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Report to the Joint Standing Committee on Agriculture,  
Conservation and Forestry  
126<sup>th</sup> Legislature, First Session

# DEP Regulatory Review Relating to Agricultural Activities

*January 2013*

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## Executive Summary

During the first session of the 125<sup>th</sup> legislature, LD 1444, “Resolve, to Enhance Agriculture and Farming,” was introduced to streamline the permitting process for clearcutting land under 12 MRSA § 8869. At the public hearing, staff from the Maine Forest Service testified that the issue with field conversion this legislation sought to address would not be solved by amending 12 MRSA § 8869, but rather the rules and regulations under the jurisdiction of the Department of Environmental Protection (DEP), and federal regulations associated with the Clean Water Act under the jurisdiction of the Army Corps of Engineers, were the likely obstacles, especially in the particular incident that seems to motivate this proposal.

At subsequent work sessions, DEP staff discussed its regulations with the Joint Standing Committee on Agriculture, Conservation and Forestry (Committee). The result of these discussions was a directive to the DEP to review its regulations, specifically 38 MRSA §§435-449, 38 MRSA §§480-A-HH, and any rules associated with these laws, such as 06-096 C.M.R. ch. 1000: *Guidelines for Municipal Shoreland Zoning Ordinances*, that affect a person’s ability to till or clear land for agriculture. In addition to this review, the Committee also directed the DEP to solicit input from the Department of Agriculture, Conservation and Forestry, as well as farmers and representatives of agricultural associations, in order to examine setbacks for which tilling of soil is prohibited, and to determine if there are options available that would allow land formerly used for forage crops and pasture to return to those uses.

Under the DEP’s rules and regulations, agricultural uses are allowed, and are provided some exemptions. However, under certain conditions, either the creation of new fields or the reclamation of former fields, would require permitting, and in some instances may not be allowed at all. Additionally, standards within these regulations would limit where tilling could occur in relation to a protected natural resource.

As directed, the DEP solicited input from the agricultural community. A meeting was held in November 2012, to discuss DEP’s regulations as they relate to agriculture, tilling and field conversion. The general consensus of the group was that the setback limits on tilling were not at issue. Instead the confusion regarding the regulations, as well as limitations on wetland conversions under the Natural Resources Protection Act, and the Clean Water Act as administered by the Army Corps of Engineers were seen as issues. Since the biggest regulatory obstacle is the federal regulations related to the conversion of wetlands to agricultural fields, the DEP is not recommending any amendments to its current rules and regulations.

In general, with proper permitting, and sometimes with no permits at all, the creation of new fields, or the expansion of existing fields is allowed. There may be standards that place some limitations on the extent and location of these activities, but they are rarely prohibitive. The current regulatory scheme, along with better outreach and education should provide those engaged in agriculture the ability to create new fields, or reclaim fields without many obstacles.

## I. Introduction

During the first session of the 125<sup>th</sup> legislature, LD 1444 was introduced to address concerns regarding the reclamation of agricultural fields. The original bill was aimed at the former Department of Conservation, more specifically, regulations concerning timber harvesting found at 12 MRSA § 8869. The bill proposed to direct the then Department of Conservation to streamline the permitting process for clearcutting land for agriculture, that had previously been used for agricultural purposes.

At the public hearing, staff from the Maine Forest Service testified that the issue this legislation sought to address was really related to the rules and regulations under the jurisdiction of the DEP, as well as federal regulations associated with the Clean Water Act, and under the jurisdiction of the Army Corps of Engineers. The specific DEP laws and regulations identified were the Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines), the Mandatory Shoreland Zoning Act (MSZA) and the Natural Resources Protection Act (NRPA).

In response to this testimony, as well as conversations with DEP staff at subsequent work sessions, the Joint Standing Committee on Agriculture, Conservation and Forestry (Committee) directed the DEP to review those provisions within 38 MRSA §§435-449 (MSZA), 38 MRSA §§480-A-HH (NRPA) and any rules associated with these laws, such as the Guidelines, that affect a person's ability to till or clear land for agriculture. LD 1444, "Resolve, to Enhance Agriculture and Farming" also directs the DEP, in consultation with the former Department of Agriculture, Food and Rural Resources, to solicit input from farmers and representatives of agricultural associations when engaging in this review. The Committee directed that during this review, the DEP was to examine setbacks for which tilling of soil is prohibited, and consider options to allow land formerly used for forage crops and pasture to return to those uses.

In response to this directive, DEP staff contacted Mark Hedrich at the Department of Agriculture, Conservation and Forestry (DACF). Mr. Hedrich provided names of potential participants. DEP contacted those individuals. All agreed to partake in a meeting to discuss these issues. Those participants were:

- Mark Hedrich, Nutrient Management Program Coordinator (DACF)
- David Rocque, State Soil Scientist (DACF)
- Jon Olson, Maine Farm Bureau
- Tom Gordon, Executive Director of the Maine Association of Conservation Districts
- Lauchlin Titus, AgMatters, LLC
- Clark Granger, Maine Farm Bureau Legislative and Forestry Committee
- Mike Mullen, DEP
- Deirdre Schneider, DEP

The meeting to discuss DEP regulations in relation to reclaiming fields for agricultural purposes was held on November 16, 2012. Details concerning this meeting can be found at Section IV of this report.

## II. The Mandatory Shoreland Zoning Act and Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances

The Mandatory Shoreland Zoning Act was enacted following a finding by the Legislature that “. . . it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls . . .” The shoreland zone includes all land areas within 250 feet, horizontal distance, of the

- normal high-water line of any great pond or river,
- upland edge of a coastal wetland, including all areas affected by tidal action, and
- upland edge of a freshwater wetland, and
- all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

Within this zone of jurisdiction, the land area is designated with a zoning district that dictates the activities that can occur, if permits are required, and the standards that must be followed. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish and lands from flooding and accelerated erosion; to protect archaeological and spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas . . .”

Within the organized areas of the state, the MSZA is administered by municipalities; in those cases where municipalities have failed to adopt local shoreland zoning ordinances consistent with the Guidelines, the DEP will adopt an ordinance through rulemaking for that municipality. The protections intended by the law are achieved through the control of land uses and the placement of structures within the shoreland zone.

The MSZA is implemented through DEP regulation 06-096 C.M.R. ch. 1000, published as the “Guidelines for Municipal Shoreland Zoning Ordinances.” The Guidelines adopted and amended by the Board of Environmental Protection, present the minimum standards for municipal shoreland zoning ordinances. Municipalities are encouraged to modify the standards to accommodate local needs and circumstances, provided that such ordinances or standards are equally or more effective in achieving the purposes of the MSZA, except where a municipality can show that special conditions exist that warrant less stringent standards.

The Guidelines contain multiple shoreland zoning district designations. The decision on how to designate these districts is based on multiple factors such as the type of adjacent resource, site conditions, pattern of existing development, as well as other factors a municipality may deem important. Districts included within the Guidelines are:

- Resource Protection
- Limited Residential
- Stream Protection
- Limited Commercial

- General Development District I
- General Development District II
- Commercial Fisheries/Maritime Activities

Not all municipalities will have all the aforementioned districts, and some may have different districts that are tailored to local conditions; however, under certain circumstances a Resource Protection designation is mandatory. Additionally, if a water body meets the definition of stream in both the MSZA and Guidelines, that water body must be zoned as Stream Protection. Lastly, districts, such as General Development and Commercial Fisheries/Maritime Activities require that certain development patterns are already in existence in order to utilize these zoning districts. The reason for this requirement is that the standards are less stringent in these districts.

The Guidelines allow the use of agriculture in all shoreland zoning districts. A permit is only required when located within a Resource Protection District. Municipal ordinances may vary in their treatment of agriculture, but if an ordinance is more stringent in regards to agricultural activities, that ordinance must be reviewed by the DACF.

The specific standards relating to agricultural activities within the shoreland zone is located at Chapter 1000, Section 15(N) of the Guidelines. These standards are as follows:

**15. Land Use Standards.** All land use activities within the shoreland zone shall conform to the following provisions, if applicable.

#### **N. Agriculture**

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.

- (5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of other water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

The other provisions within the shoreland zoning regulations that one may deem as impacting agriculture are the clearing standards found in both the MSZA and the Guidelines. However, as written, the DEP has determined that agriculture is exempt from following these standards, except for those standards found at 38 MRSA § 439-A(6), when the activity is the construction of structures associated with agriculture, such as the construction of a barn or greenhouse. Any structure construction, regardless of the associated use, must be located to meet structure setbacks as established in the Guidelines. With a few exceptions, such as structure setbacks, the standards found at 38 MRSA § 439-A(6) (when there is structural development) and Chapter 1000, Section 15(N) of the Guidelines, generally allow agricultural activities without extensive or prohibitive regulations.

### **III. The Natural Resources Protection Act**

The Natural Resources Protection Act was enacted following a finding by the Legislature stating, in relevant part: “. . . the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State. . . there is a need to facilitate research, develop management programs and establish sound environmental standards that will prevent the degradation of and encourage the enhancement of these resources. It is the intention of the Legislature that existing programs related to Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and sand dunes systems continue. . . The well-being of the citizens of this State requires the development and maintenance of an efficient system of administering this article to minimize delays and difficulties in evaluating alterations of these resource areas. . . the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.”

The Natural Resource Protection Act establishes a regulatory boundary within which development activities may occur as follows:

### §480-C. Prohibitions

**1. Prohibition.** A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the department if the activity is located in, on, or over any protected natural resource or is located adjacent to any of the following:

- A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within freshwater wetland; or
- B. Freshwater wetlands consisting of or containing:
  - (1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation , emergent marsh vegetation or open water, except for artificial ponds or impoundment; or
  - (2) Peatlands dominated by shrubs, sedges and sphagnum moss.

A person may not perform or cause to be performed any activity in violation of the terms or conditions of the permit.

**2. Activities requiring a permit.** The following activities require a permit:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation, or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction, repair or alteration of any permanent structure.

The Natural Resources Act then details the circumstances under which the department will issue a permit under the Act:

Under the Natural Resources Protection Act, certain activities do not require a permit from the Department:

**§480-Q. Activities for which a permit is not required** A permit is not required for the following activities if the activity takes place solely in the area specified below:

- 6. Agricultural activities.** Subject to other provisions of this article that govern other protected natural resources, altering a freshwater wetland for the purpose of normal farming activities such as clearing vegetation for agricultural purposes if the land topography is not altered, plowing, seeding, cultivating, minor drainage and harvesting, construction or maintenance of farm roads. . .
- 25. Existing agricultural fields and pastures.** Maintenance, but not enlargement, of agricultural fields and pastures in existence on September 1, 2002 that are adjacent<sup>1</sup> to a river, stream, or brook not regulated by a municipality under chapter 3, subchapter 1, article 2-B.

38 MRSA §480-Q(6) permits the alteration of a freshwater wetland without a permit from the department for the purpose of normal farming activities, if the topography is not altered; however,

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<sup>1</sup> The DEP has defined "adjacent" to mean the area within 75 feet of a protected natural resource.



the qualifier ‘subject to the provisions of this article that govern other protected resources’ significantly limits this activity.

Thus limits are imposed upon agricultural activities which might occur in, on, over, or in some cases adjacent to, significant wildlife habitat and all other protected natural resources other than freshwater wetlands. Notwithstanding the limits on activities as described above, the NRPA does allow some level of development activity occurring within freshwater wetlands. Subsection 480-X details both the procedures to be followed for permit applicants as well as the required level of review to be performed by the department.

Beyond the degree of alteration permitted under the §480-Q(6) exemption, activities occurring on, over, or adjacent to freshwater wetlands are subject to permitting by the Department in accordance with §480-X.

Both the Mandatory Shoreland Zoning Act and the Natural Resource Protection Act are designed to protect Maine’s natural resources while providing a means by which natural resources can be developed in a rational, coherent manner. Effective resource management often requires both a balancing of competing interests, as well as careful consideration of the longer term impacts. These statutes, and the rules implementing these statutes, incorporate the best management practices published by the DACF and the DEP.

Neither the Mandatory Shoreland Zoning Act nor the Natural Resource Protection Act has a significant impact on the normal range of agricultural activities on established farms, fields, and pastures (assuming that such activities are conducted in accordance with the Best Management Practices published by the various agriculture and natural resource agencies of the State). These rules come in play with the expansion of existing cultivated fields or pastures and/or the creation of new ones. Even then, absent a negative impact on a protected natural resource, or a conflict with a requirement of the municipal Shoreland Zoning ordinance, a permit will likely be issued for that activity to occur.

#### **IV. Meeting Overview**

DEP staff met with a group of individuals that represented an agricultural perspective on the DEP’s rules and regulations. A couple of common themes emerged from these discussions. One theme seemed to center around confusion about the regulations. This confusion was on the part of local code enforcement officers, who are charged with administering and enforcing the shoreland zoning standards, as well as the regulated community. This is especially compounded by the fact that there are often multiple laws in play, at the local, state and federal level. To help alleviate some of this confusion, Dave Rocque at the DACF has drafted a document that summarizes the laws impacting agriculture. Staff at the DEP has provided input on this document, as it relates to the DEP’s rules and regulations. This document can be viewed at Appendix A.

Another theme was trying to determine if there was a way to quantify a timeframe for reclamation of a field. If the field was in existence 10 years ago, 15 years ago, etc. would this allow the same farmer or a different farmer to resume usage without prohibition or permits? Under the Guidelines, once a field reverts back to woody vegetation, which is defined as live trees or woody, non-herbaceous

shrubs, then in order to reclaim it, it would be subject to the standards for a new field. One would be able to clear all vegetation without an issue; however, tilling would not be allowed within 75 feet or 100 feet of the resource (depending on the resource). Under the NRPA it would depend on numerous factors. In general, if outside of 75 feet from the resource, conversion in most instances would not be at issue. Any obstacles to conversions would be more prevalent when the resource is wetland. If the reclamation would require the conversion of wetlands, the NRPA may require avoidance and minimization, or compensation for conversion. Compensation may make this type of reclamation activity cost prohibitive. However, even if the DEP were to amend their rules to alleviate these issues, the regulation of wetlands by the Army Corps of Engineers (Corps) would not allow these types of conversions. In particular the Corps does not allow the removal of root balls in wetlands. The way the laws are currently written, putting a timeframe in terms of years is not feasible.

It is important to note when discussing this issue, DEP staff asked the group if they had any issues with the setbacks established at Chapter 1000, Section 15(N), especially as they relate to tilling. The group responded that they did not have an issue with the setback requirements and understood the purposes of these standards. It appeared that when it was clarified that clearing was not governed by the same setbacks, that the group felt comfortable with the requirements of Chapter 1000, Section 15(N). The ability to clear beyond the setback to accommodate equipment, allow for clearing to prevent shading, as well as allowing clearing for the function of GPS equipment are important to agriculture, and with the exception of stump removal within the buffer area of a resource, is generally allowed by DEP rules and regulations.

As this was an open forum discussion, other issues and points were made; however, they were not applicable to DEP's directive, and did not involve rules and regulations within DEP's jurisdiction, therefore, have not been included in this report.

## **V. Conclusion**

Based on a review of the DEP's rules and regulation, and input from participants during an open discussion regarding the reclamation of agricultural fields, the DEP is not suggesting any changes to its current regulations. The hurdles that do exist within the regulations at the DEP would not be alleviated by any change to the regulations because of the jurisdiction of the Corps. The DEP, along with staff at the DACF feel that education of all the entities involved in agriculture from the local code enforcement officer to the regulated farmer, will help alleviate some confusion, and hopefully will make the reclamation of agriculture fields seem less onerous. With some exceptions, these types of activities will rarely be prohibited, but may require permitting. DEP staff will continue to be available to assist people in navigating through the permitting process. Staff will also be sure to share the finalized version of the document in Appendix A with local code enforcement officers, so that they can better assist those engaged in agriculture navigate through the local process.

## **Appendix A**

The following document was produced by staff at the Department of Agriculture, Conservation and Forestry as a guide for the regulated community, as well as consultants, code enforcement officers and other interested parties. It has been created to help guide someone through the various regulations at the local, state and federal level when contemplating the creation of a farm pond or new agricultural pasture or crop land fields, or the expansion or renovation of existing agricultural fields. DEP staff provided input on the portions of the document that addresses DEP regulations.

# MAINE DEPARTMENT OF AGRICULTURE CONSERVATION AND FORESTRY

## REGULATORY ISSUES REGARDING FARM PONDS, CREATING NEW AND THE EXPANSION OR RENOVATION OF EXISTING AGRICULTURAL PASTURE OR CROP LAND FIELDS

January 25, 2013

### **BACKGROUND:**

If an agricultural producer proposes to create or expand a pasture or crop land by converting forestland, what rules/regulations/issues need to be considered? Below are citations of laws, rules and guidelines that attempt to answer these questions. Notes have been added to help clarify some laws and/or rules or to provide current opinions.

**CAUTION:** *In all cases, it is wise to consult State and Federal regulators (MDEP, LUPC, MDOA, C & F, NRCS, the local Code Enforcement Officer and ACOE) before undertaking a clearing and conversion activity or to construct a pond, to make certain all interpretations are correct and to see if any rules or regulations have been added, deleted or updated.*

### **Definitions:**

**Agriculture** (from MDEP Chapter 1000, Guidelines for Municipal Shoreland Zoning Ordinances, developed in consultation with the Maine Department of Agriculture, Conservation and Forestry) – 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 greenhouse products. Agriculture does not include forest management and timber harvesting operations.

**Agricultural Activities** (38 M.R.S.A. Chapter 3, Subchapter I, 361-A Definitions) – Agricultural activities means the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm wood lots products, including Christmas trees.

**Agricultural composting operation** (from Maine Agriculture Protection Act) – 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 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 semi-volatile organic compounds, polychlorinated biphenyls or dioxins.

**Agricultural Management Activity** (LUPC Standards) – Land clearing if the land topography is not altered, tilling, fertilizing, including the spreading and disposal of manure, liming, planting, pesticide application, harvesting or cultivating crops, pasturing of livestock, minor drainage and maintenance of drainage, and other similar or related activities, but not the construction of land management roads, nor the land application of septage, sludge and other residuals and related storage and composting activities.

**Agricultural products** (from Maine Agriculture Protection Act) – 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 bee 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 do not include trees grown and harvested for forest products.

**Agriculture support service** (from Maine Agriculture Protection Act) – Agriculture support service means the aerial or surface application of seed, fertilizer, pesticides or soil amendments and custom harvesting.

**Composting** (from Maine Agriculture Protection Act) – Composting means the controlled aerobic decomposition of organic materials to produce a soil-like product beneficial to plant growth and suitable for agronomic use.

**Farm** (from Maine Agriculture Protection Act) – Farm means the land, plants, animals, buildings, structures, ponds and machinery used in the commercial production of agricultural products.

**Farming Operation** (from Maine Agriculture Protection Act) – Farming operation means a condition of 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.

## **MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY RULES, REGULATIONS, POLICY AND GUIDELINES**

The Maine Department of Agriculture, Conservation and Forestry does not have setback requirements for expanding or creating new pasture or crop fields but does have setback requirements for a number of activities including composting sites, manure stacking sites and manure spreading (see Guidelines for Siting Compost Operations, Manure Utilization Guidelines and Site Specific Manure Spreading Guidelines).

**38 M.R.S.A. - Chapter 3, Subchapter I, Article 1-F, Section 410-J: Non-Point Source Pollution Program:** “The Department of Agriculture, Food and Rural Resources shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from agricultural activities. The Department of Agriculture, Food and Rural Resources may recommend to farmers the use of best management practice guidelines.”

*Note: It is the policy of the Department of Agriculture, Conservation and Forestry that all agricultural operations, existing and new must follow best management practices (see Manual of Best Management Practices for Agriculture and the MDEP Maine Erosion and Sediment Control BMP’s). In addition, as per 7 MRSA Part 1, Chapter 6, Section 158, if a farmer refuses to follow Best Management Practices developed by the Commissioner of MDOA in response to a complaint, the farmer is liable for abatement costs and may be fined as the result of a civil violation.*

**7 M.R.S.A. - Part 1, Chapter 6, Section 153; farming operation or agricultural composting operation not a nuisance:** “A Farm, farming operation or agricultural composting operation may not be considered a public or private nuisance under Title 17, chapter 91 if the farm, farming 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, farming operation; agricultural composting operation. The farm, farming operation or agricultural composting operation conforms to best management practices, as determined by the commissioner in accordance with Title 5, chapter 375”.

*Note: MDOA, C & F Policy - In order to qualify for the Agricultural exemption for expanding a field or constructing a pond, the activity must be conducted in a manner consistent with standard procedures for the particular activity. That means the activity should not include actions that have little or no value for the farm or farming operation, such as constructing a pond many times larger than is needed for the farm or clearing in a lakeside buffer to provide for a better view of the lake from a home. Activities which appear to be of value for a non-agricultural use will not be provided any exemption. In addition, there must be a reasonable expectation that the activity will actually be used for agricultural purposes.*

*Note: LD 1684, An Act to Create the Maine Agriculture Protection Act, describes in the summary the legislative intent for this act which became 7 MRSA, Chapter 6: “This bill repeals the Maine Revised Statutes, Title 17, section 2805, which deals with certain farm or farm operations that are exempt from being classified as a nuisance and with the use of best management practices. The bill also establishes the Agriculture Protection Act in Title 7. The bill establishes incentives to conserve and protect agriculture land and enterprises and to further encourage agricultural development. The bill also allows the State to create agriculture protection areas and to foster and strengthen agriculture development.”*

**All complaints regarding agricultural activities are the responsibility of the Maine Department of Agriculture and must be investigated by the Maine Department of Agriculture as per 7 M.R.S.A. Part 1, Chapter 6, Section 156.**

“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, ground 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, farming 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, farming operation or agricultural composting operation to comply with best management practices

and prescribe site-specific best management practices for that farm, farming operation or agricultural composting operation;

2. **Advise person responsible.** Advise the person responsible for the farm, farming 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.

**7 M.R.S.A. Part 1, Chapter 6, Section 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”. This means that a municipality may enact an ordinance that prevents a farmer from farming using best management practices but the ordinance would be unenforceable.

**7 M.R.S.A. Part 1, chapter 6, section 158: Failure to adopt best management practices.** “If the person responsible for the farm, farming 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 may refer the matter 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 \$250.00 per day for every day that the violation continues, may be adjudged”.

## ***MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION (MDEP)***

### **Jurisdiction over Maine’s organized territories**

#### **Natural Resources Protection Act (NRPA):**

**38 M.R.S.A. Sections 480-A to HH, Natural Resources Protection Act (NRPA)** – This is the law that provides protection of the State’s rivers, streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dune systems. Any work within or adjacent to these protected natural resources in organized territories of the State requires a permit from the Maine Department of Environmental Protection.

## **Section 480-Q Activities For Which A Permit Is Not Required:**

**6. Agricultural Activities.** Subject to other provisions of this article that govern other protected natural resources, altering a **freshwater wetland** for the purpose of normal farming activities such as clearing of vegetation for agricultural purposes if the land topography is not altered, plowing, seeding, cultivating, minor drainage and harvesting, construction or maintenance of farm or livestock ponds or irrigation ditches, maintenance of drainage ditches and construction or maintenance of farm roads.

*Note: When creating new agricultural fields in freshwater wetlands, removing stumps and bulldozing the land is considered to be altering the land topography and is therefore not exempt from the NRPA. This opinion is consistent with the Army Corps of Engineers opinion.*

**25. Existing Agricultural Fields and Pastures.** Maintenance but not enlargement of agricultural fields and pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter 1, article 2-B.

*Note: The NRPA requires new or expanded agricultural fields to maintain a minimum setback of 75 feet from all streams not just streams large enough to have a shoreland zone as well as from other protected natural resources such as great ponds and some wetlands. Farmers may however, be able to obtain a permit (permit-by-rule) from the MDEP that would allow them to reduce the setback to 25 feet from those streams that do not have a shoreland zone (above the confluence of the first two perennial streams when neither is the outlet of a great pond) provided it is done according to certain standards. Agriculture has an exemption from NRPA freshwater wetlands, however those non-forested wetlands adjacent to a waterbody such that the waterbody and wetland together are 10 acres or more in size or non-forested wetlands of 10 acres or more require setbacks under minimum shoreland zoning guidelines (see Chapter 1000 requirements below). Agriculture does not however, have an exemption for new or expanded farm fields to setbacks from NRPA classified significant wildlife habitats.*

## **38 M.R.S.A Sections 480-BB through GG. Significant Wildlife Habitat:**

New agricultural fields are not allowed in significant wildlife habitat or within designated buffer areas surrounding the significant wildlife habitat without first obtaining a permit from the DEP.

- A. Inland waterfowl and wading bird habitat: These are areas that have been identified by the Department of Inland Fisheries and Wildlife. Typically these are complexes of freshwater wetlands and open water but can also be freshwater wetlands adjacent to great ponds. Both have a 250 foot habitat area where the water fowl nest. The 250 foot habitat can and often does include uplands. The 250 foot habitat completely surrounds the wetland/open water complex but only is around the wetland adjacent to a great pond (does not include the entire great pond).
- B. Shorebird feeding and roosting areas: DIF&W has identified staging area habitats essential to migratory shorebirds where they feed and rest.
  - a. Shorebird feeding area: includes the intertidal area and a 100 foot buffer area. The buffer is measured from the edge of the coastal wetland and usually includes uplands.



- b. Shorebird roosting area: includes the intertidal area used for feeding, the roosting area, and a 250 foot buffer area. The buffer is measured from the edge of the roosting area and usually includes uplands.
- C. Tidal waterfowl and wading bird habitat: These are located within coastal wetlands which are already protected and do not include any buffer area.
- D. Vernal Pools: Significant vernal pools and a 250 foot habitat area surrounding them are protected by the NRPA. The determination of whether they are significant is made by counting the egg masses of certain amphibians in the spring and the pool must be of natural origin (not manmade). Contact the local DEP office if you have one or suspect you do in an area where you want to expand a farm field.

*Note: If you wonder whether you may have one of these significant wildlife habitats on or adjacent to your property, use the internet and go to [www.maine.gov/dep](http://www.maine.gov/dep) and type in "birds" in the DEP search bar. There you can find habitat screening maps for each municipal jurisdiction within the state.*

### **SITE LAW:**

**38 M.R.S.A. Section 482-(2), Site Location of Development** – This law requires a permit for any “development of state or regional significance that may substantially affect the environment”. Development is defined as being “any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that meets one of several conditions. Most of the conditions are not related to agriculture but one condition is not clear. That one is “A. Occupies a land or water area in excess of 20 acres”. There is no specific exemption for agriculture in the Site Law but there is an exemption for farm ponds and agricultural fair grounds.

*Note: DEP policy has been to exempt new or expanded agricultural fields from requiring a site law review and permit unless the Site Law is otherwise triggered on the property such as by building more than 3 acres of structure (e.g. egg farms).*

### **38 M.R.S.A. Section 488: Site Location of Development:**

11. **Farm or Fire Ponds.** A pond that is used for irrigation of field crops, water storage for cranberry operations or fire protection determined to be necessary in that location by the municipal fire department is exempt from review under this article. This provision does not provide an exemption for mining or advanced exploration activity or excavation for borrow, clay, topsoil or silt.

## **STORMWATER LAW:**

**38 M.R.S.A. Section 420-D Stormwater Management Law**– This law states the following: A person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department and may not begin construction until approval is received. This section applies to a project or any portion of a project that is located within an organized area of this State.

### **7. Exemptions.**

B. Disturbing areas for the purposes of normal farming activities, such as clearing of vegetation, plowing, seeding, cultivating, minor drainage and harvesting, does not require review pursuant to this section. A manure storage facility that is designed, constructed, managed and maintained in accordance with the United States Department of Agriculture, Natural Resources Conservation Service guidelines does not require review pursuant to this section. For the purposes of this paragraph, manure storage facility means a facility used primarily for containing manure.

*Note: The DEP interprets this exemption to apply to existing agricultural fields only.*

## **SHORELAND ZONING:**

**Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances.** These are the state minimum standards that all municipalities must use as a basis for developing their own ordinances. Local ordinance standards may be more restrictive but are only applicable to agricultural activities if the ordinance was sent to the Maine Department of Agriculture for review prior to adoption in accordance with 7 M.R.S.A., Section 155. Local shoreland zoning ordinances cannot be less restrictive than the state minimum guidelines, unless there are special local conditions that warrant a deviation.

**7 M.R.S.A. Section 155, Maine Agriculture Protection Act, 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 impacts 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 subsection does not affect municipal authority to enact ordinances.”

It is important for a municipality to have any proposed ordinance that deviates from Chapter 1000, Guidelines for Municipal Shoreland Zoning Ordinance, and that may affect agriculture reviewed by the Maine Department of Agriculture, Conservation and Forestry prior to enactment. Otherwise, a municipality may enact an ordinance with restrictions that prevent a farmer from farming using best management practices which would cause a conflict with 7 M.R.S.A. Section 154, (Maine Agriculture Protection Act) Violation of Municipal Ordinances,

which states “**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**”. Though such an ordinance may be enacted, those provisions that would prevent a farmer from farming using best management practices would be unenforceable.

## **CHAPTER 1000: PROVISIONS APPLICABLE TO AGRICULTURE**

**Chapter 1000, Section 12 (A), Non-Conformance:** It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more nonconforming.

**Chapter 1000, Section 12 (B) (2) Non-Conformance:** This ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs and renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state or local building or safety codes may require.

*Note: Agriculture is an allowed use in all shoreland zoning districts, under Chapter 1000; therefore, in general agriculture will not be viewed as a nonconforming use. However, structures associated with agriculture, tilled fields, etc. may be closer to the resource than is currently allowed under the regulations. In these cases, if the structure was located, or the field tilled before the regulations (legally), and has been maintained, then these would be considered legal nonconformities.*

### **Chapter 1000, Section 12 (D) (2) Non-Conformance: Non-Conforming Uses, (2)**

**Resumption Prohibited:** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for a good cause shown by the applicant, grant up to a one-year extension to that time period.

*Note: DEP does not consider agriculture to be a non-conforming use because it is allowed in all shoreland zoning districts. Municipalities however, may adopt shoreland zoning ordinances that differ from the State minimums in which case, agriculture may be considered by them to be a non-conforming use.*

### **Chapter 1000, Section 15 (N). Agriculture:**

Agriculture is an allowed use in all shoreland zoning districts provided that certain standards are met. Agricultural activities only require a permit when the activity is new or an expansion of an existing field and takes place in a Resource Protection District. Standards which agricultural activities must meet within the shoreland zone include the following:

\*Manure must be stockpiled at least 100 feet from a great pond or river flowing to a great pond, and 75 feet from other waterbodies including tributary streams or wetlands. Manure storage areas must be constructed such that the facility produces no discharge of effluent or contaminated stormwater.

\*Tilling of soil greater than 40,000 square feet requires a Conservation Plan to be filed with the Planning Board and must be followed.

\* New tilling must be setback at least 100 feet from the shoreline of a great pond, 75 feet from other waterbodies and coastal wetlands and 25 feet from tributary streams and freshwater wetlands. Existing tilling is not required to meet these setbacks provided it was in operation prior to the effective date of the Municipal Shoreland Zoning Ordinance.

\*Newly established livestock grazing areas must be no closer than 100 feet from the shoreline of a great pond, 75 feet from other waterbodies and coastal wetlands and 25 feet from tributary streams and freshwater wetlands. Existing livestock grazing areas are not required to meet these setbacks provided they were in operation prior to the effective date of the municipal shoreland zoning ordinance.

*Note: The Maine Department of Environmental Protection has determined that the cutting of edge trees in a shoreland zone or NRPA buffer area bordering agricultural fields that interfere with farming operations is an activity that is allowed without a permit, unless required by municipal ordinance, if for example the land is located within a Resource Protection District. If the field edge is less than the setback requirement for new fields, disturbance of the buffer area should be the minimum necessary to accomplish the cutting, including the organic duff layer and all stumps should be left in place. No more cutting than is the minimum necessary to allow the farming operation should be done. Farmers should consult with the Maine Department of Agriculture, Conservation and Forestry and the local Code Enforcement Officer before undertaking any cutting activity in a shoreland buffer area; or Maine Department of Agriculture, Conservation and Forestry and Maine Department of Environmental Protection before cutting in a NRPA buffer area. The type and extent of cutting will be determined on a site specific basis taking into consideration: the resource being buffered, the width and site factors (soils, slope, type of vegetation, organic duff thickness) within the buffer strip and the farming operation being impacted by the mature trees at the edge of the buffer. Reclaiming abandoned agricultural fields (by the same or a different farmer) is an allowed activity without a permit, unless it is within a Resource Protection District, if it meets the setback requirements for new activities. If the reclaiming activity is within the NRPA buffer area and does not meet the setback requirement for new agricultural fields, a permit is required for that portion of the field that is within the setback area. If located within the shoreland zone, a permit may be required (for example, by municipal ordinance, if it is in a Resource Protection Zone), and any new tilling would need to comply with Section 15 (N) (3) as found in Chapter 1000, or the equivalent municipal ordinance section.*

**Chapter 1000, Section 15(P), Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting:**

**Section 15 (P) (2) (e):**

(e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

**Section 15 (P) (4) & (5):**

(4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this ordinance.

(5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(P).

*Note: See the note under Section N of Chapter 1000 in this document for guidance on the reclaiming of agricultural fields.*

*It is the opinion of DEP staff that trees along the bank of a waterbody that are threatening the stability of that bank can be considered to be unsafe trees.*

*Clearing of unsafe trees in accordance with Section 15 (P)-(2)-(e) above, or the relevant ordinance section is allowed in most cases without a permit. It is strongly recommended however, that you first consult with the municipality, Maine DEP and Maine Department of Agriculture, Conservation and Forestry before undertaking any cutting activities in those locations.*

**38 M.R.S.A. Section 439-A(6)(A-C), Additional Municipal Powers and Limitations:**

“Within the shoreland area, municipal ordinances shall provide for effective screening between buildings and shorelines. Notwithstanding any provision in a local ordinance to the contrary, vegetative screening requirements shall be no less than the following:”

- A. Within a strip extending 75 feet inland from the normal high-water line, there shall be no cleared openings, except for approved construction, and a well-distributed stand of vegetation;
- B. Within the shoreland zoned area for resource protection abutting a great pond there shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards; and
- C. Selective cutting of no more than 40% of the trees 4.5 inches or more in diameter measured at 4.5 feet above the ground level, is allowed in any 10 year period, as long as a well distributed stand of trees and other natural vegetation remains.

The Board may adopt more restrictive guidelines consistent with the purpose of this subchapter, which shall then be incorporated into local ordinances.

*Note: It is the opinion of the Maine Department of Environmental Protection that this vegetative screening requirement applies to clearings done for agricultural purposes, only when associated with the construction of structures, and not applicable when the clearing is done simply for the establishment of fields.*

**38 M.R.S.A. Section 439-B, Contractor Certification in Erosion and Sedimentation.**

2. Certification Required in Erosion Control: An excavation contractor conducting excavation activities in a shoreland area shall ensure that a person certified in erosion control practices by the department:

- A. Is responsible for management of erosion and sediment control practices at the site; and
- B. Is present at the site each day earth-moving activity occurs for a duration that is sufficient to ensure that proper erosion and sediment control practices are followed.

The requirements of this subsection apply until erosion control measures that will permanently stay in place have been installed at the site or, if the site is to be revegetated, erosion control measures that will stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion have been installed.

3. Application. This section does not apply to activities resulting in less than one cubic yard of earth material being added or displaced.

4. Effective date. This section takes effect January 1, 2013.

*Note: It has been determined by the Department of Environmental Protection that this requirement does not apply to agricultural activities, except for those agricultural activities that require a Site Location of Development Permit.*

**38 M.R.S.A. Section 410-J, Nonpoint Source Pollution Program:** “The Department of Agriculture, Food and Rural Resources shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from agricultural activities. The Department of Agriculture, Food and Rural Resources may recommend to farmers the use of best management practice guidelines.”

*Note: It is the Department of Agriculture’s policy that all agricultural operations, existing and new must follow best management practices (see Manual of Best Management Practices for Agriculture and the MDEP Maine Erosion and Sediment Control BMP’s). In addition, as per 7 M.R.S.A. Part 1, Chapter 6, Section 158, if a farmer refuses to follow Best Management Practices developed by the Commissioner of MDOA, C & F in response to a complaint, the farmer is liable for abatement costs and may be fined as the result of a civil violation.*

**38 M.R.S.A. Section 420-C, Erosion and Sedimentation Control Law:** “A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in Place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation. (I skipped the second paragraph of this section which gives time frames for dealing with existing erosion problems) This section applies to a project or any portion of a project located within an organized area of the State. This section does not apply to agricultural fields. Forest management activities in accordance with applicable standards of the Maine Land Use Regulation Commission, are deemed to comply with this section. This section may not be construed to limit a municipality’s authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

**38 M.R.S.A. Section 480-Y, Creation of Agricultural Ponds:** “A permit is required for the alteration of a freshwater, non-tidal stream to construct an agricultural irrigation pond. If the provisions of this section are met (see statute for details), an individual permit is not required”.

*NOTE: In order for a farmer to obtain funding from the Maine Department of Agriculture for an irrigation pond, a determination as to whether or not the pond will be in a stream or brook must first be made. If it will require alteration of a stream or brook, a permit from the Maine*

*Department of Environmental Protection is required. It is recommended that these determinations, which require a site visit, be made by the Maine Department of Environmental Protection. These site visits can only be done when the ground is free of snow cover. Therefore, it is wise to plan in advance and schedule site visits before the on-set of winter.*

### **NATURAL RESOURCES CONSERVATION SERVICE:**

The 1985 Food Security Act provides disincentives to farmers, making them ineligible for USDA farm program benefits if certain lands (undisturbed erodible lands or wetlands that were not previously farmed) were converted and put into production to produce an agricultural commodity. A 1990 amendment strengthened the Food Security Act by making wetland conversion alone, even without cropping a violation making a person ineligible for USDA benefits. Farmers are also required to follow a conservation system to reduce or prevent erosion on all existing highly erodible croplands. A farmer should consult with their local NRCS Field Office regarding their land prior to any wetland alterations, the conversion of new native lands into cropland or for any questions regarding their conservation system requirements on existing cropland.

### **UNITED STATES ARMY CORPS OF ENGINEERS**

The ACOE has an agricultural exemption for wetland alteration but it is quite limited in scope. The farm or farming operation must be established; it can't be a start-up. In order to bring a parcel containing a wetland into production, it must be part of a farm management plan (for instance, a field allowed to go fallow for a few years and then be used again). No changes in hydrology are allowed such as drainage tiles or ditching. If an area being considered for expansion is forested, the trees can be cut but no stumping or grubbing is allowed by this exemption and any temporary fill necessary to facilitate tree clearing is not exempt and needs a permit. Slash and other clearing debris may not be windrowed in a wetland. Farm pond construction can also be an exempt activity but there are enough restrictions that farmers are advised to check with the ACOE before undertaking pond construction.

Should the work be ineligible for a federal exemption, the ACOE does have a General Permit that allows for up to 15,000 square feet of wetland alteration without the need to apply to the Corps\*. The General Permit does have a notification form that must be submitted however. To review the General Permit or to obtain the notification form, go to [www.nae.usace.army.mil/reg](http://www.nae.usace.army.mil/reg). This alteration or impact can include soil disturbance, stumping, grubbing and alteration of the hydrology (such as drain tiles or ditching) but the impact of the disturbance or alteration of hydrology must be limited to 15,000 square feet or less. For any wetland impacts over 15,000 square feet, an application to and written approval from the ACOE is required. The ACOE has a field office in Manchester, Maine and may be reached at (207) 623-8376.

*NOTE: Because of potentially significant penalties for violating federal wetland regulations and because the agricultural exemption is quite limited, farmers are advised to contact the ACOE before undertaking any activity in wetlands or other waters of the United States.*

*\*Though the ACOE may not require a permit for some wetland alterations of up to 15,000 square feet, you will still need to apply to the Maine DEP for a permit.*

## **MAINE LAND USE PLANNING COMMISSION (LUPC)**

### **Jurisdiction over Maine's unorganized territories**

#### **12 M.R.S.A. - Chapter 206-A, Subchapter 1, Section 682-B: Exemption from subdivision definition:**

4. Transfer of lots for forest management, agricultural management or conservation of natural resources. A lot or parcel is not considered a subdivision lot if the following are met:
  - a. The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources.

#### **12 M.R.S.A. - Chapter 206, Subchapter 2, Section 685-A: Land Use Districts and Standards:**

5. **Considerations, applications and exemptions:** “A land use standard may not deprive an owner or lessee or subsequent owner or lessee of any interest in real estate of the use to which it is lawfully devoted at the time of adoption of that standard. Year-round and seasonal single residences and operating farms in existence and use as of September 23, 1971, while so used, and new accessory buildings or structures or renovations of the buildings or structures that are or may be necessary to the satisfactory and comfortable continuation of those residential and farm uses **are exempt from the requirements of section 685-B**, subsection 1.”

“Land use standards adopted pursuant to this chapter for management districts may not limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings, including buildings to store equipment and materials for maintaining roads, and other structures **used primarily for agricultural** or commercial forest product purposes, including tree farms. The commission may not require a permit for such activities in a management district. Notwithstanding this subsection, a permit from the Commission is required for roads covering a ground area of 3 acres or more constructed in management districts, unless those roads are constructed in accordance with the guidelines of the Commission's Land Use Handbook, Section 6, Erosion Control on Logging Jobs, or as revised. The Commission may require a person constructing a road to notify the Commission of the location of the road within 21 days.”

#### **Chapter 10 of the Land Use Planning Commission's Rules and Standards – Land Use Districts and Standards:**

##### **Agricultural Management Activities**

1. Agricultural Management Activities are allowed in the following subdistricts without a permit subject to the applicable requirements set forth in sub-section 10.27,A. If the agricultural management activities are not in conformance with the standards of sub-section 10.27,A, a permit is required.



- a. Development Subdistricts: D-CI, D-ES, D-GN, D-GN2, D-GN3, D-RS, D-RS2, D-RS3
  - b. Management Subdistricts: M-GN, M-HP, M-NC
  - c. Protection Subdistricts: P-AL, P-AR, P-FP, P-GP, P-GP2, P-SG, P-SL, P-UA (allowed on state or federally owned land)
2. Agricultural Management Activities are allowed in the following subdistricts without a permit if in accordance with the standards set forth in subsection 10.27,A and 10.27,E for the P-RT Subdistrict.
  3. They require a permit if not in accordance with the applicable standards in subsection 10.27:
    - a. Protection Subdistricts: P-RR, P-RT, P-WL (except for cranberry cultivation which requires a permit), P-RP (if allowed in final development plan)
  4. Agricultural Management Activities require a permit in the following subdistricts:
    - a. Development Subdistricts: D-PD
    - b. Protection Subdistricts: P-FW
  5. Agricultural Management Activities are not allowed in the following subdistricts:
    - a. Development Subdistricts: D-MT
    - b. Protection Subdistricts: P-MA

*Note: Section 10.2, E is the timber harvesting standards. It includes setbacks from waterbodies for activities that expose mineral soil such as skid trails and logging yards.*

## **Ponds:**

1. **No Permit is required** for the Creation, alteration or maintenance of constructed ponds of less than 4,300 square feet in size which are not fed or drained by flowing water, provided that they are constructed and maintained in conformance with the vegetated buffer strip requirements of Section 10.27,C,2,a in the following subdistricts.

A **permit is required** if the creation, alteration or maintenance of constructed ponds which are not fed or drained by flowing water is for ponds of more 4,300 square feet in size or if the ponds are not in conformance with the vegetative buffer strip requirements of subsection 10.27,C,2,a.

D-CI, D-ES, D-GN, D-GN2, D-GN3, D-RS, D-RS2, D-RS3, P-AL, P-FP, P-GP, P-GP2, P-SL

2. **No permit is required** if standards are met, for agricultural management activities, including cranberry cultivation and the construction, alteration or maintenance of farm or livestock ponds which are not fed or drained by a flowing water for the following subdistricts. **A permit is required** if the pond is not in conformance with the vegetative buffer strip requirements of section 10.27, C,2,a. There is no size limit on the pond.

## **M-GN, M-HP, M-NC**

3. **A permit is required** for the creation, alteration or maintenance of constructed ponds which are not fed or drained by flowing waters in the following subdistricts:

## **P-AR, P-FW, P-RR, P RT, P-SG, P-UA, P-MA**

4. Ponds are allowed in the following subdistrict if they are an allowed use in the final development plan:

## **P-D**

5. Ponds are allowed in the P-WL subdistrict as follows:
  - a. **No permit is required** for the creation, alteration or maintenance of constructed ponds of less than 4,300 square feet in size within the P-WL2 or P-WL3 subdistricts which are not fed or drained by flowing water provided that they are constructed and maintained in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a.
  - b. A permit is required for the following:
    - i. Cranberry cultivation
    - ii. Creation, alteration or maintenance of constructed ponds which are not fed or drained by flowing waters
      1. of less than 4,300 square feet in size within a P-WL2 or P-WL3 subdistrict which are not in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
      2. 4,300 square feet in size or greater within a P-WL2 or P-WL3 subdistrict; and
      3. within a P-WL 1 subdistrict
6. Ponds may be allowed in the D-MT subdistrict if the commission determines they are consistent with the purposes of this district, the CLUP and are not detrimental to the resources and uses they protect.

### **Chapter 10 of the Land Use Planning Commission's Rules and Standards – 10.27 Activity-Specific Standards:**

#### **A. Agricultural Management Activities**

Agricultural management activities not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

The following requirements shall apply to agricultural management activities in all development and protection subdistricts:

1. All spreading or disposal of manure shall be accomplished in accordance with the manure best management practices, described in the publication, “Strategy for Managing Non-Point source Pollution from Agricultural Sources and best Management System Guidelines,” developed by the Maine Non-Point Source Agricultural Task Force, 1991. (*The Maine Department of Agriculture developed the document “Manure Utilization Guidelines” in 2001 that it uses for all manure spreading or disposal.*)
2. All disposal of waste potatoes shall be accomplished in accordance with the “Maine Guidelines for Field Disposal of Waste Potatoes” published by the University of Maine in September 1974.

*Note: The Maine Department of Agriculture developed Cull Potato Best Management Practices a number of years ago that it uses for all cull potato disposal.*

3. Exposed mineral soil created by tilling of soil shall occur no closer to the normal high water mark of any body of standing water, flowing water, or tidal water than is indicated by the following table, provided, however, no portion of such exposed mineral soil on a back face shall be closer than 50 feet:

Average slope of land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet Along Surface of the Ground)
0	50
10	90
20	130
30	170
40	210
50	250
60	290
70	330

**Chapter 10, Section 10.27, Subsection C,2,a, Mineral Exploration and Extraction:**

(This section is applies to the construction of Farm Ponds)

2. Mineral Extraction: The following requirements shall apply to mineral extraction activities in all subdistricts:
  - a. A vegetative buffer strip shall be retained between the ground area disturbed by the extraction activity and:
    - (1) 75 feet of the normal high water mark of any body of standing water less than 10 acres in size, any flowing water draining less than 50 square miles, tidal water, or wetland identified as a P-W11 subdistrict, and
    - (2) 100 feet from the normal high water mark of any body of standing water 10 acres or greater in size or flowing water draining 50 square miles or more.

## **MAINE FOREST SERVICE**

**Maine Forest Service Rules – Chapter 20:** Any clear cut of over 5 acres in size must meet the standards listed in Section 5, Clear Cut Standards unless exempted under 5.D. Exemption From Clearcut Standards. The exemptions are as follows:

1. Landowners who own 100 acres or less, total ownership statewide, are exempted from the clearcut standards Section 5.A. through Section 5.C.
2. Change of Land Use: Clearcut standards do not apply to the portion of a harvested area where there is a change of land use, provided:
  - a. The change of land use must be completed by the end of the second full calendar year following the year of the timber harvest.
  - b. The intent to change land use must be properly indicated on the “Forest Operations Notification” form submitted to the bureau of Forestry or other format approved by the bureau.
  - c. If the change of land use is to residential dwelling units, the exemption from clearcut standards is limited to the actual size of the lot or 5 acres, whichever is smaller.

