

# Commission to Study the Protection of Farms and Farmland

## Meeting Summary – September 25, 2008

**Members present:** Rep. Pieh, Sen. Sherman, Rep. Marean, Rep. Pratt, Cris Coffin, Tony Neves, Timothy Hobbs, Galen Larrabee, Russ Libby

### 1. Welcome and introductions

Rep. Pieh, House chair of the Commission, called the meeting to order.

### 2. Land for Maine's Future – farmland protection

Tim Glidden, Director of LMF, gave an overview of the history and projects protected under the LMF program. Farmland was not singled out in the original bond language although there were some farm projects between 1987 and 1999. In 1999, water access and farmland were added specifically. In 2005, 10% of the LMF money was set aside specifically for farmland projects. This had the effect of separating the competitive processes so that farm projects did not compete with other non-farm projects.

Director Glidden explained the weighting sheets used by LMF to score prospective farmland projects. Up to 25 points are awarded for productive farm assets including soils; 25 points for current and emerging threats from conversion to non-farm purposes; and up to 25 points for significance to regional and local markets. Lesser points were awarded for open space and public benefits (up to 10 points) and for community planning and support (up to 15 points). LMF once turned down a farm project because the farm was literally the last farm in the area. Russ Libby stated that the NRCS score sheet served as the starting point for the first round of farm preservation. Stephanie Gilbert, DAFRR, was hired as a farm preservation expert in 1999. The DAFRR's screening criteria is used to decide which projects to put forward to the LMF board. This increases the success rate of the projects.

In response to a question about farm preservation in Aroostook County from Senator Sherman, Director Glidden stated that economic pressures on farmers along with an active real estate market for alternative use act as a driving pincer movement; this is a classic description of LMF's land protection motivation. If a farm in trouble has nothing to do with the real estate market, it makes no sense to protect the land because the farmer is going out of business for another reason. Senator Sherman commented that one big year of farmland preservation beyond the 10% would be helpful for farmland preservation. John Piotti, MFT, stated that compensation for easements in Aroostook County would be too small because the highest and best use of land there is farmland. Director Glidden also stated that LMF projects have matching requirements and that it is important not to leave any money on the table, e.g. federal money. Raising private money for conservation has been very effective; farmland preservation does not do as well.

### **3. Easements as a farmland protection tool**

John Piotti, Director of the Maine Farmland Trust, outlined the role of easements in protecting farmland and the work of the MFT. MFT was formed in 1999 with the aim of keeping agriculture vital in the state. Concerns include the large amount of farms that will be ready to transition in the next 10 years due to the age of farmers, and high development pressures that exist in areas where small and medium sized farms are looking to serve local markets. MFT has an impressive record. Of the 20,000 acres permanently preserved, MFT is responsible for 13,000 of that, including 7,000 acres in the last year. The goal is 100,000 acres in the next 5 years.

Easements are one strategy to help farmers deal with economic pressures. An easement involves working with a third party (e.g. a land trust) that takes over certain rights. The land still remains in the hands of the owner. A classic conservation easement requires the land being kept as it is. An agricultural easement is a form of a conservation easement but with a different purpose, i.e. keeping the land in farmland. These easements are usually flexible enough to allow development for farm purposes (e.g. sheds, fencing) and exclusion for the farmstead area. Easements are held in perpetuity and go with the land.

Agricultural easements are purchased using the difference between the farmland value for the land and the market value to determine price. Easements can be donated and Rep. Piotti pointed out that charitable contributions of easements are treated advantageously in the tax code. LMF and MFT partner with local land trusts to purchase easements from a farmer. More recently, the MFT has undertaken a more proactive process, "Buy, Protect, Sell". So far, there have been two completed projects and there are two in process. The idea is to buy the land, put an easement on it, and then sell it to farmers. These projects require local fundraising.

Rep. Piotti predicted that developmental pressures will continue inflating property values but that in more rural areas, the opposite may occur. At the same time, energy costs are driving a growing appreciation for farms as farmland. Russ Libby asked how LMF and MFT programs might work with agricultural districts. Director Glidden stated that the LMF Board is more interested in regional scale projects so agricultural districts would be a good model because it would allow a pre-prioritization.

### **4. Mapping capabilities and capacity needed for agricultural districts**

Jill Ippoliti along with Steve Walker from Beginning with Habitat in IF&W, Sarah Demers from the Natural Areas Program, and Larry Harwood from ME GIS discussed what is available for mapping now. If agricultural districts were going to be formed, it is important to identify resources and critical information. The Unity wetlands map is an example of a regional project with data on farms and soils.

Larry Harwood located farms as points using E-911 addresses for dairy and deer farms. These farms are licensed every year and therefore DAFRR has good records that

can be used for this purpose. (These maps locate farms as a point but do not give an indication of acreage.) Tim Hobbs pointed out that in Aroostook County the E-911 address might be the office of a company owning several farms. Larry Harwood responding to staff requests also developed a map showing cultivated land, pasture and blueberries and tables sorting by acreage in agriculture within municipalities. He estimated that the map was 66-75% accurate.

Steve Walker supplied Beginning with Habitat, IF&W maps showing significant grasslands. This was used as a beginning for the Unity project. Federal dollars through the Farm Bill are available to farmers for keeping land in grasslands to protect certain species (e.g. birds). Tim Hobbs cautioned that the federal Conservation Reserve Program (CRP) for wildlife habitat could compete with growers for leased land or rental rates could go up. Absentee land owners, in particular, find CRP attractive and this can put agriculture at a disadvantage. Local land trusts are not mandated to provide their conservation data (wetlands, grasslands etc) to the state although the Natural Areas Program (NAP) includes it when they have it.

Cris Coffin asked if there were any gaps in the statewide important soils data. Stephanie Gilbert replied that there are some gaps but not in agricultural areas. This may be some missing data for the unorganized territory because the data has been collected but not digitized yet. Cris Coffin also asked how many towns have digitized tax maps. Sarah Demers responded that there are grants to municipalities to digitize the tax maps and Larry Harwood stated that about 75 towns have readily usable maps although there could be 100 or 150 towns it was difficult getting a hold of them.

Given that agricultural districts might include multiple municipalities, as does the Unity wetlands project, commission staff gathered some examples of regional and municipal data. Paul Schumacher provided some maps used by the Southern Maine Regional Planning Commission to the commission. York County has developed a map of all the growth areas as of March 2005. A regional conservation project involving six towns, Mount Agamenticus to the Sea developed a map that includes current land use including agriculture, open space, tree growth as well as town-owned, state-owned and federally-owned lands. The most specific map is a Sanford natural areas map that shows tree growth and agricultural lands as well as prime agricultural soils and agricultural soils of statewide importance.

Municipal maps with land use data are developed for comprehensive plans. Using the posted plans on the State Planning Office website, the Readfield maps were used as an example. Readfield maps include land cover (including agricultural lands, various forest lands, and grasslands), proposed land use districts i.e. zoning, and farmlands with agricultural soils. By contrast, other municipalities have less technical expertise available although these hand drawn maps still show all the agricultural operations in the town located.

## **5. Farms for the Future**

Stephanie Gilbert, DAFRR, outlined the Farms for the Future (FFF) program including recent revisions. FFF is a competitive grant process with a purpose of increasing economic vitality on the farm. During the first phase, DAFRR's contractor Coastal Enterprises, Inc. assists farmers with assembling a team of advisors to develop a business plan. Then farmers who choose to apply for the second phase compete for investment support grants to implement their business plan (grants are for 25% of the implementation cost and are capped at \$25,000). Since 2001, the state has assisted 170 farm families (phase 1 and phase 2); the state investment of \$1.57 million has leveraged a total \$7.74 from the 75 farm families granted funds in phase 2. The general fund appropriation for 2008-09 and 2009-10 was \$340,000.

The grants are most commonly used for new technology (67%), increased production levels or efficiency (80%), new products (50%) and new market channels (62%). An aspect of the program that farmers find invaluable is the team of technical people who visit the site and assist the farmer with a business plan that is site-specific.

The phase 2 program includes a 7-year Farmland Protection Agreement (formerly 5 years) which is technically a covenant rather than an easement. The agreement is not recorded in the registry of deeds therefore it does not affect the title and remains adaptable. If possible construction is not identified ahead of time in the agreement, an amendment needs to be made. The intention is to prevent a farm from being subdivided. The program coordinator is in charge of monitoring the agreements. The Farm Protection Agreement could be a good model for agricultural districts because it fixes the protection for a period of time, is flexible and does not affect the title.

A recent statutory change to the program restricts eligibility to people who have been farming commercially for at least two years. Related rules were recently submitted to the Attorney General's Office and the public hearing will be October 29. In addition to the grant program, farmers can apply for 2% loans that are funded by the Agricultural Marketing Loan Fund. Stephanie Gilbert commented that the Department seeks to increase the program's relevance to Maine's traditional farmers and large agribusinesses such as those in Aroostook. The program has been very successful for smaller and medium-sized niche farmers. The review panel appointed by the Commissioner to review and approve phase 1 and phase 2 grants has worked hard to get a diversity of farm types and a statewide geographical distribution.

Stephanie Gilbert also handed out a summary of programs administered by the Department of Agriculture's Farmland Protection Program and the Market and Production Development Division.

## **6. Agricultural protection districts – requirements and benefits**

Commission staff handed out summaries of common requirements and benefits of agricultural districts in other states. 16 states have 19 programs based on agricultural

protection districts. Rep. Pratt asked if it is necessary to delineate districts to hit the goals of protecting farmland; whether they could be statewide. Sen. Sherman asked whether soil conservation districts could be added to. Stephanie Gilbert replied that soil conservation districts are organized on county boundary (some counties are combined; Aroostook has three within its boundaries). COGs can be used to pull towns together but Tim Hobbs pointed out that their priorities may not be protecting farmland so they are good political boundaries to look at but not to be used as governing bodies.

Russ Libby stated that cohesion is more difficult as the farmers are more dispersed; geographical compact makes sense but not necessarily contiguous. As an example, there are 25 farms in Mt Vernon that are not contiguous and they involved abutting towns. Cris Coffin stated that it is difficult to have anything other than town-based because towns will always want to have a say. Municipal governments always have to keep the needs and responsibilities of the town in mind but that you could build in incentives for towns to help farms in agricultural districts.

The commission did not determine whether it would recommend the development of agricultural districts in its future but did go through the benefits chart to determine which were important to the commission and whether agricultural districts were necessary.

- Eminent domain – would like to see agricultural impact statements and consideration of alternatives. Information was requested for the next meeting. Also important is the definition of a farm.
- Farmland mitigation – this issue will be discussed in the next meeting.
- Enhanced right-to-farm. Russ Libby stated that protection from nuisance suits is unenforceable given the ruling by the Iowa Supreme Court. The commission wants to know what the current laws in Maine are and don't feel that districts are necessary for enhanced right-to-farm laws.
- Land use controls on adjacent properties. The idea of an agricultural code would discourage people from building next door to a farm. Russ Libby stated that there is a lot to be learned from the Unity ordinances.
- Public infrastructure restrictions, e.g. subdivision development. There is interest in a tie in to state statutes.
- Priority or requirement for participation in certain programs that benefit farmers.
- Tax relief – current use. The commission is not interested in actions that would require a constitutional amendment. Property tax credits would have to be carefully devised so that they are clearly spending programs, rather than a reduction in taxation. Municipalities have to collect taxes equally but once collected, they can decide how to spend the revenue. Reimbursement to towns for the farm and open space program would be a way to engage the support of towns. Information was requested on LD 544 in the 123<sup>rd</sup> with the idea that income tax credit could be narrowed to agricultural easements on working farmland.