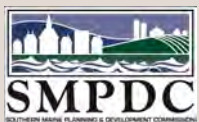


FUNDED BY  
MAINE  
COASTAL  
PROGRAM

# TRAIL

*DEVELOPMENT STRATEGIES*

DECEMBER  
2017



PREPARED BY  
SOUTHERN MAINE PLANNING & DEVELOPMENT COMMISSION

DECEMBER



2017

Maine's Regional Planning Organizations receive funding from the Legislature and Maine Coastal Program to provide general planning assistance to municipalities within their respective regions. Oversight and administration of annual Land Use Planning Assistance contracts is provided by the Maine Department of Agriculture, Conservation, and Forestry Municipal Planning Assistance Program.

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# TIFS FOR TRAILS

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## TAX INCREMENT FINANCING

Tax Increment Financing is a traditional economic development tool used by many Maine municipalities.

The use of TIF revenues for trail systems within a community is probably not well known and certainly underutilized. Typically TIFs are used for major infrastructure improvements (ie water, sewer, roads) and “credit enhancements” back to developers or entrepreneurs.

However, TIFS (Title 30-A, M.R.S. section 5221-5235) and the rules guiding TIFS (TIF Rules, 19-100 C.M.R., Ch. 1, Section 1-7) clearly allow the use of TIF funds for trails (as opposed to building a municipal recreation facility). This may point to an acknowledgment that trails are an important economic asset as well as a recreational one.

The rules guiding TIFS and trails are included as an appendix to this document.

It is not clear how many communities have utilized TIFs for trail purchase or construction. The town of Waterboro is currently considering a TIF which specifically designates trail systems in their development plan. These trails, (for ATV and other use) are part of a concerted economic development effort on the part of the town to encourage trail use - for locals, for tourists and to support local businesses.

The use of TIF revenues for trails is likely an underutilized aspect of the TIF program and certainly of trail advocates.

This may be due to the fact it has not been used or promoted within the state to any great degree and that the more traditional aspects of TIF revenue use (for infrastructure for instance) are seen as having a higher return on investment.



# MAINE OPEN SPACE LAW

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*PUBLIC ACCESS ENTITLES A  
LANDOWNER TO ADDITIONAL  
REDUCTIONS IN TAXES.*



Maines current use taxation laws may provide a possibly underutilized avenue for public access and trail development as well. The Open Space Tax law (36 M.R.S., section 1101-1121) provides landowners with the opportunity to reduce their property tax by classifying their property as open space land based on its current use as open space rather than the potential fair market value for more intensive uses. While there are a number of different rules and standards for receiving this designation from the local assessor or Board of Assessors within a community, the bottom line is that providing for public access entitles a landowner to additional reductions in taxes.

The following provides a summary of the process by which a value is determined and perhaps, more importantly, the alternative valuation method an assessor may use when determining a property tax reduction.



## VALUATION

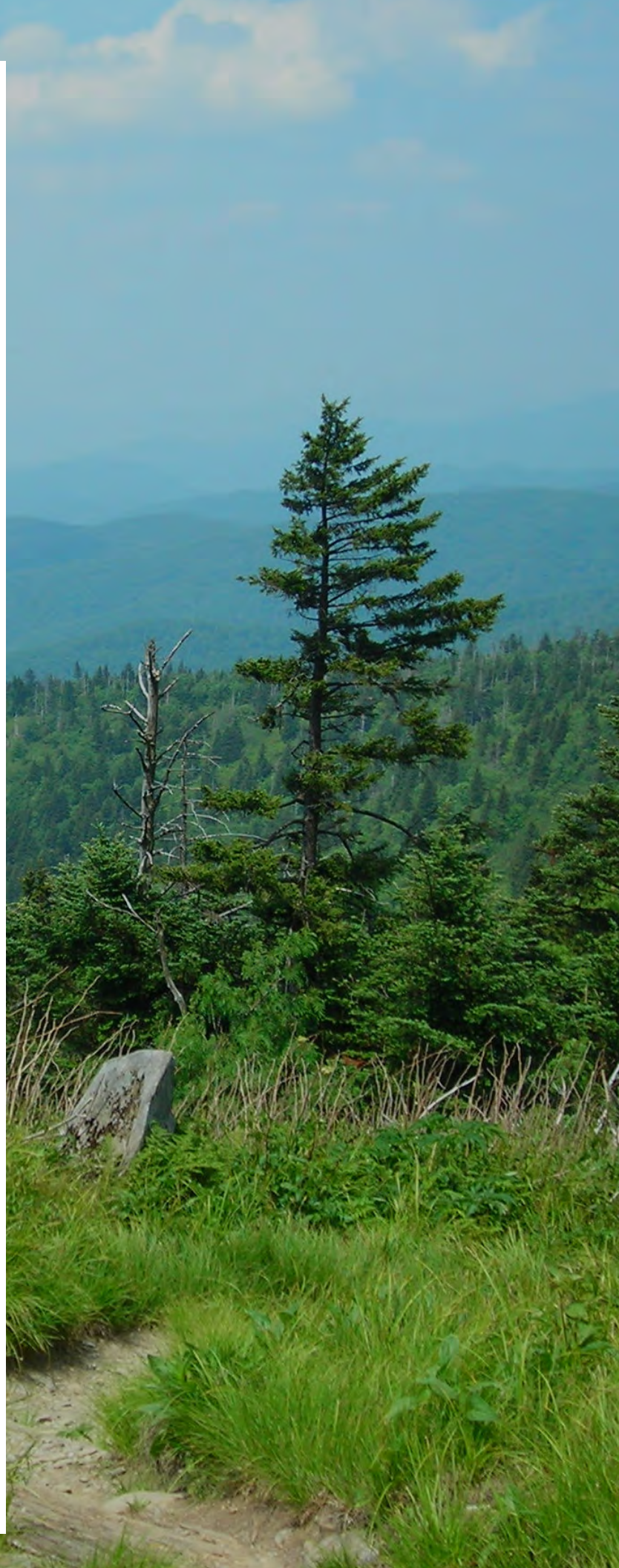
A. Valuation Method - The current use value of open space land is the sale price that particular open space parcel would command in the marketplace if it were required to remain in the particular category or categories of open space land for which it qualifies, adjusted by the certified ratio for the municipality where the land is located.

An assessor may value open space land based on such considerations as sales of land subject to permanent conservation restrictions, sales of land subject to enforceable deed restrictions, an enhancement to unclassified appurtenant land areas under the same ownership, and before and after appraisals of permanently restricted land in the region. This value may not reflect development or market value purposes other than open space use.

B. Alternative Valuation Method - Notwithstanding any other provision of law, if an assessor is unable to determine the valuation of open space land under the conventional method above, the assessor may value that land under the following alternative method. The assessor may begin with a full value of the land, based on a valuation of similar land that does not have conservation easement restrictions and is not in a current use program, then adjusts the valuation by the locally certified ratio. The assessor may then reduce this standard value according to the following categories.

(1) All ordinary open space land is eligible for a reduction of 20% of the standard value.

(2) Permanently protected open space land is eligible for the 20% reduction in paragraph 1 plus an additional 30% reduction; in other words, a total reduction of 50% of the standard value.



(3) Forever wild open space land is eligible for the 50% reduction in paragraph 2 plus an additional 20% reduction; in other words, a total reduction of 70% of the standard value.

(4) Public access open space land is eligible for the 20% reduction in paragraph 1 plus an additional 25% reduction; in other words, a total reduction of 45% of the standard value. If public access open space land is also permanently protected, it is eligible for the 50% reduction in paragraph 2 plus the additional 25% reduction in this paragraph, for a total reduction of 75%. If public access open space land is also qualified as forever wild open space land, it is eligible for the 70% reduction in paragraph 3 plus the additional 25% reduction in this paragraph, for a total reduction of 95%.

(5) Managed forest open space land is eligible for the 20% reduction in paragraph 1 plus an additional 10% reduction; in other words, a total reduction of 30% of the standard value. If managed forest open space land is also permanently protected, it is eligible for the 50% reduction in paragraph 2 plus the additional 10% reduction in this paragraph, for a total reduction of 60%. If managed forest open space land is also qualified as public access open space land, it is eligible for the 45% reduction in paragraph 4 plus the additional 10% reduction in this paragraph, for a total reduction of 55%. If managed forest open space land is also qualified as permanently protected public access open space land, it is eligible for the 75% reduction in paragraph 4 plus the additional 10% reduction in this paragraph, for a total reduction of 85%. Managed forest open space land cannot also qualify for forever wild classification

The definition of the law for public access is as follows:

Public access open space land” means an area of open space land allowing public access by reasonable means and the applicant agrees to refrain from taking action to discourage or prohibit daytime, nonmotorized and nondestructive public use. The applicant may permit but is not obligated to permit, as a condition of qualification for public access status, hunting, snowmobiling, overnight use, or other more intensive outdoor recreational uses. The applicant may impose temporary or localized public access restrictions to protect the active habitat of endangered species, prevent destruction or harm to fragile protected natural resources, or protect the recreational user from any hazardous area.

Our sense is that this is an underutilized resource for trails and access to private property and we could find no region where the law was used as part of a greater vision for trail access.

An excellent primer prepared by the Maine Coast Heritage Trust, on all the current use programs including the Open Space Program, can be found at the link below.

<http://www.mltn.org/perch/resources/property-taxation-of-conservation-land-former-TB-104-july302013.pdf>



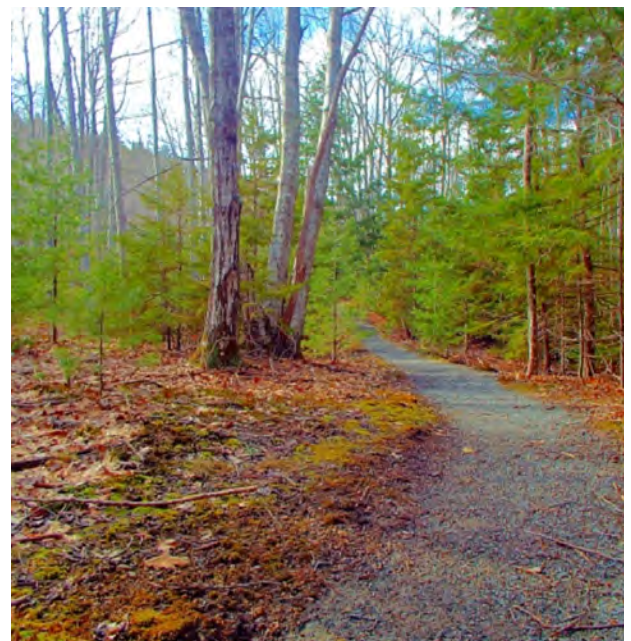
# OPEN SPACE CONSERVATION SUBDIVISIONS

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## *LONGER TRAIL NETWORKS A MAJOR SELLING POINT*

In areas with a great deal of development, trails can be provided as part of an interconnected system of trails if the town has the ability to require open space through their local development ordinances. This is particularly important if a plan for trails is in place and all parties are aware of the opportunity as an applicant comes forward with a proposal.

Conservation/Open Space Subdivisions have become fairly commonplace in Maine. These ordinances may be suitable for connecting trails. As with other possible strategies the use of the development approval process to connect trails may be underutilized. However, it is a legitimate, legal and useful strategy for trails particularly in high development areas (such as southern Maine). It is crucial, if planning for a trail through a future development, that all parties are aware of the obligations of such an agreement and who actually will hold either the easement or the fee/title to the trail as it moves from one area to another. It is also important that the request for a regional trail connection be tied to a viable trail planning effort. Dead end trails can be a major drawback. Many projects see trails and opportunities for longer trail networks as a major selling point for their housing product.





# ACCESS AGREEMENTS

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Agreements can be negotiated for one-year terms or more



As SMPDC began this trail planning effort it became clear that other groups – snowmobilers in particular – were very successful in gaining access for trail purposes. While the snowmobile trails in northern and western Maine are very significant, there is a well-established system of trails in southern Maine and York County as well. Many of these trails provide access through a very basic agreement negotiated by snowmobile groups with private landowners, water districts, and others. A copy of one of these agreements is attached to this document. It is possible similar agreements for basic trail access could also be negotiated. These agreements can also be negotiated for one-year terms or more, thus allowing landowners and trail advocates to assess the benefits or weaknesses of trail access.

Other organizations have developed more formal agreements. Mahoussac Pathways in the Bethel area has been particularly successful developing individual access agreements. The town of Bethel itself has an agreement which is only a few paragraphs long but has served the purpose of providing access. (see Appendix ). Another agreement through the town of Bethel is much more comprehensive and covers a number of issues and concerns that may arise (see Appendix).

Another agreement through the town of Bethel is much more comprehensive and covers a number of issues and concerns that may arise (see Appendix).

Yet another trail system - the 46 mile long Hills to Sea Trail from Unity to Belfast – has been developed basically through handshake agreements. The coalition of groups responsible for putting that trail together meet with landowners, describe the project, provide information on the various protections afforded them under Maine law and then simply follow up with a letter recounting the discussion. There is no formal or legally binding agreement. The trail extends through approximately one-quarter public lands and the rest is private.

See: <http://www.waldotrails.org/>





# GRANTS

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## Federal, State and Foundation Programs

A number of federal, state and foundation programs offer assistance for trail development. Many of these programs are highly competitive and underfunded however they may offer opportunities for well-planned projects.

### Federal

<https://www.nps.gov/orgs/rtca/index.htm>

### State

The Recreational Trails Program does provide assistance in a variety of ways including work fork acquisition and easements for trails. There is one round of funding per year.

[http://www.maine.gov/dacf/parks/grants/recreational\\_trails\\_program.shtml](http://www.maine.gov/dacf/parks/grants/recreational_trails_program.shtml)

A number of organizations (including SMPDC) have utilized Maine Outdoor Heritage Funds for trail planning, mapping, and construction. There are two rounds of funding per year.

<http://www.maine.gov/ifw/programs-resources/grants/outdoor-heritage-fund.html>

Maine DOT's pedestrian and bike program funds trail projects. This program is very competitive and has been used to fund large regional bike and pedestrian projects.

<http://www.maine.gov/mdot/pgafunding/>

### Foundation

<http://quimbyfamilyfoundation.org/>

<http://www.sewallfoundation.org/index.php?page=integrated-well-being>



# MAINE LANDOWNER LIABILITY RIGHTS AND RESPONSIBILITIES

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## Recreational Use Statute



Maine has a long history of providing for public access for not only hunting and fishing but also for other outdoor recreational pursuits. The Maine Legislature formally recognized that tradition with Title 14, Section 159-A, the so-called Recreational Use Statute (the link is provided below and the law is included in an appendix).

<http://legislature.maine.gov/statutes/14/title14sec159-A.html>

The law provides landowners strong protections against liability for the use of their property for recreation. Essentially a landowner assumes no responsibility or incurs any liability if someone uses your property for outdoor recreation. Protections apply whether you provide permission for use or not. The term outdoor recreation is considered in the broadest possible terms and covers a wide range of activities including hiking and biking. It appears that there has not been a successful case against a landowner concerning the liability law.

The Small Woodland Owners of Maine (SWOAM) provided the following as a primer on the law.

<https://www.maineforestry.net/landowner-liability-law>



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# APPENDIX A

TAX INCREMENT FINANCING

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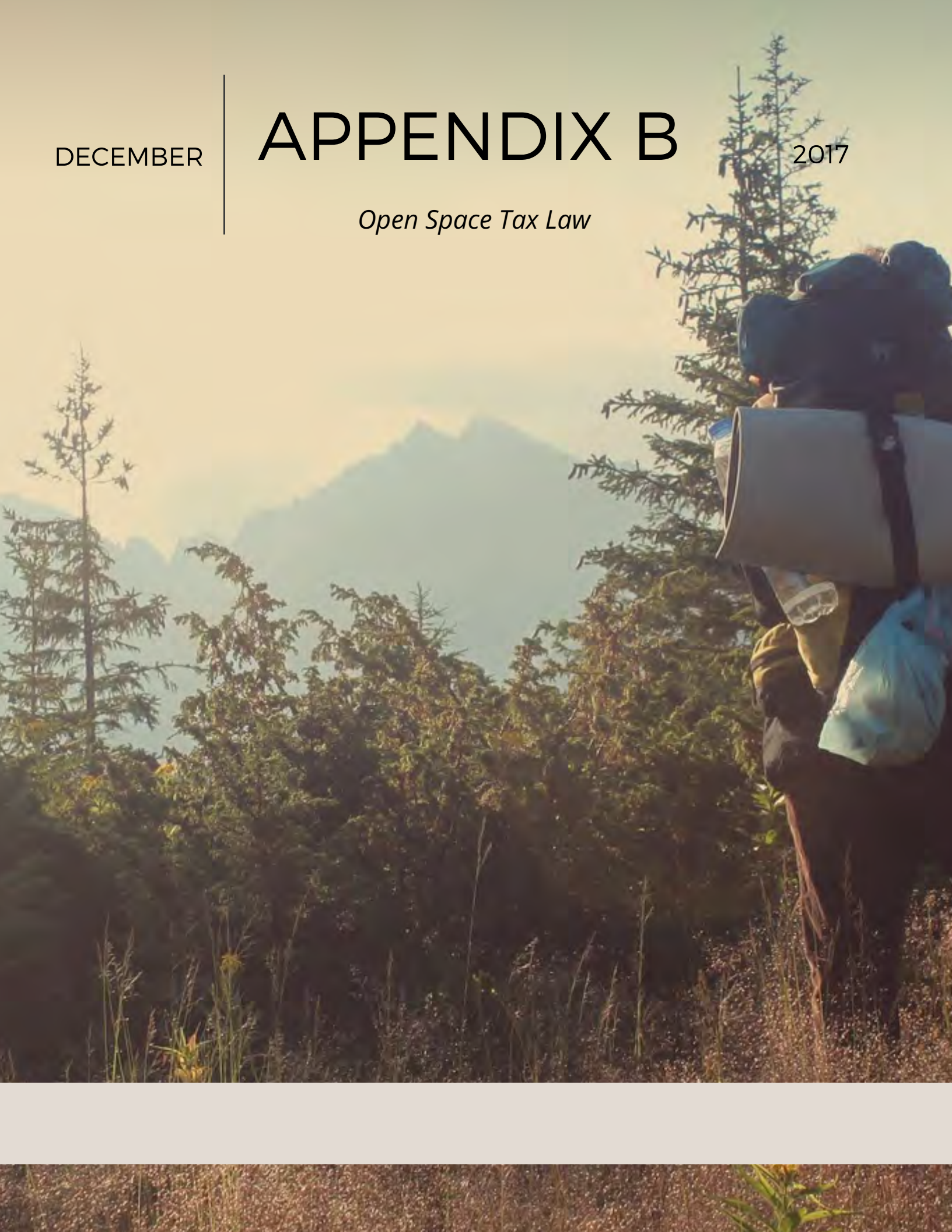


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# APPENDIX B

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*Open Space Tax Law*

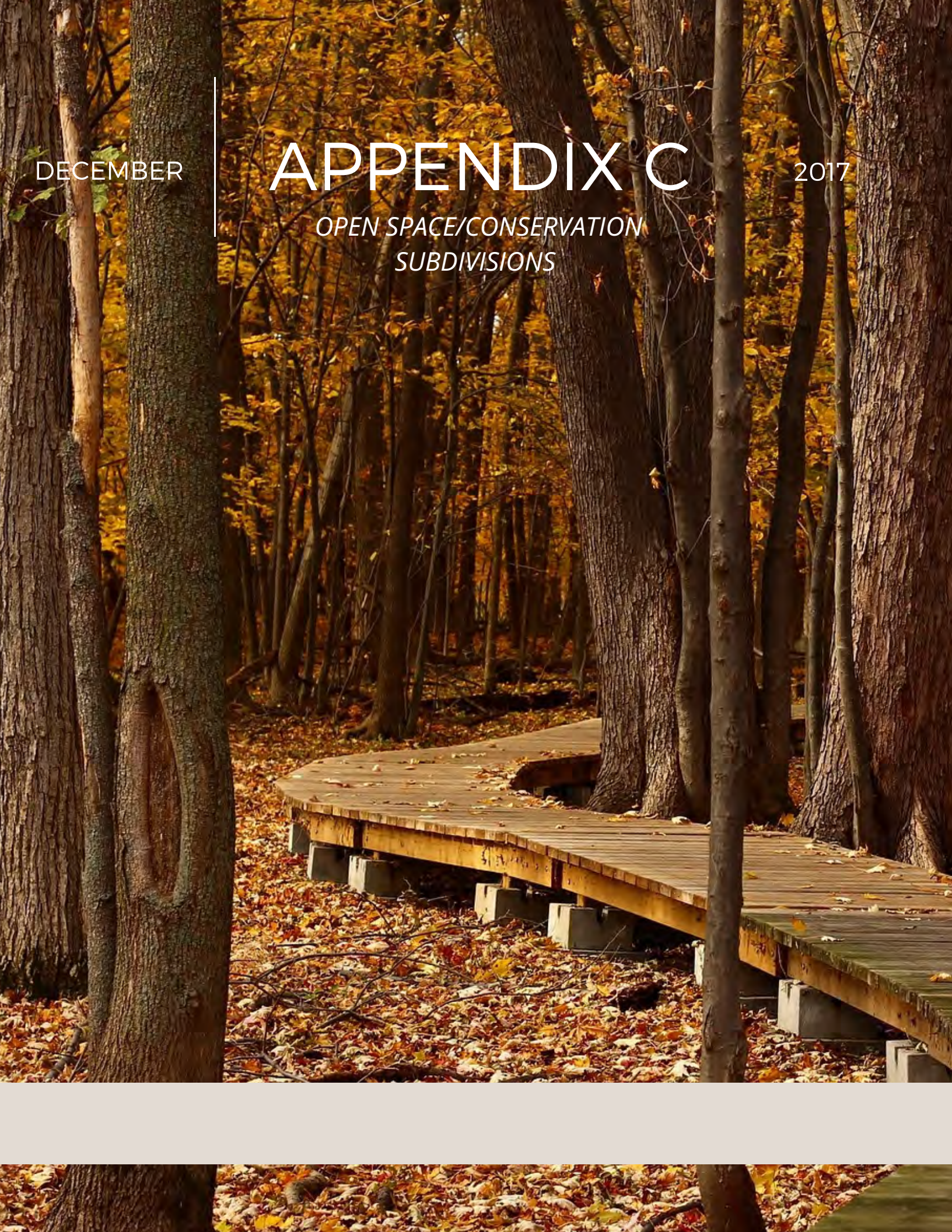


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# APPENDIX C

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*OPEN SPACE/CONSERVATION  
SUBDIVISIONS*



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# APPENDIX D

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*ACCESS AGREEMENTS*



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# APPENDIX E

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*RECREATIONAL USE STATUTE*



