

# MAINE STATE LEGISLATURE

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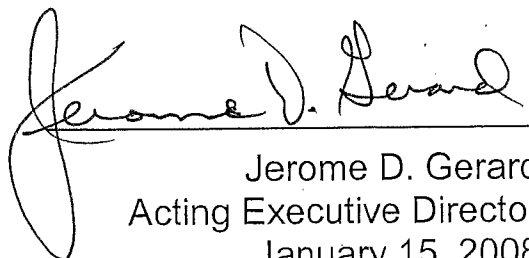
**MAINE REVENUE SERVICES**

**BIENNIAL REPORT  
ON**

**THE CURRENT USE VALUATION OF  
CERTAIN WORKING WATERFRONT LAND**

**INAUGURAL REPORT FOR TAX YEAR 2007**

**A REPORT PREPARED FOR THE  
JOINT STANDING COMMITTEE ON TAXATION**

  
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January 15, 2008

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## NARRATIVE

### A. Introduction

This report sets forth the status of Maine's Working Waterfront Tax Law as required to be reported to the Legislature on a biennial basis beginning January 15, 2008.

The specific information required by the law is summarized as follows:

- Identify "the total value of each sale of working waterfront land and the value of each sale that is reasonably related to working waterfront land, that compares the sale price of the working waterfront land with the just value of the same land and that categorizes the sales data by region, type of commercial use or commercial fishing use and any other relevant categories" (36 MRSA §1140-B(2)).
- Include any other data or analysis that the State Tax Assessor finds relevant and any recommendations the Assessor develops to assist municipal assessors in calculating the current use value of enrolled working waterfront land that is used for or supports commercial fishing activities
- Make recommendations to amend the program for the purpose of improving or ensuring the accuracy of current use assessment of working waterfront land.

Maine's Working Waterfront Coalition (WWC), a statewide group of industry associations, nonprofits, state agencies, Legislators and individuals, is dedicated to supporting and enhancing Maine's working waterfront through policy, planning, investment and education. The WWC played a significant role in educating and informing landowners and municipal officials of the new law by providing informational materials and coordinating and conducting public meetings.

## B. Background:

In response to public support of referendum Question 7 on Maine's November 8, 2005 ballot, An Act to Preserve Maine's Working Waterfront (LD 1972) was enacted by the Legislature. Question 7 was approved by 72% of Maine's voters and authorized the Legislature to amend Maine's Constitution to allow for current use valuation for land used for commercial fishing activities. P.L. 2005 ch. 609 enacted Subchapter 11 of the Maine Revised Statutes, Title 36, Chapter 105, in order to provide the legal framework for implementation and administration of the Working Waterfront Tax Law Program (the "program"). The program was later recodified by PL 2007, ch. 466, Pt. A, §58 to Subchapter 10-A of Chapter 105 (36 MRSA sections 1131 through 1140-B).

A 2007 study by the Island Institute determined that of Maine's 5,300 miles of coastline, only 20 miles remain for working waterfront and support of commercial fishing activities. Of those 20 miles, 67% is privately owned and vulnerable to conversion to uses inconsistent with commercial fishing activities. As coastal land values skyrocket due to demands for second home ownership, more and more fisherman are succumbing to the financial pressure of increased taxation and are being forced inland. Additionally, as these traditional points of access are lost, use of remaining access areas is stretched to capacity.

## C. Research and Outreach:

April 1, 2007 marked the beginning of the first property tax year for which property owners could classify their property as "Working Waterfront" and take advantage of current use values. In the months leading up to that date, a collaborative outreach campaign was initiated by the Maine Sea Grant Program, the membership of Maine's Working Waterfront Coalition and Maine Revenue Services. Press releases, targeted mailings, local media, and industry networking were used to increase awareness of the new statute.

Also, in an effort to inform and educate assessors, municipal officials, landowners, potential applicants and anyone else interested in the preservation of Working Waterfront, a series of five workshops were conducted in coastal Maine communities. These workshops were held in Machias, Ellsworth, Rockport, Brunswick and Saco. Although the focus was on the new legislation allowing current use classification for land providing support or access to the conduct of commercial fishing, a toolbox approach was employed to showcase the diverse range of options available to landowners wishing to preserve and enhance coastal properties. The workshops were well attended by assessors, planners, harbor masters, taxpayer/residents/landowners, selectmen, fishermen, boatyard owners, aquaculturists, lobster pound owners, reporters/media personnel, appraisers, town managers, legislators, Land Trust representatives, state agency staffers, and community foundation members.

Collaborators in the planning and execution of the meetings include: Maine Sea Grant, University of Maine Cooperative Extension, Island Institute, Maine Coastal Program, Coastal Enterprises Inc, Maine Department of Marine Resources, Maine Revenue Services, State Planning Office/Land for Maine's Future, and members of Maine's Working Waterfront Coalition. Principal funding was provided through the University of Maine Cooperative Extension, Project Leadership Team program.

Maine Revenue Services also held an evening meeting in Bristol at the request of the municipal officials and met with the assessor's agent and interested landowners in Vinalhaven and Steuben.

Maine Revenue Services conducted one mailing to all municipalities with tidal zone property to provide information and applications concerning enrollment in the program, and a second mailing to request municipal data relating to sales of Working Waterfront.

#### D. Program Status:

To be considered for enrollment in Working Waterfront for the 2007 tax year, the deadline for application was April 1, 2007. Fifteen municipalities in six counties reported land being classified

under the program in its first year. A total of 40 parcels consisting of almost 41.5 total acres have now been enrolled. The total reported just value (before classification) of enrolled land is \$9,860,801. The reported current use value under Working Waterfront is \$7,357,968. This represents a total reduction of \$2,502,833 or slightly less than 25% of value (Attachment A). Enrollment for the first year of the program is encouraging.

However, surveys and inquiries made by Maine Revenue Services failed to find any evidence of any recent sales of land within tidal areas that could provide comparable sale comparisons for purposes of providing additional guidance in the determination of current use value. This is not surprising given the limited number of properties that potentially fall under the definition of working waterfront in the current use sense of the term. Maine Revenue Services will continue to survey municipalities annually in an effort to identify relevant sales data that could be used to support any movement in assessment methodologies other than those currently in statute.

#### E. Observations and Comments

The consensus among assessors is that this new form of current use taxation is accomplishing its stated purpose by helping to preserve commercial fishing resources and providing tax benefits to targeted property owners. The number of parcels enrolled, compared to the total number of potentially eligible parcels, is significant, particularly considering that this was the first year of the program.

Enactment of the Working Waterfront Tax Law did elicit some negative reaction, particularly with regard to the narrow scope of the legislation dictated by the specificity of the referendum question approving the change, the principals of current use taxation, and Maine's Constitution. The complaints came largely from non-commercial fishing waterfront businesses, owners of coastal residential properties, retail or mixed use facilities, recreational boatyards, and others not eligible for classification.

Several applicants who did enter the program expressed disappointment with the level of reduction afforded them under the terms of the program. One Bristol property owner seeking a greater reduction under the program for his parcel has an appeal pending

with the State Board of Property Tax Review. Another area of concern is that different local assessment methodologies and varied interpretations of the statute will result in inconsistent treatment of working waterfront properties from one municipality to another. Respect for local control and recognition of the fact that equity within one municipality may not be directly comparable to another makes a certain amount of inconsistency unavoidable.

Complaints regarding withdrawal penalty amounts can generally be dismissed as these penalties are inherent in all current use taxation policy, are necessary in order to accomplish the purpose of any special use property tax classification, and are necessary to protect the municipality and its taxpayers. Penalties are of no consequence to properties that remain classified under the terms of current use taxation.

One problematic situation that transcends the Working Waterfront Tax Law and is prevalent in all current use programs occurs upon the transfer of classified property. The current system involving a 'check box' on the declaration of value is inadequate both to serve notice that the property is classified and also to alert new owners of their obligations under current use classification. Improved disclosure procedures and better information would likely prevent a number of parcels from being forcibly removed from the Working Waterfront and other current use programs.

#### F. Recommendations

As the Working Waterfront Tax Law is still in its formative stage, we have no recommended changes to the program to submit at this time. We believe that it would be wise to reserve final judgment until a later date and give the program a chance to establish itself before considering any changes. Ongoing outreach and education activities will continue through local assessors, Maine Revenue Services and the Working Waterfront Coalition. The program will likely expand and evolve through routine municipal administration and any challenges to that administration. Public perception of other current use programs will benefit from stability in the program. As statute dictates a review of the Working Waterfront Tax Law in 2 years, it would be prudent to revisit any suggested changes to the program at that time.



ATTACHMENT A

**WORKING WATERFRONT 2008  
Enrolled Parcel Information**

<b>MUNICIPALITY</b>	<b>COUNTY</b>	<b># of Parcels</b>	<b>Total Acres</b>	<b>Original Value</b>	<b>WW Value</b>	<b>Difference</b>
CHEBEAGUE ISLAND	Cumberland	1	1.4	\$236,000	\$186,400	\$49,600
HARPSWELL	Cumberland	1	.03	\$114,900	\$91,900	\$23,000
BROOKSVILLE	Hancock	1	.5	\$250,100	\$203,100	\$47,000
CUSHING	Knox	1	1.25	\$18,828	\$15,690	\$3,138
FRIENDSHIP	Knox	6	2.321	\$1,231,700	\$1,043,400	\$188,300
ST GEORGE	Knox	2	1	\$540,500	\$514,500	\$26,000
SO THOMASTON	Knox	1	.25	\$81,000	\$67,500	\$13,500
VINALHAVEN	Knox	4	1.69	\$619,828	\$497,090	\$122,738
BREMEN	Lincoln	3	20.7	\$867,665	\$542,392	\$325,273
BRISTOL	Lincoln	10	1.49	\$1,448,100	\$1,118,300	\$329,800
DAMARISCOTTA	Lincoln	1	1.29	\$201,900	\$161,500	\$40,400
SOUTHPORT	Lincoln	4	2.8	\$2,992,830	\$1,822,388	\$1,170,442
WESTPORT ISLAND	Lincoln	1	3.8	\$411,850	\$343,208	\$68,642
PHIPPSBURG	Sagadahoc	1	1.82	\$442,000	\$412,000	\$30,000
STEUBEN	Washington	3	1.12	\$403,600	\$338,600	\$65,000
<b>TOTALS</b>		<b>40</b>	<b>41.461</b>	<b>\$9,860,801</b>	<b>\$7,357,968</b>	<b>\$2,502,833</b>

## ATTACHMENT B

### TITLE 36

### SUBCHAPTER 11

## CURRENT USE VALUATION OF CERTAIN WORKING WATERFRONT LAND

#### §1131. Purpose

It is declared that it is in the public interest to encourage the preservation of working waterfront land and to prevent the conversion of working waterfront land to other uses as the result of economic pressures caused by the assessment of that land, for purposes of property taxation, at values incompatible with its use as working waterfront land and that the necessity in the public interest of the enactment of this subchapter in accordance with the Constitution of Maine, Article IX, Section 8 is a matter of legislative determination.

#### §1132. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Commercial aquaculture production.** "Commercial aquaculture production" has the same meaning as in section 2013, subsection 1, paragraph A-1.

**2. Commercial fishing.** "Commercial fishing" means harvesting or processing, or both, of wild marine organisms with the intent of disposing of them for profit or trade in commercial channels.

**3. Commercial fishing activities.** "Commercial fishing activities" means commercial aquaculture production and commercial fishing. "Commercial fishing activities" does not include retail sale to the general public of marine organisms or their byproducts, or other products or byproducts of commercial aquaculture production or commercial fishing.

**4. Excess valuation factor.** "Excess valuation factor" means a market-based influence on the determination of the just value of working waterfront land that would result in a valuation that is in excess of that land's current use value. "Excess valuation factor" includes, but is not limited to, aesthetic factors, recreational water-use factors, residential housing factors and nonresidential development factors unrelated to working waterfront uses.

**5. Head of tide.** "Head of tide" means the inland or upstream limit of water affected by the tide.

**6. Intertidal zone.** "Intertidal zone" means all land affected by the tides between the mean high-water mark and the mean low-water mark.

**7. Marine organism.** "Marine organism" means an animal or plant that inhabits intertidal zones or waters below head of tide.

**8. Support the conduct of commercial fishing activities.** "Support the conduct of commercial fishing activities" means:

A. To provide access to the water or the intertidal zone over waterfront property to persons directly engaged in commercial fishing activities; or

B. To conduct commercial business activities that provide goods or services that directly support commercial fishing activities.

**9. Used predominantly.** "Used predominantly" means used more than 90% for commercial fishing activity, allowing for limited uses for noncommercial or nonfishing activities if those activities are minor and purely incidental to a property's predominant use.

**10. Used primarily.** "Used primarily" means used more than 50% for commercial fishing activity.

**11. Working waterfront land.** "Working waterfront land" means a parcel of land, or a portion thereof, abutting water to the head of tide or land located in the intertidal zone that is used primarily or used predominantly to provide access to or support the conduct of commercial fishing activities. For purposes of this subchapter, a parcel is deemed to include a unit of real estate notwithstanding the fact that it is divided by a road, way, railroad or pipeline.

### **§1133. Owner's application**

An owner or owners of land may elect to apply for taxation under this subchapter for the tax year beginning April 1, 2007 and for subsequent tax years by filing with the assessor the schedule provided for in section 1147, subsection 1.

### **§1134. Administration; rules**

The State Tax Assessor may adopt rules necessary to carry out this subchapter. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **§1135. Current use valuation of working waterfront land**

The municipal assessor, chief assessor or State Tax Assessor for the unorganized territory shall establish the current use value per parcel for property classified as working waterfront land. 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 the use currently being made of the parcel as working waterfront land. The assessor may use one of the following methods to determine current use value.

**1. Comparative valuation.** The assessor may determine the current use value of working waterfront land by considering:

- A. All excess valuation factors that affect the land's just value;
- B. The comparative valuation of inland commercial enterprises that are being assessed on the basis of a use that is similar to the use of the working waterfront land with respect to function, access and level of activity; and
- C. Any other factor that results in a determination of the current use value of the working waterfront land.

**2. Alternative valuation.** If there is insufficient data to determine the current use value of working waterfront land under subsection 1, the assessor may reduce the ordinary assessed valuation of the land, without regard to permanent protection restrictions and as reduced by the certified ratio, by applying the percentage reductions for which the land is eligible according to the following categories.

A. Working waterfront land used predominantly as working waterfront land is eligible for a reduction of 20%.

B. Working waterfront land used primarily as working waterfront land is eligible for a reduction of 10%.

C. Working waterfront land that is permanently protected from a change in use through deeded restrictions is eligible for the reduction described in paragraph A or B and an additional reduction of 30%.

### **§1136. Assessment of tax**

An assessment of working waterfront land for purposes of property taxation must be based on the value determined in accordance with this subchapter.

### **§1137. Schedule; qualification**

**1. Schedule.** The owner or owners of waterfront land may apply for taxation under this subchapter by submitting a signed schedule in duplicate, on or before April 1st of the year in which the owner or owners wish to first subject such land to taxation under this subchapter, to the assessor upon a form to be prescribed by the State Tax Assessor that must contain a description of the parcel, together with a map identifying the location and boundaries of the working waterfront land, a description of the manner in which the land is used primarily for commercial fishing activities and other information the assessor may require to aid in the determination of what portion of the land qualifies for classification as working waterfront land. The schedule must be signed and consented to by each person with an ownership interest in the land. Classification of the land as working waterfront land may not be inconsistent with the use prescribed in the comprehensive plan, growth management program or zoning ordinance of the municipality.

In defining the working waterfront land area contained within a parcel, land used primarily for commercial fishing activities must be included, together with any remaining portion of the parcel that is not used for purposes inconsistent with commercial fishing activities as long as the remaining portion is not sufficient in dimension to meet the requirements for a minimum lot as provided by either the state minimum lot requirements as prescribed by Title 12, section 4807-A or Title 38, chapter 3, subchapter 1, article 2-B, as applicable, or the minimum lot size provided by the zoning ordinance or zoning map pertaining to the area in which the remaining portion is located.

**2. Classification.** The assessor shall determine what land meets the requirements of this subchapter and shall classify such land as working waterfront land in accordance with this subchapter. The assessor shall file, in the municipal office of the town in which the working waterfront land is located, the original schedule and the value of the working waterfront land as established under this subchapter and the value at which the working waterfront land would have been assessed had it not been classified under this subchapter.

**3. Notification of determination.** The assessor shall notify the owner or owners in writing of the assessor's determination as to the applicability of this subchapter by June 1st following receipt of a signed schedule meeting the requirements of this section. The assessor's notification must state whether the application has been accepted or denied, and if denied the assessor shall state the

reasons for the denial and provide the owner or owners an opportunity to amend the schedule to conform to the requirements of this subchapter.

**4. Investigation.** The assessor or the assessor's duly authorized representative may enter and examine the lands under this subchapter for tax purposes and may examine any information submitted by the owner or owners.

Upon notice in writing by certified mail, return receipt requested, any owner or owners shall, within 60 days of the receipt of such notice, respond to such written questions or interrogatories as the assessor may consider necessary to obtain material information about those lands. If the assessor determines that it is not reasonable to obtain the required material information regarding those lands through such written questions or interrogatories, the assessor may require any owner or owners, upon notice in writing by certified mail, return receipt requested, or by such other method as provides actual notice, to appear before the assessor at such reasonable time and place as the assessor may designate and answer such questions or interrogatories as the assessor may consider necessary to obtain material information about those lands.

**5. Owner obligation.** If the owner or owners of any land subject to taxation under this subchapter fail to submit the schedules under this section, or fail to respond, within 60 days of receipt, to written questions or interrogatories of the assessor, or fail within 60 days of receipt of notice as provided in this section to appear before the assessor to respond to questions or interrogatories, or fail to provide information after notice duly received as provided under this section, that owner or those owners are deemed to have waived all rights of appeal.

It is the obligation of the owner or owners to report to the assessor any disqualifying change of use of land subject to taxation under this subchapter by the end of the tax year in which the change occurs. If the owner or owners fail to report any disqualifying change of use of land to the assessor, the assessor shall assess those taxes that should have been paid, shall assess the penalty provided in section 1148 and shall assess an additional penalty of 25% of the foregoing penalty amount. The assessor may waive the additional penalty for cause.

**6. Recertification.** The assessor shall determine annually whether any classified land continues to meet the requirements of this subchapter. Each year the assessor shall recertify any classifications made under this subchapter and update the information required under subsection 1. If any classified land no longer meets the requirements of this subchapter, or the owner or owners request withdrawal of the land from the classification in writing, the assessor shall remove the classification.

### **§1138. Recapture penalty**

**1. Assessor determination; owner request.** If the assessor determines that land subject to this subchapter no longer meets the requirements of this subchapter, the assessor must withdraw the land from taxation under this subchapter. The owner or owners of land subject to this subchapter may at any time request withdrawal of any land from taxation under this subchapter by certifying in writing to the assessor that the land is no longer to be classified under this subchapter.

**2. Withdrawal of portion.** In the case of withdrawal of a portion of the working waterfront land, the owner or owners, as a condition of withdrawal, shall file with the assessor a schedule including the information required under section 1147,

subsection 1 showing the area withdrawn and the area remaining under this subchapter.

**3. Penalty.** If land is withdrawn from taxation under this subchapter, the assessor shall impose a penalty upon the owner or owners. The penalty is the greater of:

A. An amount equal to the taxes that would have been assessed on the first day of April for the 5 tax years, or any lesser number of tax years starting with the year in which the property was first classified, preceding such withdrawal had such real estate been assessed in each of those years at its just value on the date of withdrawal less all taxes paid on that real estate over the preceding 5 years, and interest at the prevailing municipal rate from the date or dates on which those amounts would have been payable; and

B. An amount computed by multiplying the amount, if any, by which the fair market value of the real estate on the date of withdrawal exceeds the 100% valuation of the real estate pursuant to this subchapter on the preceding April 1st by the following rates:

(1) If the real estate was subject to valuation under this subchapter for 10 years or less prior to the date of withdrawal, the rate is 30%; and

(2) If the real estate was subject to valuation under this subchapter for more than 10 years prior to the date of withdrawal, the rate is that percentage obtained by subtracting 1% from 30% for each full year beyond 10 years that the real estate was subject to valuation under this subchapter prior to the date of withdrawal until a rate of 20% is reached.

For purposes of this section, just value at the time of withdrawal is the assessed just value of comparable property in the municipality adjusted by the municipality's certified assessment ratio.

**4. Assessment and collection of penalties.** The penalties for withdrawal must be paid upon withdrawal to the tax collector as additional property taxes. Penalties may be assessed and collected as supplemental assessments in accordance with section 713-B.

**5. Eminent domain.** A penalty may not be assessed under this section if the withdrawal of the parcel is occasioned by a transfer to the State or other entity holding the power of eminent domain resulting from the exercise or threatened exercise of that power.

**6. Relief from requirements.** Upon withdrawal, the land is relieved of the requirements of this subchapter immediately and is returned to taxation under the statutes relating to the taxation of real property to be so taxed on the following April 1st.

**7. Reclassification as open space.** No penalty may be assessed upon the withdrawal of land from taxation under this subchapter if the owner or owners apply for and are accepted for classification of that land as open space land under subchapter 10.

**8. Report of penalty.** Any municipality that receives a penalty for the withdrawal of land from taxation under this subchapter shall report to the State Tax

Assessor the total amount received in that reporting year on the municipal valuation return form described in section 383.

### **§1139. Enforcement**

A tax lien is created to secure the payment of the penalties provided in section 1148. The lien may be enforced in the same manner and has the same effect as liens on real estate created by section 552.

### **§1140. Transfer of ownership**

If land taxed under this subchapter is transferred to a new owner or owners, in order to maintain the classification, within one year of the date of transfer, the new owner or owners must file with the assessor a new application and a sworn statement indicating that the transferred parcel continues to meet the requirements of section 1142, subsection 11.

### **§1140-A. Appeals and abatements**

The denial of an application or an assessment made under this subchapter is subject to the abatement procedures provided by section 841. Appeal from a decision rendered under section 841 is to the State Board of Property Tax Review.

### **§1140-B. Analysis and report**

**1. Analysis.** The State Tax Assessor, in consultation with municipal assessors, the director of the Land for Maine's Future Program within the Executive Department, State Planning Office, representatives of working waterfront organizations and other interested parties, shall collect and analyze the sales prices of all actual sales that occur in the State of waterfront land that is subject to restrictions on that land's use that are legally enforceable and prohibit or substantially restrict development that is not commercial fishing activity or commercial activity that is the functional equivalent of commercial fishing activity.

**2. Report.** By January 15th of each even-numbered year, the State Tax Assessor shall submit a report to the joint standing committee of the Legislature having jurisdiction over taxation matters that identifies the total value of each sale of working waterfront land and the value of each sale that is reasonably related to the working waterfront land, that compares the sale price of the working waterfront land with the just value of the same land and that categorizes the sales data by region, type of commercial use or commercial fishing use and any other relevant categories. The report may include any other data or analysis that the assessor finds relevant and any recommendations the assessor develops to assist municipal assessors in calculating the current use value of enrolled working waterfront land that is used for or supports commercial fishing activities. The report may also include recommendations to amend this subchapter for the purposes of improving or ensuring the accuracy of current use assessment of working waterfront land.