

THE OPEN SPACE PROGRAM

Maine Revenue Services

Property Tax Division

October 11th & 12th 2017

WHAT IS OPEN SPACE

Land that is preserved or restricted in use to provide a public benefit in any of the following areas:

- Conserving scenic resources
- Enhancing public recreation opportunities
- Promoting game management
- Preserving wildlife or wildlife habitat

REQUIREMENTS FOR CLASSIFICATION

- **Minimum size – none**
- **Maximum size – 15,000 acres statewide**
- **Use – must be preserved or restricted in use to provide a public benefit**
- **Any Building or Improvement areas must be excluded from classification as open space**

PUBLIC BENEFIT FACTORS

- The assessor must consider all facts and circumstances pertinent to the land and its vicinity
- A single factor, whether listed or not, may be determinative of public benefit
- Special attention should be paid to factor F.

PUBLIC BENEFIT FACTORS

- A.** The importance of the land by virtue of its size or uniqueness in the vicinity or proximity to 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

PUBLIC BENEFIT FACTORS

- F.** The likelihood that the preservation of the land as undeveloped open space will provide economic benefit to the town 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

PUBLIC BENEFIT FACTORS

- 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, fish 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

PUBLIC BENEFIT FACTORS

- 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 there is a written management agreement between the landowner and the Department of Inland Fisheries and Wildlife or the Department of Agriculture, Conservation and Forestry
- 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

VALUATION CATEGORIES

- **Ordinary Open Space**
- **Public Access Open Space**
- **Permanently Protected Open Space**
- **Forever Wild Open Space**
- **Managed Forest Open Space**

PERMANENTLY PROTECTED 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 and will permanently preserve the property in its natural, scenic or open character.

FOREVER WILD 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:

- Fishing or hunting
- Harvesting shellfish in the intertidal zone
- Prevention of the spread of fires or disease
- Providing opportunities for low-impact outdoor recreation, nature observation and study

MANAGED FOREST OPEN SPACE

Land whether ordinary, permanently protected, or public access containing at least ten acres of forested land that the applicant has provided proof of a forest management and harvest plan.

Forest management plan must be updated every 10 years

Note: Managed Forest Open Space cannot also be Forever Wild Open Space

PUBLIC ACCESS OPEN SPACE

Land, whether ordinary, permanently protected or forever wild, on which public access is allowed by reasonable means and the applicant agrees to refrain from taking action to discourage or prohibit daytime, non-motorized and nondestructive public use.

- The applicant may permit, but is not obligated to permit as a condition of qualification for public access status, hunting, snowmobiling, overnight use or other more intensive outdoor recreational uses.
- The applicant, without disqualifying land from status as public access open space, may impose certain temporary or localized public access restrictions.

VALUATION OF OPEN SPACE LAND

- The current use value of open space land is the sale price that particular open space 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 certified ratio for the municipality where the land is located.

VALUATION OF OPEN SPACE LAND

- **Alternative Valuation Method:**
 - **Ordinary Open Space – 20% reduction**
 - **Permanently Protected Open Space – 30% reduction**
 - **Forever Wild Open Space – 20% reduction**
 - **Managed Forest Open Space – 10% reduction**
 - **Public Access Allowance – 25% reduction**
- **Forested open space land can not be valued at less than the tree growth values**

FILING FOR OPEN SPACE

- **Application to the local assessor by April 1st**
- **Application must include a map of the property including any lands not classified as open space as well as the different categories of open space for the parcel**
- **Must include a statement from a Professional Forester if classifying as managed forest open space land**

NOTIFICATION OF CLASSIFICATION

- **Assessors must notify the landowner of decision to classify the land as open space by June 1st of the year that classification was requested.**
- **If the assessor denies classification they must state the reasons for denial and allow the landowner to amend the application to conform with the law.**

TRANSFER FROM TREE GROWTH

- **No Penalty shall be assessed for land that was transferred from the tree growth program and qualifies for the open space program**
- **Forest management plans are required only for managed forest open space land and must be updated every 10 years with a professional foresters signature**

TRANSFER FROM TREE GROWTH

- Failure to comply with a FMP will result in loss of the additional 10% reduction in value for 10 years.
- Local Assessor may request a copy of the FMP and may enter and examine the forested land to review classification – FMP's must be treated as confidential information.
- Penalty calculations will revert to Tree Growth Penalties for 10 years following transfer to open space

LANDOWNER RESPONSIBILITIES

- **Initial Application and Map of the land**
- **Comply with forest management plan for parcel and update every 10 years – including a licensed professional foresters signature**
- **Present a copy of the FMP upon request of the assessor for review**
- **Notify local assessor of any change in use of the parcel**

PENALTY FOR CHANGE IN USE OR REMOVAL FROM CLASSIFICATION

- **Penalty calculation based on the difference between fair market value of the property and open space value of the property (20-30% of the difference depending on years classified)**
- **When land is transferred from the Tree Growth Program, for the first 10 years the penalty calculation is based on the difference between the fair market value and the tree growth value of the property**
- **Additional penalties can be assessed if the landowner fails to notify the assessor of a change of use of the land (25% additional penalty)**