



MAINE REVENUE SERVICES PROPERTY TAX DIVISION BULLETIN NO. 36

MAINE WORKING WATERFRONT TAX LAW

REFERENCE: 36 M.R.S. §§ 1131 – 1140-B
December 2, 2024; NEW

1. General

The Current Use Valuation of Certain Working Waterfront Land law, also known as the Working Waterfront Program (the “Program”), allows certain waterfront land and other property that supports commercial fishing activities to be assessed according to its current use, rather than at its highest and best use. Assessment of property at its current use as working waterfront land results in a lower municipal assessed value and a reduction in the property taxes that would otherwise be assessed on the property.

This bulletin is intended solely as advice to assist persons in determining and complying with their legal rights, duties, and privileges under Maine law. It is written in a relatively informal style and intended to address questions and issues commonly faced by municipal assessors and landowners regarding the Program. For more information regarding the Program, contact your local municipal assessor or Maine Revenue Services (“MRS”).

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. Commercial aquacultural production. “Commercial aquacultural production,” means the commercial production of cultured fish, shellfish, seaweed or other marine plants for human and animal consumption, including: (1) all cultivating activities occurring at hatcheries or nurseries, from the egg, larval or spore stages to the transfer of the product to a growing site; and (2) all cultivating activities occurring on water, from the receipt of fish, shellfish, seaweed or other marine plants from onshore facilities to the delivery of harvested products to onshore facilities for processing.
- C. Commercial fishing. “Commercial fishing,” as defined in 36 M.R.S. § 1132(2), means harvesting or processing, or both, of wild marine organisms with the intent of disposing of them for profit or trade in commercial channels.
- D. Commercial fishing activities. “Commercial fishing activities,” as defined in 36 M.R.S. § 1132(3), means commercial aquacultural production and commercial fishing. “Commercial

fishing activities” does not include retail sale to the general public of marine organisms or their byproducts, or of other products or byproducts of commercial aquacultural production or commercial fishing.

- E. Head of tide. “Head of tide,” as defined in 36 M.R.S. § 1132(5), means the inland or upstream limit of water affected by the tide.
- F. Intertidal zone. “Intertidal zone,” as defined in 36 M.R.S. § 1132(6), means all land affected by the tides between the mean high-water mark and the mean low-water mark.
- G. 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 market value.
- H. Tax year. “Tax year” means the period beginning April 1 and ending March 31 on which property taxes are based.
- I. Used predominantly. “Used predominantly,” as defined in 36 M.R.S. § 1132(9), means used more than 90% for commercial fishing activity, allowing for limited uses for noncommercial or non-fishing activities if those activities are minor and purely incidental to a property’s predominant use.
- J. Used primarily. “Used primarily,” as defined in 36 M.R.S. § 1132(10), means used more than 50% for commercial fishing activity.

3. Qualification

To qualify for the Program, the land must meet both location and use requirements.

- A. Location. A parcel of working waterfront land must fully or partially abut water to the head of tide or land located in the intertidal zone.
- B. Use. Working waterfront land must be used primarily or predominantly to provide access to or support for commercial fishing activities. Property that provides access to or support for commercial fishing activities includes, but is not limited to:
 - (1) Property that provides access to the water or the intertidal zone over waterfront property to those directly engaged in commercial fishing activities;
 - (2) Property that is used to conduct commercial business activities that provide goods or services that directly support commercial fishing activities;
 - (3) Wharves and piers used primarily or predominantly by persons engaged in commercial fishing activities, including berthing a boat;
 - (4) Land that is subject to a legally binding right-of-way or easement that permits access to intertidal land for commercial fishing activities; and

- (5) The location of small fishing houses used for commercial fishing gear maintenance and storage.

The assessor is responsible for determining what portions of a parcel, if any, qualify as working waterfront land. As long as part of a parcel meets the location and use requirements above, the entire parcel will qualify as working waterfront land provided that the remaining portion of the parcel is (1) not used for purposes inconsistent with commercial fishing activities, and (2) does not meet the minimum lot size requirements under state law or local ordinances. Examples of land used for purposes inconsistent with commercial fishing activities are land containing residential structures and land containing commercial property engaged in activities other than commercial fishing activities.

4. Application

To be approved for the Program, an owner of a waterfront parcel must submit an application to the assessor of the municipality where the parcel is located by April 1. Owners of a waterfront parcel located in the unorganized territory must file an application with the MRS Property Tax Division by the same deadline. The application must be signed by every person with an ownership interest in the property. Applications for the Program may be available at the municipal office where the parcel is located. Applications are also available on the MRS website, at www.maine.gov/revenue/tax-return-forms/property-tax.

Applications for the Program must contain the following:

- A. Parcel description. A description of the parcel sufficient for the assessor to identify the property. Descriptions may include, without limitation, the physical address of the parcel, the book and page of the deed conveying the property, or the map and lot assigned to the parcel;
- B. Map. A map showing the location and boundaries of the entire parcel, the portion of the parcel being used to provide access to or support for commercial fishing activities, and the adjacent tide-affected water;
- C. Use. A description of the qualified use of the property as outlined in Section 3(B) above and the percentage of time the property is used for those purposes; and
- D. Other. Any other information requested by the assessor.

The assessor will review and then approve or deny applications for classification under the Program. After receiving an application, the assessor may send a written request to the owner for more information, may require the owner to appear and answer questions about the property, and may enter and examine the land to determine the land's eligibility. The owner must respond within 60 days to any request for information from the assessor. An owner who fails to timely respond to a request from the assessor will have their application denied and will be deemed to have waived all rights to appeal a subsequent determination by the assessor.

The assessor will notify the owner or owners in writing of whether the land has been approved or denied for classification under the Program by June 1 following receipt of a timely application. If an application has been denied, the assessor must state the reasons for the denial and provide the owner or owners an opportunity to amend the application to demonstrate compliance with the requirements

of Section 3 above.

The assessor must determine whether working waterfront land continues to qualify each year and recertify all qualifying parcels without requiring a new application from the owner. If the assessor determines that land no longer qualifies for the Program, the assessor must withdraw the land from the Program and impose a penalty as described in Section 6 below.

When an owner sells or transfers land classified under the Program, the new owner must, within one year of the date of transfer, file a new application with the assessor, including a sworn statement that the land continues to qualify for the Program.

5. Valuation

Once a parcel or portion of a parcel is approved for classification under the Program, it must be assessed according to the land's current use, rather than its highest and best use. The current use value of working waterfront land is the sale price that the parcel would command in the marketplace if it were required to remain in use as working waterfront land.

An assessor may use one of the following methods to determine the current use value of working waterfront land.

A. Comparative valuation method. The comparative valuation method requires an assessor to determine the value of working waterfront land as if it could be used only for or in support of commercial fishing activities. Assessors may determine the value of working waterfront land by considering:

- (1) The value of factors not related to commercial fishing activities that may increase the land's value; including, but not limited to, aesthetic factors, recreational water-use factors, and residential housing factors.
- (2) The comparative value of non-waterfront commercial property that is being assessed on the basis of similar use, function, access, and activity; and
- (3) Any other factor that may be relevant in determining the current use value of the land.

B. Alternative valuation method. If an assessor does not have sufficient information to determine the current use value of working waterfront land using the comparative valuation method, the assessor may use the alternative valuation method. The alternative valuation method establishes the current use value of working waterfront land by applying one or more discounts to the land's municipal assessed value before it was classified under the Program. The availability of a given discount is based on the use of the land:

- (1) Primary use. Land used primarily as working waterfront land is eligible for a 20% reduction in the municipal assessed value.
- (2) Predominant use. Land used predominantly as working waterfront land is eligible for a 30% reduction in the municipal assessed value.

- (3) Deeded restriction. Land that is permanently protected from a change in use through a deeded restriction is eligible for the reduction in paragraph 1 or 2, plus an additional 30% reduction in the municipal assessed value.
- (4) Right-of-way or other easement. Land that is subject to a legally binding right-of-way or other easement that allows access to intertidal land for commercial fishing activities is eligible for the reduction in paragraph 1, 2, or 3, plus an additional 10% reduction in the municipal assessed value.

6. Withdrawal and Penalty

A. Withdrawal. Land may be withdrawn from the Program in one of two ways:

- (1) Withdrawal by owner. An owner of working waterfront land must notify the assessor, in writing, if there is any disqualifying change of use of the land before the end of the tax year in which the change occurs. Upon receipt of the notice, the assessor must remove the land from the Program and assess a withdrawal penalty. If the owner fails to timely notify the assessor of a change of use, the assessor must impose an additional penalty equal to 25% of the withdrawal penalty. The assessor may waive the additional penalty for cause.

An owner may also, in writing, request the withdrawal of a parcel or portion of a parcel from the Program at any time. When withdrawing only a portion of a parcel, the owner must additionally file a revised map showing the area to be withdrawn and the area that will remain in the Program. Upon receipt of the request, the assessor must remove the parcel or portion of the land from the Program and assess a withdrawal penalty.

- (2) Withdrawal by assessor. If the assessor determines that land is no longer eligible for the Program, the assessor must withdraw the land from classification and assess a withdrawal penalty.

B. Withdrawal penalty. A penalty is imposed when land is withdrawn from the Program. The penalty applies only to that portion of the land that is withdrawn. The withdrawal penalty is the greater of:

- (1) The difference between (a) the taxes that would have been assessed on the property in the five preceding tax years if it had not been participating in the Program, and (b) the taxes that were actually paid on the land for the five preceding tax years; plus interest on the difference at the prevailing municipal rate from the date each year's taxes were due. If the land has been classified under the Program for fewer than five years, the penalty must be calculated based on the number of years the land was in the Program.
- (2) The difference between (a) the value of the property on the date of withdrawal, determined as if the property were not in the Program, and (b) the most recent municipal assessed value of the property; with the resulting difference multiplied by the applicable percentage below based on the number of years the land has been classified under the Program.

10 years or less	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%

If an owner is unable to pay the withdrawal penalty, the assessor must permit a delay in payment of the penalty for up to two years at the owner’s request. A tax lien equal to the penalty is encumbered against the parcel or portion of the parcel withdrawn from classification.

- C. Penalty exceptions. There is no penalty for the withdrawal of land from the Program if the land is transferred to and qualifies for another current use program, including the Farmland program, the Open Space program, and the Tree Growth program. In addition, there is no penalty if the land is withdrawn as a result of the exercise or threatened exercise of eminent domain.

7. Appeals

Assessments and determinations under the Program, including assessments of penalties and denials of applications for enrollment under the Program, may be appealed using the abatement process in 36 M.R.S. § 841. All appeals of decisions rendered under 36 M.R.S. § 841 regarding the Program must be appealed to the State Board of Property Tax Review. For additional information on the abatement and appeal process, see Property Tax Bulletin No. 10 – Property Tax Abatement and Appeals Procedures.

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