

SHEFFIELD LAND TRUST COMMENTS ON FRPP RULEMAKING

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The funding for the FRPP program has been critical in helping us to protect farmland in Massachusetts. There are, however some elements of the program that are problematic and changes that could make it a much more useful and effective program in the northeast. We need to look at the whole farm and farm viability and also recognize that frequently there are changes in the type of agriculture that is viable. We don't want protecting farms and farmland to decrease farming viability.

- **Appraisals:** First, thank you for dispensing with the requirement for Yellow Book appraisals. They were confusing to the landowners, cost much more, and took much longer to do without changing the outcome of the appraisal itself.
- **Land Trusts/nonprofits/municipalities as *eligible entities*:** It is important for land trusts and other nonprofits and sometimes even municipalities, to regularly be "eligible entities" to be able to own farms and farmland - for more than just a short period of time and not just on a case-by-case basis. Frequently, the land trust needs to step in to purchase important farm land that is about to be developed. There is not always an immediate take-out available and it can be the way to start a conversation with adjoining landowners and farmers. But the key to conservation is being able to be patient and allow families to work through any concerns and estate planning - which can take years. So if there is an artificial deadline put on the transfer of the land to a private individual, some land trusts will not be able to step up and take that risk.
  - Examples:
    - Within the last year we closed on three farm protection projects that were all actively being negotiated for five, eight and ten years respectively, and one of the landowners said at the celebration for the protection of his farm, that at the beginning he thought we were all crazy, but that over time as trust in each other and the programs grew, and the family was able to make a decision without being pressured by time, he changed his mind. This is a property that is essential to one of the local dairy farms that has already protected its own land.
    - Two years ago we had to step in to buy out the contracts of two second home owners and a speculative developer that were going to be putting up three houses in 7.5-acre field. On the surface, three houses and a 7.5-acre field may not seem important, but the houses were going to be going up smack in the middle of key hay fields. This smaller acreage, that had been part of the surrounding farm, but co-owned with a non-farm sibling, had had to be sold when that sibling went into a

nursing home. Everyone had always believed that the smaller lots boundaries placed in closer to the woods. Instead, a survey showed it to be the front of half the surrounding hay field. The houses would have fragmented the hay field terribly, created significant conflict with the new owners who were not going to be pleased with the early and late mowing times, nor the spreading and spraying. And, because this 7.5 acres was also smack in the middle of the viewshed of the 200-acre farm surrounding it, the houses would have then made it nearly impossible for us to raise the funds we need to protect the surrounding farm. We can hold onto the land for as long as we need to be able to work out the protection of the surrounding farm, but we had to borrow the money to buy out the contracts. If we can't sell the development rights protect the land itself while we own it and use those funds to help pay down the loan, we may need to sell off a lot that will interfere least with farming and fundraising - when it would not otherwise be necessary.

- And in the case of a gift of land to a land trust, being able to sell an agricultural restriction means ensuring that it will remain in agriculture - rather than the possibility that it will revert back to habitat in future years if the priorities of the organization shift.
- **Program Criteria and Certification:** Consistency and predictability are important, so things that are on a case-by-case basis make it difficult for land trusts, farmers and the state to plan. And in Massachusetts, where we are able to leverage the FRPP funds with state and local dollars, the state already has a very strong program with a long and successful history prior to these FRPP rules - and there have been some challenges in terms of consistency created by conflicts with how the program had operated and the contracts - also creating added levels of review, time and complexity for the state (and therefore for us and landowners) that does not seem to add protection. I understand, from conversations with the state that the general indemnity language creates concern about conflicts with state law and I know that the environmental warranty language has been a cause for concern. Since a real property interest isn't being acquired, why is this latter needed? We always do an inspection, but that is different than the warranty. Where a state or entity has shown itself to have a successful program and history, why not have the certification process result in the program being able to rely on the standards and criteria that have made the program successful?
- **Soil & Forestland Percentage Litmus Tests:** The soils percentage and forestland percentage litmus tests are also problematic in the northeast. Our farms are highly productive on prime and non-prime soils with the non-

prime soils being important for pasture and other related endeavors or for crops that don't need prime soils. This helps keep farms diversified. And farms forestland, whatever percentage of the land it may represent, should be allowed to be part of the protection as well so long as the farm itself is viable. Again because this is part of a whole farm and keeping whole farms going. Not only do many farms use that forestland for firewood or timber, but it provides an essential buffer to development. We have seen circumstances where forestland had to be cut out to meet the percentage requirement and that forest land was later sold separately, ended up with houses on it and there are conflicts now with homeowners who don't like the realities of farming. This does not mean that a forest management plan should have to be in place at the time of the sale. Cutting firewood over the years would not every require a plan if it is done gradually, but if a harvest were to meet the threshold for needing a plan, the state forester would require that one be completed before any such harvest is done. That way time and money does not have to be spent until there is an actual need.

- Example: We are working on protecting and agricultural corridor – working with multiple farmers and landowners. Recently we had the opportunity to purchase and protect a property next to a farm that is scheduled to be protected next year. Both this land and the surrounding farm are used by the same farmer. The goal was to take down hedgerows and eventually combine the fields on the two properties and into farm ownership. However, the soils and forestland percentages meant it was not FRPP eligible. Because the FRPP eligible part was small, we had to go to the Dept. of Fish and Game to help with funding the rest. Fish & Game decided that they wanted all or nothing and we were not in a position to refuse. So now Fish and Game owns the property and the farmer will have to be manage it as a lessee for the species the Dept cares about rather than a farmer owning it and being able to manage it primarily for agriculture.
- **Subdivision:** Given the changing nature of farming, the prohibition against subdivision also does not make sense. So long as the subdivision does not impact the viability of the existing farm, the new division is going to be viable itself, or is going to be added to another farm to help it be viable, it is important to be able to be flexible. We recently worked with a farmer on protecting his 247-acre farm. He had the forethought to recognize that in the future not all farmers will need that large a farm and broke it up into three separate easements. However, there is really no way to know if the way it was divided is going to best suit the future farmers and agriculture. Much better to be able to subdivide within appropriate parameters.
- **Mechanized Use:** Most of the farms in the area have parts of regional winter snowmobile trails that cross the fields in the winter, which does not harm the

fields. So a blank prohibition on mechanized use presents a challenge either in getting the easement or in the enforcement. The snowmobile clubs also help to police these trails and can help with keeping ATVers off the land during the rest of the year so we don't want to alienate this important constituency.

- **Rural Enterprises:** So long as it does not interfere with the farm operation or take over as primarily important, it is very helpful for farms to be able to host other rural enterprises than just strictly related to the farm. The MA Agricultural Preservation Restriction Program has been able to address this through special permitting processes.

Thank you for this opportunity to comment.

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