

APPENDIX G

FARMLAND ADJANCENCY LAW

TITLE 7

CHAPTER 2-B

REGISTRATION OF FARMLAND

7 § 51. Purpose

The Legislature finds that the public health, safety and welfare is threatened when land immediately adjacent to farmland is developed for human habitation. This development and the uses incident to it are inconsistent with various activities commonly engaged in on farmland, such as the application of agricultural chemicals. The Legislature declares that the purposes of this chapter are:

1. **Health impacts.** To minimize any health or other adverse impacts which common agricultural activities may have on the occupants of land adjacent to farmland;
2. **Agricultural activities.** To protect the ability of farmers to engage in common agricultural activities with minimal potential for causing harm to their neighbors;
3. **Full land use.** To permit the owners of both farmland and adjacent land to maintain to the highest degree possible the full use and enjoyment of their land, but to recognize the importance of agriculture to the economic and social welfare of the State;
4. **Production capacity.** To conserve agricultural production capacity for present needs and for the future;
5. **Harmony.** To promote harmony between agriculture and adjacent nonfarm development;
6. **Responsibility.** To recognize the mutual responsibility of agricultural operators and persons siting nonfarm development adjacent to farmland to take steps to accommodate each other's concerns and the public interest;
7. **Public records.** For purposes of administering this regulatory program, to create in each municipality and each county registry of deeds a register of farmland which will provide a public record and enable disclosure to potential buyers of real estate and the public regarding the existence of active farming operations in the community that may be incompatible with residential development on lands in the immediate vicinity; and
8. **Distance.** When farmland is registered for the application of agricultural chemicals, to provide some accommodation for that activity and for adjacent nonfarm developments by distancing them from each other and by providing a reasonable setback for new residential and other particularly sensitive types of development from actively used agricultural land.

7 § 52. Definitions

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

1. **Abutting land.** "Abutting land" means real estate which shares a common boundary, or portion of a boundary, with land that is held in common ownership with land registered or being considered for registration under this chapter when the abutting real estate is within 100 feet of the land registered or being considered for registration. Abutting land includes, but is not

limited to, land separated by a road and within 100 feet of land that is held in common ownership with land registered or being considered for registration under this chapter.

2. Agricultural chemicals. "Agricultural chemicals" means fungicides, insecticides, herbicides, and other pesticides.

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.

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.

5. Inconsistent development or use. "Inconsistent development or use":

- A. Means development or use of land which:
 - (1) Is initiated after the registration of the abutting farmland under this chapter;
 - (2) Takes place upon abutting land within 100 feet of registered farmland; and
 - (3) Is of any of the following kinds or is used for any of the following purposes:
 - (a) Residential buildings;
 - (b) Public and private wells, drinking water springs and water supply intake points;
 - (c) School buildings and any playgrounds, athletic fields or other school facilities designed for use by children in the vicinity of school buildings;
 - (d) Commercial establishments dispensing or selling food; and
 - (e) Public and commercial campgrounds and picnic areas; and
- B. Does not include any:
 - (1) Expansion of an existing use, provided that, when the existing use includes a building, the expansion does not increase the total floor area of the building by more than 100% and the expansion is no closer to the registered farmland than is the existing building; or
 - (2) Replacement or reconstruction of an existing building or structure which is damaged or destroyed by fire or other casualty and which is replaced or reconstructed within 2 years of such damage or destruction.

7 § 53-A. Eligibility

Any owner who intends to register land as farmland pursuant to section 53-B shall:

1. Application. Submit an application for review by the soil and water conservation district in which the land is located in accordance with the provisions of Title 12, section 6-A. Owners of land must apply for review by March 1st of the year in which registration is desired. The owner shall use an application provided by the department;

2. Notice of intent. Give notice of intent to register to all abutting landowners, as indicated on municipal or state tax records, by May 15th of the year in which registration is desired. Abutters shall be notified on a form provided by the department; and

3. Farm and Open Space Tax Law. Only register land classified as farmland under the Farm and Open Space Tax Law, Title 36, chapter 105, subchapter X.

7 § 53-B. Registration

An owner of land may register any designated portion of that land which qualifies as farmland under this chapter as follows.

1. Registration dates. Registration shall occur between June 1st and June 15th of 1990 or 1991.

2. Place of registration. Registration shall occur in the office of the municipality in which the land is located. In the event there is no official municipal office, the registration shall take place with the town assessor. In the event the farmland is located in the unorganized territory, the registration shall take place in the office of the county in which the land is located.

3. Effective date. A registration shall take effect 15 days after receipt of notice by the municipality and abutting owners. If review proceedings are initiated under section 54 the registration is effective when upheld by the municipality.

4. Duration. A registration made under this chapter remains effective until withdrawn in accordance with section 53-E.

5. Registry of deeds. A copy of the municipal or county registration and any withdrawal bearing the certification of a notary public that the copy is a true and accurate copy shall be recorded in the registry of deeds of the county in which the registered farmland or any abutting property is located, and shall be indexed in the Grantor index under the entry "Farmland" and filed under "F."

7 § 53-C. Registration contents and purpose

The purpose of a registration is to provide a public record of the existence of actively used farmland in order to assist public disclosure under section 55 and the setback of incompatible development under section 56. A registration shall include:

- 1. Landowner.** The name and address of the landowner;
- 2. Certification.** Certification by the applicable soil and water conservation district that the land is farmland in accordance with the provisions of Title 12, section 6-A;
- 3. Farm and open space classification.** Notice from the municipal assessor that the land is classified under Title 36, chapter 105, subchapter X;
- 4. Crops.** The types of products that are grown on the farmland to be registered;
- 5. Acreage.** The acreage of farmland to be registered;
- 6. Income.** The gross income of the farmland for each of the previous 6 years;

7. Maps. A copy of the municipal tax map, where available, and a statement of the tax parcel number or numbers which include the land at issue and any other maps needed to clearly show the location of the land, including a depiction of the distance between crop producing areas and any property boundary within 100 feet;

8. Deed. A copy of the registrant's deed; and

9. Abutter. The names and addresses of each abutting landowner to whom notice is being sent pursuant to section 53-D.

Records of registered farmland shall be maintained by each municipality and county registry of deeds in accordance with the provisions of this chapter. Registration shall be on forms provided by the department.

7 § 53-D. Notice of registration

An owner registering land as farmland shall notify all abutting landowners, as indicated on municipal or state tax records, by sending to the abutting landowners a statement of registration provided by the department. The owner shall send notification by certified mail, return receipt requested, within 2 days of submitting the registration in accordance with section 53-B, subsection 2.

7 § 53-E. Withdrawal

An owner of farmland shall withdraw from registration any farmland that no longer qualifies for registration under this chapter. An owner of registered farmland may withdraw farmland from registration at any time by filing a written notice of withdrawal in the office in which the farmland was registered. Portions of a registered tract of farmland may be withdrawn. Withdrawal from registration under this chapter does not constitute withdrawal from classification under the Farm and Open Space Tax Law, Title 36, chapter 105, subchapter X. Any abutter shall be notified in the manner provided in section 53-D using a form provided by the department.

7 § 53-F. Municipal registry

Each municipality shall establish and maintain a registry of farmland that must be current on July 15th annually and shall include registrations and withdrawals. The registry shall be operated in a manner that makes the information reasonably accessible to interested persons and effective to inform them of the existence in the registry of particular farmland.

7 § 53-G. Fees

A municipality may charge a fee for the filing of registrations which shall not exceed \$25 for each registration. The municipality may refuse to file a registration until the fee is paid.

7 § 53-H. Forms

Forms provided by the department shall contain information to clarify the provisions of this chapter as follows.

1. Application. The application shall include an outline of the registration process and indicate the information necessary for certification under section 53-A.

2. Registration. The registration form shall include an outline of the registration process, adequate space for the applicant to enter the components required by section 53-C and a separate sheet of information useful in filling out the form.

3. Notice of intent. A notice of intent shall include a list of permitted uses, a list of precluded uses, the name of a contact person who can provide more information and an outline of the registration process and the remedies available to the abutter.

4. Notice to abutter. A notice to abutters shall include a list of permitted uses, a list of precluded uses, an outline of the remedies available to the abutter and a copy of the registration form.

5. Notice of withdrawal. A notice of withdrawal shall include a map of the area withdrawn, a map of any area remaining under registration and an indication of any impact the withdrawal has on the abutter.

7 § 54. Proceedings

Notwithstanding Title 30-A, sections 2691 and 4353, an abutting landowner or the municipality may initiate any of the following proceedings with the municipal board of appeals, or, if none, with the municipal officers. The department shall be notified of any action initiated under this section or section 57 in accordance with Title 30-A, section 4353, subsection 3.

1. Proceedings to determine eligibility of farmland for registration. If the eligibility of any land for registration is questioned, the owner of the farmland shall have the burden of proving to the municipal body that the farmland meets the requirements for registration under this chapter. A proceeding under this subsection must commence within 15 days of the day notice of registration is received by the party initiating the proceeding.

2. Proceedings to determine continued eligibility of registered farmland. Once in any 2-year period, a proceeding may be initiated to determine if the registered farmland continues to meet the requirements for registration under this chapter. The owner of registered farmland shall bear the burden of proof.

3. Appeals. A decision made by a municipal body under this section may be appealed by any aggrieved party as allowed by law for appeals of decisions made by a municipal board of appeals.

4. Assistance from department. The department shall provide technical assistance and issue written advisory opinions in connection with the determinations a municipal body must make under this section.

7 § 55. Disclosure required

Every seller of abutting land, as defined in section 52, subsection 1, and every agent of a seller of abutting land must disclose the existence of registered farmland in writing in a purchase and sale agreement for the abutting land. If there is no purchase and sale agreement, the disclosure must be made, in writing, prior to the sales transaction. This section shall not apply unless notice of registration was given in accordance with the provisions of section 53-D.

The existence of the registered farmland shall also be stated on any declaration of value, as provided pursuant to Title 36, section 4641-D, covering the transfer of title to abutting land.

7 § 56. Prohibited acts

1. Inconsistent development. No owner of abutting land may undertake or allow any inconsistent development upon or use of land within 100 feet of properly registered farmland.

2. Building permit. Except as provided in section 57, no municipality may issue a building or use permit allowing any development which is prohibited under subsection 1.

3. Exemption. This section shall not apply to:

- A. Any lot or parcel of land which, together with any adjoining lot or parcel in the same ownership, was one acre or less in area as of January 1, 1988;
- B. Those subdivisions for which a completed application as described in former Title 30, section 4956, subsection 2, paragraph C-1, or Title 30-A, section 4403, subsection 3, has been filed or approved in the 2 years preceding the registration; or
- C. A lot on which inconsistent development or use has been allowed by permit granted by a state or local government in the 2 years preceding the registration.

7 § 57. Variance

An owner of real estate may apply to the municipal zoning board of appeals or other municipal body hearing zoning appeals, or, in the case of areas within its jurisdiction, the Maine Land Use Regulation Commission, for a variance permitting an inconsistent development upon or use of land which is otherwise prohibited under section 56. Notwithstanding Title 30-A, section 4353, subsection 4, a variance may be issued if adherence to section 56 renders a parcel of land subdivided prior to registration of the farmland unusable for residential purposes. Any variance granted for such a purpose shall be conditioned to provide the maximum feasible setback from the abutting registered farmland.

7 § 58. Enforcement and penalties

1. Enforcement. Proceedings to enforce any provision of this chapter may be brought by a municipality, county or any aggrieved person. Such proceedings may be initiated in accordance with the provisions of the Maine Rules of Civil Procedure, Rule 80B, as applicable.

2. Penalties. Any violation of this chapter shall be punishable as follows.

- A. In the case of failure to disclose the existence of registered farmland as provided by section 55, any contract or other agreement for the purchase and sale of real estate may be declared void by the buyer up until the passing of title to the buyer. If the buyer declares the contract or agreement void under the provisions of this paragraph, any money deposited or paid by the buyer to the seller or the agent of the seller shall be returned to the buyer.
- B. Any inconsistent development upon or use of land in violation of this chapter may be removed or discontinued by order of the court in a proceeding to enforce this chapter, and the court may fashion any other appropriate equitable remedy consistent with the purposes of this chapter.
- C. Any person who violates any provisions of this chapter shall, in addition to the other provisions of this section, be subject to the civil penalties and enforcement procedures for land use laws and ordinances in Title 30-A, section 4452.

7 § 59. Other laws not affected

Nothing in this chapter may affect the legal rights, remedies or liabilities of persons arising out of negligence or other wrongful acts or omissions involving the use of pesticides or other agricultural chemicals.