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Testimony of Tom Doak

Executive Director

Maine Woodland Owners

In Support of

LD 1648

“An Act to Make Changes to the Farm and Open Space Tax Law”

Senator Grohoski, Representative Perry and distinguished members of the Joint Standing Committee on Taxation, my name is Tom Doak, I am the Executive Director of Maine Woodland Owners speaking today in support of LD 1648, “An Act to Make Changes to the Farm and Open Space Tax Law ”

As one of the four current use taxation programs (Tree Growth, Farmland, and Working Waterfront are the other three), the Open Space program values land based on its current use instead of its development value Each program operates a bit differently, but they are critical to keep properties from being converted to other uses They all have significant penalties for noncompliance and they all run with the land, meaning even when land changes ownership, the next owner is obligated to follow the program requirements or withdraw the land and pay a heavy penalty

Unlike the Tree Growth Tax Law program which has been reviewed ad infinitum, the Open Space program has had very little attention or change since it was enacted in the early 1970's. For a number of reasons, it is not as widely used as it was expected to be when it was created I have been involved in a number of informal discussions over the past few years about the need to update the Open Space program to make it more attractive to landowners, increase its public values and to make it easier to understand and administer program This proposal is a good start in addressing all these points

I served on the Governor's Task Force on the Creation of a Forest Carbon Program that submitted recommendations to the Governor in the fall of 2021 One of the areas we discussed was potential changes to the Open Space program, not just as they might relate to forest carbon While the group did not reach full agreement on changes, we did agree that updates to the program were needed Many of the ideas discussed by the Task Force are in this proposed legislation

There are others who will discuss the proposals included in the bill in more detail But I do have several comments and a couple of concerns

One of the problems with the current Open Space program is that the reduction in valuation of 20% off ad valorem for enrolling in the program is too little to offset the potential risks (the penalty for taking land out of the program) to be of interest to most landowners. Any change should address this.

There is duplication in the existing Open Space standards. There are deductions for land that is permanently protected from development and a separate deduction for land that is also forever wild. The proposed bill consolidates those categories which we agree with.

This legislation defines the public access reduction more fully, which is a positive change from the existing statute.

The Carbon Task Force did suggest a reduction in taxes under the Open Space program for both activities that improve certain wildlife habitat and those which address forest carbon. This bill requires a management plan to be prepared and submitted to the appropriate state agency (Inland Fisheries and Wildlife for wildlife activities and Agriculture, Conservation, and Forestry for carbon practices) for approval. Preparing and having a plan approved seems overly burdensome on both the landowner and the state agency. We suggest, as the Carbon Task Force suggested, that each agency develop a list of approved practices which the landowner could choose from. Once the approved practice was implemented, the landowner would have to attest that the practice was completed in order to qualify for the reduction. The reduction would only be good for ten years and in order to keep the reduction after the ten years, the landowner would have to implement an additional approved practice.

Current law allows a landowner to transfer between any of the four current use programs without penalty provided the property meets the requirements of the new program. Tree Growth, Farmland, and Working waterfront all have specific standards that if met, qualify the landowner to enroll in the program. Open Space is different. Open Space requires the assessor to make a subjective determination as to whether enrolling the land provides a public benefit. There is a list of factors in the statute that the assessor can consider, but nothing definitive. We believe that if the property qualified for one of the other current use programs, it already provides a public benefit and should be eligible for transfer into the Open Space program. We would support the addition of language that makes this clear.

We realize the changes proposed in this bill are substantial to the program, but hope the Committee will consider a way forward to updating this important program.