



MAINE REVENUE SERVICES PROPERTY TAX DIVISION BULLETIN NO. 21

OPEN SPACE TAX LAW

REFERENCE: 36 M.R.S. §§ 1101-1121
March 30, 2021; replaces February 21, 2019 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 for uses providing a public benefit. The purpose of this bulletin is to explain the more important features of this law.

2. Definitions

- A. Assessor. “Assessor” means a sworn municipal assessing authority, whether an individual assessor, a board of assessors, or a chief assessor of a primary assessing area. With respect to the unorganized territory, “assessor” means the State Tax Assessor.
- B. Certified ratio. “Certified ratio” means the level of municipal assessed value, expressed as a percentage of just value, as certified by the assessor pursuant to 36 M.R.S. § 383.
- C. Forever wild open space land. “Forever wild open space land,” as defined in 36 M.R.S. § 1106-A(3)(B), means an area of open space land that is eligible for an additional cumulative permanently protected and subject to restrictions or committed to uses by a nonprofit entity that ensure that in the future the natural resources on that protected property will remain substantially 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.
- D. Managed forest open space land. “Managed forest open space land,” as defined in 36 M.R.S. § 1106-A(3)(D), 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.
- E. Just value. “Just value,” means market value, i.e. the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller for a property, each acting without compulsion in an arm’s-length transaction.

- F. Municipal assessed value. “Municipal assessed value” means the property value established by the assessor for purposes of local property taxation. Municipal assessed value may be equal to, higher than, or lower than just value.
- G. Municipality. “Municipality” means any city, town, plantation, or that portion of a county in the unorganized territory.
- H. Open space land. “Open space land,” as defined in 36 M.R.S. § 1102(6), means any area of land, including state wildlife and management areas, sanctuaries, and preserves designated as such in Title 12, the preservation or restriction of the use of which provides a public benefit by conserving scenic resources, enhancing public recreation opportunities, promoting game management, or preserving wildlife or wildlife habitat.
- I. Ordinary open space land. “Ordinary open space land” means land that qualifies for the basic discount for open space classification. The additional discounts under permanently protected, forever wild, public access, or managed forest open space land categories may increase the discount applicable to a parcel of land, but all open space classified land qualifies for the ordinary open space discount.
- J. Permanently protected open space land. “Permanently protected open space land,” as defined in 36 M.R.S. § 1106-A(3)(A), means an area of open space land that is eligible for an additional cumulative percentage reduction in valuation because it 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.
- K. Public access open space land. “Public access open space land,” as defined in 36 M.R.S. § 1106-A(3)(C), means an area of open space land, whether ordinary, permanently protected, or forever wild, that is eligible for an additional cumulative percentage reduction in valuation because the applicant allows 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 , but is not obligated to, 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.
- L. Shoreland area. “Shoreland area,” as defined in 38 M.R.S. § 435, 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.

3. Public Benefit

To qualify for open space classification, a parcel of land must provide a public benefit. An assessor must consider all factors pertinent to the land and its vicinity to determine whether it provides a public

benefit. A single factor, whether listed below or not, may be determinative of public benefit. Pursuant to 36 M.R.S. § 1109(3) and 30-A M.R.S. § 5730, the following factors are among those to be considered:

- 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 System 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 ordinances that provide for preserving the integrity of historically important structures or conserving a scenic view.

4. Standards for Classification

- A. Minimum size. With the exception of the managed forest land classification, there is no minimum acreage requirement for open space classification.
- 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 to the local assessor every ten years stating that the landowner is managing the parcel according to the plan. The failure to comply with the forest management and harvest plan will result in the loss of the additional cumulative percentage reduction under section 5(E) below 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, but must be returned to the owner or their agent upon completion of the review. 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 municipal assessed value of a parcel of land enrolled in the open space program is the just value of that particular parcel if it were required to remain in the particular category or categories of open space land for which it qualifies, adjusted by the certified ratio for the municipality where the land is located.

Alternately, an assessor may determine the municipal assessed value of an open space parcel by valuing the parcel as if it were not in the program (the 100% assessed value), then reducing the value according to the following categories:

- A. All ordinary open space land is eligible for a reduction of 20% of the 100% assessed value.
- B. Permanently protected open space land is eligible for the 20% reduction in subsection A plus an additional 30% reduction, for a total reduction of 50% of the 100% assessed value.
- C. Forever wild open space land is eligible for the 20% reduction in subsection A and the 30% reduction in subsection B, plus an additional 20% reduction, for a total reduction of 70% of the 100% assessed value.
- D. Public access open space land is eligible for the 20% reduction in subsection A plus an additional 25% reduction, for a total reduction of 45% of the 100% assessed value. If public access open space land also qualifies as permanently protected open space land, it is additionally eligible for the 30% reduction as permanently protected open space land, for a total reduction of 75%. If public access open space land also qualifies as forever wild open space land, it is eligible for the 70% reduction as forever wild open space plus the additional 25% reduction as public access open space land, 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 for a total reduction of 30% of the 100% assessed value. If managed forest open space land is also permanently protected, it is additionally eligible for the 30% reduction as permanently protected open space land, for a total reduction of 60%. If managed forest open space land also qualifies as public access open space land, it is additionally eligible for the 25% reduction as public access open space land, for a total reduction of 55%. If managed forest open space land is also qualified as both permanently protected open space land and public access open space land, it is additionally eligible for both the 30% reduction as permanently protected open space land and the 25% reduction as public access open space land, for a total reduction of 85%. Managed forest open space land cannot also qualify for forever wild classification.

The municipal assessed value of forested open space land may not be less than the values under the Tree Growth Tax Law program for the associated year. The municipal assessed value of open space land may not exceed just value as required under 36 M.R.S. § 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 required by law, 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 description of the land, a general description of the use to which the land is being put, a map or sketch showing the open space acres as well as the area within the parcel to be excluded from the program, and any other information required by the assessor.
- B. Notification of classification. The assessor must determine whether the land is subject to classification, classify the land by category, and notify the owner of the decision by June 1 of the application 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 open space 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 municipality.

7. Valuation of Areas Other Than Open Space

Areas other than open space land, including unclassified land within a parcel containing open space land, must be assessed on the basis of just value, as adjusted by the municipality's certified ratio.

8. Abatement and Appeal

- A. Notice of decision. The assessor must notify the landowner by June 1 of the application year that his or her application has been accepted or denied. If the application is denied, the assessor must state the reason for the denial and provide the landowner an opportunity to amend the application and/or provide requested information within 60 days. If the landowner fails to respond to the assessor's request to file an application and/or provide the requested information, the owner is deemed to have waived all rights of appeal.
- B. Abatement procedure. Denials of applications under the open space program may be appealed via 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 the assessor's own initiative within one year from date of commitment, may abate the assessed tax as the assessor 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. The 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. An application is deemed denied if the assessor fails to give written notice of their decision within 60 days from the date of filing of the application and the applicant has not consented in writing to further delay.
- 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 Property Tax Division 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 the classification. Any change in use disqualifying land from classification under the open space program will incur a withdrawal penalty assessed on the owner at the time of the change in use.
- 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.

Penalties also do not apply when there is a change of classification between open space and either the farmland or Maine Tree Growth Tax Law Program (36 M.R.S. §§ 571-584-A).

- 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 100% assessed 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) The difference between the just value of the property as if the property were not in the program on the date of withdrawal and the most recent municipal assessed value adjusted by the municipality’s certified ratio, multiplied by the applicable ratio below based on the number of years the land has been enrolled in the open space program.

10 or fewer years	30%
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%

- D. Change in classification. 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 pursuant to this subsection.
- E. Minimum penalty. 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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(Published under Appropriation No. 1037.1)