

MASSACHUSETTS FOREST ALLIANCE

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Policy Update October, 2016

Eight months into the year, and what has MFA been working on? We've been working on many things, but a core part of advocating for a strong, sustainable forest economy is an ambitious and productive policy program. What follows is an update on policy items that we have been working on in 2016.

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Legislative Policy Items

The legislature works on a two year cycle, starting on the first Wednesday of January in the odd numbered year, and ending on Tuesday preceding the first Wednesday in January (or more simply put, January 7th, 2015 – January 3rd of 2017 for this session.) During that time bills are filed, assigned to committees, have hearings, and the House and Senate act on those bills in formal and informal sessions. The last day of July in the even numbered year marks the end of formal sessions for the two year cycle. The legislature can (and does) still pass many items, but every item that they pass must obtain unanimous consent, so any member can block any item. Because of that, it is often marked by a large sigh of relieve by advocates who have been trying to stop certain items.

Zoning: While there were over 20 bills that MFA monitored relating to zoning and property rights, it was the comprehensive zoning reform efforts that have been underway in Massachusetts for almost two decades that drew the most attention. Virtually every iteration of this has involved an aggressive effort to take flexibility and ease of development out of the hands of landowners and place more control with the local municipality. Sunday the 31st of July brought that sigh of relief I mentioned regarding this bill. To be clear, MFA did not just simply oppose the bill, we remained engaged with the proponents for the entire process, recognizing that we are a small group in the debate on zoning and we must stay engaged to make a difference. We have some good friends in the legislature and we were able to rely on their support as we negotiated huge concessions from the bills advocates including:

- Language allowing special treatment of farmland and forestland if the restrictions on Approval Not Required Subdivisions prevailed, this treatment would have retained asset valuations in the instances when landowners wished to sell or donate conservation restrictions, and assure that in the rare circumstances when they needed to liquidate limited capital assets, landowners would not be forced to develop more acres than necessary to justify the added cost and red tape of that development; and
- Language that assured any development impact fees could not be imposed unless actual on the ground conversion occurred – not simply filing a subdivision plan, an occurrence that might happen for estate planning purposes, zoning protection, or proper asset valuation for easement purposes.

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Those changes were made to the bill in the Senate, a more liberal body where passage of the bill was almost assured. In the House however the bill has not advanced at all, and with the end of formal sessions, it is an issue that we can consider closed for this legislative session. It will no doubt rise again next year were we will work to continue to improve the bill, or work to prevent its passage, but for now, it has been held off.

Property Taxes: There were 34 bills filed to amend our current use taxation program (Chapter 61, 61A and 61B) which many landowners are enrolled. Of these several could have had very negative effects on the program – the timing of filing, the withdrawal process, and the types of land that can qualify. Most were not major threats based primarily on an unlikely hood of their passage, but one provision to extend the review period for town from a current total of 210 days to up to 300 days was almost slipped into a municipal modernization bill at the last moment. Working jointly with Mass Farm Bureau, we were able to act quickly to educate the Senate on the rules and procedures as they now stand and the flaws with extending the time period, killing the language.

As other agriculture groups pushed to amend the application dates for Chapterlands, MFA polled some of its membership to determine the impact on chapter 61 applicants of such a change. Based on that, we have worked to assure that legislative efforts to change the filing dates for the other chapters to better accommodate farmers' seasons do not negatively affect the workflow and timing of our members and their Chapter 61 applications. This was an instance where having the quick and easy access to licensed foresters through the Foresters' Council, and landowners through the Land League were essential in developing sound policy around how any date changes would affect them. Now, if changes do happen to 61A and 61B filing dates, they will not also happen in 61. This proposal is a part of the Agricultural Omnibus Bill, and despite it not passing before the end of formal sessions, it still stands a good chance of passage during the informal session. If that happens, MFA will assure that the changes don't hurt our members.

Contiguous Lands: We have been pushing a proposal to change the definition of contiguous to recognize the evolving patterns of our farmland and forestland use in the Commonwealth. Currently properties must be touching, or connected by an easement for water supply. By expanding this to properties within a half mile of each other, we will minimize paperwork, allow applications to cover more ground, and allow smaller parcels that are aggregated together to qualify for inclusion in the program. This too is a part of the Ag Omnibus, and we will work for its passage during the informal sessions. It may be too controversial to include, and if so, we will refile this next year and continue the push.

Estate Tax Changes: A large coalition of agricultural and farmland preservation groups joined forces to push a bill that would have changed the way land was valued for estate tax purposes. This bill, while good intentioned, was flawed. Those flaws were not fully realized until too late in the process to make substantive changes and it was decided that it was better to pull the language from the Economic Development Bill than have it fail. We will now take the upcoming 4 months to work with other advocates to rewrite the bill and hopefully refile something for next session.

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Licensing: At the request of its membership MFA has drafted language that will adjust the licensing periods for foresters and harvests. It will not change any of the substantive requirements for the licenses, the operations of the licensing boards, etc . . . , it will merely move the licenses from single year licenses to three year licenses. The legislation is not changing the fee structure (which is currently a per application not per year fee, so theoretically the per year cost of these licenses will drop by 2/3.) This language is tied up in the Agricultural Omnibus bill that I mentioned earlier. It is perhaps the least controversial piece and we are hoping to move the language in the informal sessions.

Paper Bag Tax: Annual budgets are always a time of rapid action and having to stay on our toes to keep ahead of problematic proposals. One such proposal this year was the attempted implementation of a mandatory fee (not truly a tax, the money wouldn't go to government) on bags at most retail operations. Paper bags are perhaps one of the most reused and recycled products and no tax or fee on them is needed to reduce waste. Despite very short notice and little time to act, while the language that passed in the Senate's budget did in fact include the fees on some bags, they did not apply to paper bags that were recyclable and reusable. The House of Representatives fought the measure in its entirety and the final budget that was passed by both branches included no tax or fee on bags of any sort (plastic or paper) but it was a good illustration of our need to be present and active to help prevent bad policy.

Biomass: We stopped another budget amendment that would have required a public health impact analysis by the Department of Public Health, and would have required the MEPA office to perform a full Environmental Impact Report on any facility that would burn more than one ton of combustible material per hour. This was filed at the last minute to the House version of the state annual budget, and would have added huge burdens to even small scale biomass facilities of all kinds – electrical, thermal, and even combined heat and power, regardless of the biomass they were burning.

Regulatory Policy Items

While regulations are always under review, Governor Baker was elected under a promise to review all regulations, and he quickly made good on that promise. He initiated a complete top to bottom review of every regulation on the books requiring that each agency with oversight of a regulation review it, meet with stakeholders, and report on the regulation – whether it should be eliminated, maintained as written, or amended. While this sounds great, it does not necessarily have the impact you might think. Each agency has a vested interest in the regulations it oversees so there is a bias towards keeping them whole or making them more stringent, and it reduces the policy analysis capacity of every agency and stalls other reform efforts that might be underway. Despite this, we have been making some important progress.

Alternative Portfolio Standard: After years of waiting, the Department of Energy Resources (DOER) announced their draft regulations to implement the alternative portfolio standard, a trailblazing idea that recognized the benefits of using renewable fuel sources to generating heat was just as green and beneficial (and sometimes even more so) as using those fuels for electricity generation. It is a way to reward those positive uses of renewable fuels the same way we do for electricity generation, allowing the sale of credits that represent the energy created. The draft regulations were significantly flawed.

Various provisions would have precluded cordwood from being a usable fuel, would have required all chips to be dried to below 30% moisture, and the rules made it very confusing to determine just who could, and who could not, and how they should go about certifying a “sustainably harvested” woody biomass fuel. MFA weighed in on these regulations, and encouraged our members to as well. A number of you stepped and did so, and we hope that will help make for a better final product. We are continuing to engage with DOER as we push them to make the improvements necessary to have a viable thermal credit in Massachusetts. We continue to meet with DOER and the Executive Office of Energy and Environmental Affairs to push for improvements.

Natural Heritage and Endangered Species: MFA has worked for a long time to develop an alternative pathway for review of cutting activities under the Massachusetts Endangered Species Act. In the first half of the year we were able to finalize that process, allowing a landowner or forester to apply for a letter of determination from the Natural Heritage and Endangered Species Program that would be good for 5 years. This would allow detailed information to be gathered prior to a cutting plan being filed with DCR, and if that plan were approved within one year of issuance of the NHESP letter, it would cover the entire timeframe of the cutting plan, and the two subsequent extensions of the cutting plan. While this alternative pathway requires slightly more detail than is normally required it has a longer life, and can be requested before money is invested in the preparation of a cutting plan that might need subsequent revisions after NHESP weighs in.

Wetland Crossings: MFA has been spending an increasing amount of time trying to grapple with the easiest, and most effective way to handle the issue of the regulatory framework surrounding our wetland crossings. No one will deny that our forests, our wallets, and our communities are best served by good, environmentally sound crossings that minimize the disturbance to the wetlands, not just on the short term, but on the long term. The regulations are also laid out to assure that permanent crossings are not installed under the guise of forest management and later converted to other uses, circumventing the appropriate level of regulation for each use. MFA is working to find a way to extend out as long as we can the time a temporary crossing can be left in place, thereby minimizing the impact to the environment, and the cost of constant installation and removal by an operator. This is a more complex issue than it appears, but we have DCR staff who are willing to do the hard work with us to figure this out. This is one that you will have to stay tuned to, it is developing and will be a long process to get right.

Local Policy Items

Local issues take a disproportionately large amount of time to address. They are detailed, often involve a lot of other historical factors and context that contribute to the problem, and by definition affect a relatively low number of people. For those they affect however, their impact can be huge. When dealing with local issues MFA generally tries to equip our members with the information to advocate for themselves, but we do often get directly involved when the problem has the potential to affect more members, or the member is unable to handle the issue on their own. Our resources for these efforts are very limited, but sometimes it only takes a letter or conversation from and outside entity to help sway such an issue in a community.

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Chapterlands: We have also engaged on several local issues relative to Chapterlands on behalf of our members, sometimes working through the member, informing them of the rules, sometimes communicating directly with assessors on issues such as how to properly calculate rollbacks, what types of forestland qualified for Chapterlands valuation, how to interpret the income requirements under 61A and the allowable development periods as they relate to long term management of our forests. All of these instances require significant investments of time to research the issue and present a thorough, detailed response, but the information and assistance is invaluable to the member facing a disqualification from the program over a poor interpretation of the rules. MFA has weighed in on individual landowner 61 and 61A issues in the towns of Orange; Amherst; Harvard; Dartmouth; Northfield; and Westborough.

Roadways: Roadways are crucial to our members – without access for large trucks and heavy trucks on many of our rural roadways we are unable to harvest our products in an efficient manner. MFA learned that the town of Warwick was attempting to pass a bylaw that would have made it virtually impossible for log trucks to use many of the town roads (while they were not technically prohibiting heavy trucks, the proposed inspection and bonding requirements for use of the town roads were enormous.) The draft bylaw that was being adopted was actually being promoted by the regional governments in Western Mass as a possible tool to help stop the proposed natural gas pipeline in that area. MFA wrote to the town requesting modifications to any such bylaw to assure that only traditional, reasonable and seasonal limits be made for those harvesting from working landscapes – the proposed bylaw would have been just as impractical for any farmer harvesting a field of silage as it was to any landowner looking to harvest their trees. We also worked to let others know of the issue, and weighed in with the regional governments on possible ways to exempt from the impacts of any such bylaws the use of the town roads for agricultural and forestry uses. For the time being Warwick has stopped their efforts, and the regional governments are suggesting any town that adopts such a bylaw to incorporate our suggested exemptions.

Storing Wood Products: We weighed in with a member in Gardner who was experiencing issues with their neighbors and their local town officials regarding the storage of their wood products – the size and location of various piles. As with every local issue, there are particular facts and rules and while we were not in a position to assure the landowner could do whatever they wanted wherever they wanted, we were able to work with the local officials and the landowner to assure the landowner could operate their storage yard in a manner that was workable, met with the intent of the regulations, and had the proper permits in place. This involved a combination of showing that the landowner in fact met some of the rules they were being told they were violating, finding appropriate leeway in the interpretation of some of the rules, and in showing the landowner a couple of the simple, easy ways to comply with other rules.

Budgetary Policy Items

Capital Spending: Every year the Commonwealth of Massachusetts must pass an operating budget (passed by the legislature and signed by the governor), and the administration must adopt a capital plan to spend the monies authorized in occasional bond bills passed by the legislature. While we monitor

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and give advice on the operating budget, this year the capital plan was one that caused us to call our members to action. Traditionally each agency is given an allocation and is asked to submit a spending plan to their secretariat. The secretariat then reviews the plan, amends it as they see fit, and passes it on up the chain. When the capital plan for FY 2017 was announced, MFA learned that the Working Forest Initiative, the source of funds for several important programs such as the Forest Stewardship plans paid for by DCR and Foresters For the Birds had been eliminated. We learned that DCR was as surprised by this as we were, and we called on our members to write the Secretary of Energy and the Environment urging him to restore the funds. Equipped with broad industry support, and working with DCR and EEA we were able to convince the administration to redirect funds to restore these valuable funds back to their FY2016 level.

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