

## **Questions and Answers Regarding the NJ Forest Stewardship Act of 2010**

**Q:** Does the Act change the requirements for Farmland Assessment?

**A:** No. Traditional Farmland Assessment remains unaltered. Rather, this Act creates a “sister” program to Farmland Assessment whereby forest lands can receive reduced assessment by meeting certain requirements that will be decided by the Department of Environmental Protection.

**Q:** Does the Act eliminate the two-year qualifying period for Farmland Assessment?

**A:** No.

**Q:** Does the Act apply to farm fields, pasture, orchard, Christmas tree plantations, and other agricultural lands?

**A:** No. The Act specifically addresses “forest land” (Section 10(b), Section 10(c), and Section 10(d)). Unless such an open field area is actively undergoing afforestation, these lands would still need to show active devotion to agriculture independent of this Act.

**Q:** Does the Act eliminate the income requirement for Farmland Assessment?

**A:** Traditional Farmland Assessment remains unaltered. For forest lands that are attempting to qualify through this Act, there is no requirement for sale, harvest, or receipts for any forest products. As long as the Forest Stewardship Plan is being fully implemented, the forest land will qualify for the reduced assessment. As stated above, farm field and pasture land will still need to qualify under traditional Farmland Assessment.

**Q:** But doesn't ignoring the common definition of “agricultural or horticultural use” violate Article VIII, Section 1, Paragraph 1(b) of the State Constitution?

**A:** We are not lawyers, but we are very concerned the possibility that a court challenge would find that Section 10 of this law is unconstitutional and that there would be negative tax consequences for our clients. Therefore, we are only exploring the NJ Forest Stewardship program for forest landowners who (1) are unable to generate the ~\$500/year minimum income requirement from their woodland; and (2) are unable to generate the minimum income requirement from supplemental (small-scale) agricultural activities on their properties. To be clear, if you are able to meet the minimum income requirements (either through forestry or other agricultural activities), we strongly recommend that you stay in the traditional Farmland Assessment program due to its predictability and consistency. However, we can discuss the options for your property based on the specific needs of your forest.

**Q:** When does this Act take effect?

**A:** January 18, 2011 (Section 16). It is likely that before that date, the DEP will publish regulations that implement the Act. This year's August 1, 2010 filing deadline will not be affected by this Act.

Q: Has the rollback tax changed? How would a rollback tax be triggered under the Act?

A: No. A two-year rollback tax (plus the current calendar year's full taxes) is still due if there is a change in use. However, since the term "devoted as sustainable forestland" (Section 13) is somewhat subjective, we are waiting for the regulations to be written to determine what would constitute a change in use.

Q: Can a property that currently qualifies under traditional Farmland Assessment transition into the NJ Forest Stewardship program?

A: Yes. As long as the land had qualified under traditional Farmland Assessment for the previous two years (Section 10(d)2). To be clear, if you are able to meet the minimum income requirements (either through forestry or other agricultural activities), we strongly recommend that you stay in the traditional Farmland Assessment program.

Q: Does this Act supersede local tree cutting ordinances?

A: Yes, if you have a Forest Stewardship Plan approved by the State Forester. Section 6 reads:

*"No local government unit may enact, on or after the date of enactment of [this Act] any ordinance, rule, or resolution, as appropriate, that ... impedes the implementation of a forest stewardship plan approved pursuant to [this Act] or impose a fee in excess of \$100 in any calendar year for the cutting of trees on any land that is the subject of an approved forest stewardship plan. The provisions of [this Act] supersede any such ordinance, rule, or resolution, as appropriate, enacted or adopted on or prior to the date of enactment of [this Act]."*

If your municipality has an onerous tree cutting ordinance, any activity that is in accordance with a Forest Stewardship Plan approved by the State Forester appears to be exempt. However, one does not need to be enrolled in the NJ Forest Stewardship program in order to enjoy the exemption. Section 6 allows for forest landowners in traditional Farmland Assessment who adhere to a Forest Stewardship Plan to enjoy the exemption.

Q: Is Farmland Assessment going away?

A: No. In creating a "sister" program to traditional Farmland Assessment, the Legislature appears to have affirmed the need for that program.

Q: Are there measures for the level of activities needed to qualify for reduced assessment under the Act?

A: Not in the Act itself. The Act appears to delegate that responsibility to the DEP as part of the rule-writing process.

Q: Is there an annual application?

A: Yes. Currently, it appears that this new program might use the same forms as traditional Farmland Assessment (Section 10a). Certification by a DEP-approved natural resource professional will still be necessary.

Q: Who reviews the applications and the Forest Stewardship Plan?

A: The municipal tax assessor and the NJ Forest Service (Section 10a).