Maine Coast Heritage Trust
A Statewide Land Conservation Organization

Maine Land Trusts And Property Tax Exemption

Government has long recognized the importance to the public good of preserves and protected land owned by non-profit organizations by exempting them from property tax. In Maine, this tradition has varied from informal recognition to more formal arrangements involving payments in lieu of taxes for services actually received. All of these traditions have been formalized and codified into law. With the increasing pressure on municipalities to fund ever more costly services, property tax exemption and the issue of service fees have become highly politicized controversy. Due to this tension, more land conservation organizations have opted to be taxed under the Farm and Open Space Tax Law, or to forgo tax preferred status at all. However, all land conservation organizations that own land should be aware of the technical requirements of property tax exemption, and know how to file a complete and adequate tax exemption application for their preserves.

This technical bulletin explains the threshold requirement for tax exemption and lists documentation that can be presented to support eligibility. Prior to initiating the legal process, communication with the town or municipality is extremely important. See especially the ending section "Getting Started" for more information on this.

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Eligibility

A land trust or conservation organization is entitled to property tax exemption for land it holds for conservation purposes, if it meets certain legal requirements established under Title 36 M.R.S. Section 652(1) , as interpreted by the courts. The statutory requirements for eligibility are as follows:

A. The organization must be incorporated in the State of Maine.

B. The organization must be a non-profit organization established and conducted exclusively for benevolent and charitable purposes; for example: land conservation, which is a charitable purpose that may be furthered and supported incidentally by other categories of exempt purposes such as scientific study, literary and educational efforts.

C. The property must be owned by the organization on April 1st of the year the taxes are assessed, and the initial application must be filed with the assessor as of that date.

D. The property must be occupied or used solely by the organization for its own benevolent and charitable purposes (or by another benevolent and charitable organization qualified for exemption).

E. The deed transferring the land to the organization cannot create or reserve private rights to use or manage the property.

F. No individual connected to the organization may derive any pecuniary profit from operations of the organization, except reasonable compensation for services.

G. All profits and proceeds, including proceeds from land sales, must be devoted exclusively to the purposes for which the corporation was organized.

Filing for Property Tax Exemption

The land trust can demonstrate that it meets the foregoing requirements by submitting the following information and documents, along with a letter to the town assessor. A written application, with a form provided by the town, must be filed by April 1st of the tax year. Supplemental information may be requested, but it can save time and confusion to provide the following information with the initial application:

1. A Certificate of Corporate Status (Document SS-C7A-72) issued by the Secretary of State demonstrates that the organization is incorporated in Maine and is currently in good standing.

2. The By-laws and Articles of Incorporation demonstrate the purposes for which the organization has been organized: exclusively for charitable and benevolent purposes.

3. The approval, or temporary approval, issued by the IRS showing that the land trust is qualified as a tax-exempt organization under §501(c)(3) of the Internal Revenue Code. This demonstrates compliance with a higher standard of review for another kind of tax-exempt status. This tends to demonstrate that the purposes of the organization are exclusively charitable and benevolent. If the organization enjoys "publicly supported" §501(c)(3) status, as opposed to private foundation status, this demonstrates even greater public benefit and support.

4. The deed for the land will prove ownership and will show that the donor or seller, from whom the land trust acquired title, reserved no personal rights. Any other kinds of restrictions, such as conservation easements or declarations of trust affecting the land may help to support the argument that the land is held solely for conservation as a charitable purpose.

5. To prove that the property is being used for the charitable and benevolent purposes for which the land trust organized, it is important to provide whatever documentation and information is available about how the land is used and managed, including any efforts made by the land trust to prepare the land for these uses. These can include management plans, interpretive documents, tour guides, visitor log books, inventory of improvements, etc.

6. The two financial responsibility requirements listed above (F. and G.) are also required by IRS for §501(c)(3) status and will be included in the by-laws. If further information is required, compliance can be demonstrated by a certification from the treasurer, accountant or auditor who has examined the financial books.

7. The town has the right to require the land trust to file a "report" for the preceding fiscal year. An annual financial statement will suffice to meet this requirement and, if available, should be included in the application.

Special Tax Exemption Issues

Even if the organization has met its burden of proof by providing the above-mentioned information, the town may still have questions. Some of these questions can be answered by the application of general principals of law. Others have been addressed by court cases. Here are the answers to some relevant questions:

Is the Land Trust and Its Use of the Land Charitable and Benevolent?

Proof of a land trust's purposes is found in its Articles of Incorporation. Most land trusts are founded to conserve land, and the question arises, "Is conservation a charitable purpose?" The constitutional foundation of tax exemption is dedication to public benefit as opposed to private profit. A charitable and benevolent purpose can be one that provides something the government might otherwise provide. The traditional authority on "charitable" purposes, the **Restatement (Second) of Trusts**, 1959, states at §374(f) that *"a trust to...preserve the beauties of nature, or otherwise to add to the aesthetic enjoyment of the community is charitable."* The law court has reiterated a broad definition, that would encompass land conservation, as the provision and maintenance of "public ... works". [Episcopal Camp Foundation v. Hope, 666 A2d 108, (1995)]. "An activity, to be charitable, should be for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." [Christian Fellowship and Renewal Center v. Town of Limington, 896 A2d 287, (2006) quoting Episcopal Camp at 110]. Another recent case, while declining to decide whether conservation per se is an exempt purpose, has set out a four-part test for exemption: (1) whether the owner of the land is organized and conducting its operation for purely benevolent and charitable purposes in good faith; (2) whether there is any profit motive revealed or concealed; (3) whether there is any pretense to evade taxation; and (4) whether any production of revenue is purely incidental to a dominant purpose that is benevolent and charitable. [[Cushing Nature and Preservation Center v. Cushing, 2001 ME 149, PP 17; 785 A.2d 342 (2001)]. The land trust should be prepared to show that it is not holding the land for investment.

Another more recent decision of the Superior Court in York County, has stated clearly that land conservation is a charitable and benevolent activity, after reciting the history of property tax exemption. "It is time to directly declare that a legitimate land trust, such as this one, which meets the statutory and case law requirements, is a benevolent and charitable institution exempt from local property taxes." Francis Small Heritage Trust Inc. v. Town of Limington, No. AP-12-41 (York Cty. Super. Ct. May 30, 2013) p. 12]. The York Superior Court ruled that FSHT's land conservation activities are "charitable" within the meaning of 36 M.R.S. § 652(1)(a) and that the trust is entitled to exemption. As Justice Fritzsche wrote: "The direct and indirect value of open space preservation particularly when, in appropriate cases, it is coupled with access for a wide variety of recreational activity is within any modern definition of a charitable institution. In addition to the ecological and environmental benefit of land preservation there are numerous physical, psychological and, for some, even spiritual benefits to having access to undeveloped land." Although this is a trial court decision and is not binding precedent, its pro-conservation language makes it readily citable as persuasive authority both within and perhaps even outside of Maine. This decision is on its way to the Law Court for review.

Meanwhile, applicants for exemption can provide more evidence of eligility based on the fact that Maine has adopted land conservation as a governmental purpose, and laws have reiterated the notion time and again that ecological preservation is of the utmost importance to

the well-being of the populace. This principle is found in the "purpose" sections of several Maine land use and environmental protection laws. For instance, the Natural Resources Protection Act at 38 M.R.S.A. §480-A begins *"The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State."*

Other legal recognition of the public benefit of scenic, ecological and cultural preservation is found in the preambles to Maine's Growth Management Law at Title 30-A M.R.S.A. §4312(3); the Farm and Open Space at Title 36 M.R.S.A. §1101; in the acquisition criteria of the Land For Maine's Future Act at 5 M.R.S.A. §6207; the Coastal Barrier Resources System at 38 M.R.S.A. §1901; the Critical Areas Registry, 5 M.R.S.A. §3311; and in the March 24, 1983, "Joint Resolution Relating to Conservation of Maine Farmland" of the Legislature, among others. There is further site-specific recognition to be found in regional reports adopted by the State, by County Planning Commissions and in town comprehensive plans.

The Maine Supreme Judicial Court has acknowledged that land conservation is a service provided by the government, and that public charities that provide those services would be eligible for property tax exemption. In CHRISTIAN FELLOWSHIP AND RENEWAL CENTER V. TOWN OF LIMINGTON, 2006 ME 44, the court stated "CFRC does provide recreational services that 'government would otherwise provide.' To use the Court's words, CFRC provides its benefits: 'by providing something that government would otherwise provide' through the government system of parks, public lands, and recreational facilities.

While most towns have no problem recognizing that land conservation is a bona-fide charitable and benevolent purpose, an occasional assessor wishing to contest exemption may raise the now discredited 1965 court decision on property tax exemption. The law court in HOLBROOK ISLAND SANCTUARY V. BROOKSVILLE, 161 Me. 476, 214A.2d 660, refused exemption for a wildlife sanctuary, based on a 1929 English case that held that a sanctuary for animals and birds was not of benefit to humans, but rather wild animals. The court noted that the creation of a wildlife preserve where hunting was prohibited was contrary to public policy established by State laws encouraging hunting rights. Public policy has expanded its focus. The function of Inland Fisheries and Wildlife, for instance, has broadened significantly beyond support for game sport. The irony of the Holbrook decision is that the State of Maine recognized the public importance of the sanctuary by becoming its owner shortly thereafter. In fact, the law court in Cushing, clarified the Holbrook holding to mean that if the purpose of an exempt property is contrary to public policy it will be disqualified from tax-exempt status, but that an exempt property need not permit all public uses to qualify (prohibition of clamming in a nature education center), and may exclude those who are not using the property for its charitable purpose. This holding may permit closure of exempt natural areas to hunting, despite the holding in Holbrook. [CUSHING NATURE AND PRESERVATION CENTER V. CUSHING, 2001 ME 149, PP 13, 785 A.2d 342)] At the same time, the Court declined to decide whether "land conservation or preservation, standing alone, could constitute a charitable use." [Id. at Par15]. Instead it articulated the above noted four-part test for exemption.

The FSHT Superior Court decision, the Cushing decision, the Christian Fellowship decision, and the trend of environmental legislation listed above amply demonstrate the shift in public policy since 1965. It is unlikely that the Law Court today would ignore over forty years of recent history and the relevant decisions in other states, refusing to find that ecological preservation or wildlife protection provides important benefits to humans. However, a land trust may wish to further demonstrate qualification by having corporate purposes that are broader than wildlife preservation, and by offering additional evidence, for example, of scenic enjoyment or public use of the land. If the parcel or certain areas need special protection from human intrusion or certain types of recreational use, reference to the laws that declare this type of resource fragile or the type of allowed recreation important should be persuasive of the need to limit such uses.

IS THE LAND USED SOLELY FOR THE ORGANIZATION'S CHARITABLE PURPOSES?

The meaning of the requirement that the land be "occupied or used solely" for the organizations charitable purposes has been the subject of court decision that are instructive to land trusts. One case is pertinent to the tax treatment of land held for investment rather than conservation. The law distinguishes between land owned and used for the organization's charitable purposes and land held for investment purposes. The latter, commonly known among conservation organizations as "trade lands", are not tax exempt. [CURTIS V. ANDROSCOGGIN LODGE, (1904) 99 Me. 356, 59A.518].

The requirement of use "solely" for charitable purposes raises the issue of whether the organization allows non-exempt organizations or individuals to use their property for their own purposes. One sure indication of ineligibility for tax exemption is a deed in which the donor of the land attached "strings" to retain private use or control the land. In NATURE CONSERVANCY V. BRISTOL [(1978) Me., 385 A.2d 39], the court denied exemption because the donor reserved the right to walk the land and to participate in management decisions. Even if the prior owner's use would not be inconsistent with the dedicated purpose of the land, the exemption will fail if the deed creates private rights. It is essential to negotiate gifts and purchases of land in ways that will minimize or avoid this problem. This can be accomplished by avoiding private reservation, or, if there are several parcels involved in the transfer, limiting them to one parcel which would not be tax exempt. Historic rights of way and easements not retained by the donor do not frustrate exemption. [see STANWOOD WILDLIFE SANCTUARY V. STOCKTON SPRINGS, No. CV 88-77 and CV 89-144, Sup. Ct., Waldo, June 2, 1989, and July 31, 1990, opinion by later justice of the Maine Supreme Judicial Court]. Some land trusts with problematic deeds are now negotiating to have the original donor, or the current owner, release their private rights.

Several law court cases have shed further light on the issue of "sole use". Staff residency on exempt property is not inconsistent with a finding of "sole use" if their presence is integral to the purposes of the organization. The benefit to the individuals was held to be only "incidental." [TOWN OF POLAND V. POLAND SPRING HEALTH INSTITUTE, (1994) 649 A.2d 1098]. On the other hand, an entire nursing home complex was found to be ineligible for tax exempt status because it rented out a few offices to health practitioners and provided a tunnel to the nearby hospital. [LEWISTON V. MARCOTTE CONGREGATE HOUSING, 673 A2d 209 (1996)].

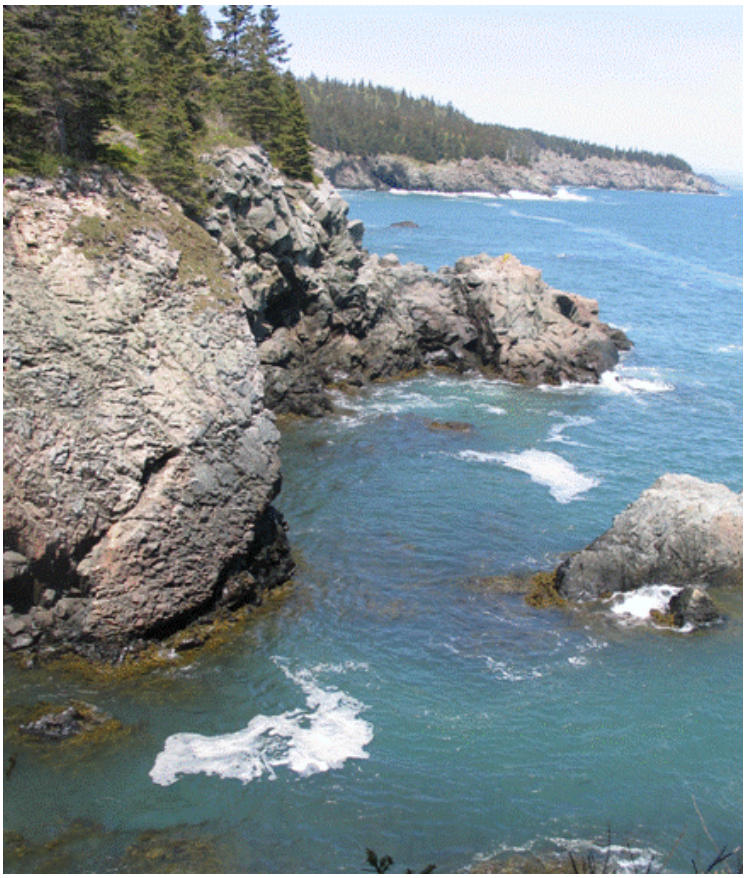
Another issue of interest to land trusts involves meeting the "use" requirement in the face of temporary delays opening the land to the public. If the land is preserved primarily for public use, the temporary closure while preparing to open, or lack of use with the firm intention for use in the reasonably foreseeable future, will not defeat exemption. OSTEOPATHIC HOSPITAL V. PORTLAND, (1942) 139 Me. 24, 26 A.2d 641; FERRY BEACH ASSOCIATION V. SACO, (1939) 136 Me. 202, 7 A2d 428. See also ADVANCED MEDICAL RESEARCH V. CUSHING (1989) Me. 555 A.2d 1040, 1041.

The law court in CHRISTIAN FELLOWSHIP AND RENEWAL CENTER V. TOWN OF LIMINGTON, 2006 ME 44, held that an intensive "use" requirement does not apply to recreational activities that support a claim for property tax exemption. It said "Addressing intensity of use, we have held that recreation and relaxation activities – even very minimal activities – may qualify as charitable activities supporting exemption." It went on to say that a charitable use may qualify a property for exemption even if the property has little human use for recreation or relaxation, citing CUSHING NATURE AND PRESERVATION CENTER V. CUSHING, 2001 ME 149, PP 15, 785 A.2d at 346-7).

An intensive "use" requirement certainly should not apply to land of high ecological sensitivity, which may serve the organizations purposes simply by being left alone. Maine recognizes the public benefit of ecological preservation, and the land trust may wish to refer to court decisions in other jurisdictions that specifically acknowledge the "charitable" public benefit of ecological preservation. In TURNER V. TRUST FOR PUBLIC LAND, the court found that the land in question *"serves the greatest public good if left in its natural state."* [445 S.2d 1124, 1126 (Fla.App. 5 Dist. 1984)]. In SANTA CATALINA ISLAND CONSERVANCY V. LOS ANGELES, the court noted that there was considerable public use but said that the "use" test could be satisfied simply by the fact of the land's dedication to the preservation of unique geographical features and rare plants, and that the preservation of such land *"provides incalculable benefit to every member of society in an era of scarce and*

vanishing ecological resources." [App., 178 Cal Rptr. 708, 720. (1982)]

Another issue raised by the "use" requirement regards the characteristics of "land conservation." Extensive use by the public may not be enough. The law court in Cushing declined to decide whether land conservation was a charitable use because it noted that the litigant demonstrated no evidence of having "engaged in land conservation or preserved the land for future public use." (Id. Par.15,p8) The court went on to state that the Town's claim that the Cushing Nature Preserve was being held for "non-charitable investment" needed to be revisited by the lower court on remand. The issue of investment could be important to land trusts, since holding land for investment can be indistinguishable, on the surface, from leaving it in its natural state. Land trusts should probably undertake affirmative steps to demonstrate that their preserves are indeed being held for the organization's charitable purposes, and not for investment. This might be demonstrated by the organization's by-laws, by establishing a declaration that is legally binding and reduces the development potential or market value of the land, or by other methods of documenting the intent to devote the land to charitable purposes.



Getting Started

It is always advisable to meet with town government regarding acquisition plans and to sit down with the assessors well in advance of the April 1 deadline. This gives everyone the opportunity to understand how the organization is providing benefit to the community. Face to face encounters will help the land trust members to understand the pressures faced by municipal officials, and will give municipal officials an opportunity to be heard on ideas they may have for local uses and stewardship of conservation land.

There is no magic formula for presenting information on property tax exemption. Maine Coast Heritage Trust writes a cover letter raising the basic eligibility issues and refers to supporting documents that it presents in notebook form, with a table of contents. It is worth following up with a phone call to be sure that the appropriate person has received the letter and to offer to meet to provide additional information, if necessary.

If the organization receives a tax bill, it will need to consider whether to apply for an abatement. Abatement procedure for tax exemption is very complex and requires the early assistance of an experienced attorney. Alternatively, the organization can decide to pay the tax and classify the land as Open Space in the following year. (A simultaneous application for Open Space, along with the exemption application, can be filed by April 1, but experience shows that such a "fail safe" method is confusing to towns). The Farm and Open Space Tax Law, as an alternative to tax exemption, provides generous tax reductions for non-profit preserves, particularly those open to the public and managed as forever wild. The Open Space law was, in fact, specifically amended in 1993 to provide a specially reduced tax rate for non-profit preserves under Open Space classification, primarily because there were so many preserves that might not have met the technical requirements of exemption, such as retention of a private right by the donor of the property, or rental to non-exempt tenants.

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