

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

001 DIVISION OF MARKET AND PRODUCTION DEVELOPMENT

Chapter 37: RULES GOVERNING THE VOLUNTARY MUNICIPAL FARM SUPPORT PROGRAM

SUMMARY: The 123rd Legislature authorized the initiation of the Voluntary Municipal Farm Support Program (7 M.R.S.A., Chapter 2-C) to create a mechanism for municipalities to voluntarily protect and support local farms, preserve farmland and reduce the potential tax burdens from new development by allowing them to enter into farm support arrangements with the owners of qualified farmland. These rules establish the procedures for governing the program, including: guidance for determining qualified farmland and the extent and amount of the farm support arrangement, the farm support application procedures and municipal easement monitoring responsibilities.

SECTION 1. DEFINITIONS

1. **Agricultural Crops** - means all types of forage plants consumed by animals including grazed land, hay, ensilage, corn for ensilage and other crops grown for forage; field grown crops and associated rotation crops, including potatoes, grain corn, small grains and broccoli; wild low-bush blueberries, field-grown and greenhouse-grown intensive vegetable and fruit row crops, including strawberries, raspberries and high-bush blueberries; planted and cultivated Christmas trees, shrubs, sod, flowers, edible and ornamental herbs, trees bearing edible fruits and nuts, fruit trees, and general ornamental nursery crops grown on the farm to be consumed by the farm household, bartered and/or sold to generate income.
2. **Agricultural Enterprises** – means activities conducted by persons or businesses engaged in Agricultural Management and any further processing, storing, packaging or marketing of products derived from plants, animals, or plant or animal by-products generated primarily on a farm. “Agricultural Enterprise” may also include commercial forest management, the processing and production of firewood and other forest products harvested on a farm, and the generation and storage of electrical energy and other energy sources primarily for consumption on the farm.
3. **Agricultural Management** – means farming activity which includes the establishment, re-establishment, maintenance and use of cultivated fields, hayfields, pastures, and orchards; the planting, growing, and harvesting of food, forage, seed and fiber, forest products and horticultural and ornamental products, harvesting and processing of maple sugar and other agricultural products; the pasturing, grazing and raising of poultry, animals and livestock of every nature and description for breeding, milking, and selling for fiber or slaughter; the repair, maintenance, operation and storage of farm equipment and machinery used primarily on the farm, including the operation of irrigation pumps; ground and aerial seeding; the composting of material produced by the farm or to be used primarily on the farm; the disposal of manure and other animal wastes generated primarily on the farm; the application of chemical fertilizers, soil amendments, conditioners or pesticides; and the construction and maintenance of water source,

wastewater storage, water quality protection and nutrient management structures and improvements as necessary to support the farm.

4. **Agricultural Soils** - means prime, unique, statewide or locally important farmland soils identified and classified by the USDA Natural Resource Conservation Service as “Prime, Unique, Statewide or Locally Important Farmland Soils” and described and depicted in the NRCS Conservation Plan.
5. **Agritourism** – means farm-related, recreational activities designed for the enjoyment or education of the public to promote agricultural products, services, or experiences on the farm. Such activities include, but are not limited to, conducting educational farm tours, offering hay and sleigh rides, planting crop mazes, offering the public the opportunity to pick and purchase agricultural, horticultural, Christmas trees or other forest products produced on a farm, cross-country skiing, and engaging in other traditional non-intensive outdoor recreational activities.
6. **Blueberry Land** – means land devoted to the production of wild low-bush blueberries.
7. **Crop Land** – means land used for the production of all Agricultural Crops defined in Section 1.1. above, which includes all crops grown in rotation with potatoes and other commodity crops, such as grain corn, small grains, lupines, broccoli, rapeseed, etc.
8. **Department of Agriculture** - means the Maine Department of Agriculture, Food and Rural Resources.
9. **Development Pressure** - means the potential of the farm operations to be curtailed due to increasing development of non-compatible land uses near the farm. This includes, but is not limited to, residential and industrial development, nuisance complaints, and loss of agricultural infrastructure in the vicinity of the farm or food business. These, and other non-compatible land uses, can create environmental, social, political, or operational constraints on the farm operation and result in negative financial impacts to the farm business.
10. **Farm Income Report** – means an accounting of the annual yield (in units) and fair market value (price or value per unit) of all of the Agricultural Crops produced on a farm.
11. **Horticultural Land – Edible** – means land used for the production of market garden vegetables and small fruit crops, including strawberries, raspberries and high-bush blueberries.
12. **Horticultural Land – Ornamental** – means land used for the production of planted and cultivated Christmas trees, flowers, sod, shrubs, trees and general nursery stock.
13. **Orchard Land** – means land devoted to the growth and cultivation of trees bearing edible fruits planted at a stocking density of 60 trees per acre or greater.
14. **Pasture Land** – means land that is primarily used for grazing livestock, and “pasture land” as it is defined in the Farmland Tax Law (Title 36, MRS sections 1101-1121) which includes land producing hay, ensilage crops, such as grass, corn and sorghum, and any other crops grown for livestock forage.

15. **Qualified Agricultural Conservation Easement** – means a 20-year Agricultural Conservation Easement that is adopted by a municipality’s legislative body to establish a Voluntary Municipal Farm Support Program for that municipality.
16. **Qualified Farmland and Farm Buildings** – means the Farmland and Farm Buildings that are authorized by a municipality to be eligible for a Farm Support Arrangement.
17. **Tax Parcel** - means all contiguous land in the same ownership, except, however, that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.
18. **Wasteland** – means land that is part of a Tax Parcel devoted to Agricultural Management that is not suitable for Agricultural Management, but would be acceptable under Maine’s Farm and Open Space Property Tax Program. In this context, wetland is classified as Wasteland.
19. **Woodland** – means land that is part of a Tax Parcel devoted forest products, including logs, lumber, and firewood, that is part of the to Agricultural Management of the farm and part of an Agricultural Enterprise.
20. **Livestock** – means animals and livestock of every nature and description for breeding, milking, and selling for fiber or slaughter that are bred, raised and housed on the farm, including, but not limited to, alpaca/llama; farmed bison, elk and deer; beef and dairy cattle; horses/donkeys/mules; sheep; goats; pigs; rabbits; emus/ostriches; poultry; ducks; and turkeys.

SECTION 2. PREPARING TO ESTABLISH A VOLUNTARY MUNICIPAL FARM SUPPORT PROGRAM

1. Before establishing a Voluntary Municipal Farm Support Program (VMFSP), the municipality must establish eligibility requirements for farmland and farm buildings to qualify for its Program, establish a model agricultural conservation easement, and determine the mechanism for making farm support arrangements and farm support payments in accordance with the following provisions:
 - A. **Eligible Farmland and Farm Buildings**
 - (1) A Voluntary Municipal Farm Support Program must include the following eligibility criteria as Qualified Farmland and Farm Buildings:
 - (a) **Farmland Type.** The farmland may be Blueberry Land, Crop Land, Horticultural Land – Edible, Horticultural Land - Ornamental, Orchard Land, Pasture Land, Orchard Land, Woodland, or Wasteland.
 - (b) **Minimum Acreage.** The farmland must be one (1) Tax Parcel of at least five (5) contiguous acres that is producing Agricultural Crops.

- (c) **Farm Income Requirement.** The Agricultural Crops grown on the farmland must generate a minimum annual gross income or fair-market value of at least \$2,000 per year. The crops may be sold directly on the farm, or sold off of the farm to wholesale and retail customers. If some of the crops are utilized on the farm and/or consumed by the farm household, then the fair-market value of attributable to those products can be counted towards the annual gross income requirement.
 - (d) **Farm Buildings.** The Farm Buildings must be used for the propagation, production, storage and/or processing of Agricultural Crops and/or Livestock, including but not limited to, the breeding and housing of Livestock; the storage of seed stock; the storage of feed for Livestock; milk handling; animal manure and waste management; and equipment and chemical storage and maintenance.
- (2) **Additional Qualified Farmlands and Farm Buildings and Improvements**
- (a) If there are additional lands and buildings that are associated with the farm's Agricultural Management, but not specifically with the production of Agricultural Crops, a municipality may establish *local criteria* for such additional lands and buildings to be eligible for the Voluntary Municipal Farm Support Program. Such designations may be made town-wide or occur on a case-by-case basis.
 - (i) The municipality shall require the landowner to demonstrate that any buildings and land that are not involved in producing Agricultural Crops serve a principal function for the farm operation. Such buildings include but are not limited to shelters for livestock, equipment storage and maintenance structures and energy generation facilities. Such land includes but is not limited to ponds for fresh water aquaculture, riding trails for Agritourism, and sand, clay and gravel mining for building and grading farm roads, woods roads and other such improvements.
- (3) **Farm Residential Buildings**
- (a) A municipality may exclude farm residential structures from a farm support arrangement, unless both the municipality and the landowner agree that the inclusion of such structures is essential to the farm's Agricultural Management and Agricultural Enterprise, and to the success of the protection effort, because such structures provide affordable housing in an area that is under intense Development Pressure.

B. Model Agricultural Conservation Easement

- (1) A municipality with a Voluntary Municipal Farm Support Program must develop a model temporary agricultural conservation easement that is limited to a term of not less than twenty (20) years, and adopt it as a Qualified Agricultural Conservation Easement. A municipality may utilize a model easement created by the Department of Agriculture, or it may draft its own. The following Conservation Purposes and Conservation Recitals are required and must be included in all temporary agricultural conservation easements drafted by a municipality for use in its Voluntary Municipal Farm Support Program. A municipality may include additional purposes and recitals so long as there is no conflict with the following required language.
 - (a) Required Conservation Purposes
 - (i) To provide public benefit by protecting the Protected Property's agricultural soils for the production of food, forage, seed and fiber; and preventing the conversion of farmland to nonagricultural uses that would reduce or destroy the Protected Property's diversified agricultural and forest productivity; and
 - (ii) To allow the Protected Property to remain available for commercial agricultural and forest management, provided that such activities are consistent with conserving the agricultural soils, agricultural productivity and natural resource values of the Protected Property.
 - (b) Required Conservation Recitals
 - (i) WHEREAS, the Grantor is the sole owner in fee simple of certain Qualified Farmland and Farm Buildings that have been approved by the legislative body of the Town of [name of municipality] to enter into a Farm Support Arrangement with the Town of [name of municipality] for a period of not less than twenty (20) years to protect approximately _____ acres of working agricultural and forest land, and other significant natural features including [list complete names of brooks, rivers, etc].
 - (ii) WHEREAS, the Grantor and Holder agree that the Farm Support Arrangement will conserve the productivity of the Agricultural Enterprise and prevent the conversion of the same to nonagricultural uses for a period of not less than twenty (20) years and will confer the following public benefits to the [name of municipality]: (a) provide a renewable and long-term source of farm and forest products and services; (b) provide for long-term management of farmland and forest land in accordance with best management practices to prevent erosion,

sedimentation and other degradation of soil and water resources; (c) provide employment opportunities in Maine; and (d) support investment in local businesses and community services that depend directly upon, or provide ancillary services to, the agricultural and silvicultural industries.

- (iii) (if applicable) WHEREAS, the Comprehensive Land Use Plan for [name of municipality] adopted in [year] recognizes the importance of conserving productive farmland and active farms to maintain the [municipality's] agricultural business sector, cultural heritage and rural character.
- (iv) WHEREAS, the protection of Agricultural Soils, preservation of agricultural and natural resource based businesses, and maintenance of open space are important to the People of the State of Maine, as evidenced by Article IX Section 8 of the Maine Constitution, and the “Farm and Open Space Tax Law”, Title 36 Maine Revised Statutes (“M.R.S.”), Section 1101 *et seq.*, which confers preferential property tax treatment for active farms and property that owners keep undeveloped and available for open space uses.
- (v) WHEREAS, the Qualified Farmland has significant conservation value as open space within the meaning of Section 170(h) (4)(a) (iii) of the Internal Revenue Code, as it includes approximately [number] (#) acres of open farmland, hay fields, pasture land, crop land, [insert also orchards, cranberry bog, blueberry barrens and other types of cultivated lands as appropriate] and other productive agricultural land and [number] (#) acres of forested farmland.
- (vi) WHEREAS, Holder is a qualified holder under Title 33 M.R.S., Section 476(2)(A) as a “qualified organization” and an “eligible donee” under Internal Revenue Code Section 170(h) (3) and the regulations promulgated thereunder to wit: a governmental entity or a non-profit corporation with the commitment to preserve the conservation values of the Protected Property, authorized by the laws of the State of Maine to accept, hold and administer conservation easements; and it possesses the authority to accept and is willing to accept this Agricultural Conservation Easement under the terms and conditions hereinafter described.

C. Farm Support Arrangement - Payment Mechanism and Easement Monitoring

- (1) A municipality with a Voluntary Municipal Farm Support Program shall make Farm Support Arrangements, for no less than twenty (20) years that obligate the municipality to make Farm Support Payments to the grantor of a Qualified Agricultural Conservation Easement on assets the municipality designates as Qualified Farmland and Farm Buildings. Such Farm Support Payments may be up to one hundred percent (100%) of the annual property taxes assessed on the grantor's farmland and farm buildings provided these payments do not exceed the total fair market value of the Qualified Agricultural Conservation Easement. A municipality must establish a mechanism for making such payments. It may assess taxes and deduct the amount of the Farm Support Payment from the property tax bill. It may collect taxes and reimburse the grantor. Or it may develop whatever other mechanism a municipality deems to be feasible.
- (2) A municipality with a Voluntary Municipal Farm Support Program must monitor any Qualified Agricultural Conservation Easement it accepts through a Farm Support Arrangement with a farm. This must be accomplished at least every two (2) years. A municipality may utilize a model monitoring form created by the Department of Agriculture, or it may draft its own. A municipal Voluntary Municipal Farm Support Program is not required to report its temporary (20-year) Agricultural Conservation Easement in the State of Maine-Conservation Easement Registry which was created to track the stewardship and monitoring of permanent conservation easements.

SECTION 3. ESTABLISHING A MUNICIPAL VOLUNTARY FARM SUPPORT PROGRAM

1. A municipality shall establish a Voluntary Municipal Farm Support Program in accordance with Title 7 M.R.S., Section 60-A. At such time a municipality must also establish its Program timeline for solicitation, review, and acceptance or denial of applications. A municipality's VMFSP application form must include the following:
 - A. The general description of the municipality's VMFSP;
 - B. The general description of a Farm Support Arrangement including Farm Support Payments and easement monitoring requirements;
 - C. A copy of the municipality's Qualified Agricultural Conservation Easement;
 - D. An estimate of the costs a typical grantor would pay the municipality to prepare and record the Qualified Agricultural Conservation Easement at the County Registry of Deeds;
 - E. The Farm Application Requirements and application procedures and deadline(s); and

- F. The municipality's process and timeline for reviewing and accepting or denying a proposed Farm Support Arrangement.

SECTION 4. FARM APPLICATION REQUIREMENTS

1. Once a municipality has solicited applications in accordance with Section 3, the farmland owner is responsible for preparing and submitting the Farm Application. A municipality may in its discretion assist the farmland owner with preparing the Farm Application.
2. The Farm Application must include all of the following:
 - A. A statement, signed by all legal owners of the property, that declares the owners' desire to enter into a Farm Support Arrangement with the municipality through the grant of a temporary Agricultural Conservation Easement for a term of at least 20 years on a specific Tax Parcel or Tax Parcels of farmland located in the municipality. This statement shall acknowledge whether the owners will retain professional legal services to review the easement document on their behalf, or have elected to waive any legal representation. The statement shall also acknowledge that if the municipality approves a Farm Support Arrangement, the owners agree to pay all of the municipality's costs for preparing and filing the Agricultural Conservation Easement in the appropriate County Registry of Deeds;
 - B. A list of the farmland and farm buildings that would be subject to the proposed Agricultural Conservation Easement;
 - C. An aerial photograph of the property that clearly delineates the farmland and farm buildings that would be subject to the proposed Agricultural Conservation Easement. If the proposal is approved by the municipality, then the owner may choose, at the owner's expense, to survey the land subject to the easement. Otherwise, an aerial photograph that clearly delineates the subject farmlands, farm buildings and easement boundary is sufficient documentation.
 - D. If the owners have a mortgage on the farmland or farm buildings, a list of each mortgaged asset noting the loan amount, pay-off date and lender's contact information;
 - E. A Farm Income Report which can be either the farmland owners' IRS Income Tax Form-Schedule F or a table that lists each Agricultural Crop, the average annual yield and the fair market value of the yield based upon the price or value per unit multiplied by the number of units produced; and
 - F. Two letters of support from either individuals or businesses within the municipality that describe the importance of supporting and protecting the specific farmland and farm buildings through a Farm Support Arrangement.

SECTION 5. MUNICIPAL REVIEW OF FARM APPLICATIONS TO DESIGNATE QUALIFIED FARMLAND AND FARM BUILDINGS

1. All Farm Applications for participation in a Voluntary Municipal Farm Support Program shall be stamped with the date and time they were received by the Town Clerk or other authorized municipal official.
2. The municipality shall review the Farm Application for completeness within the review period identified in the Solicitation. If the Farm Application is complete, the municipality shall send the applicant a written notice specifying the date and time that the municipality will take official action on the proposed Farm Support Arrangement. If the Farm Application does not meet all the requirements of Section 4, above, the municipality shall provide the applicant written notification that it's Farm Application is incomplete and shall provide guidance as to whether the applicant can resubmit a complete Farm Application.
3. The municipality shall document its review of each Farm Application in a written summary that:
 - A. Notes any communications about the Farm Application between the municipality and applicant pertaining to Section 5.2. above; and
 - B. Identifies which farmlands and farm buildings within the Farm Application that it will recommend as "Qualified Farmland and Farm Buildings" for the municipal legislative body to consider for the proposed Farm Support Arrangement.

SECTION 6. MUNICIPAL ACTION TO AUTHORIZE FARM SUPPORT ARRANGEMENTS

1. The municipality's legislative body shall vote to - accept as proposed; amend and accept; or deny a Farm Application for a Farm Support Arrangement in accordance with 7 M.R.S. Chapter 2-C.
2. A municipality may enter into an agreement with a land trust that would transfer any existing or allow any new Qualified Agricultural Conservation Easement to be held and monitored by that land trust.

STATUTORY AUTHORITY: 7 M.R.S.A. Chapter 2-C

EFFECTIVE DATE:

May 23, 2011 – filing 2011-124 (major substantive)