



MAINE REVENUE SERVICES PROPERTY TAX DIVISION PROPERTY TAX BULLETIN NO. 21

OPEN SPACE TAX LAW

REFERENCE: 36 M.R.S. §§ 1101-1121
February 21, 2019; replaces April 1, 2016 revision

1. General

The Open Space Tax Law provides for the valuation of land based on its current use as open space, rather than its highest and best use. To qualify for open space classification, land must be preserved or restricted in use to provide a public benefit. The purpose of this bulletin is to explain the more important features of this law.

2. Definitions

- A. Assessed fair market value. “Assessed fair market value” means the assessed value of comparable property in the municipality adjusted by the declared ratio to 100%.
- B. Assessor. “Assessor” means the assessor or board of assessors of a municipality, the chief assessor of a primary assessing area, or the State Tax Assessor in the case of the unorganized territory.
- C. Declared ratio. “Declared ratio” means the level of municipal assessed value, expressed as a percentage, relative to full market value as certified by the assessor pursuant to 36 M.R.S. § 383.
- D. Forever wild open space land. “Forever wild open space land” means an area of open space land that is permanently protected and subject to restrictions or committed to uses by a nonprofit entity committed to conservation and will ensure that in the future the natural resources on that protected property will remain unaltered, except for: 1) fishing or hunting; 2) harvesting shellfish in the intertidal zone (for example, clamming); 3) prevention of the spread of fires or disease; or 4) providing opportunities for low-impact outdoor recreation, nature observation and study.
- E. Managed forest open space land. “Managed forest open space land” means an area of open space land whether ordinary, permanently protected, or public access containing at least ten

acres of forested land that is eligible for an additional cumulative percentage reduction in valuation because the applicant has provided proof of a forest management and harvest plan and ongoing proof that the landowner is complying with the plan.

- F. Municipality. “Municipality” means any city, town, plantation, or any location in the unorganized territory.
- G. Ordinary open space land. “Ordinary open space land” means land that qualifies for the basic discount for open space classification. The discounts under permanently protected, forever wild, public access, and managed forest categories are additional qualifications that increase the ordinary open space discount. Land may or may not qualify for the additional qualification discounts, but all open space classified land qualifies for the ordinary open space discount.
- H. Permanently protected open space land. “Permanently protected open space land” means an area of open space land that is subject to restrictions prohibiting building development under a perpetual conservation easement or as an open space preserve owned and operated by a nonprofit entity committed to conservation that will permanently preserve the property in its natural, scenic or open character.
- I. Public access open space land. “Public access open space land” means an area of open space land allowing public access by reasonable means and the applicant agrees to refrain from taking action to discourage or prohibit daytime, nonmotorized and nondestructive public use. The applicant may permit hunting, snowmobiling, overnight use, or other more intensive outdoor recreational uses. The applicant may impose temporary or localized public access restrictions to protect active habitat of endangered species, prevent destruction or harm to fragile protected natural resources, or protect recreational users from any hazardous area.
- J. Shoreland area. “Shoreland area” means land within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal wetland, within 250 feet of the upland edge of a freshwater wetland except as otherwise provided in 38 M.R.S. § 438-A(2) or within 75 feet of the high-water line of a stream. (38 M.R.S. § 435).

3. Public Benefit

To qualify for open space classification, land must provide a public benefit. To determine whether a parcel provides a public benefit, an assessor must consider the following factors. Factors appropriate to one application may be irrelevant in determining the public benefit of another application. A single factor, whether listed here or not, may be determinative of public benefit. Among the factors to be considered are:

- A. The importance of the land by virtue of its size or uniqueness in the vicinity of extensive development or comprising an entire landscape feature;

- B. The likelihood that development of the land would contribute to degradation of the scenic, natural, historic, or archeological character of the area;
- C. The opportunity of the general public to appreciate significant scenic values of the land;
- D. The opportunity for regular and substantial use of the land by the general public for recreational or educational use;
- E. The importance of the land in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- F. The likelihood that the preservation of the land as undeveloped open space will provide economic benefit to the municipality by limiting municipal expenditures required to service development;
- G. Whether the land is included in an area designated as open space land or resource protection land on a comprehensive plan or in a zoning ordinance or on a zoning map as finally adopted;
- H. The existence of a conservation easement, other legally enforceable restriction, or ownership by a nonprofit entity committed to conservation of the property that will permanently preserve the land in its natural, scenic, or open character;
- I. The proximity of other private or public conservation lands protected by permanent easement or ownership by governmental or nonprofit entities committed to conservation of the property;
- J. The likelihood that protection of the land will contribute to the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area or similar protected area;
- K. The existence on the land of habitat for rare, endangered, or threatened species of animals or plants, or of a high-quality example of a terrestrial or aquatic community;
- L. The consistency of the proposed open space use with public programs for scenic preservation, wildlife preservation, historic preservation, game management, or recreation in the region;
- M. The identification of the land – or of outstanding natural resources on the land – by a legislatively mandated program, on the state, local, or federal level, as particular areas, parcels, land types, or natural resources for protection including, but not limited to, the register of critical areas under 12 M.R.S. § 544-B; the laws governing wildlife sanctuaries and management areas under 12 M.R.S. §§ 10109(1), 12706 and 12708; the laws governing the state's rivers under 12 M.R.S. chapter 200; the natural resource protection laws under 38 M.R.S. chapter 3(1)(5-A); and the Maine Coastal Barrier Resources Systems under 38 M.R.S. chapter 21;
- N. Whether the land contains historic or archeological resources listed in the National Register of

Historic Places or is determined eligible for such a listing by the Maine Historic Preservation Commission, either in its own right or as contributing to the significance of an adjacent historic or archeological resource listed, or eligible to be listed, in the National Register of Historic Places;

- O. Whether the land contains a wildlife habitat, which is subject to a written management agreement between the landowner and either the Department of Inland Fisheries and Wildlife or the Department of Agriculture, Conservation and Forestry to ensure that the habitat benefits provided by the land are not lost; or
- P. Whether the land is maintained in accordance with criteria that are adopted under local ordinance that provide for preserving the integrity of historically important structures or conserving a scenic view. 30-A M.R.S. § 5730.

4. Standards for Classification

- A. Minimum size. There is no minimum acreage requirement for open space classification. However, for areas within an open space land parcel that do not qualify for certification, minimum areas and setbacks must be excluded.
- B. Maximum size. No person can have more than 15,000 acres of classified farmland and open space land statewide.
- C. Use. Open space land must be preserved or restricted in use to provide a public benefit by conserving scenic resources, enhancing public recreation opportunities, promoting game management, or preserving wildlife or wildlife habitat.
- D. Developed lands. Any building or improvement area is excluded from classification as open space land. Each excluded area must include at least 20,000 square feet or the minimum lot size, as determined by local ordinance, if larger than 20,000 square feet. For improvements within the shoreland area, the excluded area must include 100 feet of shore frontage or the minimum shoreland frontage required by local zoning ordinance, whichever area is larger. The shoreland frontage requirement is waived if: 1) the affected frontage is part of a contiguous shore path or a beach for which there is or will be, once classified, regular and substantial use by the public; or 2) the legislative body of the municipality determines that a public benefit will be served by preventing future development near the shore or by securing access for the public on the particular shoreland area that would otherwise be excluded from classification. See 36 M.R.S. § 1109(3) and 38 M.R.S. § 435.
- E. Managed forest open space lands. A forest management and harvest plan must be prepared and updated every ten years for each parcel of managed forest open space. The landowner must comply with the forest management and harvest plan and must submit a statement from a

licensed professional forester, every ten years, to the local assessor. The forester statement must declare that the landowner is managing the parcel according to the forest management and harvest plan. Failure to comply with the forest management and harvest plan results in the loss of the additional cumulative percentage reduction under this paragraph for ten years.

The assessor or the assessor's duly authorized representative may enter and examine the forested land and may examine any information in the forest management and harvest plan submitted by the owner. A copy of the forest management and harvest plan must be made available to the assessor to review upon request. Upon completion of a review, the forest management and harvest plan must be returned to the owner or an agent of the owner. A forest management and harvest plan provided in accordance with this section is confidential and is not a public record as defined in 1 M.R.S. § 402(3).

5. Valuation

The value of a parcel of land enrolled in the open space program is the sale price that particular parcel would command in the marketplace if it were required to remain in the particular category or categories of open space land for which it qualifies, adjusted by the declared ratio for the municipality where the land is located.

An assessor may value open space land based on such considerations as sales of land subject to permanent conservation restrictions, sales of land subject to enforceable deed restrictions, and before and after appraisals of permanently restricted land in the municipality.

Alternately, an assessor may reduce the assessed value of an open space parcel according to the following categories:

- A. All ordinary open space land is eligible for a reduction of 20% of the assessed value.
- B. Permanently protected open space land is eligible for the 20% reduction in subsection A plus an additional 30% reduction; in other words, a total reduction of 50% of the assessed value.
- C. Forever wild open space land is eligible for the 50% reduction in subsection B plus an additional 20% reduction; in other words, a total reduction of 70% of the assessed value.
- D. Public access open space land is eligible for the 20% reduction in subsection A plus an additional 25% reduction; in other words, a total reduction of 45% of the assessed value. If public access open space land is also permanently protected, it is eligible for the 50% reduction in subsection B plus the additional 25% reduction in this subsection, for a total reduction of 75%. If public access open space land is also qualified as forever wild open space land, it is eligible for the 70% reduction in subsection C plus the additional 25% reduction in this paragraph, for a total reduction of 95%.

- E. Managed forest open space land is eligible for the 20% reduction in subsection A plus an additional 10% reduction; in other words, a total reduction of 30% of the assessed value. If managed forest open space land is also permanently protected, it is eligible for the 50% reduction in subsection B plus the additional 10% reduction in this subsection, for a total reduction of 60%. If managed forest open space land is also qualified as public access open space land, it is eligible for the 45% reduction in subsection D plus the additional 10% reduction in this subsection, for a total reduction of 55%. If managed forest open space land is also qualified as permanently protected public access open space land, it is eligible for the 75% reduction in subsection D plus the additional 10% reduction in this subsection, for a total reduction of 85%. Managed forest open space land cannot also qualify for forever wild classification.

The value of forested open space land may not be reduced to less than the values under the Tree Growth Tax Law program. Open space land value may not exceed just value as required under § 701-A.

6. General Requirements

- A. Filing. A landowner must file an application, by April 1, with the assessor of the municipality where the property is located. Annual filing is not necessary, but an assessor may request a new application at any time, such as after the property changes ownership. An application must be accompanied by a map or sketch showing the open space acres as well as the area within the parcel to be excluded from the program.
- B. Notification of classification. The assessor must determine whether the land is subject to classification, classify the land as to category, and notify the owner of the decision by June 1 of that year. If the application is denied, the assessor must state the reasons for the denial and provide the landowner an opportunity to amend the schedule to conform to the requirements of the statute.
- C. Reclassification. Landowners are required to give the assessor notice of any change in open space land use or administration. If the assessor becomes aware of a change to an open space parcel, the assessor must reclassify the parcel according to the change, whether or not the landowner has notified the assessor.
- D. Tax rate. Open space land is subject to the same property tax rate applied to other property in the jurisdiction.

7. Valuation of Areas Other Than Open Space

Areas other than open space land, including unclassified land within an open space parcel, must be assessed on the basis of fair market value as adjusted by the local declared ratio.

8. Abatement and Appeal

- A. Notice of decision. The assessor must notify the landowner by June 1 that his or her application has been accepted or denied. If the application is denied, the assessor must state the reasons for the denial and provide the landowner an opportunity to amend the schedule within 60 days. If the landowner fails to respond to the assessor's request to file an application or provide other information, the owner is deemed to have waived all rights of appeal.
- B. Abatement procedure. Assessments made under the open space program are subject to the abatement procedures provided by 36 M.R.S. § 841. The assessor, on written application by the taxpayer within 185 days from date of commitment, or on his or her own initiative within one year from date of commitment, may abate taxes on open space land as he or she thinks proper, provided the taxpayer has complied with the reporting requirements of 36 M.R.S. § 706-A.
- C. State Board of Property Tax Review. If an assessor denies a request for abatement from a landowner, the landowner may appeal that decision to the State Board of Property Tax Review. An appeal must be filed within 60 days from receipt of the assessor's decision or within 60 days from the date the application for abatement was deemed to have been denied.
- D. Superior Court. Any party dissatisfied with the decision of the State Board of Property Tax Review may further appeal to Superior Court in the county where the property is located. An appeal must be submitted within 30 days of the decision (or deemed denial) by the State Board of Property Tax Review.

For more information about the abatement and appeal procedures, see Bulletin No. 10.

9. Penalty; Withdrawal of Land

- A. Change in use. If classified open space land no longer meets the requirement for classification, the assessor must withdraw the land from classification. Any change in use disqualifying land for classification under the open space program will incur a withdrawal penalty.
- B. Exception. When withdrawal of a classified parcel is caused by a transfer resulting from the exercise or threatened exercise of the power of eminent domain, penalties do not apply.

Change of classification between open space and either farmland or tree growth does not generate a penalty.

- C. Determination of penalty. The penalty for withdrawal of all or part of an open space parcel from the program is equal to the greater of:
 - (1) The taxes that would have been assessed on the just value of the property during the time the property was in the program (but not exceeding five years), less the taxes actually paid

during that time; and:

(2) One of the following, whichever is appropriate:

- a. If the land has been classified for ten years or less, 30% of the difference between the 100% open space valuation (of the classified land on the assessment date immediately preceding withdrawal) and the 100% fair market value of the property on the date of withdrawal; or
- b. If the land has been classified for more than ten years, the following percentages shall apply to the difference between the open space valuation and the assessed fair market value:

11 years	29%
12 years	28%
13 years	27%
14 years	26%
15 years	25%
16 years	24%
17 years	23%
18 years	22%
19 years	21%
20 years or more	20%

- (3) The owner of classified land is required to report any change in classification of the property. If the owner fails to meet this obligation, the assessor will impose an additional 25% penalty on the amount calculated in this subsection.

IMPORTANT. In no event may the penalty be less than the minimum required by the Constitution of Maine, Article IX, Section 8: “a minimum penalty equal to the tax which would have been imposed over the 5 years preceding that change of use had that real estate been assessed at its highest and best use, less all taxes paid on that real estate over the preceding 5 years, and interest, upon such reasonable and equitable basis as the Legislature shall determine.”

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed, contact the Property Tax Division of Maine Revenue Services.

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