

## Town of Windham, Maine

### Voluntary Municipal Farm Support Program Program Description DRAFT

#### **Establishment of the Voluntary Municipal Farm Support Program (VMFSP):**

The 123<sup>rd</sup> 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.

The Comprehensive Plan Review Team and staff hosted a meeting at the Town Office in December 2014 in order to make sure that members of Windham's agricultural community had a chance to participate in the visioning exercises associated with the Comprehensive Plan update. At that meeting staff heard that the two biggest requests from this group were to 1) reduce tax burdens on farmland and equipment; and 2) allow flexibility when it comes to permitted zoning uses and building codes.

In response to these requests Town staff followed up with participants and with property owners enrolled in Farm and Open Space and Tree Growth tax programs to see if a VMFSP would be of interest to eligible landowners to warrant development of a VMFSP in Windham. A survey was mailed to 107 potentially qualified property owners and received 26 responses, 18 of which were interested in conserving their property.

A publication of Maine-ly Agriculture dated August 30, 1991 reported on the Town of Windham's draft Comprehensive Plan from that year as follows:

*The Maine Department of Agriculture reviews each town's Comprehensive Plan as it is submitted under the State's Growth Management laws. Recently we received Windham's draft plan, which includes one of the strongest philosophical arguments we've seen for maintaining farmland, even in a rapid growth area.*

#### **Brief Description:**

The goal of the VMFSP is to support local agricultural infrastructure, enterprise and crop production and preserve agricultural lands. The VMFSP is designed to benefit farmers and the citizens of the town of Windham. The VMFSP allows for the Town of Windham to enter into a twenty (20) year Farm Support Arrangement with qualifying landowners. The Farm Support Arrangement eases the tax burden on Qualifying Farms.

The VMFSP will:

- Provide for a renewable and long-term source of Agricultural and Forest Products and services by protecting and preserving Agriculturally Important Soils and maintaining scenic agricultural land as important open space on the landscape;
- Ease the property tax burden on local farms and Agricultural Enterprises that produce food and fiber which are under significant Development Pressure;
- Provide for long-term management of Farmland and Forest Land in accordance with accepted best management practices that protect natural resources and biodiversity and prevent erosion, sedimentation or other degradation of soil and water resources;
- Provide employment opportunities in the community by supporting Agricultural Operations, Enterprises and Agritourism
- Support trade with local businesses and community services that depend on the services of, or provide ancillary services to, the agricultural and silvicultural industries in the region

### **How the VMFSP Works:**

A landowner submits an application to the Assessor **along with a non-refundable fee of \$200** (staff does not recommend a fee) on or before October 1<sup>st</sup>.

The Assessor's Office date stamps and signs receipt of application.

The Assessor reviews the application and supporting documentation. If the application is incomplete then the Assessor contacts the landowner by written notice no later than October 15<sup>th</sup>. The written notice will specify the area(s) of the application that are incomplete and allow the landowner until November 1<sup>st</sup> to remedy the application and resubmit.

If the Assessor deems the application as complete, the applicant will be contacted to schedule a date and time to review the applicant's property.

Upon completion of the site review the Assessor shall prepare a written summary describing the site visit, including written and verbal communications and a description of the farmland and farm buildings. The written summary, along with the landowner's application will be presented to the Windham Town Council (Council) for consideration.

On or before December 31<sup>st</sup> the Council will vote to accept, deny or amend to accept the landowner's application.

Upon acceptance by the Council, the landowner is then eligible for a Farm Support Arrangement with the Town of Windham. Under the Arrangement, the landowner grants an Agricultural Conservation Easement to the Town, thus agreeing to continue the farmland and farm building's agricultural use as prescribed for a period of 20 years.

In return, the Town of Windham makes farm support payments to the landowner equal to 100% of the property tax paid each year on the Qualified Farmland and Farm Building assets.

The Agricultural Conservation Easement must be recorded in the Cumberland County Registry of Deeds.

In order to continue eligibility with the Farm Support Arrangement, the landowner must submit to the Assessor each year, on or before May 1st, a Farm Income Report and every two years are subject to an on-site inspection by the Assessor. As with the initial application's site review, a written summary will be prepared by the Assessor and delivered to the Council for review of eligibility.

Each subsequent year, the Assessor must file a written report on or before June 1st, with the Council, as to the status of each Qualified Agricultural Conservation Easement.

At any time, the landowner and/or a Council member may request a consultation with either party to review the status of eligibility based on one or more of the following:

- Lack of productivity and income, temporary or permanent;
- Catastrophic loss of property;
- Infirmitiy;
- Management change;
- Structural change.

### **Eligible Farmland and Farm Buildings**

The eligible farm must comprise one (1) Tax Parcel of at least five (5) contiguous acres that produces Agricultural Crops and/or Agricultural Products. The Tax Parcel may produce the Agricultural Crops and Agricultural Products on some portion of the parcel that is less than five (5) acres. Agricultural Products must be comprised of 50% or more local agricultural ingredients. The Agricultural Crops and Agricultural Products grown or produced on the farmland must generate a minimum annual gross income or fair market value of at least \$2,000. The fair market value of Agricultural Crops and/or Agricultural Products utilized and/or consumed by the farm household and documented by the landowner may be counted toward the \$2,000 annual income requirement.

The Council may occasionally elect to waive the income requirement due to a documented adverse crop or Livestock production issue, except that the average three year income must be at least \$2,000.

**Farmland** – Farmland is classified as Blueberry Land, Crop Land, Horticultural Land – Edible, Horticultural Land - Ornamental, Orchard Land, Pasture Land, Woodland, or Wasteland.

Special consideration is given to Farmland comprised of soils classified by the USDA – Natural Resources Conservation Service as Prime Farmland, Unique Farmland, Farmland of Statewide Importance and Farmland of Local Importance.

**Farm Buildings** – Farm Buildings, structures and improvements 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.

**Exceptions to Farmland and Farm Buildings and Improvements and Farm Residential Buildings** – At the time of the initial VMFSP Application, if there are other lands and buildings that are associated with the Farm’s Agricultural Management but not specifically with the production of Agricultural Crops and Enterprises, the Council will consider to include such land and buildings on a case-by-case basis.

The Council will require the landowner to demonstrate that any other land and buildings that are not involved in the production of Agricultural Crops and Agricultural Products 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 and residential buildings. Such other land includes, but is not limited to, ponds for fresh water aquaculture, riding trails for Agritourism, and sand, clay and gravel mined for building and grading farm roads, woods roads and other such improvements made on the farm only.

**Future Addition of Farm Buildings** - If, after entering into the Farm Support Arrangement, and recording the Agricultural Conservation Easement, a landowner constructs or erects new Farm Buildings, structures or improvements within the perimeters of the Qualified Farm, they may request through written notice to the Assessor, an amendment to the original application to include the additional Farm Buildings.

Written notice will be due on or before October 1<sup>st</sup> in any given year and follow the same deadlines as the original application, for review by the Council.

**Future Acquisition of Farmland** – Additional farmland acquisitions by the landowner will not be allowed to be added to the existing Farm Support Arrangement; however, a landowner may file a separate application for that farmland pursuant to the requirements of the VMFSP.

### **VMFSP Application:**

The landowner is responsible for initiating, preparing and submitting the VMFSP application. The landowner may request that the Windham Town Assessor assist them with the preparation of their VMFSP Application.

**Application Requirements** – The following requirements must be included with the VMFSP Application:

- 1) A statement, signed by all legal owners of the property, that declares the owner’s desire to enter into the Farm Support Arrangement with the Town of Windham through the granting of a Qualified Agricultural Conservation Easement for a term of at least 20 years on specific Qualified Farmland and/or Farm Buildings located in the Town of Windham. 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 Town of Windham approves a Farm Support Arrangement, the landowners agree to pay all of the Town of Windham's cost for preparing and filing the Qualified Agricultural Conservation Easement in the Cumberland County Registry of Deeds;

- 2) A Photo ID of the applicants;
- 3) A list of the Farmland and Farm Buildings that would be subject to the Farm Support Arrangement;
- 4) An aerial image or Google Earth image of the Tax Parcel that clearly delineates the farmland soil types, Farm Buildings and Easement boundaries that would be subject to the proposed Agricultural Conservation Easement. If the VMFSP application is approved by the Town of Windham, then the owner may choose, at the owner's expense, to survey the farmland subject to the Easement;
- 5) 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. The landowner must include a Letter of Intent from the Lienholder of the mortgage that they will sign the "Consent of Lienholder to Conservation Easement" should the VMFSP application be approved;
- 6) A Farm Income Report which lists each Agricultural or Horticultural Crop, the previous tax year's yield based upon the price or value per unit multiplied by the number of units produced; and
- 7) Two Letters of Support from either individuals and/or businesses within the Town of Windham that describe the importance of supporting and protecting the Landowner's specific Farmland soils and Farm Buildings through the VMFSP.

**Application Deadlines** – the deadlines and timelines for the VMFSP are as follows:

- 1) VMFSP Application must be received by the Town Assessor on or before October 1<sup>st</sup> in that year;
- 2) The Windham Assessor must review and make recommendation to the Town Council, whether to accept or deny all or part of the Farmland and Farm Buildings by December 31<sup>st</sup> of that year;
- 3) Upon approval by the Town Council and the recording of the Qualified Agricultural Conservation Easement, the Landowner will be eligible for a refund of the Property Tax Payments made in the next tax year on the Qualified Farmland and Farm Buildings. Payment to the landowner will be made within thirty (30) days of the designated Property Tax due dates.

**Application Fee** - Applicants must include a two hundred dollar (\$200), non-refundable, application fee when submitting their VMFSP Application. Checks and money orders must be made payable to "Town of Windham".

The Application fee will cover costs related to:

- Town review and processing of the VMFSP Application, including but not limited to, staff time for technical review, photocopying, postage, office supplies, etc.;
- Town legal review of the Qualified Agricultural Conservation Easement.

The Town is not responsible for:

- Any of the landowner's costs related to the preparation of the VMFSP Application;
- Legal review of the draft Qualified Agricultural Conservation Easement by the landowner's Independent Counsel. It is therefore recommended that the landowner retain Independent Counsel;
- Recording fee for filing the Qualified Agricultural Conservation Easement with the Cumberland County Registry of Deeds;
- Fee for filing and reporting to the State of Maine Conservation Easement Registry, pursuant to Title 33 M.R.S., ss 479-C For protection under Maine Law, Title 33, Chapter 20.

### **Annual Fee**

The applicant must pay an annual fee of \$50.00, due on May 1st of each year. This fee covers Town staff time and mileage associated with the annual monitoring and reporting.

### **Payment Mechanism**

**Tax Payments Made by the Participant** - Participants shall pay, when due, all property taxes. If such property taxes are not paid when due, the Town of Windham may withhold and suspend all payments to the Participant under their agreement until such property taxes and all penalties, interest and other costs relating thereto are paid in full and 100% of such penalties, interest and other costs shall belong to the Town of Windham without any obligation to share such penalties, interest and other costs with the Participant.

**Payments to the Participant** - The Town of Windham shall refund 100% of Participants property tax payments on assets the Town designates as Qualified Farmland and Farm Buildings. The refund will be made within 30 days of each tax payment due date for no less than twenty (20) years, provided the Participant remains in compliance with the Qualified Agricultural Conservation Easement.

**Property Tax Abatements** - In addition, if a Participant institutes any property tax abatement proceeding with respect to any of their Qualified Farmland and Farm Buildings, the Town may withhold and suspend all payments to the Participant. Upon final action and completion of such abatement proceeding (whether by administrative or court action or by settlement), the adjusted amount (based on the results of the abatement proceedings) shall then be paid to the Participant.

The Town of Windham and the Participant acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the Town is not excusing any non-payment of taxes by a Participant. Without limiting the foregoing, the Town and the Participants shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on the Participant's property.

**Failure to Make Payment to the Participant** - In the event the Town of Windham should fail to or be unable to make any of the payments required under the foregoing provisions of this program, the item or installment so unpaid shall continue as a limited obligation of the Town, under the terms and conditions of the VMFSP, until the amount unpaid shall have been fully paid.

The payments provided for in this program shall be paid directly to the Participant at the address on file in the Assessor's Office related to the Qualified Farmland and Farm Buildings.

**Limited Obligation** - The obligation of the Town of Windham to make such payments to the Participant shall be a limited obligation of the Town payable solely from that portion of taxes paid by the Participant and shall not constitute a general debt or obligation of the Town or a general obligation or charge against or pledge of the faith and credit. The agreement shall not directly or indirectly or contingently obligate the Town to levy or to pledge any form of taxation whatever therefore or to make any appropriation for their payment, excepting the Town's obligation to levy property taxes upon the Participant's property.

#### **Monitoring Each Qualified Agricultural Conservation Easement**

The Town Assessor shall monitor each accepted VMFSP Participant on an annual basis and provide a written report to the Council on or before June 1<sup>st</sup> each year. Before providing the written report, the Assessor shall:

- Require each year the filing of a Farm Income Report from the Participant, which must be submitted to the Assessor on or before May 1<sup>st</sup>.
- Conduct a site visit every two years to review the Participant's Qualified Farmland and Farm Buildings.

If, upon completion of the on-site visit, the Assessor deems the Participant's Tax Parcel is not in compliance then the written report to the Council must state such. The Council may request a meeting with the landowner to review the terms of the Easement and the Farm Support Arrangement and to mutually agree upon a plan for compliance and set a date for a follow-up site visit.

The Tax Assessor shall submit a report and other relevant updates to the Town Council on or before the scheduled October Town Council Meeting each year.

**Temporary Cessation of Use** - If the Qualified Farmland and Farm Buildings that are protected under the Arrangement are inactive for 6 months, the Tax Assessor will review the

Participant's circumstances (catastrophic loss of farm income due to crop loss, health, change in management, etc.) and the requirements of the Participant's Farm Support Arrangement, and make a written recommendation to the Council.

### **Withdrawal from the Farm Support Arrangement**

**Landowner's Request** - If the landowner seeks to withdraw from the Farm Support Arrangement any or all Qualified Farmland and/or Farm Buildings, they must provide a written notification to the Tax Assessor and pay a Withdrawal Penalty.

**Noncompliance** - If the Qualified Farmland and/or Farm Buildings cease to meet the eligibility and qualification requirements and the Participant ceases to meet his/her obligations of the Farm Support Arrangement, then the Windham Tax Assessor must deliver to the Council a written recommendation for the nullification of the Farm Support Arrangement and specific terms of the Withdrawal Penalty.

The Council must then vote to accept as recommended; amend and accept; or deny the nullification of all or part of the Farm Support Arrangement. A vote to nullify will result in the assessment of a Withdrawal Penalty on the Participant.

#### **Withdrawal Penalty:**

- Shall be no less than the 100% refund of all applicable taxes covered under the Arrangement;
- Shall include interest on the portion of the property taxes covered under the Arrangement for each year the Qualified Farmland and Farm Buildings have been in the program;
- Shall include all costs to 'extinguish' the Qualified Agricultural Conservation Easement at the Cumberland County Registry of Deeds;
- The penalty may be assessed and collected as a supplemental assessment in accordance with section 713-B.

**Exception** – A Withdrawal Penalty shall not be assessed if permanent cessation of use is caused by a transfer resulting from the exercise or threatened exercise of the power of eminent domain.

### **Definitions**

**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.

**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.

**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.

**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, vegetable, 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” does not include trees grown and harvested for forest products.

**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 an NRCS Conservation Plan or other valid soil map(s).

**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.

**Blueberry Land** – means land devoted to the production of wild low-bush blueberries as defined in the Farmland Tax Law (36 M.R.S.ss1101-1121).

**Commercial Forest Management** - means the planting, growing, cultivation, stocking, and cutting of trees and other forest products, including the following: timber cruising, resource evaluation, herbicide, pesticide and fertilizer application, timber stand improvement, pruning, mechanical and conventional timber harvesting and other forest harvesting, forest products transportation, natural and artificial regeneration of forest stands, maple sugaring,

other substantially similar and associated activities, the processing and production of firewood and forest products harvested primarily on the Qualified Farm, and the construction, creation, use and maintenance of woods roads, skid trails and winter haul roads, turnouts, timber landings and crossings of flowing waters for such purposes, all as consistent with the terms of this Qualified Agricultural Conservation Easement.

**Crop Land** – means land used for the production of all Agricultural Crops which includes all crops grown in rotation with potatoes and other commodity crops, such as grain corn, small grains, lupines, broccoli, rapeseed, etc. as defined in the Farmland Tax Law (36 M.R.S.ss1101-1121).

**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.

**Farm Income Report** – means an accounting of the annual yield (in units – pounds, tons, bushels, etc.) and fair market value (price or value per unit) of all of the Agricultural Crops and/or Agricultural Products produced on the farm, generated from Agritourism activities and Commercial Forest Management on a farm. The crops or products may be sold directly on the farm, or sold off the farm to wholesale and retail customers. If some of the crops or products are utilized on the farm and/or consumed by the farm household, then the fair market value attributable to those crops and/or products can be counted toward the annual gross income.

**Farm Support Arrangement** – is generated by the landowner's completed Farm Application, the Assessor's recommendation to the Town Council, the Town Council's vote to accept, or amend and accept, and the execution and recording of a Qualified Agricultural Conservation Easement in accordance with the Town of Windham's Voluntary Municipal Farm Support Program.

**Horticultural Land – Edible** – means land used for the production of market garden vegetables and small fruit crops, including strawberries, raspberries and high-bush blueberries as defined in the Farmland Tax Law (36 M.R.S.ss1101-1121).

**Horticultural Land – Ornamental** – means land used for the production of planted and cultivated Christmas trees, flowers, sod, shrubs, trees and general nursery stock as defined in the Farmland Tax Law (36 M.R.S.ss1101-1121).

**Livestock** - means animals and Livestock of every nature and description bred, housed and/or raised on the farm for food or fiber; including but not limited to; alpaca and llama; farmed bison, elk and deer; beef and dairy cattle; horses, donkeys and mules; sheep and goats; pigs; rabbits; emus and ostriches; and poultry including ducks and turkeys.

**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 as defined in the Farmland Tax Law (36 M.R.S.ss1101-1121).

**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 as defined in the State's Farmland Tax Law (36 M.R.S.ss1101-1121).

**Permanent Structures** – means anything built for the support, shelter or enclosure of persons, animals, and products that are used by a farm, 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; together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences and standing for more than seven months.

**Qualified Agricultural Conservation Easement** – means a 20-year Agricultural Conservation Easement that is adopted by the Town of Windham's legislative body as part of the Farm Support Arrangement with the owner of Qualified Farmland and Farm Buildings, under the Town of Windham's Voluntary Municipal Farm Support Program.

**Qualified Farmland and Farm Buildings** – means the farmland and farm buildings, structures and improvements, that are accepted by the Council for a Farm Support Arrangement.

**Tax Parcel** - means a unit of real estate, even if it is divided by a road, right of way, railroad or pipeline, or by a municipal or county line.

**Temporary Structures**- means anything built for the support, shelter or enclosure of persons, animals, and products that are used by a farm, 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 together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences and standing for less than seven months in any period of 12 consecutive months.

**Wasteland** – means land that is part of a Tax Parcel devoted to Agricultural Management that is not suitable for Agricultural Management, as defined in the Farmland Tax Law (36 M.R.S.ss1101-1121). In this context, wetland is classified as Wasteland. Such Wasteland/wetland must be contiguous to the land that is under Agricultural Management.

**Woodland** – means land that is part of a Tax Parcel devoted to Forest products, including logs, lumber, and firewood, that is part of the Agricultural Management of the farm and part of an Agricultural Enterprise as defined in the Farmland Tax Law (36 M.R.S.ss1101-1121).