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**STATE OF MAINE
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**Final Report
of the
COMMISSION TO STUDY THE
PROTECTION OF FARMS AND FARMLAND**

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Executive Summary

At the request of the Legislature, the Commission to Study the Protection of Farms and Farmland (herein referred to as “the commission”) brought together current legislators, representatives of agricultural producer associations, and experts in farmland preservation and tax policy to discuss strategies to protect working farms from the impact of development and to maintain a base of commercially viable agricultural land for Maine’s future.

Over the past three decades, the call to take notice of changes in land ownership patterns and secure an agricultural land base has been heard from many quarters. Concerns are, in part, a response to development pressure, particularly in Southern Maine and along the I-95 corridor, but also recognition that the loss of working farms in other regions threatens remaining farms and rural economies. Agriculture’s importance to Maine’s economy is significant and growing.

Increased demand for locally grown food offers promise to farmers throughout Maine. Recent concerns over food safety and high transportation costs offer opportunities for Maine farmers to supply more of the region’s food needs. The advent of climate change may result in a competitive advantage for Maine agricultural producers. Aroostook County is one of few regions in the Northeast with the land base to dramatically increase agricultural production; to produce at the scale needed to site large processing facilities. These factors and others point to the wisdom of protecting Maine’s agricultural land base and establishing policies to encourage agricultural businesses to invest in the future.

Members of the commission are enthusiastic about providing the Joint Standing Committee on Agriculture, Forestry and Conservation with additional information to make sound policy that will successfully preserve farms and farmland in Maine. The commission recommends:

1. Creating a voluntary farmland registry. Farmers would publicly identify parcels of land that they intend to keep in agricultural use or maintain in a manner to be readily returned to agricultural use.
2. Authorizing the Department of Agriculture, Food and Rural Resources (DAFRR) to develop a pilot program for the creation of agricultural districts.
3. Amending the Farm and Open Space Tax Law to: tighten eligibility to avoid inclusion of land that is not truly active farmland; review the treatment of woodland that is included in a parcel of farmland to reflect the intent of the law; and provide state reimbursement to municipalities for tax losses attributable to farmland that becomes eligible for current use taxation.
4. Adopting a state income tax credit for donations of agriculture conservation easements.
5. Adopting a state income tax credit for beginning farmers based on a credit used successfully in Nebraska.

6. Monitoring changes to the federal estate tax and continuing to explore whether there are changes to the estate tax that could facilitate the continuation of land in active farming on the death of the owner.
7. Devoting more resources to purchasing agriculture conservation easements.
8. Requiring a review of state projects and state or federally funded projects to determine if the project will result in the conversion of farmland to a nonagricultural use. Prior to approval of a project that proposes conversion, an impact assessment and consideration of alternatives must be examined. An approval must include mitigation requirements when impact on farmland cannot be reasonably avoided.
9. Prohibiting the use of eminent domain to acquire farmland when the purpose of the acquisition is recreational use or securing aesthetic or therapeutic benefits from the land.
10. Providing more specific guidelines pertaining to farmland protection for implementation of Maine's growth management laws and that the State Planning Office and DAFRR develop a model ordinance for farmland protection as a resource for municipal and regional planning committees.

“Burn down our cities and leave our farms, and your cities will spring up again as if by magic; but destroy our farms and the grass will grow in the streets of every city in the country.”

William Jennings Bryan

I. INTRODUCTION

The Commission to Study the Protection of Farms and Farmland was established in the Second Regular Session of the 123rd Legislature by Public Law 2007, chapter 649, section 11 as part of An Act to Create the Maine Agriculture Protection Act.

LD 1684, An Act to Create the Maine Agriculture Protection Act was submitted to the First Session of the 123rd Legislature and referred to the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF). The original bill proposed:

1. Authorizing the Department of Agriculture, Food, and Rural Resources to designate agriculture protection areas;
2. Directing the department to create land use plans and policies to protect these areas from nonagricultural development pressures;
3. Requiring the State Tax Assessor to consult with the department in determining the valuation of land within the districts;
4. Enacting provisions to minimize the impact of governmental actions on private agricultural properties; and
5. Moving statutory provisions in Title 17 that protect farmers from nuisance suits to Title 7, which contains Maine’s laws pertaining to agriculture and animals.

LD 1684 was a major piece of legislation, which the ACF committee, the bill’s sponsor, and the Commissioner of Agriculture, Food, and Rural Resources agreed needed more time for consideration than the session workload allowed. The bill was carried over to the 2nd Regular Session of the 123rd Legislature and ultimately reported out of committee with an amendment that proposed moving the nuisance protections commonly known as the “Right-to-Farm” law into a chapter in Title 7 entitled the Maine Agriculture Protection Act and establishing the Commission to Study the Protection of Farms and Farmland (Appendix A).

The Commission was charged with developing policy initiatives to protect working farms from the impact of development and to maintain a base of commercially viable agricultural land for Maine’s future. Specifically, the Commission was charged with the following duties:

1. Develop a system to classify farmland that is viable for agricultural production and establish statewide criteria for identifying farmland that warrants the highest order of protection;
2. Explore options and develop a proposal for designating agriculture protection areas. In exploring options, the commission shall review provisions establishing agricultural protection zones or districts in other states;

3. Review eligibility criteria and participation by farmers in Maine’s current use property tax programs and develop recommendations regarding tax policy; and
4. Consider requiring an assessment of potential impacts on agricultural land prior to a governmental action such as a permitting decision or commencement of a public works project.

The 11-member Commission included two members of the Senate, four members of the House of Representatives, two representatives of agricultural producer associations, one representative with expertise in land use policy and knowledge of farmland preservation programs, one representative with expertise in tax policy, and one representative of municipal interests (Appendix B).

Convening of the commission was contingent on the receipt of outside funding. Funding sufficient to cover the cost of four meetings and report expenses was received and the first meeting was held on September 3, 2008. The agenda for each meeting is found in Appendix C.

This report fulfills the Commission’s requirement to submit a report on its review of policy initiatives to protect farms and farmland in Maine. Following receipt and review of the Commission’s report, the Joint Standing Committee on Agriculture, Conservation and Forestry is authorized to submit legislation in the First Regular Session of the 124th Legislature.

II. BACKGROUND

In the last 15 years, Maine has lost more than 800,000 acres of rural land to development; much of this acreage was once farmland. An additional 400,000 acres is likely to change hands in the next 10-15 years due to an aging population of farmers and rural landowners.¹ Over the past three decades, the call to take notice of changes in land ownership patterns and secure an agricultural land base has been heard from many quarters. There was a flurry of studies and legislation regarding agricultural viability and farmland protection in the 1980s. This activity was, in part, a response to development pressure, particularly in Southern Maine and along the I-95 corridor but also a recognition that the loss of farms in regions not experiencing conversion to other use is also a cause for concern.

In 2001, the Department of Agriculture, Food, and Rural Resources (DAFRR) contracted with American Farmland Trust to assist the department in developing strategies best suited to farmland protection in Maine. This two-year policy study brought together farmers, representatives of farm organizations, business professionals, conservationists, planners and researchers as well as representatives of several state and federal agencies. The study culminated in a strategic plan entitled *Saving Maine’s Farmland: A Collaborative Action Plan* published in June of 2003 (DAFRR, 2003).

The mission statement in *Saving Maine’s Farmland* is: “To protect currently active and potentially productive farmland as a means to sustaining economically viable agricultural

¹ “Keeping Maine’s Farmland in Farming”, Maine Farmland Trust Pamphlet 2008

communities.” Members of this study commission making recommendations in this report concur with the nine core principles in the report printed below:

CORE PRINCIPLES²

1. Farmers are stewards of Maine’s rural working landscape.
2. Agriculture provides broad benefits – economic, social and environmental – to Maine’s communities.
3. Agriculture must be actively supported by long-term strategies and public policies.
4. Prime, significant and unique farmland soils are a non-renewable resource that must be protected from conversion to non-agricultural uses.
5. Agriculture should be considered the highest and best use of high quality farmland.
6. Farm income should be on par with other local businesses.
7. Farmers need assistance with business planning, market development, farm transfer and retirement planning.
8. A healthy and sustainable agricultural industry requires a steady influx of new generations of farmers.
9. Active stakeholder relationships at community, regional and statewide levels are necessary to accomplish our Mission.

The DAFRR strategic plan presents actions to be taken by the department and by the department working in partnership with other government agencies and private nonprofit organizations. Many of the actions are directed at strengthening connections between farmland protection and community planning. The State Planning Office (SPO) has adapted the report and distributes it to municipalities in developing and updating local comprehensive plans.

In keeping with its charge, the Commission to Study the Protection of Farms and Farmland examined programs at the state-level pertaining to farmland protection, a multi-town approach in the Unity area known as the Fields and Forests Forever Campaign, and a federal policy designed to minimize impact on farmland. Information on these programs and on farmland protection tools used in other states provide a context for the recommendations in Part V of the report.

A. Conservation easements

The purchase of conservation easements can be an effective tool for farmland preservation. A landowner voluntarily sells an easement to a third party, usually a government agency or private conservation organization. The easement is a deed restriction placed on the land and is usually permanent thus legally binding any future landowners. The intention of a

² Maine Department of Agriculture, Food and Rural Resources. *Saving Maine’s Farmland: A Collaborative Action Plan*. June 2003.

conservation easement is typically to prevent development on the land and to keep the land available for recreational or open space use.³

Agricultural conservation easements are a specific type of conservation easement that is designed to protect a farm's natural resources and keep the land available for agricultural use. Public access for recreation may or may not be guaranteed. Development rights on the farm are purchased using the difference between the appraised market value of the land with all rights intact and the value of the land as farmland to determine price. Flexibility in agricultural easements is essential and specific to each property protected. Typically, an easement allows development for farm purposes (for example, structures such as barns, sheds or fencing). The easement may allow building additional residences for the farmer's family or housing for farm workers. Alternatively, the area immediately surrounding the farm residence may be excluded from the protection area. The Land for Maine Future program, the USDA, Maine Farmland Trust and local land trusts often work cooperatively to purchase easements from a farmer. The holder of the easement is responsible for monitoring and enforcing the terms and conditions in the easement. The new Voluntary Municipal Farm Support Program described below creates a standardized process for municipalities to enter into agreements with farmers and hold "qualified easements" on farmland.

Land for Maine's Future (LMF)

The LMF program was established in 1987 to provide a framework for the acquisition of lands for conservation, outdoor recreation and wildlife through fee acquisition or the purchase of development rights. Farmland has been included in the factors for determining state significance since enactment.⁴ Although there were some farm projects between 1987 and 1999, in 1999 water access and farmland were specifically included in the bond language that provides funding for purchases. In 2005, 10% of the LMF money was set aside specifically for farmland projects. This had the effect of separating the competitive processes so that farm projects did not compete with non-farm projects. LMF has completed 26 farmland conservation projects protecting 7,551 acres of farmland. As of November 2008, LMF has 10 additional farmland projects underway with the potential of conserving an estimated 1,639 acres.⁵

LMF works in partnership with Department of Agriculture, Food and Rural Resources (DAFRR) to solicit federal and private money and identify farmland projects. Criteria and weighting sheets have been developed to score prospective farmland projects (Appendix E). Up to 25 points are awarded for productive farm assets including soils; 25 points for current and emerging threats from conversion to non-farm purposes; and up to 25 points for significance to regional and local markets. Lesser points are also awarded for open space and public benefits (up to 10 points) and for community planning and support (up to 15 points). Since 1999,

³ 33 MRSA, §476, sub-§1 defines a conservation easement as "a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property."

⁴ 7 MRSA §6207, sub-§2, ¶A

⁵ Land for Maine's Future Program, Maine State Planning Office

DAFRR has employed a farm preservation specialist who screens prospective farmland protection projects and helps prepare project applications to put forward to the LMF board. The specialist also assists the applicant in finding a land trust to partner on the protection project. This expertise, and the use of screening criteria prior to submission to LMF, has greatly increased the success rate for farmland protection projects (see Appendix F for screening criteria).

The classic land protection project is driven by economic pressures on a farmer combined with an active real estate market for alternative use. Where development pressure is greatest, the difference between the land's market value and its value as farmland is the greatest. Sale of the development rights in this situation can offer a significant monetary benefit to the farmer. The revenue received can be used to pay down debt, buy equipment or make other improvements to the enhance profitability of a farm operation. In the absence of development pressure, other tools to decrease production costs and increase farm profitability are more useful.

LMF projects have matching requirements and LMF works to ensure that all available funding is fully utilized, including federal money. Raising private money for conservation of lands for recreation and wildlife habitat has been very effective; farmland preservation has been more difficult.

Maine Farmland Trust (MFT)

MFT, formed in 1999, is a private nonprofit statewide land trust focused exclusively on farmland. The mission is: to protect and preserve Maine's farmland; to keep agricultural lands working; and support the future of farming in Maine.⁶ MFT is particularly concerned about the large amount of farms that will be ready to transition in the next 10 years due to the age of farmers, as well as high development pressures that exist in areas where small and medium sized farms serving local markets. Since 1999, MFT has helped preserve 10,000 acres of Maine farmland; the MFT goal is to preserve permanently 100,000 acres by 2012.⁷

MFT's primary tool for preserving agriculture is working with local land trusts to purchase agricultural easements. The difference between the farmland value for the land and the market value generally determines price. MFT accepts donated easements and educates potential donors of advantageous treatment of such charitable contributions in the federal tax code.

Recently, MFT has undertaken a more proactive process, "Buy, Protect, Sell". The idea is to buy the land, put an easement on it, and then sell it to someone who wants to farm the land. These projects typically require local fundraising. After sale of the development rights, the land becomes affordable for farming. MFT maintains a database of farmers seeking new land through its FarmLink program. Two "Buy, Protect, Sell" projects have been completed and more are in process.

⁶ www.maineFarmlandtrust.org/

⁷ Maine Farmland Trust News, vol. 6 no. 1, Spring 2007; Maine Farmland Trust: "Keeping Maine's Farmland in Farming

Voluntary Municipal Farm Support Program

The Voluntary Municipal Farm Support program⁸ establishes a process for municipalities to hold a “qualified” agricultural conservation easement that restricts development and compensates the land owner with payments equaling up to 100% of the annual property taxes on land and buildings subject to the easement. The minimum time period in statute for such an easement is 20 years. A municipality could have initiated a similar process on its own prior to passage of the law in 2007. However, under the new law DAFRR is directed to develop rules to implement this program. As a part of the rulemaking process, municipalities were surveyed. Of the 98 towns that responded by August 30, 2008, 64 said they were concerned about protecting farmland. This major substantive rule will be submitted to the Legislature in early January 2009.

Maine Farms for the Future Program (FFF)

The FFF program administered by the DAFRR uses a non-development agreement to protect farmland. The two-phase program combines a competitive grant process with the non-development agreement.⁹ In the first phase of the program, the DAFRR and Coastal Enterprises Inc, the program administrator, help the farmer assemble a team of advisors to develop a business plan. Farmers who choose to apply for the second phase compete for investment support grants to implement their business plan. A grant may not exceed 25% of the investments identified in the plan with a cap of \$25,000. Since 2001, the program has assisted 170 farm families (Phase 1 and Phase 2); the state investment of \$1.57 million has leveraged a total \$7.74 million from the 75 farm families granted funds in Phase 2. The Phase 2 grants are most commonly used for new technology, increased production levels or efficiency, new products and new market channels.¹⁰

Farmers who receive the Phase 2 investments sign a seven-year non-development agreement with DAFRR. The agreement is not recorded in the registry of deeds therefore it does not affect the title and remains a relatively adaptable farmland protection tool. If proposed construction is not identified at the time of the agreement, an amendment is necessary. The DAFRR monitors these agreements to ensure that they provide flexibility to the farm operation and protect the land from conversion to nonagricultural use. Farmers who are reluctant to enter into a permanent easement find the seven-year agreement acceptable. The increased profitability realized by farmers participating in FFF is likely to keep the land in farming far beyond the seven-year agreement period.

B. The Growth Management Act

Comprehensive planning under the Growth Management Act¹¹ provides a tool to municipalities to manage future land use and prevent development sprawl through zoning. The intent of the law is “to find ways to continue to build neighborhoods and commercial centers where they make the most sense in order to accommodate and stimulate economic growth, and,

⁸ 7 MRSA, chapter 2-C

⁹ 7 MRSA c. 10-B

¹⁰ Evaluation Report to DAFRR and CEI, January 2008: Farms for the Future Program

¹¹ 30-A MRSA c. 187, sub-c. 2

at the same time, conserve large rural territories as working landscapes and natural gems.”¹² Since enactment in 1988, more than 260 towns have developed comprehensive plans including most towns experiencing growth. The development of comprehensive plans by towns is voluntary, as is submission of the plans to the SPO.

The Growth Management Act establishes state goals to provide direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. Included is the goal to “safeguard the State’s agricultural and forest resources from development which threatens those resources.”¹³

The chapter 208 rule recently revised by SPO establishes review criteria for comprehensive plans and includes definitions for “critical rural area” and “rural area” (see Appendix G). According to SPO, the majority of comprehensive plans do address agriculture.¹⁴ SPO developed a planning manual for municipalities to use; DAFRR was involved in writing the section relating to agriculture. SPO’s role relates to reviewing plans for consistency with state law, but implementation of adopted plans is up to the towns.

Regional councils of government work with municipalities developing comprehensive plans. For example, the Southern Maine Regional Planning Commission worked on 20 comprehensive plans in the last 5-6 years.¹⁵ Councils of government help towns to inventory and prioritize farmland to try and preserve it. In southern Maine and in some other areas, conservation commissions are active and have been more successful in preserving open space rather than farmland. However, recently, there has been increased interest in local agriculture because of increased energy costs and food safety concerns. One obstacle for farmers can be over-zoning, for example, traffic problems preventing farmers from setting up farm stands.

C. Current Use Taxation

Article IX, Section 8 of the Constitution of Maine generally requires property taxes to be “... apportioned and assessed equally according to the just value [of the property.]” “Just value” is generally equivalent to fair market value. The “just value” of farmland is affected not only by its productivity but by its location in the state and its desirability for conversion to house lots or for other development. Farmland with shore frontage is particularly subject to inflationary pressures on value.

In 1970, the Maine Constitution was amended to permit the Legislature to provide for the valuation of the certain types of real estate based on the current use of the real estate “... in accordance with such conditions as the Legislature may enact.” Current use valuation is intended to base property taxes on the value of the land at its current use rather than incorporating any market influences resulting from pressures to change the use of the land or extrinsic factors such as shore frontage or scenic views. Pursuant to this authority, in 1971 and 1972, the Legislature

¹² Comprehensive Planning: a manual for Maine Communities, SPO 2005 p. xi

¹³ 30-A MRSA §4312, sub-§3, ¶ H

¹⁴ Presentation by Sue Inches, Deputy Director, SPO, September 3, 2008.

¹⁵ Presentation by Paul Schumacher, SMRPC, September 3, 2008.

enacted The Farm and Open Space Tax Law (FOS)¹⁶ and the Tree Growth Tax Law (TGTL)¹⁷ to implement current use taxation. In 2005 the Constitution was amended to add to the Legislature’s “current use” authority waterfront land used for or supporting commercial fishing activities.

Farmland eligible for FOS current use valuation is defined as “[a] tract or tracts including woodland and wasteland of at least 5 contiguous acres on which farming or agricultural activities have contributed to a gross annual farming income of at least \$2,000 per year in one of the 2 years or 3 of the 5 years preceding application for classification.”¹⁸ DAFRR, with the assistance of the Bureau of Revenue Services publishes biennial guidelines for use by municipalities in determining current use values for various types of farmland. However, the ultimate authority on the determination of valuation is the municipal assessor (Appendix H). The penalty for change of use or withdrawal from FOS valuation is the difference between current use taxes and just value taxes for the 5 years prior to the change of use or withdrawal. This is the minimum penalty permitted by the Maine Constitution.¹⁹

The state Bureau of Revenue Services gathers information from municipalities annually regarding property taxes. The most recent data is for 2007.²⁰ This report indicates that in 2007 there were 3,968 parcels of land in the state with a total of 205,237 acres that were taxed under the FOS law. More than half (52.8%) of the total acres, consisted of woodland included with cropland acreage. There were 31 parcels containing a total of 1,607 acres withdrawn resulting in total penalties assessed by municipalities of \$41,729.

D. Fields and Forests Forever

The Fields and Forests Forever campaign is a joint effort of the Friends of Unity Wetlands, Maine Farmland Trust and DAFRR to preserve farmlands comprised of prime and important agricultural soils and key ecological features in a seven-town area that includes parts of Albion, Benton, Burnham, Clinton, Freedom, Unity and Unity Township. Staff from the Maine Natural Areas Program and the Department of Inland Fisheries and Wildlife identified and mapped deer wintering yards and rare, threatened and endangered species habitat. Farming and soil layers were added to show the coincidence of these factors to prioritize farmland parcels for protection within the 43,000 acre focus area.

The major focus of this project is to restrict non-farm development on approximately 2,000 acres of significant farmlands within the focus area. Landowners with eligible farmland

¹⁶ 36 MRSA, c. 105, sub-c. 10

¹⁷ 36 MRSA, c. 2, sub-c. 2-A

¹⁸ 36 MRSA §1102 sub-§4

¹⁹ In comparison, under the TGTL the state Bureau of Revenue Services calculates current use values for each county or region using a formula provided by statute based on a capitalization of value approach. The penalty for withdrawal of land from TGTL valuation is much higher than the constitutional minimum. While municipalities are reimbursed by the State for a portion of the taxes foregone under the TGTL, there is no state reimbursement under the FOS law.

²⁰ State of Maine. Maine Revenue Services. Property Tax Division. *2007 Municipal Valuation Return Statistical Summary*. 2008.

were able to sell development rights in exchange for granting an agricultural conservation easement to the Friends of Unity Wetlands. These easements will permanently protect the property for farming and forestry, restricting future development or other nonagricultural uses. A conservation plan, developed by USDA's Natural Resources Conservation Service, helps secure LMF and federal funding for each farm project. Overall, this multiple farm protection effort transcends municipal boundaries and could be used as a model for agricultural districts.

E. The Farmland Protection Policy Act (FPPA)

The federal Farmland Protection Policy Act²¹ was enacted as part of the 1981 Farm Bill. Its intent is to minimize the extent to which federal activities contribute to unnecessary and irreversible loss of farmland. The FPPA applies only to federal projects and projects receiving federal funds. It requires examination of a project's potential impact on prime farmland, unique farmland and farmland of statewide or local importance as defined in the Act. These definitions are included in Appendix I along with other definitions relevant for this study.

The Natural Resources Conservation Service (NRCS) within the USDA is charged with oversight of the FPPA. NRCS has developed a form to be used in rating a project's impact on farmland conversion the AD-1006 (Appendix J). The form is based on a land evaluation and site assessment (LESA) system. Completion of the form results in a score that indicates the need to look for alternatives. Upon request NRCS can assist an agency in completing site assessments and evaluating alternatives. NRCS estimates that less than ten percent of project assessments include comparison rankings for alternatives.²² Approval by NRCS is not needed prior to undertaking a project nor is an agency required to choose the alternative with the least impact on farmland.

Agencies are required to submit the completed AD-1006 to NRCS for reporting purposes. However, NRCS has no way of knowing the number of projects that fall under the FPPA or the extent to which the agencies initiating these projects have complied with the assessment process. NRCS's annual FPPA report for FY 2007 lists zero farmland acres proposed for conversion in a number of states; this seems unlikely. The report indicates 375 acres of important farmland in Maine were proposed for conversion.²³ NRCS rarely has a record of an agency's final decision in locating a project and no means of determining the effectiveness of the FPPA.

In Maine, most state highway projects are funded in part with federal dollars. The Maine Department of Transportation completes the NRCS rating form for all of the projects with the potential to impact farmland and does attempt to look at alternatives. For example, DOT has looked at alternative sites since 1999 for a series of corridors for the current proposed Presque Island bypass project in Aroostook County; and meetings with local farmers and DOT have proved productive.

²¹ 7 U.S.C. 4201-4209

²² Presentation by Bill Yamartino, NRCS, 29 October 2008.

²³ USDA, NRCS, Farmland protection Policy Act Annual Report for 2007, March 2008, p. 4

III. AGRICULTURAL PROTECTION DISTRICTS

LD 1684 had proposed authorizing the DAFRR to designate agriculture protection districts (APDs). As proposed, farmers would apply to the department for this designation and would realize certain benefits if the department determined that eligibility criteria were met. (See Appendix K for proposed provisions in LD 1684.) Testimony at the public hearing on LD 1684 generally supported the concept of APDs but criticized the proposal because it lacked any mechanism for public input or municipal involvement. The bill proposed establishing eligibility criteria in statute, imposing restrictions on local control and mandating valuation by the State Tax Assessor. These provisions were removed from the bill prior to enactment.

Based on support for the APD concept, the Joint Standing Committee on Agriculture, Conservation and Forestry directed the study commission to review agricultural district programs in other states and develop a proposal for designating agriculture protection areas. At the Commission's first meeting, Bob Wagner, a Senior Director with the American Farmland Trust, gave an overview of APDs. The background in this section is based on this presentation and other materials available through the Farmland Information Center.²⁴

APDs are special areas designated to protect and encourage commercial agriculture by providing a package of benefits to participants. Districts are typically authorized by state legislatures and voluntarily formed by farmers in areas where farms cluster. Specifics vary across programs as they are generally tailored to the local environment. Common elements include: enhanced right-to-farm protections; economic benefits through property tax relief programs; protections from eminent domain; and limited state development of infrastructure projects. Farmers participating in agricultural districts usually have to meet some type of minimum thresholds relating to acreage and soil quality.

Agricultural districts involve some delineation of a specific area or areas but parcels within a district are not necessarily contiguous. For example, a district could consist of 8 parcels of land owned by 4 different farmers and totaling 600 acres. No one parcel might meet the minimum acreage requirement but together the threshold would be exceeded. Although the Unity Wetlands Focus Area is not a state-designated ADP, the map of this project in Appendix L illustrates how a district might be delineated.

Currently, there are 19 priority agricultural district programs in 16 states. The first program was the California Land Conservation Act of 1965, known as the Williamson Act, designed to preserve farmland and open space and promote efficient urban growth.²⁵ Participating landowners sign renewable 10 year contracts with participating counties to restrict use of their land to agriculture and open space. The land is assessed at its agricultural use value resulting in significant property tax relief for the landowners. The state reimburses local governments for the loss of property taxes. Approximately 16 million acres of agricultural land is enrolled representing about half of the state's agricultural land and one-third of all privately

²⁴ Farmland Information Center. Fact Sheet: Agricultural District Programs. October 2007

²⁵ David E. Hansen and Seymour I. Schwartz, "Prime Land Preservation: The California Land Conservation Act" *Journal of Soil and Water Conservation*, September-October 1976 pp 198-203

owned land.²⁶ In fiscal year 2007-08, California spent about \$39 million a year in tax reimbursements.²⁷ New York's Agricultural Districts Law, enacted in 1971, was the second program in the country. The New York program makes differential assessment available to farmers and provides protection from nuisance suits, local ordinances that negatively impact farming and eminent domain.²⁸ By 2001, there were 343 agricultural districts protecting 22,000 farms and more than 8.5 million acres.²⁹ Other states have enacted APD programs with similar parameters.³⁰

Several studies undertaken in Maine have recommended the establishment of agricultural districts here.³¹ This study commission discussed various eligibility criteria and benefits appropriate for an APD program in Maine. However, there was not consensus on establishing a program at this time (see Recommendation 6). Acreage thresholds and proximity to other parcels within a district would need to be flexible to reflect the variations within the state, i.e. large blocks of farmland in Aroostook and relatively small acreages in Cumberland or York. Inclusion of forested land and land that is suitable for farming but not currently in agricultural use also warrants discussion.

An APD program identifies land for protection based on its potential productivity as farmland and the landowner's desire to continue farming. Once identified, available resources can be focused on protecting the land and enhancing the profitability of farm operations within the districts. The importance of a critical mass of farms in maintaining the infrastructure necessary for an agrarian economy is well recognized. APDs are designed to secure a critical mass of protected land. Using a carefully crafted definition of farmland or participation in a current use farmland tax program to focus resources may not be as effective in maintaining a critical mass.

IV. MITIGATION PROGRAMS

Programs to mitigate farmland loss are not widely used around the country but they provide another model for protecting farmland and providing a source of funds for local or state preservation programs. Mitigation practices are often used to protect and restore wetlands. Mitigation includes: avoiding the impact by not taking a certain action; minimizing the impact by limiting the magnitude of the action and its implementation; rectifying the impact by repairing or restoring the impacted environment; reducing or eliminating the impact over time by preservation and maintenance; and compensating for the impact by providing substitute resources

²⁶ "Agricultural Districts: A Tool for Protecting Local Agriculture" *LandWorks Connection* Summer 2002 vol. 5 (3)

²⁷ California, Department of Conservation website: <http://www.conservation.ca.gov/DLRP/lca/Pages/Index.aspx>

²⁸ "Agricultural Districts: A Tool for Protecting Local Agriculture" *LandWorks Connection* Summer 2002 vol. 5 (3)

²⁹ American Farmland Trust: "New York Agricultural Landowner Guide to Tax, Conservation and Management Programs"

³⁰ Agricultural districts are used in CA, DE, IL, IA, KY, MD, MN, NJ, NY, NC, OH, PA, TN, UT and VA.

³¹ For example, see Report of the Maine Food & Farmland Study Commission to the Governor and the 109th Maine Legislature. June 1979; *Agriculture in Maine: A Policy Report*. Submitted to the Food and Farmland Study Commission by Maine State Planning Office. March 1979; and *Purchase and Transfer of Development Rights for Maine Farmland: Options, Costs and Recommendations*. Prepared for the Maine Department of Agriculture, Food and Rural Resources. July 1985.

or environments.³² The FPPA's intent is to mitigate the loss of farmland caused by projects using federal funds. Agencies sponsoring the project are required to contact the NCRS so that a site assessment is conducted. If the level of farmland loss reaches a certain level, the agency is supposed to search for alternative sites although there is no requirement for this to occur. The FPPA does not go as far as requiring a mitigation fund.

A small number of states have developed mitigation programs to mitigate the loss of farmland. In addition to Massachusetts' conservation easement program, a Massachusetts Executive Order issued in 1981 directs state agencies to avoid and mitigate against the conversion of farmland. EO 193 requires that state and federal funds administered by the state cannot be used to convert agricultural land to other uses when feasible alternatives are available.³³ The Massachusetts Environmental Policy Act (MEPA) goes a step further by requiring state agencies to study alternatives to the proposed project and developing enforceable mitigation commitments which become permit conditions if the project is approved. MEPA applies to projects over a certain size proposed either by a state agency or by a municipality or private organization requiring a permit, financial assistance or land transfer from state agencies. For these projects, an Environmental Impact Report is required if the proposal directly alters 25+ acres of farmland and converts agricultural land with soil classified as prime, unique or state-important to a nonagricultural use. The result for some projects being permitted is that the developer/agency may be required to protect a parcel of farmland similar to the land being developed and/or pay compensation equal to the cost of protecting comparable agricultural land. The Massachusetts Department of Food and Agriculture estimates that since 1991, \$1.3 million has been contributed to farmland preservation efforts through mitigation.³⁴

Vermont has a similar program to Massachusetts except that the Vermont land use law, Act 250, is a broader environmental law that also encompasses farmland preservation. Developers must apply to the District Environmental Commission for a permit for specific types of projects. In addition to other environmental factors, the Commission must find that the proposed project does not significantly reduce the potential of primary and secondary agricultural or forestry soils on the site. If the applicant can prove that there are no feasible alternatives to the project impact, then mitigation is considered. Any mitigation payment is based on the number of acres developed, the cost of purchasing development rights to agricultural lands in the area, and the quality of soil.³⁵

³² Mitigation as defined by the National Environmental Policy Act. Cited in American Farmland Trust. "Mitigation of Farmland Loss" September 2002

³³ See Appendix M for EO 193.

³⁴ American Farmland Trust. "Mitigation of Farmland Loss" September 2002

³⁵ American Farmland Trust. "Mitigation of Farmland Loss" September 2002

V. FINDINGS AND RECOMMENDATIONS

The commission's recommendations fall into three categories:

- A. Identifying and prioritizing farmland for protection from conversion to nonagricultural uses;
- B. Using tax policies to encourage continued agricultural use of the land; and
- C. The role of state and local governments in maintaining an agricultural land base.

Identifying the land to which these protections and benefits would apply occupied a significant portion of the commission's discussions. While recognizing that agricultural district programs have been an effective strategy in focusing resources and protecting farmland in other states, commission members were reluctant to recommend authorizing such a program in Maine. One concern with the district approach was that some farmers would be excluded from participating because of the farm's location. An example of this would be a farmer with acreage below the threshold for a district or geographically isolated from other farms wanting to participate. Near term budget constraints was another reason for hesitation. With limited financial resources it is difficult to offer incentives sufficient to attract participation in an agricultural protection district.

Although the commission was charged with developing criteria to identify farmland that warrants the highest order of protection and a proposal for designating agriculture protection areas, the creation of a voluntary farmland registry was endorsed instead.³⁶ Some members see the registry as a precursor to the creation of districts – revealing clusters of agricultural activity and a willingness to be recognized. In the commission's concluding discussion there was support for authorizing DAFRR to establish a pilot agricultural district program.

Recommendation 1: The commission recommends the creation of a voluntary farmland registry. A registry would allow farmers to publicly identify parcels of land that they intend to keep in agricultural use or maintain in a manner to be readily returned to agricultural use.

Eligibility criteria and a process for registering land could be established in statute or by DAFRR through rulemaking. The commission proposes that land eligible for registration include parcels of five acres or larger, classified as prime farmland, land of statewide or local importance, or unique farmland by the USDA's Natural Resources Conservation Service. In counties where farmland of local importance has not been identified, a determination that the land is in active agricultural use would need to be made. The Maine Soil and Water Conservation Districts are logical entities to work with the department in developing the criteria and verifying a parcel's eligibility for registration.

³⁶ P.L. 2007, c. 649, §10, sub-§ 4, ¶¶ A & B

The commission recommends that the department develop a registration form and allow registration by either the landowner or the person leasing the land for agricultural use with the endorsement of the landowner. The applicant would submit the form to the municipality in which the parcel is located or the Land Use Regulation Commission (LURC) for farmland in LURC's jurisdiction. The applicant would also submit a copy to the DAFRR. Legislation establishing a registration process could authorize a municipality to charge a fee to cover the anticipated cost of maintaining a local registry.

A registry could serve multiple purposes. As a statement of intention to continue farming, registration could assist the department in identifying areas with a possible interest in the formation of an agriculture district. It could also facilitate communication among farmers and increase public awareness of local agriculture. Linking certain benefits and protections to registration would be possible and provide an incentive to register. Such incentives might be a preference built into the scoring system for LMF projects or in the review process for applications to the FFF program.

Municipal planning boards would benefit from the identification of land likely to continue in agricultural use and could readily contact farmers and landowners who lease to farmers to invite their participation in land use discussions. Requiring disclosure prior to the sale of property abutting farmland becomes more feasible when the requirement applies to land abutting registered farmland.

Recommendation 2: The commission recommends authorizing DAFRR to develop a pilot program for the creation of agricultural districts.

The premise for the Maine Agriculture Viability Act of 1985 continues to be valid today. The Act stated that:

- Regional variations in the State's agricultural economy exist because of differences in climate, soil, availability and cost of productive land, and access to infrastructure and markets;
- Opportunities and constraints facing farmers change in response to scientific and technical advances, consumer preferences, and input costs; and
- A healthy agricultural economy depends on a timely response by farmers to these changing opportunities and constraints.

The Maine Agricultural Viability Act of 1985 directed Maine's Commissioner of Agriculture to review and identify opportunities and constraints in selected regions of the State. It envisioned the department subsequently administering programs to optimize the effectiveness of each in responding to regional needs. (See Appendix N for the Maine Agricultural Viability Act.)

The commission acknowledges the benefits of a regional approach to supporting and promoting agriculture. DAFRR is encouraged to continue its leadership and cooperation with local and regional initiatives to protect farmland and enhance the profitability of farming. The

commission recommends that the department be authorized to establish pilot agricultural districts as resources allow.

In a period of shrinking revenue and budget cuts throughout state government, staff resources available to assist in the establishment of districts and financial incentives to encourage participation will be limited. The comprehensive approach to farmland protection and farm viability offered in many of the 16 states with agricultural district programs is probably beyond Maine's reach at this time. However, a pilot program could demonstrate the effectiveness of a district approach and offer experience on which to refine a model for the creation of other districts as interest arises and resources allow.

Recommendation 3: The commission recommends that the following changes to the Farm and Open Space Tax Law be considered:

- **Tighten eligibility for the program in order to avoid inclusion of land that is not truly active farmland;**
- **Review the treatment of woodland that is included in a parcel of farmland to reflect the intent of the law; and**
- **Provide State reimbursement to municipalities for tax losses attributable to farmland that becomes eligible for current use taxation.**

Numerous analyses over the last 20 years have concluded that the Farm and Open Space program is underutilized by Maine farmers. Reasons identified for this situation are lack of knowledge of the way the program works, fear of withdrawal penalties, reluctance to involve government in land use decisions and the fact that in many areas of the state, there is not a great difference between the just value of the land which forms the ordinary basis for property taxes and the current use values used under the FOS laws. The commission addressed several specific concerns regarding the operation of the FOS laws and makes the following recommendations:

Tightening eligibility. The commission recommends that the farm income factor for eligibility for FOS classification be amended to require that at least 50% of the gross annual farming income required must be from cash sales of agricultural products as defined in the Maine Agriculture Protection Act.³⁷ This definition excludes "...trees grown and harvested for forest products." This tightening will address situations identified to the commission where land with marginal farming activities was classified under the FOS based on the value of harvested forest products. This subversion of the intent of the FOS law results in landowners receiving the benefit of current use taxation with a potentially greatly reduced penalty for change of use and deprives the municipality of any reimbursement for the land. Any statutory change in this regard must ensure that the cash sales requirement does not exclude land leased to a farmer for farming activities.

Treatment of woodland. In addition to tightening the income eligibility requirement, the commission recommends that the Legislature consider whether to amend the FOS law

³⁷ 7 MRSA §152.

to remove, for future applications, all or a portion of woodland from inclusion in a parcel of current use farmland, especially if such woodland could qualify for current use taxation under the Tree Growth Tax Law.

Reimbursement of municipalities. The commission recommends that once eligibility is tightened and the treatment of woodland is resolved, the state should reimburse municipalities for property tax losses based on the difference between the current use value of the farmland and the state valuation figures for farmland for the municipality. Some commission members recommend making this treatment prospective to reduce the cost for the state and to help alleviate the reluctance of municipal assessors to encourage the FOS classification of land. Some commission members believe that restricting state reimbursement for future applications would unfairly penalize those municipalities that have actively encouraged participation in the program. Reimbursement recognizes that preservation of farmland is a significant state policy and that the cost should be borne statewide rather than just by the municipalities where farmland is located.

The commission recognized that making changes in eligibility for the current use laws has historically created discomfort among current and potential program participants. Consideration should be given to whether changes should be made only with regard to new entrants into the program or whether withdrawal penalties can be lessened for prior participants.

Recommendation 4: The commission recommends the adoption of a state income tax credit for the donations of farmland preservation easements.

In 2007 the Legislature considered LD 544 which would have provided a state income tax credit based on amounts claimed as deductions on a federal income tax return for qualified charitable donations of conservation (including farmland) easements. The estimated fiscal impact of that bill was \$400,000 to \$800,000, and the bill died on the Special Appropriations Table. The commission recommends resubmission of this proposal and restricting it to farmland preservation easements only to reduce the fiscal impact. It is important that the credit be refundable and transferable as provided in the Committee Amendment to LD 544.

Recommendation 5: The commission recommends the adoption of a state income tax credit for beginning farmers based on a credit used successfully in Nebraska.

Nebraska has a state income tax credit for owners of agricultural land who rent or lease to beginning farmers. The credit is equal to 10% of the cash rent or 15% of the share crop rent received over 3 years. The beginning farmer can receive a credit for the cost of a financial management class up to \$500. The Nebraska Department of Agriculture operates a Beginning Farmer Connections program to match up farmers with persons who want to begin farming.

The commission recommends the adoption of a Maine income tax credit similar to the one in Nebraska. Maine already has a “Farm Link” program that matches up prospective new farmers with existing farmers who are looking to sell or lease their land for farming. This

program works well, but its success could be enhanced by providing an income tax credit as an incentive.

Recommendation 6: The commission recommends that the Legislature and DAFRR monitor changes to the federal estate tax and continue to explore whether there are changes to the Maine estate tax that could facilitate the continuation of land in active farming on the death of the owner. Maine’s estate tax is based on the federal estate tax. However, Maine has not conformed to recent federal changes that phase down the federal tax until it is eliminated in 2010.³⁸ While estates of less than \$3.5 million are currently exempt from the federal estate tax, the Maine exemption is only \$1 million.

Because of the fluidity of the federal estate tax, it is difficult to know what the impact on Maine will be even in the near-term. It is also not clear whether the Maine estate tax is a significant barrier to maintaining farmland in active farming. Therefore, the commission recommends that the Legislature and the administration track estate tax changes throughout the next few years to identify any potential changes that will have an impact on the preservation of farmland. Maine estate tax policies should encourage the passing of farmland through generations and should recapture any estate tax preferences if the land is subsequently converted to other purposes.

Recommendation 7: The Commission recommends that more resources be devoted to purchasing agriculture conservation easements.

The purchase of development rights is a tool to maintain a land base available for farming and affordable for farmers. This tool is particularly effective in areas experiencing significant development pressure. Statutory language authorizes use of the LMF Fund to acquire interest in farmland. Recent bills have specified an amount of bond proceeds to be used for farmland protection.³⁹ This sets aside a pot of funding for which only farmland projects compete. With many excellent projects competing for these funds, the commission recommends that future LMF bonding proposals designate a higher percentage of the total for farmland projects.

Imposing mitigation impact fees as proposed in Recommendation 2 could provide a match to other funding sources and increase the acreage protected. Maine Farmland Trust and other land trusts provide willing partners to work with DAFRR on creative projects to secure farmland in many areas of the state.

Recommendation 8. The commission recommends requiring a review of any state project or state or federally funded project to determine if the project will result in the conversion of farmland to a nonagricultural use. Prior to approval of any project requiring review, an impact assessment and consideration of alternatives to minimize the impact must be undertaken. An approval must include mitigation requirements when impact on farmland cannot be reasonably avoided.

³⁸ Under current federal law, the federal estate tax returns in 2011 at the 2001 pre-phasedown levels. Changes to this schedule are likely at the federal level. However, it is not clear at the present time what changes will be made.

³⁹ PL 2007, c. 39, Pt E §E-5, sub-§4; P.L. 2005, c. 462, Pt B, §B-5, sub-§5

This recommendation parallels the intent of the federal FPPA described in the background section of this report. The purpose is to minimize the unnecessary and irreversible conversion of farmland using state or federal funding. Unlike the FPPA, this recommendation includes a mechanism for realizing the intent of the proposal. The mechanism proposed is review under the Site Location of Development Law⁴⁰ or the Natural Resources Protection Act (NRPA).⁴¹

Statutory revisions are needed to incorporate the review proposed in this recommendation for projects subject to review under Site Law or NRPA. Revisions need to clearly limit this assessment to projects proposed by state agencies and using state and federal funds. Privately funded projects would not be affected.

A process for notifying and soliciting input from DAFRR for such projects needs to be established. The commission suggests that the agency or developer responsible for the permit application be required to notify the department prior to or simultaneously with submission of an application. Ideally, agencies and developers would start to consider potential impacts on farmland early in the site selection process. In some cases, such as new school construction, the commission suggests that agencies amend their rules governing site approval to include an assessment of the potential impact on farmland.⁴²

The commission suggests that DAFRR work with the Soil and Water Conservation Districts to adapt NRCS's Land Evaluation and Site Assessment (LESA) rating system and the Farmland Impact Rating Form (form AD-1006) to provide a tool for impact assessment. The assessment would result in a reasonably objective score to determine when alternative sites must be found or mitigation actions taken. When an impact fee is the appropriate measure, the commission recommends that the fee be deposited in a fund dedicated to the purchase of agriculture conservation easements.

A definition of farmland is needed to implement this recommendation. Restricting the mitigation requirements to farmland that is registered as envisioned in Recommendation 1 or enrolled as farmland under Maine's current use tax law is less advisable. Using a definition that includes land being actively farmed and land with soils favorable to farming would be preferable. Soils maps and land cover type maps available through NRCS and the Soil and Water Conservation Districts could be referenced in support of such a definition.

Recommendation 9: The commission recommends prohibiting the use of eminent domain to acquire farmland when the purpose of the acquisition is recreational use or securing aesthetic or therapeutic benefits from the land. The commission recommends revising the statutory authority granted to the Bureau of Parks and Lands (BPL) to specify when condemnation is prohibited. Under current law, the Director of BPL can acquire land by eminent domain with the consent of the Governor and the Commissioner of Conservation.⁴³ Other

⁴⁰ 38 MRSA §482 et seq

⁴¹ 38 MRSA §480 et seq

⁴² Maine Department of Education Rules, Chapter 60

⁴³ 12 MRSA §1812, §1813, §1892

agencies have eminent domain authority but BPL is the agency most likely to use this authority to acquire land for recreational purposes. LMF is authorized to acquire interest in land using eminent domain but only if the acquisition has been approved by the Legislature or is with the consent of the owners allowing for “friendly condemnation”, that is, using eminent domain to expedite a transfer with a willing seller.⁴⁴

The commission recommends that the Joint Standing Committee on Agriculture, Conservation and Forestry develop legislation to clearly prohibit the taking of farmland by eminent domain when the purpose is to convert that land for a recreational, aesthetic or therapeutic purpose. The legislation would need to define “therapeutic use” and “farmland”.

Recommendation 10: The commission recommends providing more specific guidelines pertaining to farmland protection for implementation of Maine’s growth management laws. The commission recommends that SPO and DAFRR develop a model ordinance for farmland protection as a resource for municipal and regional planning committee.

The comprehensive planning process may be the best avenue for identifying farmland meriting protection from development and preventing conversion to or encroachment by incompatible uses. For municipalities that choose to develop a comprehensive plan, the Maine statutes itemize various resources to be inventoried and analyzed including commercial forestry and agricultural land.⁴⁵ The corresponding guidelines for ensuring the protection of agricultural and forest resources calls upon municipalities to “discourage new development that is incompatible with uses related to agricultural and forest industries.”⁴⁶ In addition, the SPO rule establishing the criteria for review of comprehensive plans defines “critical rural area” to include significant farmland and it lists agricultural and forest resources as one of the 13 topic areas to be addressed in a plan.⁴⁷ We suggest that SPO, working with DAFRR, go the next step to promote implementation of comprehensive plans.

Several towns in Maine have comprehensive plans and land use ordinances that demonstrate a commitment to farmland protection and agriculture as a key component of the economy. (See Appendix O for a summary of farm support measures in Unity’s land use ordinance.) The commission recommends that SPO and DAFRR review existing ordinances with a view to developing a model ordinance for the protection of farms and farmland. Including the model ordinance in the resource package provided to municipalities in the planning process could be effective in implementing growth management measures.

⁴⁴ 5 MRSA §6207-A

⁴⁵ 30-A MRSA §4326, sub-§1, ¶E

⁴⁶ 30-A MRSA §4326, sub-§3-A, ¶F

⁴⁷ Executive Department, State Planning Office, Chapter 208: Comprehensive Plan Review Criteria Rule

APPENDIX A

Authorizing Legislation - Public Law 2007, Chapter 649

STATE OF MAINE

APR 18 '08

649

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD
TWO THOUSAND AND EIGHT

S.P. 591 - L.D. 1684

An Act To Create the Maine Agriculture Protection Act

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, maintaining a base of commercially viable agricultural land is vital to rural communities and the State's economy; and

Whereas, thoughtful policies are needed to address the impact of development on working farms and farmland; and

Whereas, convening a commission for this purpose as soon as possible will allow more time for thoughtful examination of the issues; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §52, sub-§3, as enacted by PL 1989, c. 478, §1, is amended to read:

3. Commercial farming. "Commercial farming" means the production of any "farm product," ~~as defined by Title 17, section 2805,~~ with the intent that that farm product be sold or otherwise disposed of to generate income.

Sec. 2. 7 MRSA §52, sub-§3-A is enacted to read:

3-A. Farm product. "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products.

Sec. 3. 7 MRSA c. 6 is enacted to read:

CHAPTER 6

MAINE AGRICULTURE PROTECTION ACT

§151. Short title

This Act may be known and cited as "the Maine Agriculture Protection Act."

§152. Definitions

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

1. **Agricultural composting operation.** "Agricultural composting operation" means composting that takes place on a farm. "Agricultural composting operation" does not include an operation that involves nonorganic municipal solid waste or that composts municipal sludge, septage, industrial solid waste or industrial sludge. "Agricultural composting operation" does not include an operation that composts materials with a moderate or high risk of contamination from heavy metals, volatile and semivolatile organic compounds, polychlorinated biphenyls or dioxin.

2. **Agricultural products.** "Agricultural products" means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur. "Agricultural products" does not include trees grown and harvested for forest products.

3. **Agricultural support services.** "Agricultural support services" means the aerial or surface application of seed, fertilizer, pesticides or soil amendments and custom harvesting.

4. **Composting.** "Composting" means the controlled aerobic decomposition of organic materials to produce a soil-like product beneficial to plant growth and suitable for agronomic use.

5. **Farm.** "Farm" means the land, plants, animals, buildings, structures, ponds and machinery used in the commercial production of agricultural products.

6. **Farm operation.** "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of agricultural products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects and fumes; operation of machinery and irrigation pumps; disposal of manure; agricultural support services; and the employment and use of labor.

§153. Farm; farm operation or agricultural composting operation not a nuisance

A farm, farm operation or agricultural composting operation may not be considered a public or private nuisance under Title 17, chapter 91 if the farm, farm operation or

agricultural composting operation alleged to be a nuisance is in compliance with applicable state and federal laws, rules and regulations and:

1. Farm; farm operation; agricultural composting operation. The farm, farm operation or agricultural composting operation conforms to best management practices, as determined by the commissioner in accordance with Title 5, chapter 375;

2. Storage or use of farm nutrients; complaints. For complaints regarding the storage or use of farm nutrients as defined in section 4201, subsection 4, the farm, farm operation or agricultural composting operation has implemented a nutrient management plan developed in accordance with section 4204 and operation of the farm, farm operation or agricultural composting operation is consistent with the nutrient management plan; or

3. Change in land use; occupancy of land. The farm, farm operation or agricultural composting operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation or agricultural composting operation as long as, before the change in land use or occupancy, the farm, farm operation or agricultural composting operation would not have been considered a nuisance. This subsection does not apply to a farm, farm operation or agricultural composting operation that materially changes the conditions or nature of the farm, farm operation or agricultural composting operation after a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation or agricultural composting operation. Nothing in this subsection affects the applicability of any of the other provisions of this chapter.

§154. Violation of municipal ordinances

A method of operation used by a farm or farm operation located in an area where agricultural activities are permitted may not be considered a violation of a municipal ordinance if the method of operation constitutes best management practices as determined by the commissioner in accordance with section 153, subsection 1.

§155. Application; municipal ordinances

This chapter does not affect the application of state and federal laws. A municipality must provide the commissioner with a copy of any proposed ordinance that affects farm operations. The clerk of the municipality or a municipal official designated by the clerk shall submit a copy of the proposed ordinance to the commissioner at least 90 days prior to the meeting of the legislative body or public hearing at which adoption of the ordinance will be considered. The commissioner shall review the proposed ordinance and advise the municipality as to whether the proposed ordinance restricts or prohibits the use of best management practices. This section does not affect municipal authority to enact ordinances.

§156. Complaint resolution

The commissioner shall investigate all complaints involving a farm, farm operation or agricultural composting operation, including, but not limited to, complaints involving the use of waste products, groundwater and surface water pollution and insect

infestations. In cases of insect infestations not arising from agricultural activities, when the State Entomologist believes that the infestation is a public nuisance and is able to identify the source or sources of the infestation, the commissioner shall refer the matter to the Department of the Attorney General. If the commissioner finds upon investigation that the person responsible for the farm, farm operation or agricultural composting operation is using best management practices, the commissioner shall notify that person and the complainant of this finding in writing. Notwithstanding section 153, subsection 3, if the commissioner identifies the source or sources of the problem and finds that the problem is caused by the use of other than best management practices, the commissioner shall:

1. **Changes.** Determine the changes needed in the farm, farm operation or agricultural composting operation to comply with best management practices and prescribe site-specific best management practices for that farm, farm operation or agricultural composting operation;

2. **Advise person responsible.** Advise the person responsible for the farm, farm operation or agricultural composting operation of the changes, as determined in subsection 1, that are necessary to conform with best management practices and determine subsequently if those changes are implemented; and

3. **Findings.** Give the findings of the initial investigation and subsequent investigations and any determination of compliance to the complainant and person responsible.

§157. Good faith

The Maine Rules of Civil Procedure, Rule 11 applies in any private action filed against the owner or operator of a farm, farm operation or agricultural composting operation in which it is alleged that the farm, farm operation or agricultural composting operation constitutes a nuisance if it is determined that the action was not brought in good faith and was frivolous or intended for harassment only.

§158. Failure to adopt best management practices

If the person responsible for a farm, farm operation or agricultural composting operation does not apply best management practices as required by the commissioner, the commissioner shall send a written report to an appropriate agency if a federal or state law has been violated and to the Attorney General. The Attorney General may institute an action to abate a nuisance or to enforce the provisions of this chapter or any other applicable state law, and the court may order the abatement with costs as provided under Title 17, section 2702, such injunctive relief as provided in this section or by other applicable law, or that a civil violation has been committed. Failure to apply best management practices in accordance with this chapter constitutes a separate civil violation for which a fine of up to \$1,000, together with an additional fine of up to \$250 per day for every day that the violation continues, may be adjudged.

§159. Agricultural Complaint Response Fund

There is established the nonlapsing Agricultural Complaint Response Fund. The commissioner may accept from any source funds designated to be placed in the fund. The commissioner may authorize expenses from the fund as necessary to investigate complaints involving a farm, farm operation or agricultural composting operation and to abate conditions potentially resulting from farms, farm operations or agricultural composting operations.

§160. Educational outreach

The commissioner shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this chapter and the best management practices of the department. The commissioner shall inform the public about the provisions of this chapter, the complaint resolution process adopted by the department and state policy with respect to preservation and protection of agricultural and natural resources.

§161. Rules

The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act to interpret and implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 7 MRSA §4203, sub-§1, ¶C, as enacted by PL 2003, c. 283, §2, is amended to read:

C. When an aggrieved party within 30 days of the commissioner's decision appeals a decision of the commissioner regarding site-specific best management practices prescribed for a farm or other issue governed under section 156 or Title 17, section 2701-B ~~or 2805~~, the board shall hold a hearing in accordance with Title 5, chapter 375, subchapter 4. The board may affirm, amend or reverse a decision made by the commissioner. The board's decision is a final agency action. The board may also conduct an information-gathering meeting at the request of the department or any party with a legitimate interest to facilitate the complaint resolution process under section 156 or Title 17, section 2701-B ~~or 2805~~.

Sec. 5. 7 MRSA §4203, sub-§2-A, as enacted by PL 2003, c. 283, §3, is amended to read:

2-A. Temporary membership. When the subject matter of an appeal or complaint resolution process under this section is other than manure or nutrient management, the commissioner may appoint up to 3 temporary board members for the purpose of hearing an appeal, conducting an information-gathering meeting or facilitating the complaint resolution process under ~~Title 17, section 2805~~ 156. At least one temporary member must have expertise with the subject matter of the complaint or problem and one temporary member must represent the agricultural sector involved. The terms for temporary members expire when the board determines that it has taken final action on the appeal or complaint resolution process.

Sec. 6. 12 MRSA §6-A, sub-§2, as enacted by PL 1989, c. 478, §2, is amended to read:

2. Crop-producing. Includes only land where agricultural chemicals, as defined in Title 7, section 52, were used in the production of farm products, as defined in Title 47 7, section ~~2805~~ 52, subsection 3-A, in 3 or more of the previous 6 calendar years; and

Sec. 7. 17 MRSA §2805, as amended by PL 2005, c. 638, §1, is repealed.

Sec. 8. 36 MRSA §2013, sub-§1, ¶A, as repealed and replaced by PL 2007, c. 466, Pt. A, §60, is amended to read:

A. "Commercial agricultural production" means commercial production of crops for human and animal consumption, including the commercial production of sod, an agricultural composting operation as defined in Title 47 7, section 2805 152, subsection 1, the commercial production of seed to be used primarily to raise crops for nourishment of humans or animals and the production of livestock, including the removal and storage of manure from that livestock.

Sec. 9. 37-B MRSA §801, sub-§4, ¶B, as enacted by PL 1989, c. 464, §3, is amended to read:

B. Owners and operators of commercial agricultural operations ~~shall be~~ are exempt from the fee requirements under this section for registering agricultural facilities and for hazardous materials used in the commercial production of ~~farm~~ agricultural products as defined in Title 47 7, section ~~2805 152~~, subsection ~~1, paragraph C~~ 2. Farm Agricultural product processing facilities are not exempt from the fee requirements. For the purposes of this section, "processing" ~~shall~~ does not include the packaging of raw commodities or ~~farm~~ agricultural products for resale.

Sec. 10. 38 MRSA §480-Y, sub-§2, ¶A, as enacted by PL 1995, c. 659, §1, is amended to read:

A. The farm must have an irrigation management plan, referred to in this section as the "irrigation plan." The irrigation plan must identify the total number of irrigated acres on the farm or on a specified management unit, the amount of water needed, the potential sources of water for irrigating the field and the water management practices that will be used to ensure that the amount of water used for crop irrigation will be kept to a minimum. For the purposes of this subsection, "farm" has the same meaning as in Title 47 7, section ~~2805 152~~, subsection 5.

Sec. 11. Commission to Study the Protection of Farms and Farmland established. The Commission to Study the Protection of Farms and Farmland, referred to in this section as "the commission," is established.

1. Membership. The commission consists of 11 members, appointed as follows:

A. Two members of the Senate, one member from the party holding the largest number of seats and one member from the party holding the 2nd largest number of

seats, appointed by the President of the Senate. At least one Senate member must be serving on the Joint Standing Committee on Agriculture, Conservation and Forestry;

B. Four members of the House of Representatives, at least one member from the party holding the largest number of seats and at least one member from the party holding the 2nd largest number of seats, all appointed by the Speaker of the House. At least one House member must be serving on the Joint Standing Committee on Agriculture, Conservation and Forestry;

C. One member with expertise in land use policy and knowledge of farmland preservation programs appointed by the President of the Senate;

D. One member with expertise in tax policy appointed by the President of the Senate;

E. Two members recommended by a council representing diverse agricultural producer associations and appointed by the Speaker of the House; and

F. One member representing municipal interests appointed by the Speaker of the House.

2. Commission chairs. The first-named Senator is the Senate chair of the commission and the first-named member of the House is the House chair of the commission.

3. Appointments; convening of commission. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment of all members has been completed, the chairs of the commission shall call and convene the first meeting of the commission.

4. Duties. The commission shall develop policy initiatives to protect working farms from the impact of development and to maintain a base of commercially viable agricultural land for Maine's future. Towards this end, the commission shall:

A. Develop a system to classify farmland that is viable for agricultural production and establish statewide criteria for identifying farmland that warrants the highest order of protection;

B. Explore options and develop a proposal for designating agriculture protection areas. In exploring options, the commission shall review provisions establishing agricultural protection zones or districts in other states;

C. Review eligibility criteria and participation by farmers in Maine's current use property tax programs and develop recommendations regarding tax policy; and

D. Consider requiring an assessment of potential impacts on agricultural land prior to a governmental action such as a permitting decision or commencement of a public works project.

5. Staff assistance. The Legislative Council shall provide necessary staffing services to the commission.

6. Report. No later than November 5, 2008, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, to the joint standing committee of the Legislature having jurisdiction over agricultural matters. Upon receipt of the report, the joint standing committee of the Legislature having jurisdiction over agricultural matters may introduce legislation related to the protection of farmland to the First Regular Session of the 124th Legislature.

7. Commission budget. The commission shall seek outside funds to fully fund all costs of the commission. If sufficient outside funding has not been received by the commission by August 1, 2008 to fully fund all costs of the commission, no meetings are authorized and no expenses of any kind may be incurred or reimbursed. Contributions to support the work of the commission may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution must certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the study. The certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of the funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of the funds. The Executive Director of the Legislative Council shall administer any funds received by the commission. The executive director shall notify the chairs of the commission when sufficient funding has been received.

Sec. 12. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Study Commissions - Funding 0444

Initiative: Provides funds for the per diem and general operating expenses of the Commission to Study the Protection of Farms and Farmland.

OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
Personal Services	\$0	\$1,320
All Other	\$0	\$2,950
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$4,270

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

In House of Representatives, 2008

Read twice and passed to be enacted.

..... Speaker

In Senate, 2008

Read twice and passed to be enacted.

..... President

Approved 2008

..... Governor

APPENDIX B

Membership list, Commission to Study the Protection of Farms and Farmland

Commission to Study the Protection of Farms and Farmland

Public Law 2007, Chapter 649

Wednesday, August 20, 2008

Appointments by the President

Sen. John Nutting – Chair
RR 1 Box 3410
Leeds, ME 04263

Senate Member

Sen. Roger L. Sherman
P.O. Box 682
Houlton, ME 04730

Senate Member

Cris Coffin
American Farmland Trust
One Short Street
Northampton, MA 01060

Expertise in Land Use Policy & Knowledge of
Farmland Preservation Programs

Anthony Neves
310 Quimby Road
Albion, ME 04910

Expertise in Tax Policy

Appointments by the Speaker

Rep. Wendy Pieh – Chair
P.O. Box 203
Bremen, ME 04551

House Member

Rep. Benjamin Marriner Pratt
95 Hatcase Pond Road
Eddington, ME 04428

House Member

Rep. Donald G. Marean
P.O. Box 135
Standish, ME 04085

House Member

Rep. Stacey Allen Fitts
180 Lancey Street
Pittsfield, ME 04967

House Member

Timothy Hobbs
744 Main Street, Suite 1
Presque Isle, ME 04769

Recommended by a Council Representing Diverse
Agricultural Producer Associations

Galen Larrabee
1520 Shibbles Road
Thorndike, ME 04986

Representing Municipal Interests

Russ Libby
P.O. Box 170
Unity, ME 04988-0170

Recommended by a Council Representing Diverse
Agricultural Producer Associations

APPENDIX C

Agendas for meetings of the Commission

COMMISSION TO STUDY THE PROTECTION OF FARMS AND FARMLAND
Cross State Office Building – Room 206
Augusta, ME
Wednesday, September 3, 2008

- 9:30 Introductions – Select dates for next 3 meetings
- 9:45 Review the Committee’s duties and recent legislation proposing the creation of agricultural protection areas – *Committee staff*
- 10:00 Overview of Agricultural District Programs –purposes & functions, benefits and drawbacks – *Bob Wagner, American Farmland Trust*
- 11:00 Fields and Forests Forever Campaign – a regional approach to ensure that farmland is available for future generations – *Stephanie Gilbert, Department of Agriculture, Food and Rural Resources*
- Lunch
- 1:00 Agricultural resources as a component of Community Comprehensive Plans - the Growth Management Act and review criteria under the State Planning Office’s Chapter 208 Rule – *Sue Inches, State Planning Office; Paul Schumacher, Southern Maine Regional Planning Commission*
- 1:30 Maine’s Current Use Property Tax Laws – Farm, Open Space and Tree Growth: basic differences and participation rates – *Dave Ledew, Maine Revenue Services & Julie Jones, Office of Fiscal and Program Review*
- 2:00 The Voluntary Municipal Farm Support Program – Summary of Provisions, Status of Rulemaking – *Julie Jones, OFPR, & Stephanie Gilbert, Department of Agriculture, Food and Rural Resources*
- 2:15 Discussion,
Directions to staff
- 3:15 Adjourn

**COMMISSION TO STUDY THE PROTECTION OF FARMS AND
FARMLAND**

Cross State Office Building – Room 206

Augusta, ME

Thursday September 25, 2008

9:30 Land for Maine's Future – Overview of Farmland Protection - *Tim Glidden, Director*

- Statutory provisions and bond language specific to farmland
- Scoring System for Evaluating Farmland Proposals

10:00 Easements as a farmland protection tool and the role of land trusts
John Piotti, Director, Maine Farmland Trust

Funding Sources for Farmland Preservation – *Tim Glidden & John Piotti*

10:45 Farms for the Future – Overview of program and recent revisions
Stephanie Gilbert, Department of Agriculture, Food and Rural Resources

11:00 Mapping Capabilities in Maine and Mapping Capacity Needed to Support a
Maine Agriculture Districts Program – Staff
*Larry Harwood, Maine GIS & Steve Walker, Department of Inland Fisheries
and Wildlife*

Lunch

1:00 Review benefits available to farms within agriculture protection districts in other
states; review criteria and process for designating agricultural districts in other
states – *Staff*

Discuss criteria and benefits for potential inclusion in a Maine Agriculture
Districts Program

2:45 Information requests for next meeting (October 10th)
Directions to staff

3:00 Adjourn

**COMMISSION TO STUDY THE PROTECTION OF FARMS AND
FARMLAND**

Cross State Office Building – Room 206

Augusta, ME

Friday, October 10, 2008

9:30 a.m. – 3:00 p.m.

9:30 Farmland Protection Elements – *Staff*

- Brief overview of tools in the toolbox
- Farmland Protection Policy Act – federal
- Development Review under Maine Law
- Protection from condemnation using eminent domain
- Definitions

Discuss incentives to maintain Maine's farmland base:

How might these incentives be provided?

Are delineated agricultural districts necessary? Can farmland be defined in a manner suitable for implementing a farmland protection program?

Lunch

1:00 Regional Efforts to Support Agriculture – *Mark Hews, Coordinator, Threshold to Maine Resource Conservation and Development (RC&D)*

1:45 Continue discussion and develop recommendations

2:30 Direction to staff for next meeting (October 29th)

3:00 Adjourn

**COMMISSION TO STUDY THE PROTECTION OF FARMS AND
FARMLAND**

Cross State Office Building – Room 206

Augusta, ME

Wednesday, October 29, 2008

9:30 a.m. – 3:00 p.m.

9:30 Explanation of materials – *Staff*

9:45 Conservation Reserve Program – *Ken Gustin, USDA Farm Service Agency;
Buster Carter, Maine Department of Inland Fisheries and Wildlife*

10:15 Implementation of the Farmland Protection Policy Act (FPPA) – *Bill Yamartino,
USDA, Natural Resources Conservation Service; Ray Faucher, Maine
Department of Transportation*

10:45 Discuss Potential Recommendations

Lunch

1:00 Continue discussion and vote on final recommendations

3:00 Adjourn

APPENDIX D

Glossary of abbreviations used in this report

Glossary of abbreviations used in this report:

ACF	Joint Standing Committee on Agriculture, Conservation and Forestry
APD	Agricultural protection district
BPL	Bureau of Parks and Lands within Maine Department of Conservation
DAFRR	Department of Agriculture, Food and Rural Resources
DOT	Department of Transportation
FFF	Farms for the Future Program
FOS	Farm and Open Space Tax Law
FPPA	Farmland Protection Policy Act (federal)
LESA	Land Evaluation and Site Assessment
LMF	Land for Maine's Future
LURC	Maine Land Use Regulation Commission
MEPA	Massachusetts Environmental Policy Act
MFT	Maine Farmland Trust
NRCS	Natural Resources Conservation Service
NRPA	Natural Resources Protection Act
SPO	State Planning Office
TGTL	Tree Growth Tax Law
USDA	United States Department of Agriculture

APPENDIX E

LMF Scoring System for Evaluating Farmland Protection Projects



LMF Scoring System for Evaluating Farmland Protection Proposals

Developed in Partnership with the
Maine Department of Agriculture, Food and Rural Resources

Each farmland protection proposal to the LMF Program will be scored using this system. The scoring system assigns points according to the relative value of criteria associated with a farmland protection proposal. The “other criteria” found at the end of the scored criteria are considered by the Board when it compares and considers the top farmland protection proposals.

The five scored criteria and the maximum points that can be awarded for each are :

1. **productive farm assets including soils**, prime and state significant soils, tillable land, pasture land, water resources, woodland, buildings, etc. (25 Points max.);
2. **documented current and emerging threats from conversion** that would reduce or eliminate the farm’s productive potential (25 Points max.);
3. **significance to regional and local markets**, both existing and emerging including service providers to farms (25 Points max.);
4. **open space and public benefits as they contribute to the scenic and landscape values**, character of the town/region where it is situated and where public access/protection can be secured for conservation, recreation, wildlife, and education use/values (10 Points max.); and
5. **community planning and support, both local /regional** for farming and farmland protection (15 Points max.).

PRIMARY SCORING CATEGORIES

Total Possible Points for Each Category

- Productive Farm Asset 25
- Current and Emerging Threats to Conversion 25
- Significant to Regional and Local Markets 25
- Open Space, Cultural, and Other Public Benefits 10
- Community Planning and Support 15

Total Points **100**

APPENDIX F

DAFRR Farmland Protection Screening Criteria

MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES

Farmland Protection Project – Screening Criteria

The Department seeks farms that:

1. Are active, working farmland comprised of **Prime and Statewide Important Farmland** soils. In some cases, other soils of local significance may or may not count towards eligibility.
2. Have farm buildings and other agricultural infrastructure.
3. Are enrolled in the Farmland and/or Tree Growth property tax programs.
4. Are under current or emerging threat of conversion to non-agricultural use.
5. Are in close proximity to active and productive farms and agricultural infrastructure.
6. Are comprised of more than one farm property or can serve as the keystone parcel of a regional farmland protection effort.
7. Are selling or distributing their products through local, regional or national markets.
8. Are located in designated and active priority agricultural areas identified in Town Comprehensive Plans that are consistent with the Growth Management Act and where there is some concrete evidence of a town's efforts to implement the objectives of the plan.

The Department seeks to sponsor the owners of farms who are also:

9. Planning how to transfer the farm to the next generation farmer.
10. Following an NRCS Conservation Plan.
11. Willing to provide a summary of the farm's business plan and debt-to-income ratio.
12. Willing to contribute to some of the protection project transaction costs.
13. Able to demonstrate community support for agricultural, open space, cultural and public benefits.
14. Committed to forming a project planning team that includes a designated "project manager" and other key representatives from agriculture, municipal, conservation and land trust organizations.
15. Willing to work with the potential easement holder (land trust or town) to develop a plan to fundraise a stewardship endowment to cover the holder's costs to monitor and steward the easement.

APPENDIX G

State Planning Office Rules
Chapter 208: Comprehensive Plan Review Criteria Rule
(Definitions & Agriculture Provisions Only)

07 EXECUTIVE DEPARTMENT

105 STATE PLANNING OFFICE

Chapter 208: COMPREHENSIVE PLAN REVIEW CRITERIA RULE

SUMMARY: This chapter establishes the criteria the State Planning Office uses to review community comprehensive plans for consistency with the goals and guidelines of the Growth Management Act (30-A MRSA §4312 et seq.). The Office uses this Chapter to review and comment on proposed comprehensive plans under §4347-A(1) of the Act, and to review the plan component of local growth management programs for which certification has been requested under §4347-A(2).

SECTION 1. GENERAL PROVISIONS AND PROCEDURES

1. Purpose

The primary purpose of this Chapter is to establish the process and criteria the State Planning Office uses to review community comprehensive plans for consistency with the goals and guidelines of the Growth Management Act (30-A MRSA §4312 et seq.). If a community requests certification of its growth management program under 30-A MRSA §4347-A(2), the Office also uses this Chapter to review the comprehensive plan component of that program. This Chapter sets forth a two-part process for the Office's consistency review: 1) a completeness determination for all required elements of a comprehensive plan; and 2) a more in-depth review of the Future Land Use Plan.

The criteria of this Chapter are based on the Act's goals, substantive guidelines, and procedures. They are not intended to prohibit or discourage a community from developing a plan, ordinance, or program that is more specific or detailed, or that covers more subject areas than called for by required elements.

2. Definitions

The following terms, as used in the Act and this Chapter, have the following meanings unless the context indicates otherwise:

- A. Act: "Act" means the Growth Management Act (30-A MRSA §4312 et seq.).
- B. Amendment: "Amendment" means a change to a comprehensive plan that is adopted subsequent to an Office finding that the plan is consistent with the Growth Management Act.
- C. Applicable regional council: "Applicable regional council" means the council of governments, established under 30-A MRSA §2311-2316, or regional planning commission, established under 30-A MRSA §2321-2326, that is the authorized review agency for the regional planning and development district or subdistrict, designated under 30-A MRSA §2341-2342, within which the community submitting a comprehensive plan or zoning ordinance is located.

- D. Arterial: "Arterial" means a highway providing long-distance connections as approved by the Federal Highway Administration pursuant to 23 Code of Federal Regulation, Section 470.105(b)(1999) and as so designated by MaineDOT pursuant to the Maine Highway Driveway and Entrance regulations, 17-229 CMR 299.
- E. Business day: "Business Day" means Monday through Friday, excluding federal and state holidays.
- F. Capital Improvement Program: "Capital Improvement Program" (CIP) means a detailed schedule for capital improvements, estimates of total cost of each improvement, financing sources, scheduling of construction starts or equipment life spans, and projected annual expenditures. The CIP implements the Capital Investment Plan that is prepared as part of the comprehensive plan.
- G. Capital Investment: "Capital Investment" means expending municipal funds to purchase assets such as land, machinery, or buildings. For the purposes of this Chapter, capital investments at a minimum include expenditures of more than \$10,000 that are used to purchase assets that serve a useful life of at least five (5) years.
- H. Capital Investment Plan: "Capital Investment Plan" (CInP) means a summary list of municipal capital investments anticipated during the planning period in order to implement the strategies in the comprehensive plan.
- I. Commercial development: "Commercial development" means for-profit business operations that provide goods, services, or commodities. For the purposes of this Chapter, home occupations are not considered commercial development.
- J. Community: "Community" means any municipality or multi-municipal region.
- K. Comprehensive plan: "Comprehensive plan" or "plan" means a document or interrelated documents developed by a community in accordance with the procedural provisions of 30-A MRSA §4324, and the substantive requirements of 30-A MRSA §4326.
- L. Critical natural resource: "Critical natural resources" means those areas in the community comprised of one or more of the following:
- (1) Shoreland zone;
 - (2) Large habitat blocks;
 - (3) Multi-function wetlands;
 - (4) Essential Wildlife Habitats and Threatened, Endangered, and Special Concern Species occurrences as depicted on maps prepared by the Department of Inland Fisheries and Wildlife pursuant to the Maine Endangered Species Act;
 - (5) Significant wildlife habitat as defined in 38 MRSA §480-B(10);
 - (6) Significant freshwater fisheries habitat;
 - (7) Rare and exemplary natural communities, and rare plant occurrences as determined by the State's Natural Areas Program database;
 - (8) Coastal sand dune systems as defined in the Natural Resources Protection Act (38 MRSA §480-B(1));
 - (9) Beginning with Habitat Focus Areas of Ecological Significance identified by the Beginning with Habitat Program of the Maine Department of Inland Fisheries and Wildlife ;

- (10) Fragile mountain areas as defined in 38 MRSA §480-B(3);
 - (11) Coastal bluffs and coastal landslide hazards as depicted on maps prepared by the Maine Geological Survey;
 - (12) Flood plains as depicted on Federal Emergency Management Agency flood hazard identification maps; or
 - (13) Areas designated as a National Natural Landmark pursuant to the National Park Service's National Natural Landmark Program (36 Code of Federal Regulation, Section 62).
- M. Critical Resource Area: "Critical Resource Area" means those areas in a community most vulnerable to impacts from development and must include:
- (1) Critical rural areas;
 - (2) Critical natural resources; and
 - (3) Critical waterfront areas.
- N. Critical rural area: "Critical rural area" means a rural area that is specifically identified and designated by a community's comprehensive plan as deserving maximum protection from development to preserve natural resources and related economic activities that may include, but are not limited to, significant farmland, forest land or mineral resources; high-value wildlife or fisheries habitat; scenic areas; public water supplies; scarce or especially vulnerable natural resources; and open lands functionally necessary to support a vibrant rural economy.
- O. Critical waterfront area: "Critical waterfront area" means a shorefront area characterized by functionally water-dependent uses, as defined in MRSA 38 §436-A(6), and specifically identified and designated by a community's comprehensive plan as deserving maximum protection from incompatible development.
- P. Floor area: "Floor area" means the total area covered by all floors in a building, typically measured in square feet or acres.
- Q. Growth area: "Growth area" means an area that is designated in a community's comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combinations of those types of development and related infrastructure, and into which most development projected over 10 years is directed.
- R. Growth management program: "Growth management program" means a set of interrelated documents that comprise a comprehensive plan and implementation program, including zoning ordinances, as described in 30-A MRSA §4326.
- S. Industrial development: "Industrial development" means business operations that manufacture, process, or store goods or commodities. For the purposes of this Chapter, home occupations are not considered industrial development.
- T. Institutional development: "Institutional development" means establishments such as governmental facilities, colleges, vocational schools, hospitals, or health care facilities.
- U. Large habitat blocks: "Large habitat blocks" means contiguous, undeveloped areas of 150 acres or more.
- V. Managed forest lands: "managed forest lands" means lands managed for any of the following purposes: timber stand improvement, timber or other forest products harvesting, regeneration of forest stands, habitat management, aesthetics, recreation, or water quality protection.

- W. Marine transportation facilities: "Marine transportation facilities" means public and private facilities used for cargo and/or passenger transport that rely on water access, including infrastructure and support facilities such as buildings, piers, docks, parking, and storage.
- X. Minimal commercial/institutional development: "Minimal commercial development" means that there has been less than a ten (10) percent increase in the floor area devoted to commercial and institutional development in the community over the previous ten (10) years.
- Y. Minimal industrial development: "Minimal industrial development" means that there has been less than a ten (10) percent increase in the floor area devoted to industrial development in the community over previous ten (10) years.
- Z. Minimal residential development: "Minimal residential development" means that residential development in the community is characterized by:
- (1) Less than five (5) percent population growth over the previous ten (10) years; and
 - (2) Less than fifty (50) units of residential housing, including apartment, condominium, and seasonal units, constructed over previous ten (10) years.
- AA. Mobility corridor: "Mobility corridor" means an arterial that is a designated "mobility corridor" pursuant to the Maine Highway Driveway and Entrance regulations, 17-229 CMR 299.
- BB. Multi-function wetlands: "Multi-function wetlands" means those wetlands found to provide three or more wetland functions as depicted on the Wetlands Characterization Maps developed by the Office.
- CC. Municipal growth-related capital investment: "Municipal growth-related capital investment" means investment by the municipality in the following projects, even if privately-owned, using municipal, county, state, federal, or other public funds, in the form of a purchase, lease, grant, loan, loan guarantee, credit, tax credit, or other financial assistance:
- (1) Construction of new transportation infrastructure or capacity;
 - (2) Construction or acquisition of newly constructed multifamily rental or affordable housing;
 - (3) Development of industrial or business parks;
 - (4) Construction or extension of sewer, water, or other utility lines;
 - (5) Construction of public, quasi-public, or private service infrastructure, facilities, and community buildings; or
 - (6) Construction or expansion of municipal office buildings, municipal educational facilities, municipal courts, and other quasi-public facilities and other civic buildings that serve public clients and customers.
- Municipal growth-related capital investment does not include investment in the following: the operation or maintenance of a governmental or quasi-governmental facility or program; the renovation of a governmental facility that does not significantly expand the facility's capacity; maintenance of existing transportation infrastructure without significantly expanding capacity; municipal revenue sharing; capital projects that by their purpose are likely to be outside a growth area (such as recreational trails, drinking water holding or purification systems, public works facilities, landfills, etc.); or public health programs.
- DD. Municipal officers. "Municipal officers" means the selectmen or councilors of a town, or the mayor and aldermen or councilors of a city.

- EE. Non-point sources of pollution. "Nonpoint sources of pollution" means facilities, activities, or any circumstance that cause rainfall, snowmelt, or irrigation water, running over land or through the ground, to pick up pollutants and to deposit them into rivers, lakes, coastal waters, or ground water.
- FF. Office: "Office" means the State Planning Office.
- GG. Planning committee: "Planning committee" means the committee established by the municipal officers of a municipality, or combination of municipalities, in accord with 30-A MRSA §4324(2), which has general responsibility for the comprehensive plan.
- HH. Planning period: "Planning period" means a minimum of ten (10) years.
- II. Regional council: "Regional council" means the council of governments, established under 30-A MRSA §2311-2316, or regional planning commission, established under 30-A MRSA §2321-2326, that is the authorized review agency for the regional planning and development district or subdistrict, designated under 30-A MRSA §2341-2342.
- JJ. Rural area: "Rural area" means a geographic area that is identified and designated in a community's comprehensive plan as an area that is deserving of some level of regulatory protection from unrestricted development for purposes that may include, but are not limited to, supporting agriculture, forestry, mining, open space, wildlife habitat, fisheries habitat, and scenic lands, and away from which most development projected over 10 years is diverted.
- KK. Shoreland zone: "Shoreland zone" means the same as "Shoreland Area" in the Mandatory Shoreland Zoning Act (38 MRSA §435 et seq.).
- LL. Significant freshwater fisheries habitat: "Significant freshwater fisheries habitat" means any freshwater river, stream, brook, lake, or pond that is identified as:
- (1) a brook trout stream as depicted on maps developed by the Maine Department of Inland Fisheries and Wildlife; or
 - (2) diadromous fisheries habitat as depicted on maps developed by the Maine Department of Inland Fisheries and Wildlife Beginning with Habitat program.
- MM. State Transportation System: "State transportation system" means:
- (1) Maine Department of Transportation and Maine Turnpike Authority administered or supervised state or state aid highways along with associated sidewalks, paths, trails, and/or bridges;
 - (2) Maine Department of Transportation administered or supervised marine highways, airports, and rail lines along with associated sidewalks, paths, trails, and/or bridges; and
 - (3) Any associated facilities essential to the safe and efficient operation of those state transportation systems, including but not limited to highway maintenance facilities, transit/rail stations, toll plazas, ferry terminals, cargo ports, intermodal transportation centers, weigh stations, rest areas, visitor information centers, service plazas, and park-and-ride lots, as well as parking lots and other infrastructure serving those facilities.
- NN. Stream: "Stream" means the same as "Stream" in the Mandatory Shoreland Zoning Act (38 MRSA §435 et seq.)
- OO. Strip development: "Strip development" means a pattern of development, usually commercial in nature, in which individual establishments have direct access to a single arterial or main throughfare. Strip developments are generally not in downtown areas and often lack pedestrian

facilities, but are characterized by automobile-focused access with multiple curb cuts in relatively short distances.

- PP. Transit services: "Transit services" means public or private operations that provide transportation to the public, such as rail and bus operations.
- QQ. Transitional area: "Transitional area" means an area that is designated in a community's comprehensive plan as suitable for a share of projected residential, commercial, or industrial development but that is neither intended to accept the amount or density of development appropriate for a growth area nor intended to provide the level of protection for rural resources afforded in a rural area or critical rural area.
- RR. Wetlands: "Wetlands" means any coastal wetlands or freshwater wetlands as defined below:
- (1) Coastal wetlands include any of the following:
 - a. all tidal and sub-tidal lands, including all areas below any identifiable debris line left by tidal action;
 - b. all lands containing vegetation that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and
 - c. any swamp, marsh, bog, beach, flat, or other contiguous low land that is subject to tidal action during the maximum spring tide level identified in tide tables published by National Ocean Services.
 - (2) Freshwater wetlands include freshwater swamps, marshes, bogs, and similar areas (other than areas considered part of a great pond, coastal wetland, river, stream, or brook) that are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above defining criteria.
- SS. Zoning ordinance: "Zoning ordinance" means a municipal land use ordinance that:
- (1) Divides a community into zoning districts and prescribes the reasonable application of different regulations in each district to encourage orderly growth and development and implement a community's designation of growth, rural, and critical resource areas in its comprehensive plan; and
 - (2) Has been developed by the community in accordance with the procedural provisions and the substantive requirements of 30-A MRSA §§4324, 4326, and 4352.

3. Transition from Chapter 202

This Chapter replaces Chapter 202, which is repealed as of the effective date of this Chapter.

- A. Communities that have submitted plans or amendments to plans to the Office for review prior to the effective date of this Chapter but have not yet received a Finding of Consistency have two options:
- (1) Resubmit the plan for review under the provisions set forth in this Chapter. Resubmission resets the comment and findings deadlines set forth in 30-A MRSA §4347-A(3); or

- (2) Through local land use ordinances, require the planning board (or other designated review authority) to incorporate maps and information provided by the Maine Historic Preservation Commission into their review process.
- (3) Work with the local or county historical society and/or the Maine Historic Preservation Commission to assess the need for, and if necessary plan for, a comprehensive community survey of the community's historic and archaeological resources.

10. Agricultural and Forest Resources

A. State Goal

To safeguard the State's agricultural and forest resources from development which threatens those resources.

B. Analyses and Key Issues

To generate minimum analyses to address state goals, use Conditions and Trends data in Section 4.10(C) to answer the following questions.

- (1) How important is agriculture and/or forestry to the community and region? Are these activities growing, stable, or declining? Are the farms or woodlots in the community important for non-economic reasons, such as scenic landscapes, wildlife habitat, outdoor recreation, or historic significance?
- (2) How are land use patterns and land values contributing to the loss of farm or forest land?
- (3) What regulatory and non-regulatory steps is the community currently taking to support productive farm and forest lands? Are there local or regional land trusts actively working to protect farms or forest lands in the community?
- (4) Are there undeveloped parts of town in which prime farmland soils are prevalent? If so, how are these areas currently being used? How are they being protected?
- (5) Are farm and commercial forest land owners taking advantage of the state's current use tax laws?
- (6) Has proximity of new homes or other incompatible uses affected the normal operations of farms or woodlot owners?
- (7) Are there large tracts of agricultural or industrial forest land that have been or may be sold for development in the foreseeable future? If so, what impact would this have on the community?
- (8) Is clear-cutting an issue in the community? Is the clear-cutting related to normal woodlands management, or is it in preparation for land development?
- (9) Do local farmers and/or loggers take steps to minimize impacts on natural resources in the community? Do local farms participate in Natural Resource Conservation Service programs?
- (10) How does the community support community forestry or agriculture (i.e. small woodlots, community forests, tree farms, community gardens, farmers' markets, or community-supported agriculture)?
- (11) Does the community have, or need, a street tree or other tree planting and maintenance program?

C. Conditions and Trends

Minimum data required to address state goals:

- (1) The community's Comprehensive Planning Agriculture and Forestry Data Set prepared and provided to the community by the Department of Agriculture, the Maine Forest Service, and the Office, or their designees.
- (2) A map and/or description of the community's farms, farmland, and managed forest lands, including information on the importance of these resources to the local and regional economy and rural character.
- (3) Information on the number of farms and acres of farmland in the community enrolled in the state farm and open space law taxation program, including changes in enrollment over the past 10-20 years.
- (4) Information on the number of parcels and acres of forest land enrolled in the state tree growth tax law program, including changes in enrollment over the past 10-20 years.
- (5) A description of any community farming and forestry activities (e.g. street tree program, community garden, farmer's market, or community forest), including identification of managing officials and/or organizations.

D. Policies

Minimum policies required to address state goals:

- (1) To safeguard lands identified as prime farmland or capable of supporting commercial forestry.
- (2) To promote the use of best management practices for timber harvesting and agricultural production.
- (3) To support farming and forestry and encourage their economic viability.

E. Strategies

Minimum strategies required to address state goals:

- (1) Consult with the Maine Forest Service district forester when developing any land use regulations pertaining to forest management practices.
- (2) Consult with Soil and Water Conservation District staff when developing any land use regulations pertaining to agricultural management practices.
- (3) Amend land use ordinances to require commercial or subdivision developments in *critical rural areas* to maintain areas with prime farm soils as open space to the greatest extent practicable.
- (4) Limit non-residential development in *critical rural areas* to natural resource-based businesses and services, nature tourism/outdoor recreation businesses, farmers' markets, and home occupations.
- (5) Encourage owners of productive farm and forest land to enroll in the current use taxation programs.
- (6) Permit activities that support productive agriculture and forestry operations, such as roadside stands, greenhouses, and pick-your-own operations.
- (7) Include agriculture and commercial forestry operations in local or regional economic development plans.

APPENDIX H

Guidelines for Agricultural Valuation - Maine Revenue Services

GUIDELINES FOR AGRICULTURAL VALUATION

The following **GUIDELINES** were derived by the Department of Agriculture and Maine Revenue Services after review of commentary from the assessing and agricultural communities.

The **CATEGORIES** indicated vary somewhat relative to language found in the law; our attempt to reconcile that language with typical Maine farming practices follows.

SUGGESTED VALUES are a correlation of market data analysis and income streams attributable to agricultural enterprise.

Upon consideration of the various **ADJUSTMENT FACTORS** relative to regional or statewide averages, assessors may elect to develop localized values. However, the local assessors must substantiate any variation in assessment of farmland from the recommended values.

PASTURE LAND...Land devoted to the production of forage plants consumed by animals. This includes grazing land, hay, ensilage, corn for ensilage and any other crops grown for forage.

\$325 per acre suggested value - observed range \$100 - \$525.

CROP LAND...Land used for field grown crops such as a typical Maine potato farm. This would include usual crops grown in rotation with potatoes - corn for grain, small grains, lupines, broccoli, etc.

\$400 per acre suggested value - observed range \$150 - \$600.

BLUEBERRY LAND...Land devoted to production of wild low-bush blueberries.

\$400 per acre suggested value - observed range \$200 - \$800.

HORTICULTURAL LAND I (EDIBLE)...Land used for intensive vegetable and small fruit production, market gardening, strawberries, raspberries, high-bush blueberries, etc.

\$450 per acre suggested value - observed range \$350 - \$650.

HORTICULTURAL LAND II (ORNAMENTAL)...Land used for production of planted and cultivated Christmas trees, flowers, sod, shrubs, trees and general nursery stock.

\$550 per acre suggested value - observed range \$425 - \$850.

ORCHARD LAND...Land devoted to the growth and cultivation of trees bearing edible fruit. There should be a minimum stocking density equivalent to 60 trees per acre.

\$450 per acre suggested value - observed range \$350 - \$800. (For standard/full size varieties)

\$650 per acre suggested value - observed range \$450 - \$1150. (For dwarf and semi-dwarf varieties)

ADJUSTMENT FACTORS

Soil type, conservation measures, convenience and proximity to the farmstead, field size and shape, slopes, drainage, aeration, accessibility to and choice of markets, rocks, climate, commodity yield and price.

APPENDIX I

Compilation of definitions

DEFINITIONS

Definitions for “farm”, “farmland”, “farming”, “farm operation”, “commercial farming” “agricultural land”, “agricultural enterprise”, “agricultural products”:

Federal:

Farm

Since 1850, when minimum criteria defining a farm for census purposes were first established, the farm definition has changed nine times as the Nation has grown. A farm is currently defined, for statistical purposes, as any place from which \$1,000 or more of agricultural products (crops and livestock) were sold or normally would have been sold during the year under consideration. This definition has been in place since August 1975—by joint agreement among USDA, the Office of Management and Budget, and the Bureau of the Census.

Source: <http://www.ers.usda.gov/briefing/farmstructure/glossary.htm>

Title 7, Ch. 73: Farmland Protection Policy Act

§ 4201. General provisions

(c) Definitions

As used in this chapter—

- (1) the term “farmland” includes all land defined as follows:
 - (A) prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion, as determined by the Secretary. Prime farmland includes land that possesses the above characteristics but is being used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage;
 - (B) unique farmland is land other than prime farmland that is used for production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables; and
 - (C) farmland, other than prime or unique farmland, that is of statewide or local importance for the production of food, feed, fiber, forage, or oilseed crops, as determined by the appropriate State or unit of local government agency or agencies, and that the Secretary determines should be considered as farmland for the purposes of this chapter;

Maine Law:

Title 7 AGRICULTURE AND ANIMALS Pt 1: ADMINISTRATION

Ch. 2-B: REGISTRATION OF FARMLAND

§ 52. Definitions

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

4. Farmland. "Farmland" means any tract or tracts of land used for commercial farming:

- A. That consists of 5 or more contiguous acres;
- B. That has produced a gross income averaging no less than \$300 per acre for 3 or more of the previous 6 calendar years;
- C. Where use of agricultural chemicals has occurred; and
- D. That includes only the land on which the crop is produced.

"Farmland" does not include land used for woodlots, Christmas tree production, homes, farm buildings, roads, pastures, lawns or any area covered with noncrop vegetation that borders abutting land.

Ch. 6: MAINE AGRICULTURAL PROTECTION ACT

§ 152. Definitions

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

2. Agricultural products. "Agricultural products" means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur. "Agricultural products" does not include trees grown and harvested for forest products.

5. Farm. "Farm" means the land, plants, animals, buildings, structures, ponds and machinery used in the commercial production of agricultural products.

6. Farm operation. "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of agricultural products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects and fumes; operation of machinery and irrigation pumps; disposal of manure; agricultural support services; and the employment and use of labor.

Ch. 2: INTEREST IN AGRICULTURAL LAND

§ 32. Definitions

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

2. Agricultural land. "Agricultural land" means any land in Maine which is used or capable of use without substantial modification for production of agriculturally related products including, but not limited to, crops, livestock, poultry, dairy products and sod.

Pt 2: MARKETING, GRADING AND LABELING

Ch. 101: GENERAL PROVISIONS, Sub-Ch. 1-D: AGRICULTURAL MARKETING LOANS

§434. Definitions

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

1. Agricultural enterprise. "Agricultural enterprise" means a person or business located in this State and engaged in the commercial growing or harvesting of plants; raising of animals; growing or obtaining plant or animal by-products; aquaculture, as defined in Title 12, section 6001, subsection 1; or further processing, storing, packaging or marketing a raw product derived from plants, animals, plant or animal by-products or aquaculture, as defined in Title 12, section 6001, subsection 1, with the intent that the product be sold or otherwise disposed of to generate income. "Agricultural enterprise" includes a business or activity that attracts visitors to a farm for the purpose of supplementing income from the primary crop or livestock operation. "Agricultural enterprise" does not include a business engaged primarily in the growing, harvesting or further processing of forest species of trees for the purpose of producing pulp or other materials used in the paper manufacturing or wood manufacturing process.

Title 36 TAXATION Pt 2: PROPERTY TAXES

Subch. 10: FARM AND OPEN SPACE TAX LAW

§ 1102. Definitions

When used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

4. Farmland. "Farmland" means any tract or tracts of land, including woodland and wasteland, of at least 5 contiguous acres on which farming or agricultural activities have contributed to a gross annual farming income of at least \$2,000 per year in one of the 2, or 3 of the 5, calendar years preceding the date of application for classification. The farming or agricultural activity and income derived from that activity may be achieved by either the owner or a lessee of the land.

A.

B.

Gross income as used in this section includes the value of commodities produced for consumption by the farm household. Any applicant for assessment under this subchapter bears the burden of proof as to the applicant's qualification.

Title 10 COMMERCE AND TRADE Pt 2: BUILDING AND DEVELOPMENT

Ch. 110: FINANCE AUTHORITY OF MAINE, Sub-Ch. 1: FINANCE AUTHORITY OF MAINE ACT

§ 963-A. Definitions

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

1. Agricultural enterprise. "Agricultural enterprise" means knowledge, skill or labor applied to growing or raising plants or animals, harvesting plants or growing or obtaining plant or animal by-products, includes forestry and aquaculture and includes production, processing, storing, packaging or marketing products derived from agricultural enterprise.

2. Agricultural land. "Agricultural land" means land capable of supporting commercial farming and forestry production.

Definitions in Maine DAFRR rules:

01-001 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES Chapter 10: RULES FOR THE AGRICULTURAL COMPLIANCE PROGRAM

2. Definitions

12. **Farm** - The land, buildings and machinery used in the commercial production of farm products.

13. **Farm Operation** - A set of conditions or activities that occur on a farm in connection with the commercial production of farm products including, but not limited to, operations giving rise to noise, odors, dust, insects, fumes, operation of machinery and irrigation pumps, ground and aerial seeding, ground spraying, aerial spraying, composting of material produced by the farm or to be used at least in part on the farm, disposal of manure, the application of chemical fertilizers, soil amendments, conditioners or pesticides and the employment and use of labor.

Chapter 32: RULES FOR OPERATION OF AGRICULTURAL MARKETING LOAN FUND

Section II. Definitions

A. **Agricultural enterprise.** "Agricultural enterprise" means a person or business, located in Maine, engaged in the commercial growing or harvesting of plants; raising of animals; growing or obtaining plant or animal by-products, aquaculture, as defined in Title 12, section 6001, subsection 1; or further processing, storing, packaging or marketing a raw product derived from plants, animals, plant or animal by-products or aquaculture as defined in Title 12, section 6001, subsection 1, with the intent that the product be sold or otherwise disposed of to generate income. "Agricultural enterprise" shall also include a business or activity that attracts visitors to a farm for the purpose of supplementing income from the primary crop or livestock operation. "Agricultural enterprise" does not include a business engaged primarily in the growing, harvesting or further processing of forest species of trees for the purpose of producing pulp or other materials used in the paper manufacturing or wood manufacturing process.

Chapter 565: NUTRIENT MANAGEMENT RULES

§3. Definitions

Unless the context otherwise requires, the following terms have the following meanings as used in these rules:

- 12. Farm or farming operation** - The aggregate of all agricultural land, equipment and all related facilities, crops and animals, regardless of their location or ownership, that form part of an integrated agricultural business or enterprise.

Town of Unity Land Use Ordinance:

Agriculture - the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

Commercial farmland - any piece of land used to grow crops or livestock, in a way that directly contributes at least \$300 per acre in market value.

Productive farmland - land that has historically been used for commercial crop production, or that meets the definition of either prime, unique or significant farmland soils as defined by the Soil Conservation Service. Pastureland varies widely in nature and will be evaluated on a case-by-case basis as to its viable agricultural value. Land supporting orchards and Christmas trees is considered productive farmland, while that supporting other trees is not, unless it meets one of the soil definitions outlined above.

APPENDIX J

USDA Farmland Conversion Impact Rating Form AD-1006

U.S. Department of Agriculture

FARMLAND CONVERSION IMPACT RATING

PART I (To be completed by Federal Agency)	Date Of Land Evaluation Request
Name Of Project	Federal Agency Involved
Proposed Land Use	County And State

PART II (To be completed by NRCS)		Date Request Received By NRCS	
Does the site contain prime, unique, statewide or local important farmland? (If no, the FPPA does not apply -- do not complete additional parts of this form).		Yes <input type="checkbox"/>	No <input type="checkbox"/>
		Acres Irrigated	Average Farm Size
Major Crop(s)	Farmable Land In Govt. Jurisdiction Acres: %	Amount Of Farmland As Defined in FPPA Acres: %	
Name Of Land Evaluation System Used	Name Of Local Site Assessment System	Date Land Evaluation Returned By NRCS	

PART III (To be completed by Federal Agency)	Alternative Site Rating			
	Site A	Site B	Site C	Site D
A. Total Acres To Be Converted Directly				
B. Total Acres To Be Converted Indirectly				
C. Total Acres In Site	0.0	0.0	0.0	0.0

PART IV (To be completed by NRCS) Land Evaluation Information				
A. Total Acres Prime And Unique Farmland				
B. Total Acres Statewide And Local Important Farmland				
C. Percentage Of Farmland In County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland In Govt. Jurisdiction With Same Or Higher Relative Value				

PART V (To be completed by NRCS) Land Evaluation Criterion Relative Value Of Farmland To Be Converted (Scale of 0 to 100 Points)	0	0	0	0
--	---	---	---	---

PART VI (To be completed by Federal Agency) Site Assessment Criteria (These criteria are explained in 7 CFR 658.5(b))	Maximum Points				
1. Area In Nonurban Use					
2. Perimeter In Nonurban Use					
3. Percent Of Site Being Farmed					
4. Protection Provided By State And Local Government					
5. Distance From Urban Builtup Area					
6. Distance To Urban Support Services					
7. Size Of Present Farm Unit Compared To Average					
8. Creation Of Nonfarmable Farmland					
9. Availability Of Farm Support Services					
10. On-Farm Investments					
11. Effects Of Conversion On Farm Support Services					
12. Compatibility With Existing Agricultural Use					
TOTAL SITE ASSESSMENT POINTS	160	0	0	0	0

PART VII (To be completed by Federal Agency)					
Relative Value Of Farmland (From Part V)	100	0	0	0	0
Total Site Assessment (From Part VI above or a local site assessment)	160	0	0	0	0
TOTAL POINTS (Total of above 2 lines)	260	0	0	0	0

Site Selected:	Date Of Selection	Was A Local Site Assessment Used? Yes <input type="checkbox"/> No <input type="checkbox"/>
----------------	-------------------	---

Reason For Selection:

AD-1006 Instructions

The AD-1006 , "Farmland Conversion Impact Rating" is the form used by Federal agencies who wish to convert farmland to nonagricultural uses.

FOR USE BY FEDERAL AGENCIES

SUBMITTING THE AD-1006

The following steps should be taken by the Federal agency in submitting the form.

Step 1

Federal agencies involved in proposed projects that may convert farmland, as defined in the FPPA to nonagricultural uses, will initially complete Parts I and III of the form.

Step 2

The Federal agency will make 4 copies of the form. Three copies will be submitted to the local NRCS, formerly SCS, field office, along with three copies of the maps indicating locations of the site. The Federal agency will keep one copy for its files.

Step 3

NRCS will, within 45 calendar days after receipt of the form, make a determination as to whether the site(s) of the proposed project contains prime, unique, statewide or local important farmland.

Step 4

NRCS will complete Parts II, IV, and V of the form, in cases where farmland will be converted.

Step 5

NRCS will return two to the Federal agency involved in the project. NRCS will keep one copy for its files.

Step 6

The Federal agency involved in the proposed project will complete Parts VI and VII of the form.

Step 7

The Federal agency involved in the proposed project will make a determination as to whether the proposed conversion is consistent with the FPPA and the agency's internal policies.

Step 8

Once the Federal agency has made a final decision on the project, the Federal Agency should submit a copy of the AD-1006 to the NRCS field office. The form should indicate the final decision of the agency.

COMPLETING THE AD-1006

Part I

In completing the "County and State" questions list all the local governments that are responsible for local land controls where the site(s) are to be evaluated.

Part III

In completing item B (Total Acres To Be Converted Indirectly), include the following:

1. Acres not being converted but that would no longer be capable of being farmed after the conversion, because the conversion would restrict access.
2. Acres planned to receive services from an infrastructure project as indicated in the project justification (e.g. highways, utilities) that will cause a direct conversion.

Part VI

1. Do not complete Part VI if a local site assessment is used.
2. Assign the maximum points for each site assessment criterion as shown in 7 CFR Part 658.59(b). In cases of corridor-type projects such as transportation, power line and flood control, criteria #5 and #6 will not apply and will be weighed zero, however, criterion #8 will be weighed a maximum of 25 points and criterion #11a maximum of 25 points.
3. Individual Federal agencies at the national level, may assign relative weights among the 12 site assessment criteria other than those shown in the FPPA rule. In all cases where other weights are assigned, relative adjustments must be made to maintain the maximum total weight points at 160.
4. In rating alternative sites, Federal agencies shall consider each of the criteria and assign points within the limits established in the FPPA rule. Sites most suitable for protection under these criteria will receive the highest total scores, and sites least suitable, the lowest scores.

Part VII

1. In computing the "Total Site Assessment Points", where a State or local site assessment is used and the total maximum number of points is other than 160. Example: If Site Assessment maximum is 200 points; and alternative Site "A" is rated 180 points:

2. Total points assigned Site A = $180 \times 160 = 144$ point for Site "A"
3. Maximum points possible 200The AD-1006 , "Farmland Conversion Impact Rating" is the form used by Federal agencies who wish to convert farmland to nonagricultural uses.

APPENDIX K

Provisions proposed in original bill LD 1684 and not enacted

Provisions proposed in original LD 1684 that were not enacted

AGRICULTURAL PROTECTION DISTRICTS

§ 153. Agriculture protection area

An area that is designated as an agriculture protection area by the department must be protected from nonagricultural development pressures. To protect these areas, the department shall create land preservation and use plans and policies and establish agricultural areas where substantial agricultural activities are encouraged. The land in these agriculture protection areas is conserved for the production of agricultural products to ensure the preservation of agriculture as a major factor in the economy of the State.

1. Eligibility. A unit of 250 acres or more of cropland under the ownership of one or more persons is eligible to be designated as an agriculture protection area. The area may also consist of a number of noncontiguous parcels. Each agriculture protection area must have a minimum annual gross income of \$10,000 from the production of agricultural products.

2. Application. For cropland to be designated as an agriculture protection area, an owner or owners of that cropland must submit an application prepared by the department to the commissioner. The application must include:

A. A legal description of the cropland, including the municipal tax map and lot number or numbers;

B. Maps that provide the soil types, zoning and flood plan of the cropland; and

C. Proof of annual gross income from the production of agricultural products of at least \$10,000 for the previous 3 years.

3. General rule. A municipality or political subdivision may not enact a law or ordinance that unreasonably restricts farm structures or farm practices within an agriculture protection area unless the law or ordinance bears a direct relationship to public health or safety.

4. Public nuisance. A municipality or political subdivision law or ordinance defining or prohibiting a public nuisance must exclude from the definition of the nuisance any agricultural activity or operation conducted using normal farming operations within an agriculture protection area as permitted by this chapter if the agricultural activity or operation does not bear a direct relationship to public health or safety.

5. Valuation. The State Tax Assessor in consultation with the department shall determine the valuation of cropland located in an agriculture protection area.

A. The valuation must be the same as that determined in Title 36, sections 1101 to 1121.

B. The valuation may be reviewed biannually and must remain in effect as long as the cropland remains in production.

C. The owner of the property shall annually on or before April 1st provide documentation

that the cropland remains in an agriculture protection area.

6. Penalty. The penalty for withdrawal from the agriculture protection area is the taxes that would have been assessed upon the land for the past year, less all taxes that were actually paid in the past year, plus interest at the rate set annually by the municipality during the previous year.

MINIMIZATION OF IMPACT

§ 157. Minimization of impact of governmental action

To minimize the impact of governmental action affecting private agricultural property, a governmental entity shall:

- 1. Diminution in value.** Avoid diminution in value of agricultural property;
- 2. Expedite decision.** Expedite a decision by the entity in cases in which a delay of the decision will substantially interfere with the use or value of agricultural property rights; and
- 3. Avoid delays in compensating owners.** Avoid unnecessary delays in compensating owners of agricultural property when diminution in value occurs by governmental action.

IMPACT ASSESSMENT

§ 158. Impact assessment

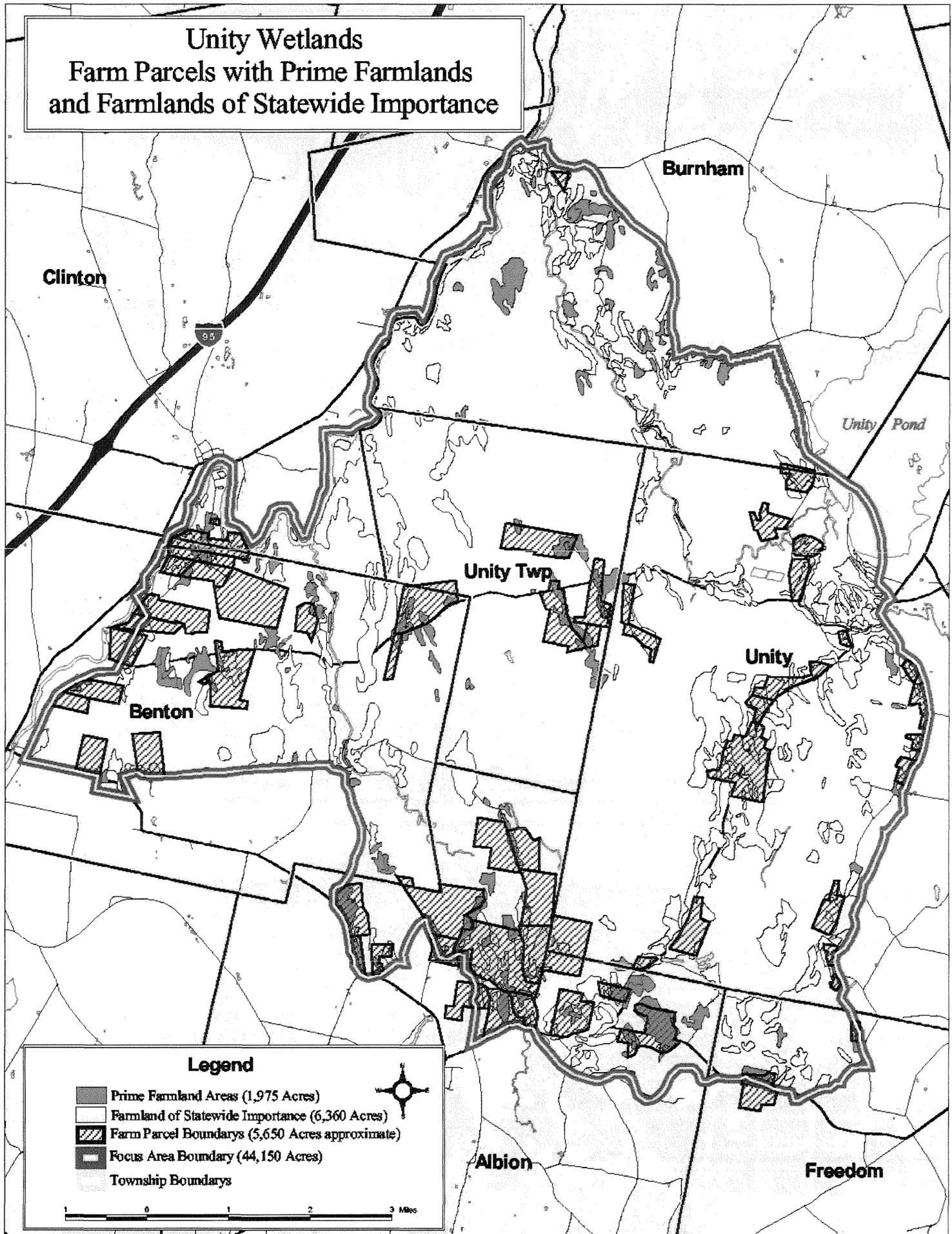
A governmental entity shall prepare a written assessment of any proposed governmental action prior to taking any proposed action that results in a diminution in value of agricultural property. The written assessment must include:

- 1. Identification of governmental action.** A clear and specific identification of the governmental action and the purpose of the governmental action;
- 2. Affected agricultural property.** Whether the governmental action would result in a diminution in value to the affected agricultural property. If so, the extent of the diminution in value;
- 3. Alternatives.** Alternatives to the proposed action that would lessen or eliminate any adverse impact on the agricultural property; and
- 4. Source of payments.** The source of payments in the entity's budget or otherwise for any compensation that may be in order.

APPENDIX L

Map of Unity Wetlands Focus Area

Figure 4: Farm Parcels with Prime Farmlands and Farmlands of Statewide Importance



APPENDIX M

Massachusetts Executive Order 193

General Laws of the Commonwealth of Massachusetts
Mass. Executive Order #193
By His Excellency EDWARD J. KING
Governor
PRESERVATION OF STATE OWNED AGRICULTURAL LAND

Preamble

Agricultural land in Massachusetts is a finite natural resource that is threatened by competing land use pressure.

The natural resource qualities associated with agricultural land make state owned agricultural land an irreplaceable economic and environmental asset when utilized for food production. This land is part of the "common wealth" of Massachusetts citizens, and the wise use and conservation of state-owned agricultural land is of broad public value. As the loss of private agricultural land in the Commonwealth continues, the state-owned land will play an increasingly important role for the state's remaining farmers and young people who wish to enter farming. As the state-owned agricultural land decline in productivity and efficient utilization, so does the maximum return of benefit to the citizens, of the Commonwealth.

Furthermore, the loss of agricultural land has had a detrimental affect upon environment quality. Agricultural land reduces flooding by effectively absorbing precipitation, while replenishing critical ground water supplies. The open characteristic and natural vegetation of agricultural land helps purify the air; enhances wildlife habitat; provides for recreation; and maintains the landscape's aesthetic and historic quality. Therefore, it is essential to ensure that the Commonwealth's agricultural land remains available for oresent and future generations.

WHEREAS, the Commonwealth seeks to preservet he productive agricultural land base on which the Massachusetts agricultural industry and the people of the Commonwealth depend; and

WHEREAS, state acquisition programs administered by the Department of Environmental Affairs, pursuant to G.L.c. 132 A, secs 11A-11E and G.L.c. 184 secs 31-33, promote the preservation of private agricultural land; and

WHEREAS, it is the policy of the Executive Department of the Commonwealth of Massachusetts to protect, through the administration of current programs and laws, the Commonwealth's agricultural land base from irreversible conversion to uses which result in its loss as an essential food production and environmental resource;

NOW THEREFORE, I, Edward J. King, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution and laws of the Commonwealth, do hereby order and direct all relevant state agencies to seek to mitigate against the conversion of state-owned agricultural land and adopt the policies herewith:

1. State funds and federal grants administered by the state shall not be used to encourage the conversion of agricultural land to other uses when feasible alternatives are available.
2. State Agency actions shall encourage the protection of state-owned agricultural land by mitigating against the conversion of state-owned land to non-agricultural uses, and by promoting soil and water conservation practices.
3. The Secretary of Environmental Affairs shall identify state-owned land suitable for agricultural use according to the following criteria:

a. the presence of soil types capable of supporting or contributing to present or potential commercial agriculture

b. current and historic use for agriculture, and

c. absence of non-farm development.

4. State Agencies controlling state-owned land suitable for agricultural use shall coordinate agricultural land management policy with the Executive Office of Environmental Affairs. In managing said land, State Agencies shall be encouraged to allow for use on a multiple year basis for forage and food crops.

5. Surplus state-owned land, identified as suitable for agriculture by the Secretary of Environmental Affairs, shall remain available for agriculture when compatible with state agency objectives.

6. For purposes of this Executive Order, "agricultural land" shall be defined as land classified Prime, Unique, or of State and Local Importance by the USDA Soil Conservation Service, as well as land characterized by active agricultural use.

7. For the purposes of this Executive Order, "state-owned land" shall be defined as:

a. all land under the custody or control of a state agency,

b. all lands purchased in whole or in part with state funds or federal funds administered by the state.

Given at the Executive Chamber in Boston this 19th day of March in the year of our Lord one thousand nine hundred and eighty one and of the Independence of the United States of American two-hundred and five

Edward J. King Governor, Commonwealth of Massachusetts

APPENDIX N

Maine Agricultural Viability Act of 1985

Farm-Support Measures within Unity's Land Use Ordinance

The Town of Unity's Land Use Ordinance contains several provisions that are intended to help protect farmers and farmland. They are summarized below.

Channeling Growth into the Downtown District

NOTE: Unity's "Downtown District" includes the traditional village center and surrounding areas served by public sewer. The remainder of town is the "Rural District." The Downtown District, though small by comparison, is large enough to accommodate significant growth without the loss of farmland.

Unity's Ordinance is designed to encourage new development to locate in the Downtown District rather than on the farmland found throughout the Rural District. To this end, the Ordinance allows the creation of significantly higher densities and smaller lots downtown. (Lots can be as small as 10,000 square feet if connected to public sewer.) The Ordinance also requires most new commercial activity to be located downtown, including all new retail. *NOTE: Home-based business and farm-related businesses are exempted from this requirement.*

Providing Flexibility in Rural Lot Size

Unity's Ordinance allows rural land to be developed in creative ways that can lessen negative impacts on farmland. In the Rural District, Unity requires an average lot density of 120,000 square feet (about 2 ¾ acres), but it does not require that all new lots be that size. Big lots can be interspersed with small lots (as small as 20,000 square feet where soil conditions allow) as long as the average density is maintained. This approach allows farmers wishing to sell a few house lots to do so without giving up as much of their farmland. It also allows developers to create site plans that retain large tracts of open space (including farmland) under single ownership, without reducing the number of lots they can create.

Protecting Existing Farms through Setbacks on new Development

Unity's Ordinance includes setbacks designed to minimize the impact that new development bordering farmland may have on farm operations, such as the spreading of manure. The Ordinance does not allow new water wells to be drilled within 300' of commercial farmland, or new houses to be built within 100' of farmland. To prevent this requirement from hurting farmers who may want to develop a portion of their land, the Ordinance allows farmers to waive this requirement as they see fit.

Over, please

Limiting Development on Farmland

Unity's Ordinance requires that all new developments be configured in ways that preserve farmland to the maximum extent practical. New structures and roads may be built on farmland to the extent allowed under other provisions of the Ordinance, but the applicant shall seek creative measures to minimize development that: 1) occurs on productive farmland; or 2) divides a single field; or 3) otherwise reduces the ease with which a parcel of farmland can be farmed in the future. Such measures may include: 1) interspersing small and large lots to maximize single ownership of a given field; or 2) locating some or all structures in woodland abutting farmland; or 3) utilizing other strategies which the applicant or Planning Board may devise.

Beyond this, Unity's Ordinance requires that all "Type 2" developments (which include all new construction totaling over 20,000 square and any subdivision involving five or more lots) occurring on parcels of land containing 5 or more acres of farmland to adhere to the following standards: 1) no more than 15% of the farmland may be used for structures, roads, or other impervious surfaces, with the exception that use is allowed for an agricultural facility (such as a barn or greenhouse); and 2) the remaining farmland shall be retained in a manner that facilitates use for agriculture. The Planning Board may waive these standards if the applicant preserves by permanent deed restriction another parcel of productive farmland located in Unity that is equal or greater in size.

Encouraging Developers to Preserve Farmland

Unity's Ordinance allows landowners who are subdividing property to create more lots than otherwise possible, if they take extra steps to: a) locate new structures away from productive farmland; and b) preserve farmland through permanent deed restriction.

An Ordinance can only go so far...

An Ordinance that contains measures to help protect farmland can prove a valuable community tool. But an ordinance by itself, no matter what it contains, will not preserve farming. The local people who drafted Unity's Ordinance realized this, and for this reason, many of these same people then went on to form Unity Barn Raisers (UBR). UBR is a non-profit membership organization dedicated to preserving and enhancing Unity's small town character. UBR is working to support many of the goals underpinning Unity's Ordinance, by helping to revitalize local farms and directly preserve farmland.

For more information, contact John Piotti, Chair of Unity's Planning Board and Comprehensive Plan Committee. Email: piotti@uninets.net Phone: 437-2493

APPENDIX O

Farm-support measures within the Town of Unity's land use ordinance

PUBLIC LAW 1985, Chapter 482
1st Regular Session
112th Legislature

CHAPTER 482

S.P. 489 - L.D. 1316

AN ACT to Encourage a Viable Agriculture
for Maine.

Be it enacted by the People of the State of Maine as
follows:

Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-¶(1-A)
is enacted to read:

(1-A) Agriculture Maine Expenses 7 MRSA §313
Agricultural Only
Viability
Advisory
Committee

Sec. 2. 7 MRSA Pt. 1-A is enacted to read:

PART 1-A

AGRICULTURAL AND RURAL RESOURCES DEVELOPMENT

CHAPTER 51

THE MAINE AGRICULTURAL VIABILITY ACT OF 1985

§311. Short title

This chapter shall be known as the "Maine Agri-
cultural Viability Act of 1985."

§312. Legislative findings

The Legislature finds that:

1. Importance of agriculture. Agriculture is
important to the overall economy of the State and
that regional variations in the State's agricultural
economy exist because of differences in climate,
soil, availability and cost of productive land, ac-
cess to service, supply and market infrastructure,
size of local markets and distances to other markets.
These regional variations result in different produc-
tion and marketing opportunities and constraints;

2. Changing conditions. Opportunities and con-
straints change in response to new scientific and
technical developments, changing consumer demands and
changes in the relative costs of agricultural inputs.
A healthy agricultural economy depends on a timely
response by farmers to these changing opportunities
and constraints; and

3. Response by farmers. Timely farmer response
is encouraged by an awareness of changing market con-

ditions, access to accurate information on new technologies appropriate to each region, adequate financing for innovative change and appropriate supply and marketing infrastructures.

§313. Maine Agricultural Viability Advisory Committee

1. Membership. The Maine Agricultural Viability Advisory Committee, as established by Title 5, section 12004, subsection 10, shall consist of the following 7 members:

- A. One representative of the Maine Farm Bureau;
- B. One representative of the Maine State Grange;
- C. One representative of the National Farm Organization;
- D. One representative of the Maine Small Farm Association;
- E. One representative of the Maine Organic Farmers and Gardeners Association;
- F. One representative of the Maine Association of Conservation Districts; and
- G. The Chairman of the Soil and Water Conservation Commission or his designee, who shall serve during his tenure in that office.

2. Selection of representatives; terms. The representatives of each of the organizations set out in subsection 1, paragraphs A to F, shall be chosen by that organization from among its members in a manner determined by that organization. Each representative shall serve for terms of 3 years, except that, of those first chosen, the representatives chosen pursuant to subsection 1, paragraphs A and B, shall serve terms of one year; the representatives chosen pursuant to subsection 1, paragraphs C and D, shall serve terms of 2 years; and the representatives chosen pursuant to subsection 1, paragraphs E and F, shall serve terms of 3 years. If any representative ceases to be a member of the organization which he represents, he shall cease to be a member of the advisory committee. Any vacancy on the advisory committee shall be filled in the same manner as the original selection for the remainder of the unexpired term.

3. Chairman. The advisory committee shall annually select one of its members to serve as chairman of the advisory committee.

4. Compensation. Advisory committee members shall be compensated in accordance with Title 5, chapter 379.

5. Responsibilities. The responsibilities of the committee shall be to:

- A. Advise the commissioner in developing rules as required in section 314, subsections 2 and 3;
- B. Review information gathered by local agencies and the analysis performed by the department pursuant to section 314, subsection 2;
- C. Advise the commissioner in proposing redirection of existing programs pursuant to section 315; and
- D. Advise the commissioner in implementing any other provision of this Act.

6. Meetings. Either the chairman or the commissioner may call a meeting of the committee. The committee shall meet at least quarterly.

§314. Establishing a pilot program for identifying regional opportunities

In response to these legislative findings, the commissioner shall establish a pilot program to review and identify the agricultural opportunities and constraints in up to 4 regions of the State and, to the maximum extent possible, to administer the department's programs in these selected regions so as to address these opportunities and constraints. In this pilot program, the commissioner shall:

1. Public participation. Ensure that the agricultural community and public in general have the opportunity to participate in the assessment of regional opportunities and constraints and in any redirection of programs resulting from the assessment; and

2. Local lead agencies. By rule establish criteria for selecting up to 4 regions for inclusion in this pilot program and designating local lead agencies to coordinate public input and assist in this regional assessment, provided that preference shall be given to local soil and water conservation districts as lead agencies which meet designation criteria. Regions shall be selected so as to reflect the agricultural, geographic and demographic diversity of the State and the capacity of potential local lead agencies to participate in this pilot program.

A. The department shall provide the local lead agencies with current information about agricultural production, processing and marketing within the State, the demand for state agricultural products and the State's market position relative to its competitors.

B. Local lead agencies shall hold hearings and public meetings and shall collect and assess information on agricultural resources, problems and needs in their local areas, including at a minimum:

- (1) The land base currently used or suitable for agricultural production, its nature and extent, use and ownership;
- (2) The market, supply and service infrastructure serving the area;
- (3) The availability and cost of production inputs in the area;
- (4) The local demand for agricultural goods produced in the area; and
- (5) The needs of the agricultural sector in the area perceived to be critical to maintaining or enhancing its economic strength.

C. The department shall compile and analyze information received pursuant to paragraph B and shall, after consultation with local lead agencies, propose redirection of existing programs and implementation of new programs as appropriate; and

3. Funds. Establish by rule provisions for the expenditure of funds authorized for the purposes of this chapter.

§315. Regional opportunities addressed

Within one year following completion of all regional assessments, the commissioner shall initiate implementation of appropriate state programs to respond to regional needs.

§316. Participation of other agencies

1. Other state agencies. The State Planning Office, the State Soil and Water Conservation Commission, the Finance Authority of Maine and the University of Maine shall cooperate with and assist the commissioner in his efforts to assess regional agricultural opportunities and constraints pursuant to this chapter.

CHAPTER 482

2. Federal agencies. The commissioner shall consult with appropriate federal agencies, including the Farmers Home Administration, the Soil Conservation Service and the Agricultural Stabilization and Conservation Service, in carrying out this chapter.

Sec. 3. 12 MRSa §2 is amended to read:

§2. Policy

Conservation of soil and water resources may involve adjustments in land and water use and the development, improvement and protection of these resources under various combinations of use. It is declared to be the policy of the Legislature to provide for and encourage the optimal use of the State's agricultural resources, to insure the availability of appropriate soil and water resources for the production of food and other renewable resources, to provide for the conservation of the soil and soil and water resources of this State, and for the control and prevention of soil erosion, and thereby to preserve natural resources and maintain the economic base for the State's natural resource industries, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this State.

Effective September 19, 1985.

APPENDIX P

Letter from the Wild Blueberry Commission of Maine - October 28, 2008



Wild Blueberry Commission OF MAINE

5784 York Complex, Suite 52, Orono, Maine 04469-5784

TEL: 207-581-1475

FAX: 207-581-3499

October 28, 2008

Commission to Study the Protection of Farms & Farmland
c/o Jill Ippoliti, Legislative Analyst
Office of Policy & Legal Analysis
13 State House Station
Augusta, ME 04333-0013

Dear Senator Nutting, Representative Pieh and Members of the Commission:

On behalf of the Wild Blueberry Commission of Maine, thank you for the important work you are doing as members of the Commission to Study the Protection of Farms and Farmland. Since we will not be able to attend the last meeting on October 29th, we want to address several important issues under consideration during the Commissions' proceedings this past couple of months. We are keeping in mind that the limited state budget will most likely make it necessary to study the ramifications of certain actions and programs while recommending other revisions that will not require financial support. To that end, it is important to provide a package of benefits to protect farms and farmland and determine costs for specific elements.

We ask that the Commission consider the following in their recommendations:

- Link the Department of Agriculture's Farmland programs to a mapping system or capability such as that available to the public through USDA-NRCS or the Maine Geographic Information System. This will ensure that classification of land that is viable for agricultural production occurs.
- Consider revising the Farm and Open Space Tax law by increasing the amount of farm income to qualify farmland for the program. Include land that is designated as unique, prime and significant in the State of Maine into the farmland valuation criteria of the law.
- Determine budget range needed to reimburse towns for farmland in the current use taxation program.

- If the establishment of agricultural protection areas or districts will not be made mandatory, establish Maine as a whole as an agricultural district and allow voluntary participation from individual farmers or groups of farmers link some of the criteria for participation on the newly revised Farm and Open Space Law (see above). Structure enhanced benefits for joining the statewide protection/district area.
- Establish development buffer zones that protect farm and farmland impact for any farm or farmland in the Farm and Open Space program, or if established, an agricultural protection area.
- When considering the use of agricultural impact assessments, incorporate development buffer zones into these assessments that are written into rules in the Dept. of Agriculture, Food and Rural Resources and across other state departments and municipalities.
- Ensure that productive agricultural land has an environmental and/or economic value at least as valuable as wetlands and is afforded the same protection in the development of public infrastructure projects including those initiated through eminent domain.

Thank you for considering these suggestions in your recommendations. We appreciate your efforts and look forward to working with you in the future.

Best Regards,

A handwritten signature in cursive script that reads "Patricia Kontur".

Patricia Kontur
Director of Programs