advocated that the regulations allow for passive management of lands under the program, will be greatly disappointed by the NJDEP's new regulatory adoption, which mandates active management of forest lands. The regulations do, however, faithfully comply with both constitutional and statutory mandates that land be "actively devoted to agricultural or horticultural use."

This new program, while not a "pass" for those who might want to reduce their taxes on forest land but not create the necessary income to demonstrate active management, does provide an alternative option allowing property owners to actively manage their land for ecological sustainability.

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