

42.20.156 AGRICULTURAL AND FOREST LAND USE CHANGE

CRITERIA (1) The department shall change the classification and valuation of land from class three, as defined in 15-6-133, MCA, or class ten, as defined in 15-6-143, MCA, to class four, as defined in 15-6-134, MCA, when any of the following criteria are met:

(a) the land contains covenants or other restrictions that prohibit agricultural use or the cutting of timber, other than that required as part of a timber management plan or a conservation easement;

(b) the agricultural land does not meet the eligibility requirements in 15-7-202, MCA;

(c) the forest land does not meet the eligibility requirements in 15-44-102, MCA, and subsequently does not meet the requirements of 15-7-202, MCA;

(d) the land is part of a platted and filed subdivision, and the land contains three or more of the following physical site improvements:

(i) a city or community sewer system;

(ii) a city or community water system;

(iii) street curbs and gutters;

(iv) a paved or all-weather gravel road that meets county standards;

(v) a storm sewer system;

(vi) underground or aboveground utilities that may include gas, electricity, telephone, or cable television;

(vii) streetlights;

(viii) a fire hydrant;

(ix) landscaping developed for the aesthetic benefit or security of all the landowners; or

(e) the land contains a commercial or industrial structure or is used in direct support of commercial or industrial activities.

(i) Examples of a commercial or industrial structure include, but are not limited to:

(A) an apartment building;

(B) an office building;

(C) a mobile home park;

(D) a warehouse;

(E) a lumber mill;

(F) a sugar beet processing plant;

(G) a refinery;

(H) a power generation facility;

(I) a greenhouse where the product is sold to the public;

(J) a storage tank; and

(K) a cellular communication tower.

(ii) Examples of land being used for commercial or industrial activity include, but are not limited to:

(A) a parking lot;

(B) a lumber company log yard;

(C) land used as a buffer for an industrial facility from adjoining land uses;

(D) land used to store sugar beets, potatoes, or other cash crops until those crops can be transported to a manufacturing facility; and

(E) land that is used to store horticultural crops for sale where the roots of the crop are placed in a container or other material and that container is either placed in the ground or on a platform.

(2) Examples of what would not be considered a change in land classification based on this rule are:

(a) utility lines that run across the property but are provided for the benefit of a third party and not for access or the benefit of the property owner;

(b) easement access roads that are provided for the benefit of a third party and not for access or the benefit of the property owner.

(3) The land will be valued at market value under class four instead of its productivity value when any of the criteria in (1) are met. (History: Sec. 15-1-201, 15-7-111, and 15-44-105, MCA; IMP, Sec. 15-1-101, 15-6-133, 15-7-103, 15-7-111, 15-7-202, 15-7-206, 15-7-207, 15-7-210, 15-44-102, and 15-44-103, MCA; NEW, 2002 MAR p. 3062, Eff. 11/1/02.)



Changing Land Classification

Informal

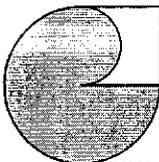
Negotiated Rulemaking

Committee Report

*Changing Land Classification
Informal
Negotiated Rulemaking
Committee Report*

Dated June 18, 2002

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**CHANGING LAND CLASSIFICATION
FROM CLASS 3 AND 10 TO CLASS 4
NEGOTIATED RULEMAKING COMMITTEE**

Meeting Date – June 18, 2002

Facilitator:

Department of Revenue

Rules & Policy Office

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**CHANGING LAND CLASSIFICATION
FROM CLASS 3 AND 10 TO CLASS 4
NEGOTIATED RULEMAKING COMMITTEE
(continued)**

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Formal Committee Report to Department of Revenue

Procedural Material Addressed

The Changing Land Classification Rulemaking Committee met in Helena, Montana on June 18, 2002, to discuss the development of rules pertaining to when land classification should change from Class 3 (agricultural land, non-qualified agricultural land and non-productive patented mining claims) and Class 10 (forest land) property to Class 4 (all land except that specifically included in another class).

A packet of material had been sent to each member prior to the meeting date. This packet included: a brief background summary of the issues for discussion; two cases previously heard by the State Tax Appeal Board (STAB) and one at District Court; the agenda; and a list of Committee members.

All of the members were present except Mr. Gene Cook. Mr. Cook participated via telephone conferencing.

Cleo Anderson, Rules and Policy Officer for the department, facilitated the meeting and the meeting was tape-recorded. The Facilitator advised the Committee that the Department would determine, at a later date, if a written transcript would be necessary.

Committee ground rules and the overall process of the meeting were discussed. The Committee was provided with a definition of "consensus" as defined in 2-5-103, MCA. The Facilitator asked the Committee if this definition was acceptable and they agreed. The Facilitator further advised the Committee that, as required under the Montana Administrative Procedure Act (MAPA), the Committee may only make a formal recommendation based on the consensus of the Committee to the agency regarding rules to be adopted, amended or repealed by the agency.

Recommendations from the Committee are not binding on the department. However, the Department must respond to a recommendation of the Committee in a formal rulemaking process. If the Committee makes a formal

recommendation and the department decides not to follow that recommendation, the department must specify the grounds for which it is not following the recommendation of the Committee.

At the conclusion of this discussion, the Committee agreed that for purposes of this Committee "consensus" means: **"Consensus does not require unanimous agreement but 'you' can live with the decision and support it."** If there are issues where a unanimous consensus cannot be reached, the report will note that a consensus could not be reached and identify the areas of disagreement.

Committee members asked for some background information regarding the intent of "negotiated rulemaking" and the Facilitator provided a brief explanation of the history and process.

Report and Rule Structure Format

This report reflects a summarized discussion of the Committee meeting. The draft rule as stated in the report reflects the standard rule-drafting format using Roman numerals to reference a new rule as required by the Model Rules adopted by the Attorney General for newly proposed rules.

Discussion and Background Pertaining to Issues

Randy Wilke, Process Lead for the Compliance, Valuation and Resolution Process, Department of Revenue, gave a brief history surrounding the issues before the Committee. He explained the difficulty the agency and taxpayers have with determining when property that has had certain improvements should change to a different classification for tax purposes. Mr. Wilke explained the two cases that were previously heard before the State Tax Appeal Board (STAB) and subsequently appealed to District Court. (*Mariners Haven*, DV-97-13 and STAB PT-1996-5 and *Bottrell Family Investments, LLC*, STAB PT-2001-3). The STAB ruled in the department's favor in both of these cases and the Nineteenth Judicial District Court upheld that decision in the *Mariners Haven* case. The *Bottrell* case was appealed to the Thirteenth Judicial District Court by the taxpayer this month.

Mr. Randy Pearson, Department of Revenue, provided the statutory background of the applicable statutes. Mr. Pearson provided a hand-out for the members review (this document was faxed to Mr. Cook) and is referenced as Exhibit #1 for the record. The Committee reviewed these statutes and Mr. Pearson explained the difference of one acre parcels under agricultural and forest land and the variations of Class 3, 10 and 4.

Proposed Rule Reviewed by the Committee

The department provided draft New Rules I and II to the Committee for their consideration and review. See Exhibit #2 of the record.

After discussion and review it was determined that proposed New Rule II, which was a definition rule was not necessary since the term being defined was removed from proposed New Rule I.

The revised language as approved by a consensus of the Committee is shown below:

NEW RULE I AGRICULTURAL AND FOREST LAND USE CHANGE CRITERIA (1) The department shall change the classification and valuation of land from class 3, as defined in 15-6-133, MCA, or class 10, as defined in 15-6-143, MCA, to class 4, as defined in 15-6-134, MCA, when any of the following criteria is met:

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- (i) city or community sewer system;
- (ii) city or community water system;
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- (v) storm sewer system;
- (vi) underground or above ground utilities, that may include gas, electricity, telephone, or cable television;
- (vii) streetlights;

(viii) fire hydrants; or
(ix) landscaping developed for the aesthetic benefit or security of all the land owners; or

(e) the land is used for commercial or industrial structures or is used in direct support of commercial or industrial activities.

(i) Examples of commercial or industrial structures include, but are not limited to:

- (A) apartments;
- (B) office buildings;
- (C) mobile home parks;
- (D) warehouses;
- (E) lumber mills;
- (F) sugar beet processing plants;
- (G) refineries;
- (H) power generation facilities;
- (I) greenhouses where the product is sold to the public;
- (J) storage tanks; and
- (K) cellular communication towers.

(ii) Examples of support activities include, but are not limited to:

- (A) parking lots;
- (B) lumber company log yards;
- (C) land used as a buffer for an industrial facility from adjoining land uses;
- (D) land used to store sugar beets, potatoes, or other cash crops until those crops can be transported to a manufacturing facility; and
- (E) land that is used to store horticultural crops for sale where the roots of the crop are placed in a container or other material and that container is either placed in the ground or on a platform.

(2) The land will be valued at market value under class 4 instead of its productivity value when any of the criteria in (1) is met.

AUTH: 15-1-201, 15-7-111, and 15-44-105, MCA

IMP: 15-1-101, 15-6-133, 15-7-103, 15-7-111, 15-7-202, 15-7-206, 15-7-207, 15-7-210, 15-44-102, and 15-44-103, MCA

The Facilitator presented the proposed timeframe for adopting the rule as follows:

- 7/1/02 Report to the Director with Recommendations
- 8/5/02 File Proposed Notice of Adoption
- 9/5/02 Conduct Public Hearing
- 11/1/02 Rule are Effective

Issues Resolved by the Committee

It is the consensus of the Committee to adopt the rule revisions proposed by the Committee. The rule as drafted reflects the logical criteria for changing land classification from Class 3 and 10 to Class 4.

The Committee recommends, to the Director of Revenue, the adoption of the above-stated rule, which clarifies the criteria that must be met before the department will change the property classification of Class 3 and 10 to Class 4. This rule provides clear guidance to all interested parties regarding the "trigger" point that will initiate the change in classification. Further, the Committee recommends the adoption of the proposed rule according to the tentative schedule presented by the Facilitator at the meeting.

Unresolved Issues

There were no unresolved issues from this Committee.

Conclusion of Report

This report was compiled and prepared by the Committee Facilitator from the tapes of the meeting, notes taken during the meeting and editorial comments provided by the Committee members on a draft report.

Dated this 2nd day of July, 2002.

CLEO ANDERSON
Changing Land Classification
Negotiated Rulemaking
Committee Facilitator