



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY

MAINE FOREST SERVICE
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333

PAUL R. LePAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

15 December 2017

Governor:

The following report responds to your July 2017 directive to the Maine Forest Service regarding efforts to improve compliance with the requirements of the Tree Growth Tax Law (TGTL). Specifically, you directed that MFS:

1. Contact all municipal assessors in the state and offer technical assistance in reviewing the forest management plans of parcels enrolled in the TGTL Program;
2. When requested by a municipal assessor, a district forester will review a forest management plan and provide recommendations if needed on how to fulfill the requirements of the forest management plan to both the municipal assessor and the woodland owner; and,
3. Assist any woodland owners found not in compliance with the TGTL Program and help bring their forest management plans into compliance within a reasonable amount of time.

In addition to reaching out to municipal assessors and responding to requests for assistance, MFS also has conducted several TGTL workshops for consulting foresters who write TGTL forest management plans.

Please let me know if you have any questions.

Sincerely,

Doug Denico
Director, Maine Forest Service

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**REPORT OF THE MAINE FOREST SERVICE
REGARDING THE GOVERNOR'S EXECUTIVE ORDER 2017-008
AN ORDER TO OFFER ASSISTANCE TO MUNICIPALITIES IN THE REVIEW OF
LAND ENROLLED IN THE TREE GROWTH TAX LAW PROGRAM**

Introduction

This report details Maine Forest Service (MFS) actions on the Governor's directives contained in Executive Order 2017 - 008, An Order to Offer Assistance to Municipalities in the Review of Land Enrolled in the Tree Growth Tax Law Program.

Recommendation

MFS stands by its recommendations contained in the 2014 TGTL audit report to the Legislature's Taxation Committee. MFS has not found anything in TGTL reviews conducted since publication of its 2014 report to support changes to those recommendations.

Outreach to Municipalities

Upon receipt of the Governor's Executive Order, MFS contacted the Maine Municipal Association (MMA) for assistance. MMA published MFS's offer of assistance in its newsletter, and this offer did elicit a significant response over business as usual.

MFS staff also spoke at MMA's annual convention in early October. Over 40 municipal officials attended MFS's workshop on its program of TGTL assistance to municipalities. MFS repeated its offer of assistance; several towns followed up.

Assistance to Municipalities - TGTL Forest Management Plan Reviews

Since July 2017, MFS staff received seven requests for assistance from municipalities concerning over 20 parcels. MFS has responded affirmatively to all requests and provided guidance for securing management plans; however, four towns have not followed up on their initial request or are in the process of securing management plans.

Of the three towns that combined provided ten plans for review in total, MFS has completed or nearly completed all of them. In all cases, MFS both reviewed forest management plans and performance on the ground.

MFS also closed out two reviews for towns (five parcels combined) that initiated the review process prior to the Executive Order's issuance.

MFS findings from its reviews are as follows:

- Nearly all of the forest management plans complied with the basic requirements of the Tree Growth Tax Law. In a few cases, the plans were older than ten years and had expired. MFS made several observations regarding the lack of acknowledgment as to whether the subject parcels contained Significant or Essential Wildlife Habitat as required by law.
- In several cases (roughly half), although the forest management plans recommended harvesting during the planning period, the landowners did not conduct harvests as recommended.

- Several parcels have not been harvested for two or more decades despite the fact that forest stands are declining in vigor and value due to overmaturity and site conditions (wind, shallow soils, etc.), and a harvest would be indicated.

MFS contacted the town of Vinalhaven for an update on its 2016 review of all TGTL parcels on the island. Of the 28 parcels originally enrolled in TGTL before the review, there remain 12 parcels enrolled in TGTL, down from 17 at the conclusion of the review. Five of the parcels MFS reviewed in 2016 have transferred to Open Space in recent months. The assessor is attempting to convince several other landowners to transfer to Open Space. Two of the remaining 12 landowners have received letters about recertification within the next couple of months.

Finally, MFS notes that the law requires municipalities to submit annually to MFS a roster of all parcels enrolled in TGTL. MFS sends the first request for this information in August each year. Compliance with this requirement is fair. As of 01 December 2017, 19 percent of municipalities (93) have not responded to two requests for the required information. MFS will only assist municipalities that are up to date on their TGTL rosters.

Outreach to Consulting Foresters

MFS recognizes the important role that consulting foresters play in implementing the TGTL. The large majority of consulting foresters write forest management plans consistent with the law's intent, and their clients follow those plans. However, as MFS pointed out in its 2014 audit report to the Taxation Committee and further reinforced in a 2016 letter to consulting foresters working on Vinalhaven, there are issues that need to be addressed (see Appendix 3).

With that in mind, MFS conducted two workshops for consulting foresters in October 2017 (Scarborough and Bangor). Maine Revenue Services provided staff to discuss the Open Space Tax Program. MFS's primary goal for these workshops was to communicate clearly the TGTL's intent, MFS review procedures, and expectations for consulting foresters. Over 80 consulting foresters attended these workshops. Based on an analysis of the demographics of those who attended, MFS decided to offer an additional workshop in Ellsworth in January 2018 and individually invite approximately 20 foresters known to work Downeast and further south along the coast.

MFS staff also were invited to speak about TGTL to the Maine Society of American Foresters annual meeting. Although the audience demographic is quite different from that of the workshops mentioned above (most of the foresters at this meeting work for large landowners), the presentation still generated a lively discussion about what's expected of foresters and landowners.

Assistance to Landowners

Because of our efforts regarding the Executive Order, since late July MFS staff have fielded hundreds of contacts regarding various aspects of the TGTL, including forest management plans and compliance. At least 75% of the contacts were with woodland owners; the rest were with licensed foresters, town officials, real estate brokers, law firms representing woodland owners, and at least one logger.

MFS District Foresters typically participate in workshops for forest landowners where TGTL is nearly always a topic of discussion. For example, a District Forester in southern Maine will deliver a TGTL workshop in January 2018.

Conclusion

The Maine Forest Service appreciates the opportunity to present this information on the Tree Growth Tax Law to you. We welcome your questions.

Appendix 1. Governor's Executive Order

OFFICE OF
THE GOVERNOR



NO. 2017-008
DATE July 24, 2017

AN ORDER TO OFFER ASSISTANCE TO MUNICIPALITIES IN THE REVIEW OF LAND ENROLLED IN THE TREE GROWTH TAX LAW PROGRAM

WHEREAS, Maine's natural resources are a fundamental part of our lives as Mainers and our State's economy; and

WHEREAS, proper enforcement of our Tree Growth Tax Law Program ensures that these assets are managed for the benefit of all Mainers; and

WHEREAS, the Tree Growth Tax Law Program provides an incentive for woodland owners to actively manage their property; and

WHEREAS, woodland property enrolled in the Tree Growth Tax Law Program covers 11.2 million acres in the State of Maine; and

WHEREAS, woodland owners who participate in the Tree Growth Tax Law Program are required to have a forest management plan and are required to follow the conditions of their plan; and

WHEREAS, woodland owners who participate in the Tree Growth Tax Law Program shift a portion of their property tax burden to other property taxpayers in their municipalities; and

WHEREAS, municipal assessors are responsible for administering the Tree Growth Tax Law Program and assessors can request technical assistance from the Maine District Foresters and Forest Rangers from the Bureau of Forestry under the Department of Agriculture, Conservation and Forestry; and

WHEREAS, the Bureau of Forestry found in its previous work with municipal assessors that some woodland owners who participate in the Tree Growth Tax Law Program are not fulfilling their responsibilities under the program; and

WHEREAS, the failure of some woodland owners to follow their forest management plan under the Tree Growth Tax Law Program jeopardizes the credibility of the program and creates perennial uncertainty about the program's stability among the large percentage of woodland owners who are fulfilling their responsibilities under their forest management plans;

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, do hereby direct the Bureau of Forestry to undertake the following actions to ensure that municipal assessors can carry out their administrative duties under the Tree Growth Tax Law Program:

1. Contact all municipal assessors in the state and offer technical assistance in reviewing the forest management plans of parcels enrolled in the Tree Growth Tax Law Program;
2. When requested by a municipal assessor, a district forester will review a forest management plan and provide recommendations if needed on how to fulfill the requirements of the forest management plan to both the municipal assessor and the woodland owner;
3. Assist any woodland owners found not in compliance with the Tree Growth Tax Law Program and help bring their forest management plans into compliance within a reasonable amount of time;

The Bureau of Forestry shall submit a report of its findings with respect to the above actions to the Office of the Governor no later than December 15 of calendar year starting in 2017.

The effective date of this Executive Order is July 24, 2017.


Paul R. LePage, Governor

Appendix 2. MFS Recommendations from 2014 Audit Report

Tree Growth Tax Law amendments

1. The Legislature should authorize a continued Tree Growth audit function for MFS until 31 December 2015. Should the Legislature continue this authorization, MFS recommends the following methodology to better assess compliance issues on properties with waterfront and oceanfront features, as these properties appear to be the major cause of concern for municipalities.
2. There are 122 coastal municipalities in the organized territory. MFS recommends that either the Maine Municipal Association or the individual coastal municipalities recruit volunteers or interns to assist MFS in this portion of the study. The volunteers or interns would visit coastal municipal offices to identify all coastal parcels enrolled in the Tree Growth Tax Law program. From this population, MFS would draw a random sample of parcels to evaluate, using the same methodology as this study. MFS would focus its efforts, and a 2016 report, solely on coastal Tree Growth Tax Law issues, again along the lines of the current legislative directive. If the Maine Municipal Association and/or the municipalities provide the necessary volunteer or intern labor, MFS can accomplish this task within its existing resources.
3. Municipalities could consider conducting random audits similar to what MFS has done. Assessors already have the authority under 36 M.R.S. §579 to compel enrolled landowners to submit requested information. Conducting random audits would systematize the process and ensure that all enrolled landowners could be held accountable at any point during their tenure.
4. The Tree Growth Tax Law could be amended to clarify the existing requirements for the content of a forest management and harvest plan. Suggested language follows:

3-A. Forest management and harvest plan. "Forest management and harvest plan" means a written document that ~~outlines~~ recommends activities to regenerate, improve and harvest a standing crop of timber over a ten-year period. The plan must state clearly the type, nature, and timing of any recommended activities and the reasoning justifying the recommendation. The plan must include the location of water bodies and wildlife habitat identified by the Department of Inland Fisheries and Wildlife. If such features are not found on a parcel, the plan must explicitly state this. A plan may include, but is not limited to, schedules and recommendations for timber stand improvement, harvesting plans and recommendations for regeneration activities. The plan must be prepared by a licensed ~~professional~~ forester or a landowner and be reviewed and certified by a licensed ~~professional~~ forester as consistent with this subsection and with sound silvicultural practices.

Municipalities

1. The Tree Growth Tax Law could be amended to clarify the reporting responsibilities of municipalities. The timely filing of required, accurate reports to Maine Revenue Services and Maine Forest Service should be linked to the municipal reimbursement under 36 M.R.S. §578 to promote better compliance with current law.
2. The Tree Growth Tax Law allows assessors to request technical assistance from MFS. The results of this study indicate that many requests for assistance result in a

MFS finding that the landowner's forest management and harvest plan and/or management conform to the law's requirements. To better screen future requests, MFS will now require assessors to complete a worksheet (see Appendix 3). MFS developed this worksheet several years ago; however, it may not have been as widely used as it could have been.

3. Municipalities should be encouraged to exercise the full range of their administrative powers to ensure that landowners comply with the requirements of the Tree Growth Tax Law. MFS can assist in this regard by offering more workshops for municipal officials about the Tree Growth Tax program, but responsibilities for administration of the program should remain with municipal assessors.

Landowners

1. Several landowners contacted did not possess a copy of their management plan. This required MFS to contact the consulting foresters who prepared the plan to obtain a copy. The Tree Growth Tax Law could be amended to require that landowners maintain a copy of their forest management and harvest plan in their possession (meaning at their primary residence) at all times.

Foresters

1. Anecdotal information obtained during the course of this study suggests that many landowners do not understand their forest management plans, in large part because they are not trained in forestry, but also because foresters may not take the time to explain the plan to the landowner or ask if the landowner understands the plan. The Tree Growth Tax Law should be amended to require that a licensed forester attest that they have explained to the landowner the contents of a forest management and harvest plan that the forester has prepared or approved.
2. Under the Tree Growth Tax Law as currently written, landowners are held responsible for the contents of their forest management plan. Landowners generally are not familiar with the specific requirements for forest management plans and rely on the licensed foresters who prepare their plans to ensure that their plans are compliant. The law and rules regarding licensed foresters could be amended to state clearly the responsibilities of foresters to write forest management plans that conform to the requirements of the Tree Growth Tax Law.
3. The Tree Growth Law requires that a licensed forester certify every 10 years that, for a plan adopted by a new owner following a land transfer, that the new owner is managing the forest land in accordance with the plan prepared for the previous landowner, or, for a plan being recertified, that the forester has inspected the parcel and that the owner is managing the parcel according to the forest management and harvest plan. Anecdotal information suggests that a small number of foresters have recertified landowners even though these foresters are well aware that their client landowners have not followed, are not following, and, in some instances, have no plans to follow, the recommendations in their management plans. The Tree Growth Tax Law could be amended to require that landowners maintain an expired forest management and harvest plan in their possession for two years following recertification of a parcel to permit assessors to review those expired plans and performance thereon.

Appendix 3. MFS Letter to Foresters Writing Forest Management Plans on Vinalhaven



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To: Foresters who have worked on Vinalhaven properties
From: Maine Forest Service
Date: 14 December 2016
RE: Review of Tree Growth Tax Law properties on Vinalhaven

Dear Forester:

As you are aware, the Maine Forest Service (MFS) conducted a review of properties enrolled in the Tree Growth Tax Law program (TGTL) on Vinalhaven in 2016. This letter is to update you on our findings, broadly as well as specifically in relation to the role of foresters who work with landowners enrolled in the TGTL.

Please note, the purpose of this letter is to provide a general overview of the Tree Growth Tax Law. It is not intended to provide legal advice for specific situations. If you have any questions about your legal obligations, you should consult with a qualified attorney.

When we began our review earlier this year, there were 28 parcels enrolled in TGTL. During the course of our review of forest management plans, 11 parcels either were transferred to the Open Space program or withdrawn from TGTL. Our field review in September addressed the remaining 17 parcels.

Our key finding is that of the 17 parcels currently enrolled in TGTL on Vinalhaven, MFS believes that the owners of 10 parcels should give serious consideration to transferring their parcels to the Open Space program or withdrawing from TGTL. We are concerned that a lack of active, commercial forest management activity on these parcels, as demonstrated in Tree Growth documentation and in the field, indicates that the landowners' objectives may not be consistent with the program's requirement for enrolled forest land to be used "primarily for growth of trees to be harvested for commercial use."

As you are aware, forest management on Vinalhaven, as with other islands and coastal areas, presents an array of challenges in terms of historical land use (past farming and resulting forest structure and composition); forest conditions (especially poor soils, insects and diseases, abiotic factors including high winds, ice, and salt spray); and economic conditions (lack of island markets for wood, transportation costs to markets off-island). Nonetheless, landowners enrolled in TGTL can and should make a good-faith effort to "regenerate, improve, and harvest timber" as the program requires.

We understand that licensed foresters take very seriously their professional obligation to serve their clients and protect their interests. Also, foresters who write forest management plans for landowners are not always asked to participate in implementation of the plans, including harvesting. However, our review strongly indicates that licensed foresters are

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Maine Forest Service to Foresters re TGTL review

sometimes misapplying, miscommunicating, and/or in some cases fundamentally misconstruing the letter and/or intent of the Tree Growth Tax Law's requirements.

We found examples of each of the following issues in the Forest Management Plans we reviewed and in our subsequent field review:

1. Timber objectives must clearly be primary, as the TGTL requires. We found instances where a landowner's property ownership objectives cited multiple objectives with no indication that timber production was the primary objective. In other instances, timber was identified as the primary objective property-wide, but one or more stand descriptions and/or prescriptions at the stand or sub-stand level stated that objectives for smaller areas were primarily aesthetic, recreation, or wildlife-related.
 - All forested acres enrolled in TGTL must share the primary objective of the growth and harvest of commercial forest products. Acres and areas where harvesting will be excluded or severely restricted to accomplish non-timber objectives should not be enrolled in Tree Growth.
2. Forested acres must be capable of producing forest products. In stand descriptions and in our field review, we found stands which were described as too rocky or too wet to grow timber products which were included in Tree Growth acreages. In the field we observed rocky balds with minimal soil or exposed ledge, as well as scrub-shrub swamps with wet soils, neither of which are capable of growing more than scattered small trees, and indeed are sensitive areas where harvesting equipment would likely damage fragile soils and unique vegetation (Where one plan suggested harvest of ornamental materials, Christmas tree, or wreath greens in such areas, there was no evidence of any such utilization).
 - All forested acres enrolled in TGTL must be capable of growing commercial forest products. Nonproductive forest acres should be excluded.
3. Forested acres enrolled should be accessible for harvesting. We found instances of Tree Growth acres with extremely broken, rocky terrain and steep cliffs where it would be impossible for any type of machinery, draft animal, or other equipment to operate to extract forest products. We also found instances of very small areas surrounding residences, driveways and/or shorefronts where equipment similarly could not operate safely, but which were enrolled in Tree Growth.
 - Forested acres with inoperable/inaccessible terrain should be excluded from Tree Growth.
4. Forest management recommendations should clearly identify and describe harvest and other management activities and opportunities. We found numerous examples where prescriptions failed to specify, or failed entirely to identify, "activities to regenerate, harvest, and improve" forest stands as Tree Growth requires. We also found particular field conditions with significance for management decisions which were not identified or addressed. The nature of these situations spans a range of issues:
 - Stands which had or were described as having deteriorating forest health, and, currently or prospectively, widespread mortality, breakage or windthrow. However there was little or no mention of recommendations to salvage, remediate or improve these stands, or of lost timber volumes (e.g. of balsam fir or spruce, in some cases significant volumes).
 - Fully stocked stands with mature or at-risk timber, merchantable volumes and opportunities for stand improvement, yet with a "no-harvest" recommendation.

Maine Forest Service to Foresters re TGTL review

- Stand descriptions which identified as desirable long-term shifts in species composition and structure (e.g. from balsam fir to spruce and hardwoods), but did not provide any recommendations to achieve them.
 - Stand prescriptions for very light, small-scale harvests, with little indication of their severe operational and economic constraints (as evidenced in some instances by their non-implementation), how they might be accomplished in spite of those constraints, or alternative approaches.
 - Stand prescriptions which included vague, non-specific language that harvesting should be "considered" or undertaken "if desired."
 - Stand prescriptions where no or only very broad timeframes for activities were identified.
 - Stands which had some cutting (of declining/dead fir) but wood was left on the ground.
 - Stands where regeneration of trees was clearly compromised by ferns and/or deer browse, without any indication of efforts to enhance regeneration (e.g. through planting and/or competition control).
 - Forest recommendations by licensed foresters should provide direct, specific, actionable information to accomplish timber management objectives, including proactive and timely measures to address regeneration, stand improvement, and harvesting of merchantable products. Failure to provide such recommendations can in some cases lead to poor implementation of silvicultural practices, or give landowners the false impression that custodial, reactive removal or clean-up of a few trees for aesthetic or recreational purposes meets the intent of Tree Growth. Even more, it can inaccurately lead landowners to conclude that doing nothing even over multiple planning cycles in declining, stagnant, or inadequately regenerated stands, is acceptable forest management.
5. Forest Management Plans must be certified by a licensed forester as having been followed, as well as updated, every ten years. We saw examples where past plans had been recertified by a licensed forester, despite little evidence in documentation or in the field that the previous plans' recommendations had been accomplished. We saw examples of "updates" to forest management plans that consisted largely of a restatement of the previous plan's unimplemented recommendations; or of an explanation of missed opportunities due to failure to implement and subsequent mortality; or (in one case) of a series of brief notes referencing the previous plan.
- Foresters recertifying an existing or expiring Forest Management Plan must assure themselves that its recommendations have been substantially followed, including if there has been a change in ownership. Plans with non-specific recommendations as addressed above present a particular challenge for a forester ethically to certify that a plan's recommendations have been followed, potentially putting the landowner/client at risk.
 - Foresters updating an existing Forest Management Plan should provide a cohesive, identifiable document that:
 - identifies the new planning period,
 - incorporates relevant information from a previous plan directly, not primarily by reference,
 - documents accomplishments of past recommendations,

Maine Forest Service to Foresters re TGTL review

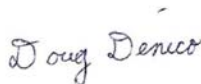
- identifies current conditions, and,
 - provides specific recommendations for the new planning period.
6. Timber harvesting of commercial forest products requires that a Forest Operations Notification (FON) be submitted to the Maine Forest Service. In a few cases, we reviewed plans that indicated a harvest had taken place during the previous planning period, and/or we found evidence of harvesting during our field review, yet there was no FON on file. Such notifications are required if commercial forest products are harvested, even if no money changes hands, or if the landowner pays the logger a service fee. In addition, the FON and the subsequent, required Landowner Report of Timber Harvesting provide important documentation of the landowner's efforts to follow their Forest Management Plans.
- A Forest Operations Notification must be filed with Maine Forest Service for all timber harvesting which yields commercial forest products.

Private, licensed foresters play an important role in assisting landowners in making informed decisions about their woodlands. Forest management on Vinalhaven clearly presents numerous challenges. The cumulative effect of these challenges has been to constrain opportunities for forest management and especially timber management. Where proactive, engaged landowners have been able to identify and successfully implement a long-term strategy to grow and harvest forest products on eligible forest acres, with the assistance of their foresters, Tree Growth is an appropriate program. Where landowners are unable or unwilling to commit to such efforts, their forested lands would more appropriately be reclassified or transferred to the Open Space program. While landowners clearly are the primary decision makers about their participation in Tree Growth, licensed foresters in their role as advisors and educators to their clients need to be very clear about the program's requirements.

Foresters also play a key role more broadly in recommending forest practices to their clients. The Tree Growth Tax Law does not dictate the timing, frequency, method, volume or value of forest harvests, instead leaving these management decisions to landowners and the licensed foresters who serve them. Nonetheless, harvesting recommendations should provide sufficient information for landowners to take action as described above. In addition, since Tree Growth's purpose is specifically to encourage such activity, two further considerations apply. First, where the management and harvesting of commercial forest products is planned that goes outside the norms of existing markets (especially for non-timber forest products), conventional/available equipment, or current technology, such management and harvest approaches should be demonstrated as being practicable as soon as possible (e.g. within one planning cycle, i.e. ten years). Second, forest harvesting should occur at a scale, in terms of volume and value, commensurate with the acres enrolled. Harvest scheduling should include all enrolled acres within reasonable timeframes, rather than perpetually deferring harvesting on some acres.

Please let us know if you have any questions regarding this review. We appreciate your attention to the issues raised in this letter.

Sincerely,



Doug Denico
Director, Maine Forest Service