

# Chapter 61 Presentation



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# Massachusetts Forest Resources



- Forests support 25,000 jobs in MA with a payroll of \$800 million that is reflected in wood and paper products worth \$3 billion.
- Wood products harvested in MA are sold for \$580-845 million annually.
- A forest parcel of less than 15 acres is no longer economically viable.

# Massachusetts Farms



- **Ma farms generate \$458 million in cash receipts, exporting over \$300 million in products per year and supporting more than 12,000 jobs.**
- **Value-added manufacturing of Massachusetts-grown products contributes an additional \$2 billion to the state economy and employs 19,000 people.**
- **Although it is the 8<sup>th</sup> smallest state, MA ranks 7<sup>th</sup> in direct sales of agricultural products.**
- **MA farmers collectively spend \$200 million annually on supplies and pay employees \$77 million per year.**

# The Opportunity and the Challenge

- 62% of MA land base is forest  
- 8<sup>th</sup> most forested state.
- 76% of forestland is privately owned, majority by families and individuals (NIPFs).
- Average parcel size - 10 acres and decreasing – more and more people own the forest.
- Land tenure rate averages less than 10 years.



# How Many Woodland Owners?

## Private Timberland by Size Class of Owner (Birch 1994)

Acres Owned Size Class	Number of Owners	Total Acres in Class
1-9	181,300	241,400
10-49	18,300	378,200
50-1,000	13,050	1,497,500
Subtotal	31,350	1,835,700



# The Opportunity and the Challenge

- As many as 40% of woodland owners are not aware of the Stewardship Program or Chapter 61.
- Currently only 15% of the 2.1 million acres of eligible private forest land is enrolled in Chapter 61 (6,000 of a potential 31,000 landowners).
- Only a minority of forest landowners give wood production as the primary reason for actively managing their woods.
- When they do decide to harvest timber, it's often as a result of a logger knocking at the door rather than in the context of a professionally written long term plan.

# Forest Management Plan

- A 10-year Forest Management Plan, written by a MA Licensed Forester, is the entry point to enrollment in the Chapter 61 Program.
- The plan serves as comprehensive document that details:
  - landowner goals and objectives
  - current condition/inventory of forest resources
  - desired future condition
  - management actions to achieve desired future conditions

# Value of Non-Market Ecosystem Services

- Mass. Audubon's "Losing Ground: At What Cost?" estimates that forest cover statewide (3.1 million acres) provides annual ecosystem services valued at **\$2.9 billion**.
- Using an average value of \$905/ac./year, the 350,000 acres enrolled in Ch 61 provide **\$317 million** worth of ecosystem services annually.
- Ecosystem Services include: Climate Regulation, Freshwater Supply, Waste Assimilation and Water Quality, Nutrient Regulation, Habitat Protection, Soil Retention and Formation, Disturbance Prevention, Recreation and Aesthetics.
- MA considering a Forest Carbon Registry – similar to GA and MI

# The Forest Forums

- Since May 04, five day-long meetings of 35 key forest interest groups were held including harvesters, mill owners, foresters, land owners, and conservation organizations.
- One key agreement was that “working forests” are a key way to protect open space and support local economies.
- The group heard a presentation on NH’s Forest Tax law where 65% of the forest land is enrolled in a very simple program.
- The group spent most of two days working on revisions to Chapter 61 that make it simpler and more landowner friendly - many of the recommendations of this group are in the new law.

# Senator Resor's Committee

- Convened in December 2005 and had regular meetings (including one led by a professional conflict resolution mediator!) – group included conservation orgs, assessors, landowners, farmers, Farm Bureau, Mass. Forestry Association, MMA, DAR, DOR and DCR.
- Goal of the effort was to make Ch 61 programs more consistent, simple, fair, attractive to landowners and better for open space protection;
- Group came to consensus on all the language of the new bill and each group wrote letters of support for the bill.

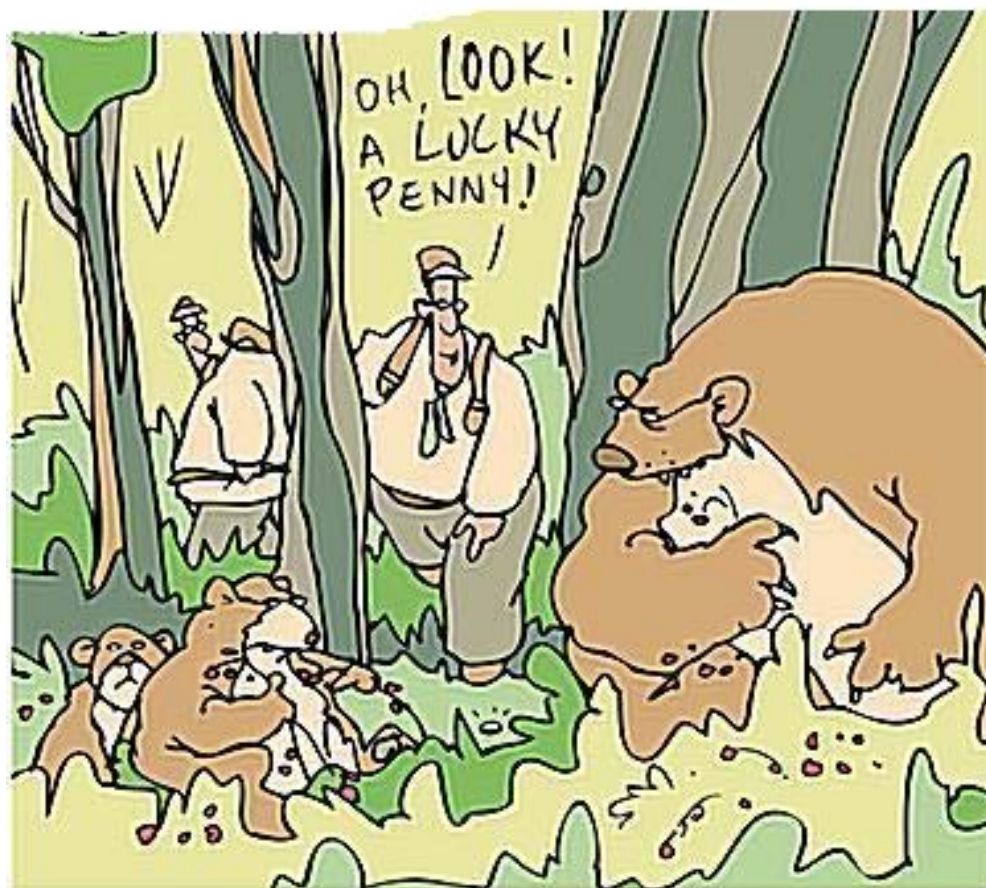
Senate Bill 2683 became Chapter 394 of the official Acts of 2006 on December 22, 2006 and took effect on March 22, 2007 except as noted below. Thanks to Nathan L'Etoile of the Farm Bureau for this analysis!

Subject	Pre March 22, 2007	Post March 22, 2007
<b>Tax Rate</b> under Chapter 61 (section 1, and 12) and Chapter 61A (section 20) Chapter 61B (Section 40)	All land under chapter 61 or 61A, because the nature of such land was commercial, had to be taxed (in towns with a split tax rate) at the Class Three Commercial Property Tax Rate.	A town may choose, by adopting this section (in towns having a split tax rate) to tax land under chapters 61 or 61A at the Class Two Open Space Property Tax Rate.

Subject	Pre March 22, 2007	Post March 22, 2007
<p data-bbox="59 282 432 496"><i>Definition of</i> <b>“Forest Land”</b> under Chapter 61 (Section 2)</p>	<p data-bbox="510 282 1103 1011">“land that is at least sixteen and seven-tenths per cent stocked, that contains at least seven and five-tenths square feet of basal area per acre by forest trees of any size; or that formerly had such tree cover and is not currently developed for non-forest use; or that is a plantation containing at least five hundred trees per acre.”</p>	<p data-bbox="1141 282 1866 611">“land devoted to the growth of forest products. Upon application, the state forester may allow accessory land devoted to other non-timber uses to be included in certification.”</p>

Subject	Pre March 22, 2007	Post March 22, 2007
<p><i>Definition of “Forest Products”</i> under Chapter 61 (Section 3)</p>	<p>“wood, timber, Christmas trees, other tree forest growth and any other hardwood product produced by forest vegetation.”</p>	<p>Removes the word “hardwood” allowing for a wide variety of products to be counted.</p>
<p><b>Stumpage Tax</b> under Chapter 61 (Section 6, 10)</p>	<p>A tax was owed based on a percentage of the value of all timber harvested.</p>	<p>The stumpage tax has been eliminated.</p> <p><i>(Note: Will go into effect July 2008)</i></p>

Subject	Pre March 22, 2007	Post March 22, 2007
<p><b><i>State Forester Review</i></b> under chapter 61 (Section 7)</p>	<p>It was unclear as to if a town could determine that land did not meet the requirement of “Forest Land”, and if there was “Forest Production”</p>	<p>“The state forester will have sole responsibility for review and certification with regard to forest land and forest production.”</p>
<p><b><i>Fee for State Forester Review</i></b> under Chapter 61 (Section 8)</p>	<p>There was an application fee collected by the state forester for review of the application</p>	<p>The fee has been struck.</p>



Turned out to be a not-so-lucky bottle cap.

Subject	Pre March 22, 2007	Post March 22, 2007
<p><b><i>Valuation of Land</i></b> under Chapter 61 (Section 13)</p>	<p>5% of a fair cash valuation under the provisions of MGL Chapter 59, with a \$10.00/acre minimum</p>	<p>Like Chapter 61A, the valuation of the land will be “the value that the land has for forest production purposes”.</p> <p>The assessors shall use the list of ranges published by the Farmland Valuation Advisory Commission and their personal knowledge, but all factors shall be limited specifically to data specific to forest production similar to chapter 61A.</p> <p><i>(Note: Will go into effect July 2008)</i></p>

Subject	Pre March 22, 2007	Post March 22, 2007
<p><b><i>Betterment Assessments</i></b> under Chapter 61 (Section 15) Chapter 61A (Sections 33, 34, 35 and 36)</p>	<p>Are subject to betterment assessments, however any assessment other than water pipes become due and payable at the time the land is removed from classification.</p>	<p>A betterment may only be assessed to the proportion that it finances a service or facility that is used to improve the forest production use capability of the land, or the personal benefit of the owner.</p> <p>Payment and interest are due in accordance with MGL § 13 Chapter 80 upon a change of use, however interest shall only be computed from the date of the change in use.</p>

Subject	Pre March 22, 2007	Post March 22, 2007
<p data-bbox="48 118 340 337"><b>Conveyance Tax</b> under Chapter 61 (Section 16)</p> <p data-bbox="48 1310 266 1348"><i>(Slide 1 of 3)</i></p>	<p data-bbox="465 118 836 219">There was no Conveyance Tax</p>	<p data-bbox="904 118 1798 277">This does not apply to any land under classification under chapter 61 before this date until it is conveyed to a new owner.</p> <p data-bbox="904 348 1846 564">There is now a conveyance tax if property is sold for another use within ten years of its date of earliest uninterrupted use or its acquisition by the current owner.</p> <p data-bbox="904 635 1827 793">The tax shall be 10% (minus 1% for every year the property has been used or owned) of the value of the property.</p> <p data-bbox="904 865 1821 1023">The assessment is only in proportion in the proportion that the land whose use has changed.</p> <p data-bbox="904 1095 1856 1362">In the case of eminent domain takings, there is still a conveyance tax, however the conveyance tax must be added to value determined under MGL Chapter 79 (the amount paid by law to the landowner)</p>

Subject		Post March 22, 2007
<p><b>Conveyance Tax</b> under Chapter 61 (Section 16)</p> <p><i>(Slide 2 of 3)</i></p>		<p>There is no conveyance tax (but the restriction carries forward) if:</p> <ul style="list-style-type: none"><li>• the land is acquired for a natural resource purpose by the government or a nonprofit conservation organization</li><li>• transactions between family where no consideration is given</li><li>• there is a foreclosure</li><li>• the land meets the definitions of forest, agricultural, horticultural or recreational land under § 1 and 3 of 61A, or § 2 and 3 of 61A, or § 1 of 61B (but does not need to be enrolled.)</li></ul>

<b>Subject</b>		<b>Post March 22, 2007</b>
<p data-bbox="48 118 343 337"><b>Conveyance Tax</b> under Chapter 61 (Section 16)</p> <p data-bbox="48 1243 266 1282"><i>(Slide 3 of 3)</i></p>		<p data-bbox="898 118 1864 337">Any sale with an avadavat signed by the new landowner stating that the use of the land will not change within the next ten years removes the liability from the seller.</p> <p data-bbox="898 404 1818 565">If there is then a subsequent change in the following ten year period, the conveyance will be due and payable at that time</p>



Subject	Pre March 22, 2007	Post March 22, 2007
<p><b>Roll Back Taxes</b> under Chapter 61 (Section 17)</p>	<p>A roll back tax, with significant interest, compounded daily was due upon unenrollment from the chapter.</p> <p>This was the difference between taxes paid and the taxes that would have been paid if the property was not enrolled in Chapter 61.</p> <p>There were no provisions for proportional removal.</p>	<p>The Roll Back tax will only look back 5 years, and will have a flat 5% interest rate compounded annually.</p> <p>The tax is only proportional to the amount of land whose use is changed.</p> <p>No Roll Back Tax will be assessed if the land meets the definitions of forest, agricultural, horticultural or recreational land under § 1 and 3 of 61A, or § 2 and 3 of 61A, or § 1 of 61B (but does not need to be enrolled.)</p>

<b>Subject</b>	<b>Pre March 22, 2007</b>	<b>Post March 22, 2007</b>
<p><b><i>Notice of Intent to Sell or Convert</i></b>  under Chapter 61(Section 18),  Chapter 61A  (Section 31)</p> <p><i>(Slide 1 of 3)</i></p>	<p>Land cannot be sold or converted to another use without giving a notice to the town of the intent to sell or convert while being taxed under the chapter.</p> <p>This provides notice to the town under their right of first refusal of their opportunity to buy the property.</p>	<p>Land cannot be sold or converted for another use within one year of being taxed under the chapter without giving the town a notice to sell or convert.</p> <p>With the notice the landowner shall also provide:</p> <ol style="list-style-type: none"> <li>1.) a statement of intent to sell or convert , a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.</li> </ol>

<b>Subject</b>		<b>Post March 22, 2007</b>
<p data-bbox="67 139 483 471"><b><i>Notice of Intent to Sell or Convert</i></b> under Chapter 61(Section 18), Chapter 61A (Section 31)</p> <p data-bbox="67 1220 280 1263"><i>(Slide 2 of 3)</i></p>		<p data-bbox="1068 139 1816 242">With the notice the landowner shall also provide:</p> <p data-bbox="1068 307 1864 699">2.) a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter (for an intent to sell.)</p>

<b>Subject</b>		<b>Post March 22, 2007</b>
<p data-bbox="67 139 483 471"><b><i>Notice of Intent to Sell or Convert</i></b> under Chapter 61(Section 18), Chapter 61A (Section 31)</p> <p data-bbox="67 1220 280 1263"><i>(Slide 3 of 3)</i></p>		<p data-bbox="1062 139 1883 692">The Purchase and Sale Agreement may not be dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use.</p> <p data-bbox="1062 763 1883 928">This provides notice to the town under their right of first refusal of their opportunity to buy the property.</p>



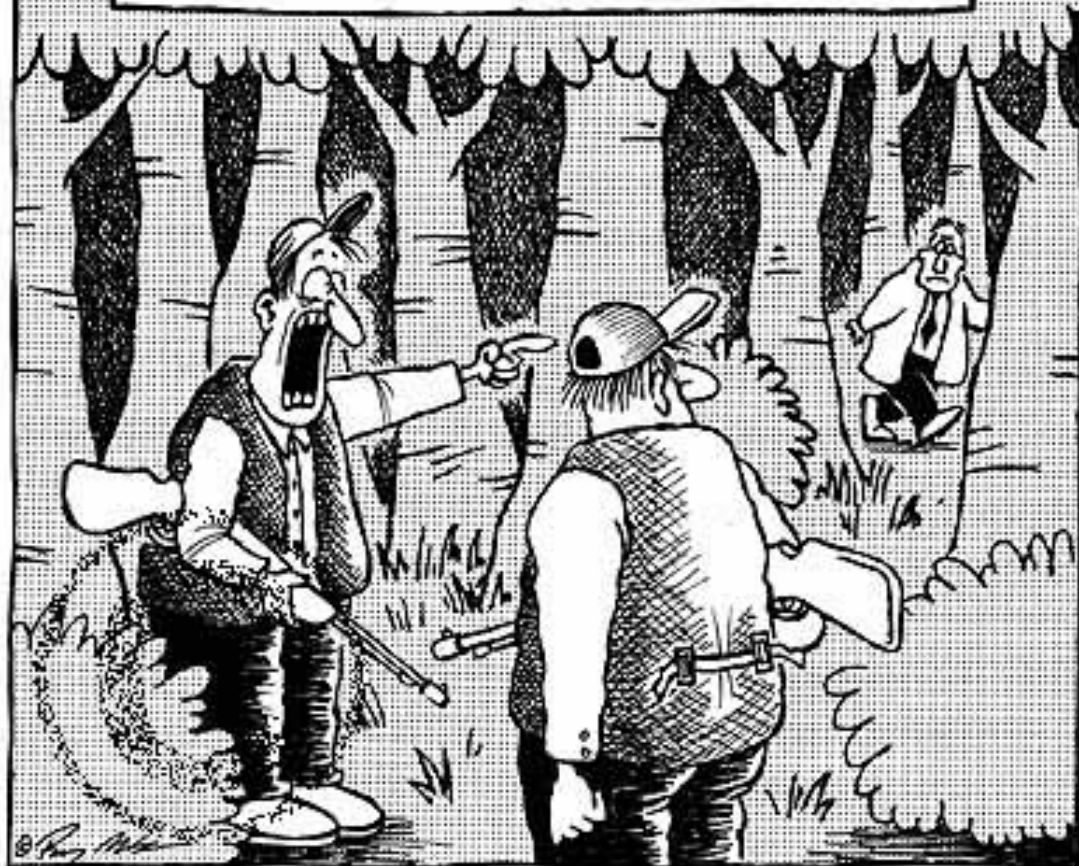
“Since I got tagged I’ve been getting way more spam.”

Subject	Pre March 22, 2007	Post March 22, 2007
<p><b><i>Conversions Not Involving a Sale</i></b>  under Chapter 61  (Section 18),  Chapter 61A  (Section 31)</p> <p><i>(Slide 1 of 2)</i></p>	<p>Land may only be purchased under a Right of First Refusal at “full and fair market value to be determined by impartial appraisal”.</p> <p>There are no provisions to withdraw a Notice of Intent to Convert and the subsequent Right of Refusal to the town after a value has been determined.</p>	<p>The town or it’s assignee will contract (at their expense) to conduct a first appraisal.</p> <p>If the landowner is dissatisfied with such appraisal, the landowner, at the landowner’s expense may contract for a second appraisal.</p> <p>If after the completion of the second appraisal the parties cannot agree on a price they may contract for a third appraisal with a mutually agree upon Appraiser, the cost to be born by both parties equally.</p>

<b>Subject</b>		<b>Post March 22, 2007</b>
<p data-bbox="67 159 463 492"><b><i>Conversions Not Involving a Sale</i></b> under Chapter 61 (Section 18), Chapter 61A (Section 31)</p> <p data-bbox="67 1128 280 1163"><i>(Slide 2 of 2)</i></p>		<p data-bbox="1058 159 1796 378">The third appraisal is the final determination of price. It must be delivered to the parties within 90 days of the initial notice to convert.</p> <p data-bbox="1058 449 1864 835">At any time in the process, the landowner may withdraw their notice to convert (and the subsequent ability of the town or it's assignee to purchase the property) with no penalty, but they may not follow through with the conversion.</p>

<b>Subject</b>	<b>Pre March 22, 2007</b>	<b>Post March 22, 2007</b>
<b><i>Inspection of Property</i></b> under Chapter 61 (Section 18), Chapter 61A (Section 31)	Previously there were no provisions for inspection of the property.	During the 120-day period, the city or town or its assignees, shall have:  1.) the right, at reasonable times and upon reasonable notice, to enter upon said land for the purpose of surveying and inspecting said land, including but not limited to soil testing for purposes of Title V and the taking of water samples.  2.) all rights assigned to the buyer in the purchase and sales agreement contained in the notice of intent.

The first reported sighting  
of Bigfoot's podiatrist-



<b>Subject</b>	<b>Pre March 22, 2007</b>	<b>Post March 22, 2007</b>
<b><i>Closing</i></b> under Chapter 61 (Section 18), Chapter 61A (Section 31)	The town or it's assignee has a "reasonable" amount of time to close upon reaching a decision.	The town or its assignee shall, prior to the end of the 120 decision period, provide "a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days" unless otherwise agreed to in writing by the landowner.

Subject	Pre March 22, 2007	Post March 22, 2007
<p><i>Definition of “<b>Land in Horticultural Use</b>” as it Relates to Forestry</i> under Chapter 61A (Section 19)</p>	<p>For land used for raising forest product, requires “. . . a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business. . . .”</p>	<p>For land used for raising forest product, requires “. . . a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business . . .” to bring it more in line with the requirements of MGL Chapter 61.</p>
<p><i><b>Farmland Valuation Advisory Commission</b></i> under Chapter 61A and Chapter 61 (Sections 23 and 24)</p>	<p>Contains no specific direction or position for Forest Values</p>	<p>Gives specific direction to the Commission to determine forest land values and places the Commissioner of the Department of Conservation and Recreation on the Advisory Commission.</p>

Subject	Pre March 22, 2007	Post March 22, 2007
<p><b>Conveyance Tax on Land Acquired Through an Assignment to a Non Profit</b> under Chapter 61 (Section 18), Chapter 61A(Section 26)</p>	<p>The Conveyance tax does not carry on to an acquiring non profit.</p>	<p>If the land is sold within five years by a non profit, then the non-profit shall be subject to the conveyance tax.</p>
<p><b>Conveyance Tax Carrying Forward to a Buyer</b> under Chapter 61A (Section 27)</p>	<p>There is no specific time frame under which the conveyance tax carries forward to a buyer when they provide an affidavit stating the use will continue.</p>	<p>If the land is not continued in the use stated in the affidavit for at least 5 consecutive years, the conveyance tax becomes due and payable and is the liability of the buyer.</p>

Subject	Pre March 22, 2007	Post March 22, 2007
<p><b><i>Conveyance and Roll Back Taxes Exemption</i></b> under 61A (Section 28, 30)</p>	<p>There is debate as to if a conveyance tax or roll back tax is applicable if there is a change of use to forestry or the landowner, or subsequent owner simply stops farming but does not otherwise “convert” the property</p>	<p>No conveyance tax or roll back tax will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of recreational land under chapter section 1 of chapter 61B.</p>

<p><b><i>Interest Rate on Roll Back Taxes</i></b> Under Chapter 61A (Section 30)</p>	<p>There is no interest on these taxes</p>	<p>Both taxes will be subject to a 5% simple interest rate per annum unless taxed under this chapter as of July 1, 2006 if it remains in the same ownership as it was on that date, or under the ownership of the original owner’s spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any deceased such relative.</p>
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Subject	Pre March 22, 2007	Post March 22, 2007
<p><b><i>Allowance for Equine and Related Activities</i></b> under 61B (Sections 38 and 39)</p>	<p>Previously land must be “in substantially a natural, wild, or open condition or in a landscaped condition” and “horseback riding” is a recreational use.</p>	<p>Land can now also be in a “pastured condition” and commercial horseback riding and equine boarding” are now recreational uses.</p>
<p><b><i>Allowance for Forestry Activities</i></b> under 61B (Section 38)</p>	<p>The requirement of being “natural” or “wild” did not properly provide for forestry uses</p>	<p>Land may now be “in a managed forest condition under a certified forest management plan approved by and subject to procedures established by the state forester.”</p>



"Close the door! Do you live in a barn or something?"

# Article 97 Land Disposition Policy

- "The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose."  
-- Constitution of the Commonwealth of Massachusetts, Article XCVII (97) --

# Article 97 Land Disposition Policy

- Article 97 dispositions requires 2/3 vote of legislature
- EEA Policy signed in 1998
- Goal: ensure no net loss of Article 97 state and municipal land
- Disposition = transfer, conveyance, change in control or use of Art. 97 land
- Does not apply to revocable permits

# Conditions for Disposition Exceptions

- All other options explored and “no feasible and substantially equivalent alternatives exist” (test used by MEPA – all dispositions must file an ENF)
- The proposed use does not destroy or threaten a unique or significant resource
- Real estate of equal or greater fair market and significantly greater resource value are granted to the agency so the constitutional rights of the citizens are protected/enhanced.

# Article 97 Land Disposition Policy

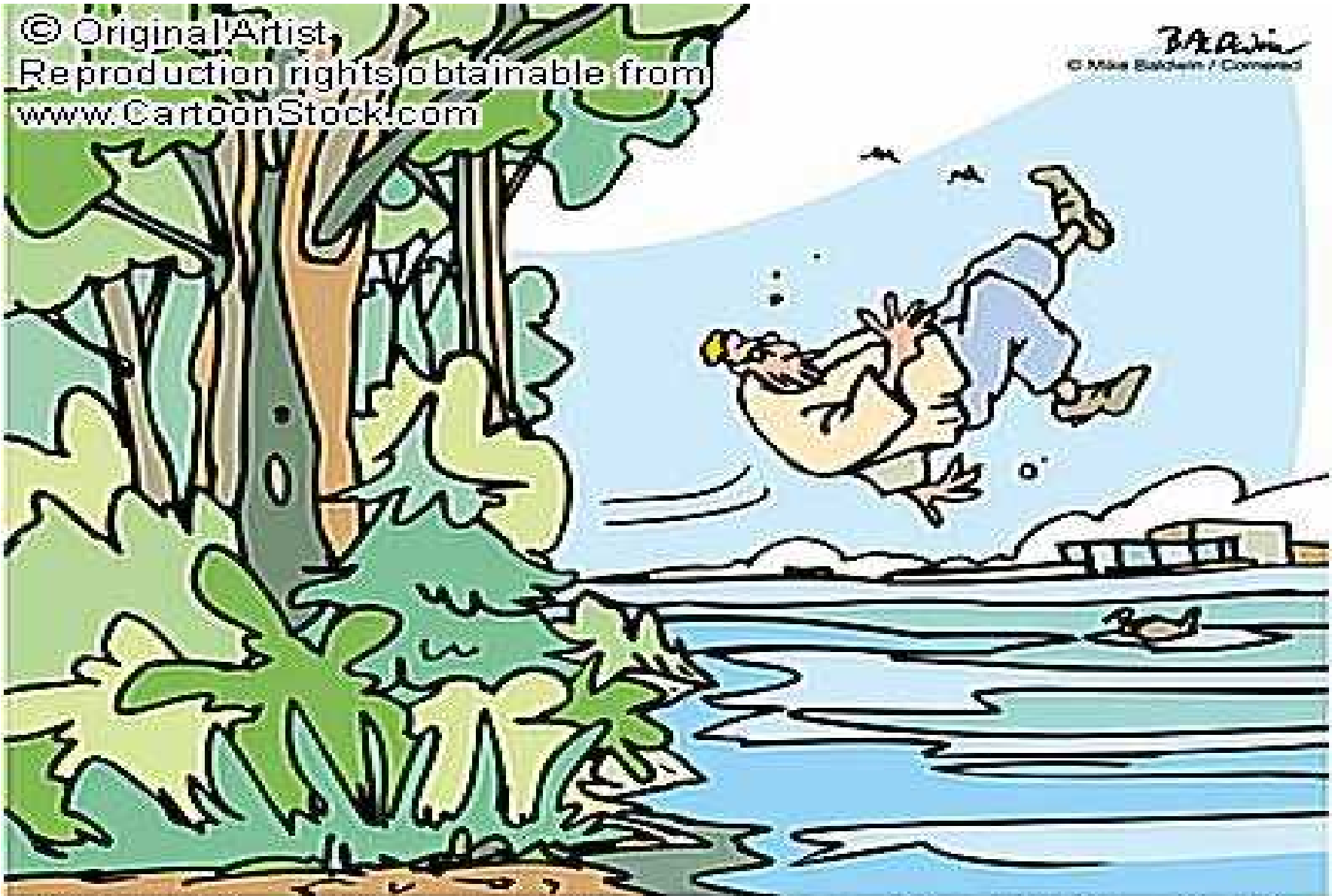
- Procedures for Disposition:
  - Obtain the concurrence of the EEA Secretary and ensure that all EEA conditions are incorporated in state dispositions – if not recommend amendment or veto of legislation
  - For municipal Art 97 dispositions need unanimous vote of Cons Com or Park Commission and 2/3 vote of town meeting or city counsel before 2/3 legislative vote

# Article 97 Land Disposition Policy

- Municipal dispositions must comply with Self Help, Urban Self Help and Land and Water Conservation Fund requirements
- Municipalities that fail to comply with the policy will not be eligible for EEA grants until they have complied as determined by EEA Secretary

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**Bob tried living off the land. But the land soon got tired of Bob not pulling his weight, and kicked him out.**

Thank You

