

ACTION GUIDE

Agricultural and Farmland Protection for New York

by
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American Farmland Trust is the largest private, nonprofit conservation organization dedicated to protecting the nation's strategic agricultural resources. Founded in 1980, AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.

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A Note From the Commissioner

DECEMBER 1999

DEAR FRIENDS,

One of the greatest challenges we face in agriculture today is assuring that our valuable farmland resources remain available for productive use by not only today's farmers, but many generations of New York farmers to come.

I am pleased that great strides have been made in recent years in meeting this challenge. Under Governor Pataki's leadership, aggressive steps have been taken to strengthen farm viability and to encourage local participation in farmland protection efforts. Over the past five years, farmers' school tax burdens have been significantly reduced, funding has been provided to two-thirds of our counties to assist in the preparation of agricultural protection plans tailored to their own specific needs, and nearly \$17 million has been awarded to municipalities statewide to preserve highly viable farmland which is threatened by development.

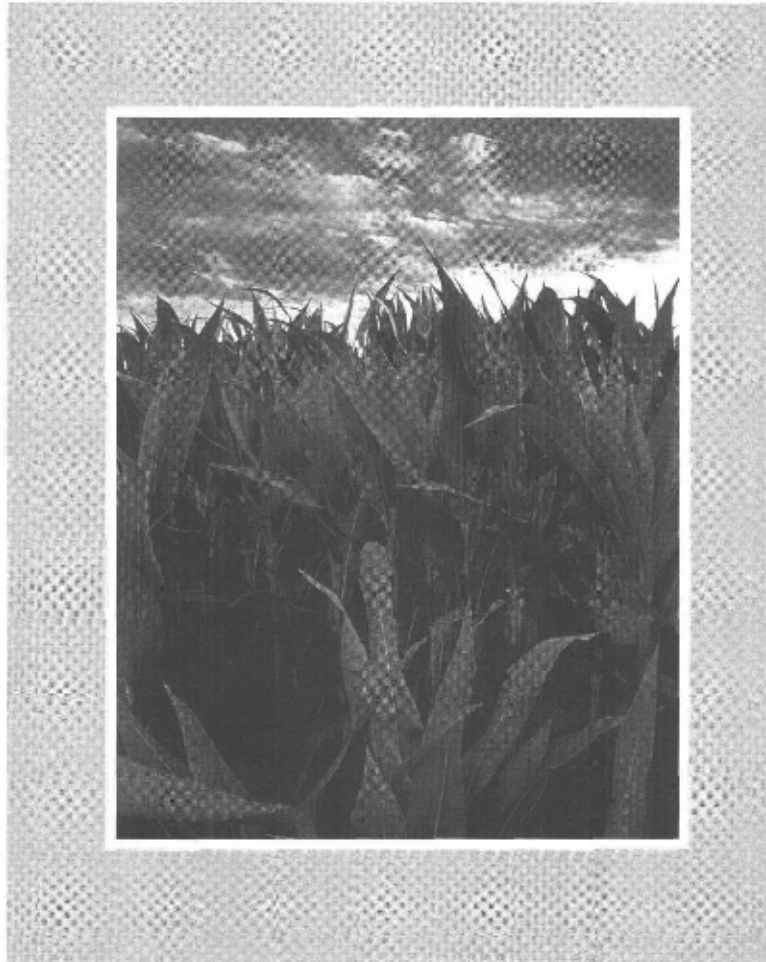
Despite the progress we have made, there is more we can and must do. We must continue to take advantage of the farm protection programs already at our disposal, such as agricultural districting and the purchase of development rights, and explore new options as well. I am confident that the information presented by American Farmland Trust in this handbook will be helpful to you as you consider how best to address your own farmland protection needs.

I look forward to working cooperatively with all parties in protecting the valuable farmland resources upon which the future of our farming industry literally rests.

Sincerely,

Nathan L. Rudgers

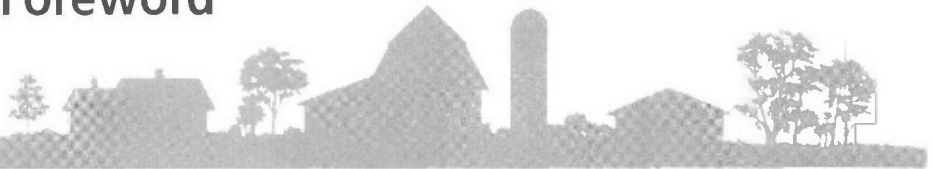
COMMISSIONER
NEW YORK STATE DEPARTMENT
OF AGRICULTURE & MARKETS



"The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products."

—NEW YORK STATE CONSTITUTION

Foreword



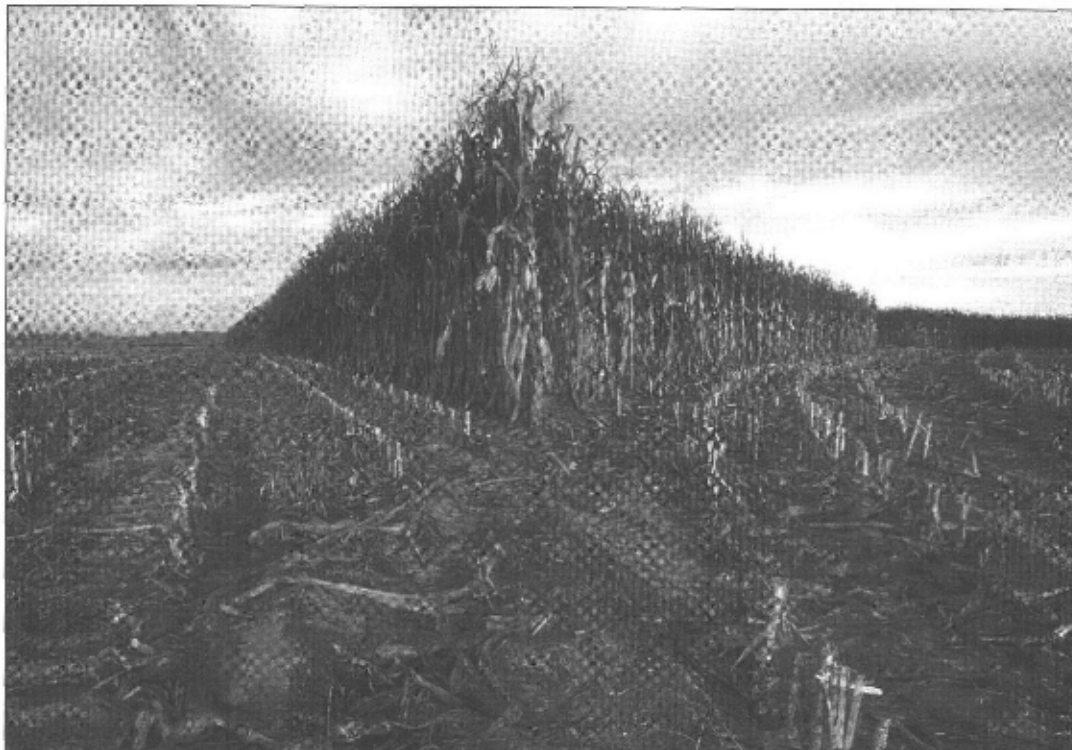
IN 1992, I STARTED WORK IN NEW YORK for American Farmland Trust shortly after the Agricultural Protection Act was passed. In fact, I attended the bill signing by former Governor Cuomo just before I started work. Building on the Agricultural Districts Law, the act strengthened right-to-farm provisions and established, for the first time, a state agricultural and farmland protection program.

This new program allowed each county in the state to develop an agricultural and farmland protection plan as a blueprint for future local initiatives. To date, I am pleased to report that nearly 40 counties have prepared, or are in the process of preparing, these strategic plans for agriculture. This response demonstrates the level of local interest in agricultural issues across New York.

In 1996, Governor Pataki allocated funding from the Environmental Protection Fund (EPF) for farmland protection implementation grants—the first time the state had invested money in purchasing development rights to farmland. In the first three years of the program, nearly \$17 million was appropriated from the EPF and the Clean Water/Clean Air Bond Act to protect thousands of acres of valuable New York farmland. The state funding has leveraged millions more in local and federal funding for farmland protection as well.

Indeed, 1996 was a very good year for farmland protection. That year, we also hailed the passage of the Farmers' Protection and Farm Preservation Act. As we all know, property taxes have long been an important issue in farmland protection because of their relation to farmers' profitability. The act created a new, refundable tax credit for school district property taxes paid on agricultural land and buildings. Early estimates indicate that this tax credit will be worth approximately \$60 million per year to New York farmers—about the same amount of tax benefit provided by agricultural assessment.

As successful as we have been, advocates of farmland protection in New York recognize that more needs to be done. Agricultural and farmland protection plans have documented many future objectives. We need to strengthen the Agricultural Districts Law as the cornerstone of New York's farmland protection efforts; we need to incorporate agriculture into state and local economic development efforts; and we need to better integrate farmland



protection with planning efforts and the growing demand for “smart growth.” In addition, we continually need to remind our non-farm neighbors and city cousins about the importance of agriculture to all New Yorkers.

Much like politics, farmland protection essentially operates on the local level. Both the Agricultural Districts Law and the Agricultural and Farmland Protection program in New York rely on local initiatives. This publication has arisen from the same objective that prompted the first *Agricultural and Farmland Protection for New York* publication in 1993—

to provide information on the tools, techniques and strategies that help strengthen agriculture and protect farmland. It is dedicated to the tireless efforts of farmers, conservationists, community leaders and advocates who work at the local level, day in and day out, to make a better future for New York agriculture.

JERRY COSGROVE

Northeast Field Director

American Farmland Trust



Introduction

THIS HANDBOOK, a revised and expanded version of *Agricultural and Farmland Protection for New York*, published in 1993, presents a variety of programs and techniques that can be used by farmers and farmland protection advocates, state and local officials, and land use professionals to protect New York's valuable agricultural land.

Section One of this book reviews initiatives that have been enacted by Empire State officials to confront some of the challenges facing farmers and rural communities. Chapter One provides an overview of the Agricultural Districts Law, which was enacted in 1971 and now serves as the cornerstone of the state's agricultural and farmland protection efforts.

Based on the theory that the best farm neighbor is another farmer, the agricultural districts program encourages farmers to join together and commit their lands to special areas where commercial farming is encouraged and protected. In return, agricultural districts provide farmers advantages such as property tax relief (agricultural assessment) and protection from outside intrusions (right-to-farm). The "package" of right-to-farm protections contained in the Agricultural Districts Law is covered in detail in Chapter Two.

In 1992, New York went a step further by passing the Agricultural Protection Act. Heralded as the most sweeping farmland protection legislation since the passage of the Agricultural Districts Law, this act strengthened farmers' right-to-farm, placed greater scrutiny on state projects that may negatively affect agriculture and set in motion the development of county farmland protection plans.

Article 25-AAA of the Agricultural Protection Act was enacted to explore ways to sustain the state's farm economy and promote local initiatives for agricultural and farmland protection. It also authorized the creation of county agricultural and farmland protection boards—11-member committees that advise their county legislatures about actions affecting farmland located in agricultural districts.

County agricultural and farmland protection boards (AFPBs) also are charged with developing and approving county agricultural and farmland protection plans. Starting in 1994, the state began allotting funds for counties to develop these strategic plans that focus predominantly on education, agricultural development and land protection. Since then, nearly 40 of New York's 57 counties have developed, or are currently developing, such plans.

In 1996, the state passed legislation to provide counties that have approved plans, or eligible municipalities, with the funding to purchase development rights to farmland.

Purchase of development rights (PDR) is a voluntary farmland protection technique that pays farmland owners for permanently protecting the land for agriculture. Since 1996, three rounds of farmland protection grants have been awarded, totaling more than \$16 million.

Chapter Three describes the state planning grants and PDR grants in more detail.

Statewide initiatives and funding make a world of difference, but farmland protection cannot succeed without the efforts of individuals in towns and counties around the state. As Washington County dairy farmer George Houser has said, "You lose agricultural land one house lot at a time." The reverse is also true: You save farmland one parcel at a time. Many communities across the state have developed their own programs to protect farmland and agricultural resources.

Chapter Four continues the discussion of PDR. As a farmland protection tool, PDR can help communities protect important farmland from conversion to non-agricultural use. The chapter provides an introduction to the technique and discusses some of the issues that communities should consider before initiating PDR projects or programs, such as how to fund PDR. An appendix to the chapter covers the drafting of agricultural conservation easements—flexible documents that designate agricultural use as the primary purpose of the land.

Purchase of development rights is a significant farmland protection tool; however, it is not by any means the only one. Tax relief, for instance—long an important issue for farmers—can be considered a farmland protection tool since overtaxed agricultural land may be more susceptible to conversion out of farming. The year 1996 was a milestone in tax relief for farmers. That year saw the establishment of the Farmers' Protection and Farm Preservation Act, which created a state-funded income tax credit for farmers' school

district property taxes. Chapter Five discusses the credit along with other measures that can be used by municipalities to provide tax relief for farmers.

Planning and zoning also are important farmland protection tools at the local level. Zoning ordinances, lot size requirements and specifications for roads and subdivisions have a tremendous effect on how a community develops or protects its farmland. Chapter Six describes several land use tools, such as agricultural protection zoning, comprehensive planning and mitigation techniques, that communities can make use of when incorporating farmland protection into their planning processes.

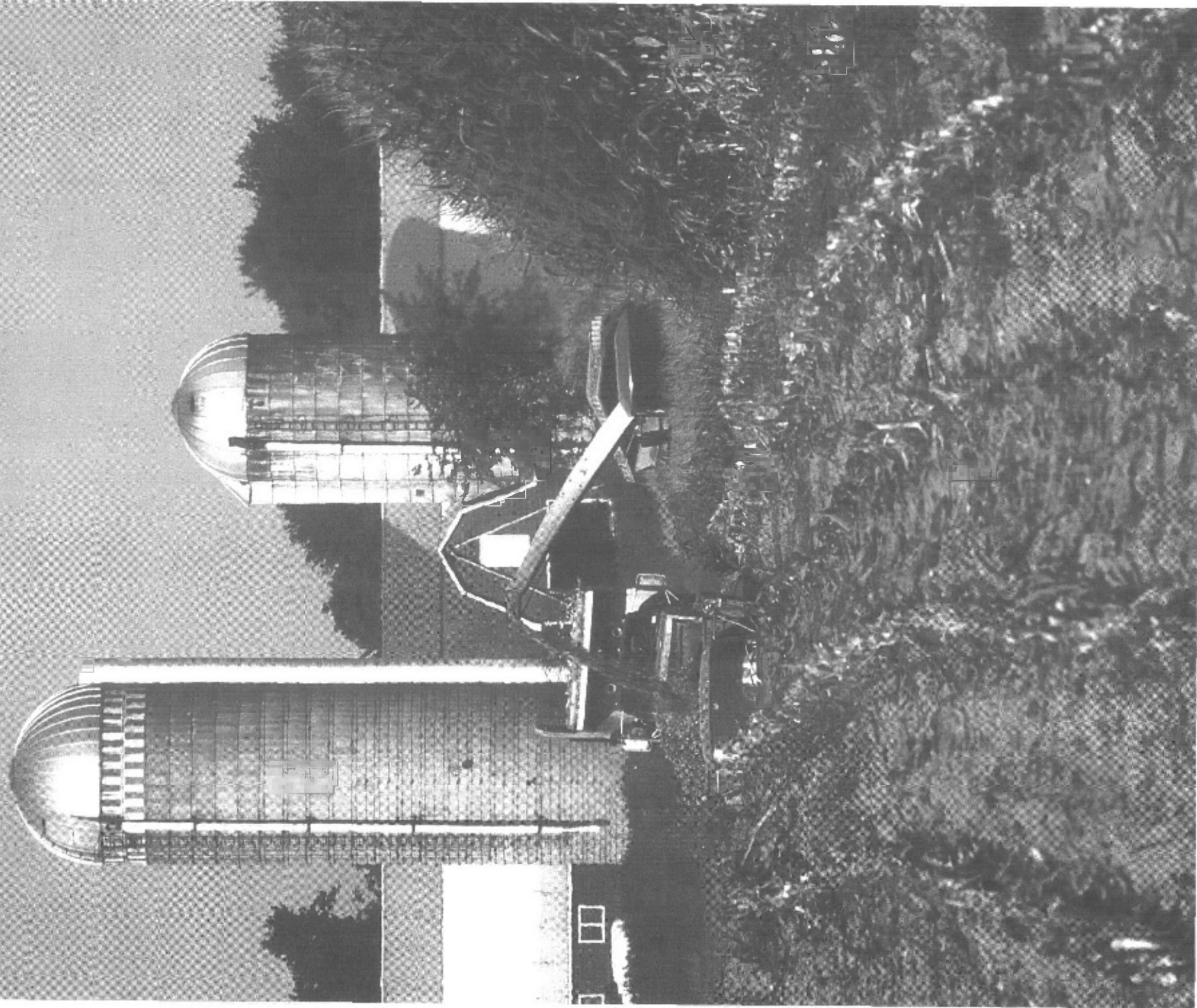
Competition for land is only one of the problems facing New York farmers. Section Three presents a concept relatively new to farmland protection: agricultural economic development. Based on the concept that helping farmers stay in business can help farmers keep their land in farming, agricultural economic development initiatives seek to improve the profitability of farming. Chapter Seven covers some of the unique strategies that have been employed in different areas of the state to enhance the competitiveness of farm businesses. Chapter Eight provides a non-comprehensive list of programs available for farmers and communities interested in improving the profitability of farm businesses.

A suggested reading list and resource directory completes the handbook. Also, American Farmland Trust is available to provide technical assistance and help county agricultural and farmland protection boards, local governments and the agricultural community in protecting New York's most valuable natural resource: productive farmland.

Eight Ways Local Governments Can Protect New York Farmland

- 1 Work with local farmers to form an agricultural protection task force or committee. Review model programs in other areas, consider options and design a package of conservation techniques to protect farmland and sustain agriculture.
- 2 Support agricultural districts since they protect farms from nuisance suits, eminent domain takings and state regulations that interfere with farming. Pass an ordinance to supplement the state right-to-farm law.
- 3 Create incentives for landowners to keep land in agriculture. Set up a purchase of development rights (PDR) program. Encourage the donation of development rights. Support the work of local land trusts.
- 4 Provide property tax relief so farmland is taxed at its agricultural value instead of at its potential value for development. Ensure that all protected lands qualify, as well. Encourage assessors to properly assess agricultural structures.
- 5 Discourage land uses that put pressure on nearby agricultural operations. Confine development to uses that will not infringe upon agriculture. Allow for creative development plans that economize on the amount of land used for buildings while leaving land open for future agricultural use.
- 6 Review planning and zoning ordinances. Make adjustments and pass reforms that address the needs of agriculture. Establish farmland protection zones with sufficiently low residential density to support viable farm operations. Require buffer strips as part of any non-agricultural development in or near existing farms.
- 7 Support farming and encourage its economic viability. Offer technical assistance in marketing and promotion. Permit roadside stands, greenhouses and pick-your-own operations. Allow seasonal operations to use off-site signs to attract customers. Establish a local farmers' market.
- 8 Include agriculture in local economic development plans. Grant low-interest loans or economic development grants for farm improvements and expansions. Extend economic incentives to improve agricultural support industries and encourage new ones.

New York State Agricultural and
Farmland Protection Initiatives





CHAPTER 1



The Agricultural Districts Law— An Overview

NEW YORK STATE'S AGRICULTURAL DISTRICTS LAW, Article 25-AA, was enacted in 1971 to protect farmland in New York. The law recognizes that while agricultural land is one of the state's most important resources, farmland throughout New York is threatened by non-farm development. The law's purpose is to provide local mechanisms for keeping land in agricultural production.

The Agricultural Districts Law has been amended several times. In 1992, it was enhanced significantly to support New York state's farmland protection activities. These changes were included in the Agricultural Protection Act, signed into law that year. Among other amendments, the legislation included stronger right-to-farm protection and established a statewide agricultural and farmland protection program.

This chapter will cover several aspects of the Agricultural Districts Law, including:

- Agricultural districts—formation and review
- County agricultural and farmland protection boards
- The Advisory Council on Agriculture
- Agricultural assessment
- Ad valorem limitations

Right-to-farm provisions, a major component of the Agricultural Districts Law, are described in detail in Chapter Two.

Agricultural Districts

In 1971, the Agricultural Districts Law set forth the concept of "agricultural districts" as an effective and politically viable way to protect New York farmland.

An agricultural district is initiated when interested landowners submit a proposal to their county legislative body. The owners must collectively own at least 500 acres (or 10 percent) of the land proposed for the district.

In considering the agricultural district proposal, the county legislature evaluates:

- The viability of active farming in the district and adjacent areas
- The presence of viable farmland that is not actively farmed
- The extent of other land uses
- County development patterns and needs

Once the county legislative body adopts an agricultural district, the commissioner of New York State Department of Agriculture & Markets must certify the district.

Agricultural districts have been created in 50 of New York's 57 counties. As

of 1997, 408 districts encompassed more than eight million acres, with an average district size of approximately 20,000 acres. Most of the seven counties without agricultural districts are located either in or near New York City or in the Adirondack Mountains, where little active farming takes place.

Review

By law, agricultural districts are reviewed every eight, 12 or 20 years by the county legislature. To date, all counties have adopted an eight-year review period. During the review process:

- The county agricultural and farmland protection board reports on the status of farm resources within the district, the nature of the farm economy, the extent to which the district has achieved its original objectives, and any farmland protection efforts in place.
- The county planning board reports on the effect of the district on county and local comprehensive plans, and the impacts of development, local laws and regulations on farms in the district.
- The county legislature holds a hearing at which the public may comment on the agricultural district, local land use decisions and the viability of the local farm economy.

County Agricultural and Farmland Protection Boards

In 1992, the Agricultural Protection Act reconstituted the former agricultural district advisory committees as county agricultural and farmland protection boards (AFPBs). To date, AFPBs have been formed in 53 of New York's 57 counties.

Agricultural and farmland protection boards, established by the county legislative body, should consist of 11 members. These members include the chair of the county soil and water

conservation district's board of directors, a member of the county legislative body, a representative of the county cooperative extension, the county planning director and the county director of real property services. In addition, the board must contain at least four active farmers and an agribusiness representative (these members must reside within the county). A representative from a land preservation organization may also be on the board.

County agricultural and farmland protection boards are authorized to:

- Advise the county legislative body about agricultural districts
- Review notice-of-intent filings
- Make recommendations about proposed actions involving government acquisition of farmland in agricultural districts
- Prepare and update county agricultural and farmland protection plans
- Request review of state agency regulations that affect farm operations within an agricultural district
- Review and endorse applications for New York PDR funds

These responsibilities provide the opportunity for AFPBs to become active partners with Agriculture & Markets in influencing state and local policy on agricultural and farmland protection issues.



Advisory Council on Agriculture

The Advisory Council on Agriculture (ACA) is appointed by the governor and authorized to make recommendations on state government plans, policies and programs affecting agriculture. This includes agricultural districts, agricultural assessment values and land use issues.

The ACA consists of 11 members selected for their expertise. At least five members are operators of commercial farm enterprises; at least two are local government officials. The rest represent

agricultural businesses or institutions. The ACA also invites participation by the chair of the state soil and water conservation committee and the dean of the New York State College of Agriculture and Life Sciences at Cornell University.

The 1992 Agricultural Protection Act authorized two studies by the ACA. One addressed right-to-farm issues, and the other addressed farm property taxes. The right-to-farm report is currently used by Agriculture & Markets to guide its sound agricultural practice determinations. The property tax report advocated a property tax credit for school taxes paid by farmers. This recommendation was realized when the Farmers' School Tax Credit was enacted in 1996.

Agricultural Assessment

Agricultural assessment was established under the Agricultural Districts Law to provide property tax relief for farmers. Any owner of land used for agricultural production may qualify if the land meets the requirements or is rented to an eligible farm operation. Land does not have to lie within an agricultural district to receive the assessment.

Agricultural assessment provides "use value" assessment for eligible agricultural land. This allows farmland to be taxed for its agricultural value, not for its market (i.e., non-farm development) value. In 1998, farmers received more than \$60 million in property tax savings as a result of the agricultural assessment program.

To qualify:

- Enrolled land must be greater than 10 acres and farmed by a single operation.
- Land must have been used in the preceding two years for the production of crops, commercial boarding of horses or production of livestock.
- Farm operation must gross an average of \$10,000 or more in sales.
- Land of fewer than 10 acres may qualify if the operation has an average gross sales value of \$50,000 or more.

Rented land may qualify, as may support land, farm woodland (up to 50 acres) and land set aside in a federal conservation program. Land used for processing or retail merchandising does not qualify.

TABLE ONE

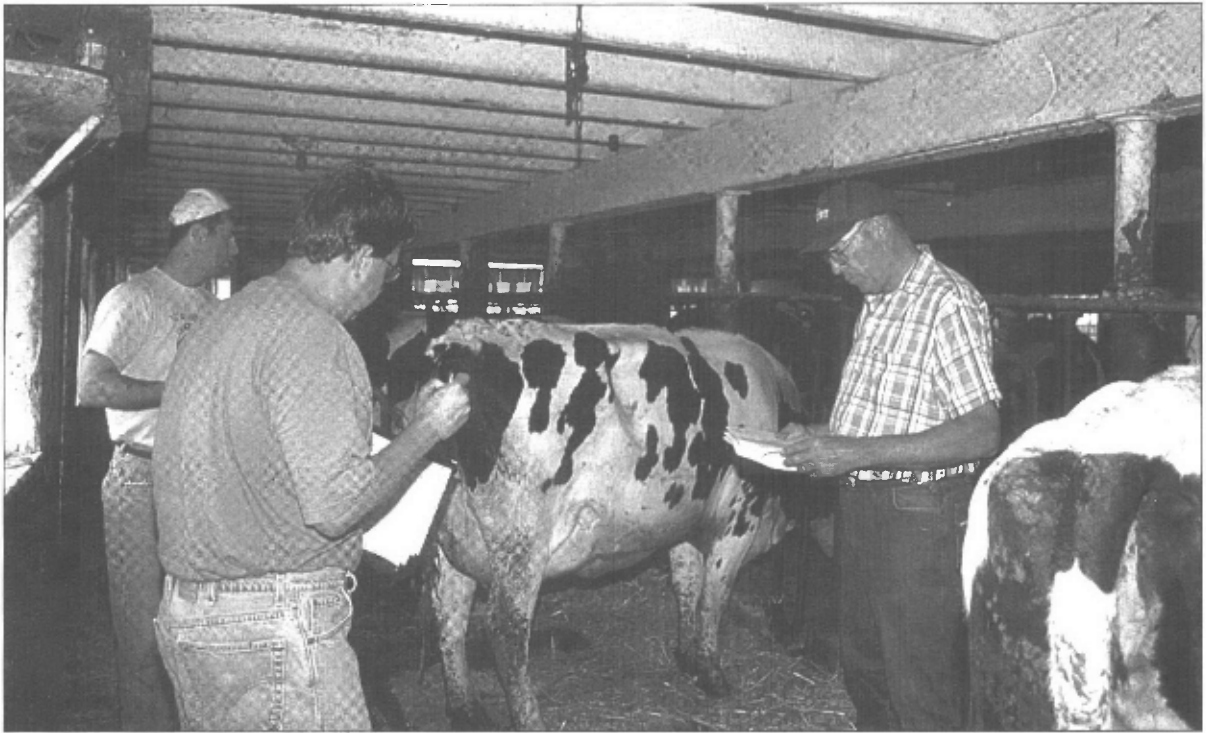
1999 Agricultural Assessment Values Per Acre

MINERAL SOIL GROUP	VALUE PER ACRE
1a	\$ 535
1b	476
2a	476
2b	423
3a	423
3b	364
4a	364
4b	310
5a	310
5b	251
6a	251
6b	198
7	198
8	139
9	86
10	27
ORGANIC SOIL GROUP (MUCK)	VALUE PER ACRE
A	\$1070
B	696
C	589
D	375
AQUACULTURE	\$ 535
FARM WOODLAND	\$ 198

Calculation

Landowners must apply annually for agricultural assessment on a form issued by the state office of real property services (in most areas the deadline is March 1).

Agriculture & Markets maintains an agricultural land classification system based on soil productivity. The system consists of 10 primary groups of mineral soils and four



groups of organic (muck) soils. In determining agricultural assessment, the assessor multiplies the state certified assessment value for each soil group by the total number of acres within the soil group. (*Table One* shows the state agricultural assessment values for 1999.) The assessor then totals the sub-amounts and applies the local equalization rate to determine the parcel's agricultural value.

Conversion of Agricultural Land

Land placed under agricultural assessment and then converted to non-agricultural use is subject to conversion fees. These payments equal five times the taxes saved in the last year during which the land was receiving an agricultural

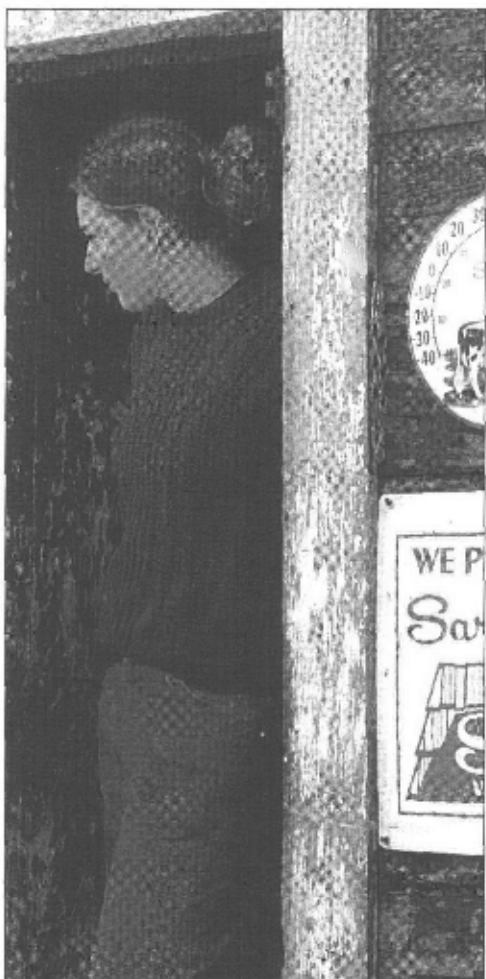
assessment, plus 6 percent interest compounded annually for each year that the assessment was granted (up to five years). If only part of the parcel is converted, then payment is based on the converted portion that had received an agricultural assessment. Landowners have up to six months to notify the assessor whenever a conversion occurs. Failure to do so can result in penalties up to \$500.

Ad Valorem Limitations

The Agricultural Districts Law limits the taxation of farmland for certain municipal improvements such as sewer, water, lighting, non-farm drainage, solid waste disposal or other landfill operations. Land used for agricultural production within an agricultural district cannot be taxed for such improvements unless the fees were imposed prior to the formation of the district—or unless the farm structure benefited directly from the improvement district. The fees may be imposed on a one-half-acre lot surrounding any dwelling or non-farm structure located on the farm's land. In addition, the governing body of a fire protection or ambulance district may adopt a resolution to state that agricultural assessment values be used to determine the taxes levied by that district.



"In 1992, The Agricultural Districts Law was enhanced significantly to support New York's farmland protection activities. Among other amendments, the legislation included stronger right-to-farm protection and established a statewide agricultural and farmland protection program."



CHAPTER 2



The Agricultural Districts Law— Right-to-Farm “Package”¹

THE CONTINUED DEVELOPMENT OF AGRICULTURAL AREAS has increased the potential for conflicts between farmers and their neighbors. In 1992, the Agricultural Districts Law was amended to add a limited defense for farmers against private nuisance lawsuits. Commonly referred to as the right-to-farm law, all 50 states have enacted some kind of nuisance protection law. Generally, these provisions aim to strengthen the ability of farmers to defend themselves in a nuisance suit brought by a neighbor or local government.

Right-to-farm laws also may be used to shield farmers from excessively restrictive local laws or to ward off intrusive and unwanted public infrastructure. Right-to-farm provisions can improve the viability of farm businesses since a “farm-friendly” local business climate can allow farmers to invest more in the future of their operations.

The Agricultural Districts Law now provides five types of right-to-farm protections for farm businesses:

- 1) **Definition of Agriculture** – Requires the commissioner of New York State Department of Agriculture & Markets to determine whether land uses are agricultural in nature.
- 2) **Local Ordinance Provision** – Provides protection against laws that unreasonably regulate farm operations in agricultural districts.
- 3) **Notice of Intent** – Requires analysis of proposed public projects that may impact farms in agricultural districts.
- 4) **Sound Agricultural Practice Determinations** – Offer limited protection from private nuisance claims.
- 5) **Disclosure Notices** – Inform property buyers about farming practices before they purchase property in an agricultural district.

The five right-to-farm protections are described in more detail below.

Definition of Agriculture

Agriculture is a dynamic industry. Farmers must continually adapt to changing markets, production practices and technology. In addition, more nontraditional enterprises such as aquaculture today are considered to be agriculture. As a result, there may be legislative or judicial debate about how agriculture is defined. A recent addition to the Agricultural Districts Law authorizes the commissioner, in consultation with the Advisory Council on Agriculture, to issue case-by-case opinions on whether particular land uses are agricultural in nature.

It is important to note, however, that such right-to-farm protections can only assist farming operations located within agricultural districts. Court decisions

¹ The following chapter was modified, with permission, from *Agricultural Districts: Lessons from New York*, by Nelson Bills and Jeremiah Cosgrove (Cornell University, 1998).

such as the one in *Krenzer v. Town of Caledonia Zoning Board of Appeals* underscore this reality.² In this case, the Krenzlers began building a barn to house dairy heifers, planning to raise them on contract. Toward the end of construction, the local zoning board ordered them to stop work on the barn. The Krenzlers sued to overturn the decision.

However, a local judge ruled that contract heifer raising was not “agriculture” but “commercial” in nature and therefore not allowed under a local zoning ordinance. In deciding the case, the judge was forced to examine case law in other states—which defined agriculture only as crop-raising and related activities—because the local zoning ordinance did not define agriculture. Had the Krenzer property been located within an agricultural district, the operation likely would have been ruled agricultural and afforded protection under the Agricultural Districts Law.

Local Ordinance Provision

Section 305-a of the Agricultural Districts Law allows the commissioner of Agriculture & Markets to intervene when local governments enact laws that unreasonably regulate farm operations in agricultural districts, unless it can be shown that public health or safety is threatened.

Questions concerning the impact of local laws on farm structures or practices are solved far more easily at the drafting stage than after provisions have been enacted. Agriculture & Markets encourages local governments to contact them in advance to discuss proposed legislation. A farmer or other affected party may request the department’s informal opinion on a proposed or existing law without filing a complaint.

If a farmer wishes to file a request for review, he or she must include the location and a description of the affected farm operation, a description of the farm structure or practice involved, a copy of the relevant local law and a list of contacts for further information. Agriculture & Markets will examine these factors and determine whether farm

operations are affected. If so, the department will decide if the local law is reasonable and has a direct relationship to public health and safety.

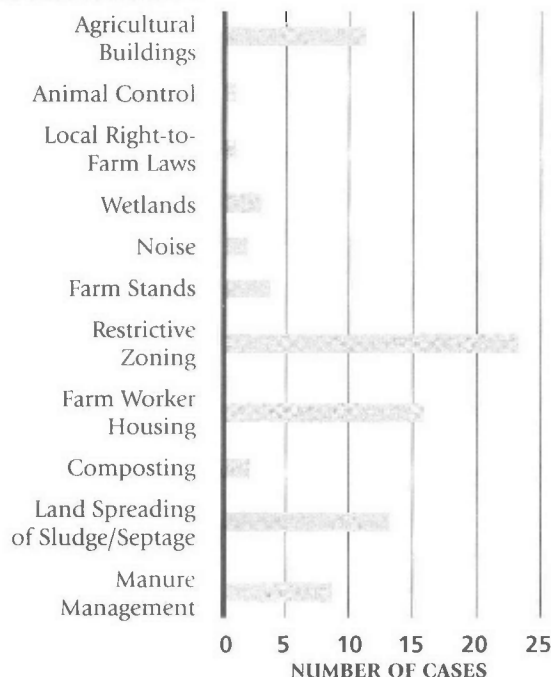
Figure One categorizes the 85 total requests for local law review made to the department from 1985 to 1999. Farmers, local government officials, county farm bureaus and county agricultural and farmland protection boards have made these requests. Complaints about overly restrictive zoning lead the list, followed by laws concerning farm worker housing (mobile homes), land spreading of sewage or septage and manure management.

If the department determines that local legislation unreasonably regulates farm operations in an agricultural district, it will notify the involved municipality and attempt to negotiate a resolution. If the municipality rejects the department’s attempts at remediation, the commissioner is authorized to bring an action to enforce Section 305-a. The commissioner may also cite the municipality for violating the Agriculture and Markets Law.³

FIGURE ONE

Requests for Review of Local Laws, 1985–1999

FARMING PRACTICE



² Sup. Ct., Monroe Co., 1995

³ Two recent court decisions have upheld Agriculture & Markets’ ability to require local governments to comply with the Agricultural Districts Law—*Town of Verona v. McGuire* (Sup. Ct., Albany Co., 1996) and *Town of Butternuts v. Davidsen* (Sup. Ct., Albany Co., 1997). In both cases, the courts upheld the department’s determination that application of sewage sludge constituted an agricultural practice under those circumstances.

Agricultural Data Statements

Section 305-a requires agricultural data statements to be made on land use determinations affecting property within 500 feet of a farm operation located in an agricultural district. This includes applications for special use permits, site plan approvals, use variances or subdivision approvals under municipal review. The agricultural data statement (ADS) evaluates the proposal's possible impact on agriculture before the local board makes its planning decision, and includes input from farmland owners. The local reviewing board then evaluates the statement and reviews possible impacts on the farm operation in question. Some local boards refer the agricultural data statement to the county AFPB for review and comment but are not required to do so.

The agricultural data statement includes the location and description of the proposed project, names and addresses of farms within 500 feet of the project and a map showing the project's site relative to those farm operations.

The municipality must notify the landowners identified in the agricultural data statement so they may comment on the effect of proposed changes to their farm operations. The municipality's review board also must evaluate the possible impacts of the proposed project so that local land use decisions do not contradict the goals of the Agricultural Districts Law.

Notice of Intent

Public projects can have a significant impact on agricultural resources. Section 305(4), commonly referred to as "Notice of Intent," allows for limitations on the exercise of eminent domain and other public acquisitions. It recognizes the importance of analyzing proposed projects for their possible impact on agriculture and seeks to minimize any adverse effects on farming. The law requires an agricultural impact statement to be made before public dollars are spent on non-farm projects in an agricultural district.

However, farmland owners themselves can take advantage of a "willing seller waiver" provision that allows them to terminate the review process on infrastructure projects. The waiver provision only can be executed if the public entity intends to acquire, through easement or purchase, one acre of land from an actively operating farm in an agricultural

district, or 10 acres in total from an agricultural district. This escape clause may be questionable from a land use planning perspective, but it reflects the landowner-oriented approach inherent to the Agricultural Districts Law.

Preliminary Notice

Any agency, corporation or government that proposes an action subject to Section 305(4) must file a preliminary notice of intent with the commissioner of Agriculture & Markets and the county agricultural and farmland protection board (AFPB). The preliminary notice includes a brief description of the proposed action, its agricultural setting and a summary of potential detriments to agricultural operations and resources within the district. This notice must be filed as early as possible and no later than when a determination is made about whether an environmental impact statement is required under New York state's Environmental Quality Review Act.

Agricultural Impact Statement

At least 65 days before the proposed acquisition or advance of public funds, a final notice of intent—including a detailed agricultural impact statement—must be filed with Agriculture & Markets and the county agricultural and farmland protection board.

The agricultural impact statement describes:

- Short- and long-term effects of the project on agriculture (including any adverse effects)
- Alternatives to the proposed project
- Irreversible loss of agricultural resources involved
- Mitigation measures
- Aspects of the project that would encourage non-farm development

Review of Notice

After consulting with the Department of Environmental Conservation and the Advisory Council on Agriculture, the commissioner of Agriculture & Markets decides whether the proposed project would unreasonably affect the viability of farm enterprises within the district. Since the 1992 Agricultural Protection Act, agricultural and farmland protection boards also may comment during the notice of intent process and provide a local perspective on potential agricultural impacts.



If the commissioner concludes that farm viability is at risk, a reasonable alternative may be proposed. If the project's sponsor rejects the alternative, it must set forth its reasons and provide a detailed comparison of the two proposals. The entity also must certify compliance with Section 305(4) at least 10 days in advance of undertaking its project. The commissioner may ask the state's attorney general to enforce any violations by lawsuit, or may bring an action to enforce any mitigation measures that result from the notice of intent review process.

However, a recent case in western New York illustrates the difficulty in protecting agricultural resources when other legitimate economic objectives must be considered. In *Brady v. Davidsen*, the court upheld the commissioner's determination that the Brady farm would not be unreasonably affected by the extension of a rail spur.⁴ The rail line, as proposed, would cut through prime farmland owned by the Brady family to service a local salt mine. The commissioner's approval of the rail line (after establishing mitigation measures to minimize impacts to the farm operation) occurred

over the objections of the Brady family and the Livingston County Agricultural and Farmland Protection Board. In reviewing the case record, the court acknowledged the AFPB's advisory capacity but stated that the commissioner's responsibility is to make the final determination. The court also noted that the commissioner is obligated to consider all relevant factors, including the community's economic climate, when determining whether the impact on agriculture is unreasonable.

Lateral Restrictions

Many notice-of-intent filings concern proposals to extend water and sewer lines into farming areas. These filings are so common that Agriculture & Markets has developed guidelines for water and sewer transmission mains located wholly or partially within an agricultural district. Three of the four guidelines relate to construction. They strive to minimize the disruption of farm enterprises, address soil compaction and erosion and provide repair for any damaged agricultural drainage systems.

⁴ Sup. Ct., Albany Co., 1996

The fourth guideline recommends that future water and sewer service be provided only to agricultural structures. Such limitations are known as "lateral restrictions." A recent court decision upheld the imposition of lateral restrictions on a water line located in an agricultural district. The court observed that the Agricultural Districts Law allows localities to limit non-farm development in an agricultural district to prevent "development seeping in through the unaffected lands."⁵

Sound Agricultural Practices

Despite the ambitious tone of their title, right-to-farm laws are not meant to shield farmers from all legal disputes with neighbors. However, they assert that a person who voluntarily moves into the vicinity of the nuisance activity (which is interfering with his or her enjoyment of the property) has no right to expect that a court would restrict such an activity.

The protection is meant to apply to farmers who are using "sound" agricultural practices. According to Section 308, such practices are those "necessary for the on-farm production, preparation and marketing of agricultural commodities." This includes the operation of farm equipment, crop protection methods, such as the proper use of agricultural chemicals, and the construction/use of farm structures.

Under Section 308, the commissioner may issue opinions, upon request, about whether a particular agricultural practice is sound. In consultation with the Advisory Council on Agriculture, the commissioner evaluates practices on a case-by-case basis. To help streamline the process, the Advisory Council on Agriculture has issued a set of guidelines regarding such determinations.

The guidelines for defining a sound agricultural practice ask four basic questions:

- Is the practice legal?
- Does the practice cause personal or property damage?
- Is the practice effective?
- Is the practice necessary?

Once the commissioner issues an opinion, the owner of property on which the practice is conducted as well as

adjoining property owners are notified. The commissioner's opinion then provides a defense to a private nuisance action based on that particular agricultural practice. The law explicitly excludes damages for personal injury or wrongful death from the scope of the defense.

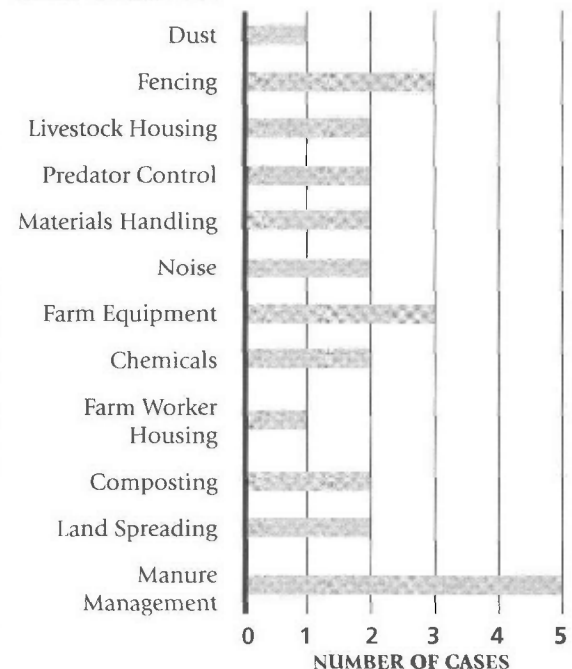
Section 308-a, enacted in 1995, allows for the award of attorneys' fees and expenses to the prevailing party in cases when the claimed private nuisance is determined by the commissioner to be a sound agricultural practice.

As of 1999, the commissioner had reviewed 28 cases to determine if the farming practices in question were sound. (See *Figure Two*.) The debated practices have involved issues of manure management, noise, fencing, farm equipment, farm worker housing and predator control. In approximately 75 percent of the cases, the practices were deemed to be sound. However, such determinations were based on a careful case-by-case review. Approvals in single instances are not intended to constitute a list of authorized practices. Thus

FIGURE TWO

Farming Practices Reviewed for "Soundness," 1993-1999

FARMING PRACTICE



⁵ See *Town of Wright v. Kendall* (Sup. Ct., Orleans Co., 1997)

far, most of the opinions have been requested by either farmers themselves or by local government officials.

There are few court opinions on these sound agricultural practices determinations. To date, only one of the formal determinations has resulted in a lawsuit. In the case of *Pure Air and Water Inc. of Chemung County v. Davidsen*, New York's Court of Appeals upheld the commissioner's determination that the manure management practices of the Trengo hog operation were sound (a nonprofit corporation representing nearby residents had challenged the opinion in local court).⁶ In a later decision, a lower court also ruled that New York's right-to-farm law was constitutional. This was an important victory for New York's statute, since it counters several rulings in other states that have been unfavorable for similar statutes.⁷

Disclosure Notices

Section 310 requires an owner of land in an agricultural district to provide a prospective purchaser with a disclosure notice prior to signing a purchase contract. The notice is intended to advise property buyers about modern agricultural practices before they purchase property in a farming area. This "ounce of prevention" may help minimize future farmer-neighbor conflicts.

Section 310 requires the notice to state: "It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural



"Agriculture is a dynamic industry. Farmers continually must adapt to changing markets, production practices and technology. In addition, more nontraditional enterprises such as aquaculture today are considered to be agriculture. As a result, there may be legislative or judicial debate about how agriculture is defined."

land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances."

The sooner potential buyers are notified the better. The notice must be attached as an addendum to any purchase contract and must be signed by the seller and buyer. Local real estate agents and attorneys are responsible for advising property owners about this requirement. Early notification should protect sellers from possible legal disputes about the disclosure obligation.

⁶ NY Appellate Division, Third Dept., 1998; Appeal dismissed, NY Ct. of App., 1998

⁷ In Iowa's widely publicized Bormann case, for instance, the court struck down Iowa's right-to-farm law, ruling it an unconstitutional taking.



CHAPTER 3

Agricultural and Farmland Protection Program

NEW YORK STATE'S AGRICULTURAL AND FARMLAND PROTECTION PROGRAM, Article 25-AAA, was enacted in 1992 as part of the Agricultural Protection Act. The program encourages counties and towns to work with farmers to promote local initiatives that help maintain the economic vitality of agriculture and protect the industry's land base.

Under this program, funds are available for counties to develop agricultural and farmland protection plans. Since 1994, almost 40 counties have received planning grants through the state's Environmental Protection Fund to develop such plans. (*Map One* shows New York counties with completed agricultural and farmland protection plans or with planning in progress.) In 1996, the state amended Article 25-AAA to provide counties that have approved plans, or eligible municipalities, with implementation grants to purchase development rights to farmland.

Planning Grants

County agricultural and farmland protection boards, in conjunction with local soil and water conservation districts and the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS), develop agricultural and farmland protection plans. These plans locate important county farmland, analyze the agricultural and environmental value of such farmland and identify threats to its continued agricultural use. They also describe activities, programs and strategies that will help keep the land in agriculture.

State agricultural and farmland protection planning grants are limited to \$50,000 and cannot exceed 50 percent of the plan's total cost. At least 20 percent of the local match (up to \$10,000) must be in cash; the remainder can be in-kind services. Some county boards have used a public/private partnership to start the planning process by obtaining private funding to cover the local cash match.

Completed agricultural and farmland protection plans, while tailored to the specific concerns of their region, have addressed four critical issues:

- **Agricultural viability and profitability** – For agriculture to succeed, it must be profitable.
- **Agricultural land use and farmland protection** – Maintaining the land base for agriculture is crucial to its success as an industry.
- **Agricultural awareness and public education** – Public support for agriculture depends on educational efforts that stress its importance.
- **Municipal land use** – Review of local laws, ordinances, regulations and comprehensive plans can help identify potential conflicts with agriculture.

Strategic agricultural and farmland protection plans are only the beginning of a continually evolving process. To ensure their greatest success, plans must be evaluated periodically and revised as needed. They will not achieve their objectives unless the recommendations they make are enacted. Responsibility and oversight for implementation efforts must be assigned. In addition, future

actions should be prioritized in order to focus efforts once the plan has been adopted.

Funding sources for implementation also need to be identified and obtained. Some implementation efforts, such as purchasing development rights, can make use of state farmland protection grants. Other initiatives, such as agricultural economic development, likely will require local funding sources as long as state funds are not available for that purpose. Still other initiatives may serve as catalysts for new statewide or regional programs or may create new partnerships between public and private sectors.

Purchase of Development Rights Grants

Background

In 1996, the New York State Legislature amended Article 25-AAA to provide eligible municipalities that have approved agricultural and farmland protection plans with implementation grants to purchase development rights (PDR) on farmland.

PDR, also known as purchase of agricultural conservation easements (PACE), is a voluntary farmland protection technique that pays farmland owners for permanently protecting the land for agriculture.

In general, landowners possess a variety of rights to their property, including the rights to use water resources, harvest timber or develop the property consistent with local regulations. Some or all of these rights can be transferred or sold to another person. PDR programs enable landowners to separate and sell their right to develop land from their other property rights. In New York state, participating farmers are typically offered the difference between the restricted value of the land and the fair market value of the land. The land remains private and on the tax rolls; its taxable value should be based on the remaining rights.

In New York, PDR was first funded in 1996. From 1996 to 1999, three rounds of farmland protection grants were awarded to counties and towns throughout New York, totaling nearly \$17 million. Funds for PDR are allocated from the state's Environmental Protection Fund and the open space account of the Clean Water/Clean Air Bond Act. Grants have been awarded to communities across the state.

Since the program's inception, competition for the state's limited funds has been intense. Eight applicants received \$3.7 million in grants in the first round, and eleven applicants received approximately \$4.5 million in the second

MAP ONE

Agricultural and Farmland Protection Planning in New York



round. In each round, grant requests far exceeded the available funding. For example, in the third round in 1998, 12 applicants received grants of \$7.7 million in response to requests that totaled more than \$40 million. (*Figure Three* compares PDR grant requests for the first three rounds versus amounts awarded.) Based on widespread interest in this program around the state, funding requests are expected to continue to increase.

Please see Chapter Four and the appendix for more information on the use of PDR as a farmland protection tool.

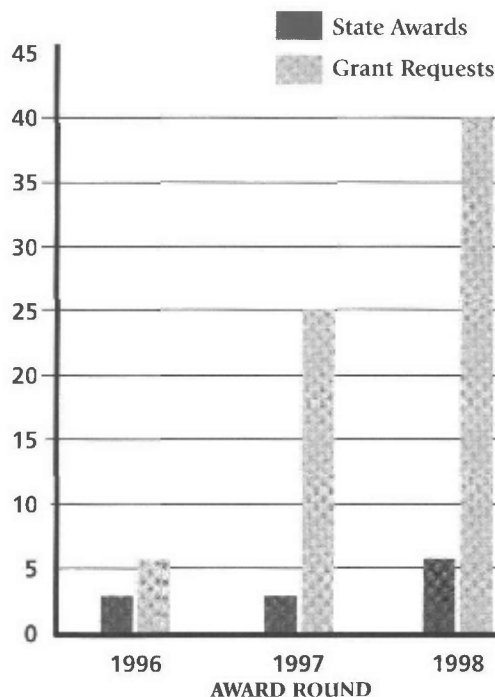
Who Can Apply for PDR Grants

- A county Agricultural and Farmland Protection Board (AFPB) that has an approved county agricultural and farmland protection plan

Or

- A municipality that has adopted a local farmland protection plan (a master, comprehensive or open space plan that considers agricultural uses and needs; the project must be endorsed by the county AFPB)

Local land trusts and other nonprofit conservation organizations interested in protecting agricultural land are not eligible to apply directly for implementation funds, but can work cooperatively with county or municipal governments to support a project for which funding is requested. In New York, local land trusts have prepared a majority of applications. These organizations also may provide funds to meet

FIGURE THREE**NYS PDR
Grants vs. Requests**

the 25 percent local matching requirement or may participate in a project's development at the discretion of the municipality.

Counties or municipalities interested in applying for agricultural and farmland protection planning grants should contact New York State Department of Agriculture & Markets for more information.

PDR Application Process

Over the past three years, Agriculture & Markets has issued a request for proposals (RFP) to seek applications from eligible counties or towns for the purchase of development rights projects on selected farms.

Generally, counties or towns interested in responding to the RFP contact farm landowners within their jurisdiction to determine farmer interest in the program. Some municipalities offer periodic sign-ups and attempt to attract interested farm owners through local newspapers, bulletins and word-of-mouth campaigns. Informational meetings are held to discuss the program, answer questions and request letters of interest.

The municipal review body (AFPB, local planning board or

local farmland/open space committee) then reviews letters of interest and information on eligible farms. The review body may rank potential applicants based on their own selection criteria and submit an application(s) to the state. Applications for funding must include a cover sheet, project summary, plan of work, list of key personnel and a budget identifying the source of the cash match.

Agriculture & Markets staff members perform on-site reviews of each of the parcels submitted under the RFP. Farms are then scored and ranked using state criteria. Once a project is selected, Agriculture & Markets drafts a contract defining all project terms, conditions and responsibilities. An appraisal(s) must be conducted by a New York state certified general real estate appraiser to determine the easement value of the parcel. The farm family then decides whether to accept the terms of the contract. If they do, the easement is drafted, signed and recorded, and the funds are transferred. A project generally takes a year to 18 months to complete.

steps

to Participate in New York State's PDR Program

- Farmers inform their AFPB and municipality of interest in selling development rights.
- Review body gathers information and selects potential applicants.
- Municipality or AFPB submits application(s) to Agriculture & Markets.
- Agriculture & Markets staff members perform on-site reviews.
- Farm is scored and ranked using state criteria.
- Farms are selected and Agriculture & Markets develops contracts.
- Appraisals are conducted to determine or confirm easement value.
- Farm family decides whether to accept terms.
- Easement is drafted and pre-approved by Agriculture & Markets.
- Copy of easement, approval and other documents are provided to Agriculture & Markets.
- Agriculture & Markets determines that all documentation is in order and requests that the comptroller issue payment to the municipality.
- Landowner signs easement, which is then recorded in the county clerk's office after closing.
- Municipality pays landowner at closing.

State Selection Criteria

Priority is given to projects that:

- Preserve viable agricultural land
- Are in areas facing significant development pressure
- Serve as buffers for a significant natural public resource

Additional criteria are:

- Number of acres preserved
- Soil quality
- Percentage of total farm acreage available for agricultural production
- Proximity to other conserved farms
- Level of farm management demonstrated by current landowner
- Likelihood of the property's succession as a farm if ownership changes

Funding Criteria

State funds to an applicant cannot exceed 75 percent of the total project cost; municipalities are required to provide a cash match equal to at least 25 percent. An in-kind administrative credit of up to 80 percent of the cash match or \$25,000 (whichever is less) is allowed. A landowner also may help satisfy all or part of the required local match through a bargain sale (which occurs when the landowner accepts the state match as full payment) or other reduction in the sale price of development rights for the property. Project expenses eligible for state assistance include transaction costs such as surveys, legal fees, baseline reports, title abstracts and insurance as well as stewardship fees to cover future monitoring and enforcement obligations.



Examples of Successful PDR Applications

Long Island Suffolk County and several towns on eastern Long Island have established strong PDR programs. Farmland preservation programs on the island have captured nearly \$7 million in funds—almost half the total amount awarded by the state since 1996. Land values for development on the island are among the highest in the state, thus making it a prime candidate for such funds. In addition, island municipalities have successfully coordinated their efforts to apply for PDR grants. For example, a “Preservation Partnership” program allows towns to match county funds for land acquisition projects. In 1998, Suffolk County voters approved a “Community Greenways Fund” that will raise \$62 million from bond sales to preserve farmland and open space.

Town of Amherst Widespread community and political support led to several successful applications submitted by the town of Amherst, located just east of Buffalo in northeastern Erie County. A multifaceted partnership between the town, the Western New York Land Conservancy, the USDA NRCS and the Erie County Soil & Water Conservation District resulted in grant awards for 1996, 1997 and 1998 that totaled nearly \$1 million. The funds will protect hundreds of acres of Amherst farmland, enabling active farmers to purchase additional farmland at its agricultural value.

Orange County When a farmer from the town of Warwick inquired about the state’s new farmland protection program, he was advised that a local match was required and that such local funds were not available. Undaunted, the farmer asked whether he could provide the “local” match by offering a bargain sale of his development rights. He would agree to accept the state match (75 percent) as full payment, in effect making a donation of the remaining value. After review, Agriculture & Markets decided to accept the bargain sale as fulfilling the local match requirement. As a result, the farmer received a substantial payment for his development rights so he could buy the farm that he had been renting. A total of four farms in Orange County received funding over a three-year period using a bargain sale as the local match.

Town of Ancram Following Orange County’s example, the Columbia County Land Conservancy asked Agriculture & Markets if the owners of contiguous farmland could supply the local match by donating a conservation easement on their property. The department answered in the affirmative, and an Ancram couple was financially able and willing to donate a conservation easement on their land in order to provide the local match requirement for the purchase of development rights on neighboring farms.

Onondaga County In the 1996 Farm Bill, the United States Congress created the Farmland Protection Program to provide matching grants to state and local farmland protection programs. In 1998, New York received \$1.4 million in federal grant funding for its state farmland protection program. In Onondaga County, the federal grant money has been combined with state funds to purchase the development rights to the 400-acre Manorcrest Farm in the town of Camillus. Without this partnership, Manorcrest Farm likely would have been sold for development.

SECTION TWO

Farmland Protection Tools





CHAPTER 4



Purchase of Development Rights (PDR) Programs

CHAPTER THREE PROVIDED INFORMATION on New York's Agricultural and Farmland Protection program, which provides funding for eligible municipalities to purchase development rights (PDR) on farmland.

New York's Suffolk County created the nation's first purchase of development rights program in the mid-1970s. It has since been replicated across the country. The process of designing the Suffolk PDR program and winning support for a \$21-million bond to fund it began in 1974. Funds were appropriated in 1976, and the first deals were closed in 1977.

The Suffolk County program was created to protect farmland by compensating landowners who agreed to keep their land in agriculture. In return for participating, the county paid farmers a sum equivalent to the difference between the development value and the restricted value of their land.

Maryland, Massachusetts, Connecticut and Vermont followed Suffolk County's lead by establishing programs. Since then 15 states have established PDR programs that have protected farmland. New York first funded its state-wide PDR program in 1996.

In addition, some New York municipalities have initiated their own PDR programs. Section 247 of the New York State General Municipal Law, enacted in 1960, authorizes local governments to use public funds to acquire interests or rights to real property (including development rights) for the preservation of open spaces and agricultural land.

Local PDR programs can prevent development that would effectively eliminate the future possibility of farming in an area. Selling an easement allows farmers to cash in a percentage of the equity in their land, thus creating a financially competitive alternative to development. Producers often use PDR program funds to buy and/or improve land, buildings and equipment, retire debt and increase the viability of their operations. The reinvestment of PDR funds in equipment, livestock and other farm inputs also may stimulate local agricultural economies.

PDR Program Issues

The effectiveness of PDR programs depends on how well municipalities address several key issues. There are many factors that a municipality or organization needs to consider before participating in the New York State Agricultural and Farmland Protection Program or before designing their own local PDR program.

These include deciding what kind of farmland to protect, which areas to target and how to set priorities; what restrictions to put on the use of the land; how much to pay for easements; how to raise purchase funds; how to administer PDR programs; and how to monitor and enforce easements.

Agricultural Conservation Easements

The purchase of development rights to a piece of farmland places a deed restriction—known as a conservation easement or development rights agreement—on the property, protecting the land for agriculture. For this reason, PDR programs are also known as Purchase of Agricultural Conservation Easement (PACE) programs. Most conservation easements are permanent. The farmland owner retains all other rights of ownership and can continue to farm the land as he or she did before. The land remains private and on the tax rolls. The value of an easement is determined by an appraisal(s) that evaluates the property's protected value versus its unprotected value.

Agricultural conservation easements are written documents signed and acknowledged by all parties involved. They are filed with the county clerk's office so that future owners and lenders will learn about the restrictions through a title report. Depending on the circumstances of the transaction, the easement may need to meet the requirements of the New York Environmental Conservation Law and the federal tax code.

Because agriculture is always evolving, agricultural conservation easements must be flexible and tailored to meet its ever-changing conditions. Generally, they:

- Limit future uses of the land that degrade the agricultural value or productivity of the land
- Extinguish virtually all non-farm development rights

(i.e., the right to build residential or non-agricultural structures)

- Encourage the business of farming
- Permit the construction of new farm buildings and farm employee housing
- Complement the right-to-farm provisions in the Agricultural Districts Law
- Do not require public access
- Leave the landowner in full ownership of the farm

(The appendix provides a detailed discussion of the drafting and monitoring of agricultural conservation easements. You can obtain sample agricultural conservation easements by contacting New York State Department of Agriculture & Markets or American Farmland Trust.)

Determining Easement Value

In general, the value of an easement is the fair market value of the property minus its restricted value, as determined by a qualified appraiser. For example, if the market value of an unprotected parcel of farmland is \$200,000, but worth only \$100,000 if protected with an agricultural conservation easement, then the farmer is paid the difference of \$100,000 for selling the development rights.

Landowners may choose to donate some or all of the value of their development rights as a way to permanently protect their farmland and potentially reduce income and estate taxes.



Stewardship and Monitoring

Landowners can donate or sell agricultural conservation easements to the state, a municipality or a qualified non-profit conservation organization. The agency or organization that acquires the restriction does not obtain the right to build on or develop the land, but only the right and responsibility to prevent non-farm development.

Though the New York State Agricultural and Farmland Protection Program provides funding to purchase development rights to farmland, New York State Department of Agriculture & Markets does not hold easements. The holder of an easement is obligated to monitor the land involved and uphold and enforce the terms of the agreement.

Known as stewardship, the process of holding and maintaining easements is an important consideration to any PDR program or project. Good stewardship will help ensure the perpetual nature of the easement. The municipality or organization holding the easement should set up a system for administering, monitoring and enforcing the easement terms. That involves creating baseline documentation, maintaining a good working relationship with the landowner, monitoring the property and, if needed, addressing violations. In recognition of this permanent obligation and responsibility, project costs in the New York State Agricultural and Farmland Protection Program can include funding for stewardship expenses as part of the initial transaction for which state assistance payments are sought.

PDR Funding Mechanisms

PDR programs have become increasingly popular with farmers. Despite the recent allocation of state grants, however, current funding levels have not been sufficient to meet the growing demand for agricultural conservation easements. In the future, additional state funding will be needed to help New York communities protect their farmland from development and keep productive land in agricultural use.

Since the state PDR program requires applicants to contribute a local match, county and municipal funds are also necessary for the implementation of PDR projects. The following section outlines several ways local communities can finance their PDR programs.

Bonds

In the past decade, many New York communities have recognized that farmland conservation is a long-term

investment. Several of these communities have issued municipal bonds to pay for the purchase of development rights on farmland. Suffolk County on Long Island was the first. In 1976, they authorized a \$21-million bond program to pay for the development rights to thousands of acres of farmland. Since then, several towns on the eastern end of Long Island also have instituted bond programs of their own. In the 1990s, the western New York town of Pittsford authorized two consecutive \$5 million bonds to fund its farmland protection program.

General Revenues

Other communities have set aside annual appropriations to pay for farmland protection projects by using current revenues. The town of Amherst has allocated funding for its projects in this manner, and so has the town of Ithaca.

Real Estate Transfer Taxes

In 1998, the state legislature and Governor Pataki approved a law that allowed five towns in the Peconic Bay region of Long Island to establish individual community preservation funds. The proposed funding mechanism would create a two percent real estate transfer tax to apply to most high-end property sales. The tax, paid by the purchaser, is based on property value above a designated threshold.

In 1998, the proposed real estate transfer tax was approved by voter referendum in all five towns as a way to raise money for the protection of farmland and other resources. The money raised in each town through tax revenues will be used to purchase development rights on farmland, as well as protect other environmentally sensitive or historic properties. New York state approval will be required before local communities can increase the real estate transfer tax.

Land Installment Purchase Obligations

In 1996, New York authorized municipalities to issue a new funding mechanism called land installment purchase obligations. The legislation was designed to make it less expensive for municipalities to acquire development rights to farmland and other open spaces. This new debt instrument, under the state local finance law, can give important tax advantages to the seller of development rights, including the benefits of installment payments and tax-free interest.

The land installment purchase obligation is considered municipal debt and will be backed by the issuing municipality. Subsequently, the bond owner has the right to insist on payment from the municipality, even if property taxes must

benefits of PDR

- PDR protects farmland permanently, while keeping it in private ownership.
- Participation in PDR programs is voluntary.
- PDR allows farmers to capitalize on undeveloped assets—their land.
- PDR can be implemented by state or local governments, or by private organizations.
- PDR provides farmers with a financially competitive alternative to development.
- PDR programs can protect ecological as well as agricultural resources.
- PDR removes the non-agricultural value of land, which helps keep it affordable to farmers.

be raised to do so. This new financing mechanism has yet to be implemented, as several technical issues must be resolved before communities can explore this funding option.

Public/Private Partnerships

Many municipalities have successfully used partnerships with private organizations to facilitate their PDR programs. In some areas, local land trusts, once formed primarily by conservationists concerned about vanishing habitat and open space, have formed to tackle the challenges of preserving farmland. A private land trust can contribute greatly to the overall bottom line of a project, and land trusts often have the available staff or needed experience that municipalities may lack.

For example, a land trust may play a key role in assembling PDR applications, holding, monitoring and enforcing easements, managing the PDR program or providing a portion of the local match as in-kind credit or in cash. In addition, land trust involvement may increase the incentive for farmer participation, since landowners who donate an easement or a portion of their property to a nonprofit land trust may receive a federal tax deduction, thus offsetting some of their capital gains tax liability.

Examples of Successful Public/Private Partnerships

LONG ISLAND—Suffolk County and several towns on eastern Long Island have recognized that farmland protection efforts

on the island require a level of conservation, tax and land planning expertise that few local governments possess. These municipalities have hired the Peconic Land Trust to manage all aspects of their farmland protection programs—from project selection and design to negotiation to stewardship obligations after the deal has been completed. In addition, the land trust, on its own, has acquired donations of land and conservation easements for more than 2,500 acres of Long Island farmland, at a value of close to \$40 million.

ESSEX COUNTY/WASHINGTON COUNTY—In two rural counties in the upper reaches of the Hudson Valley, a public/private partnership has emerged between local land trusts and county governments. In an arrangement between Washington County and the Agricultural Stewardship Association—and in a similar one between Essex County and the Adirondack Land Trust—the county made the application to Agriculture & Markets for funding while the land trust agreed to hold and monitor the conservation easement. The land trust also took care of transaction details, including drafting the agricultural conservation easement and establishing a monitoring and stewardship plan.

Tax and Estate Planning Implications for Farmers

The sale of development rights is a major decision for any farm family and should never be undertaken without careful consideration. In the process, four major planning issues should be considered: business viability, land planning,

disadvantages of PDR

- PDR is expensive.
- PDR programs generally are oversubscribed. In New York, funding for PDR has been limited, with demand far exceeding available funds.
- Purchasing easements is time consuming. Participants in the state program generally must wait at least a year before all details regarding their easements are finalized.
- Monitoring and enforcing easements requires an ongoing investment of time and resources.

financial or tax issues and estate planning. The following section briefly highlights tax issues and estate planning.

Income (Capital Gains)

Proceeds from the sale of development rights are considered a long-term capital gain if the property has been held over 12 months and the proceeds exceed the cost basis of the property. In most cases, properties will have a low basis and some capital gains taxes will be owed. However, the IRS permits the taxpayer to allocate the entire basis towards the easement or development rights sale, which often will reduce the amount of taxable gain. Bear in mind that such an allocation will effectively reduce the basis in the property to zero.

Bargain Sale

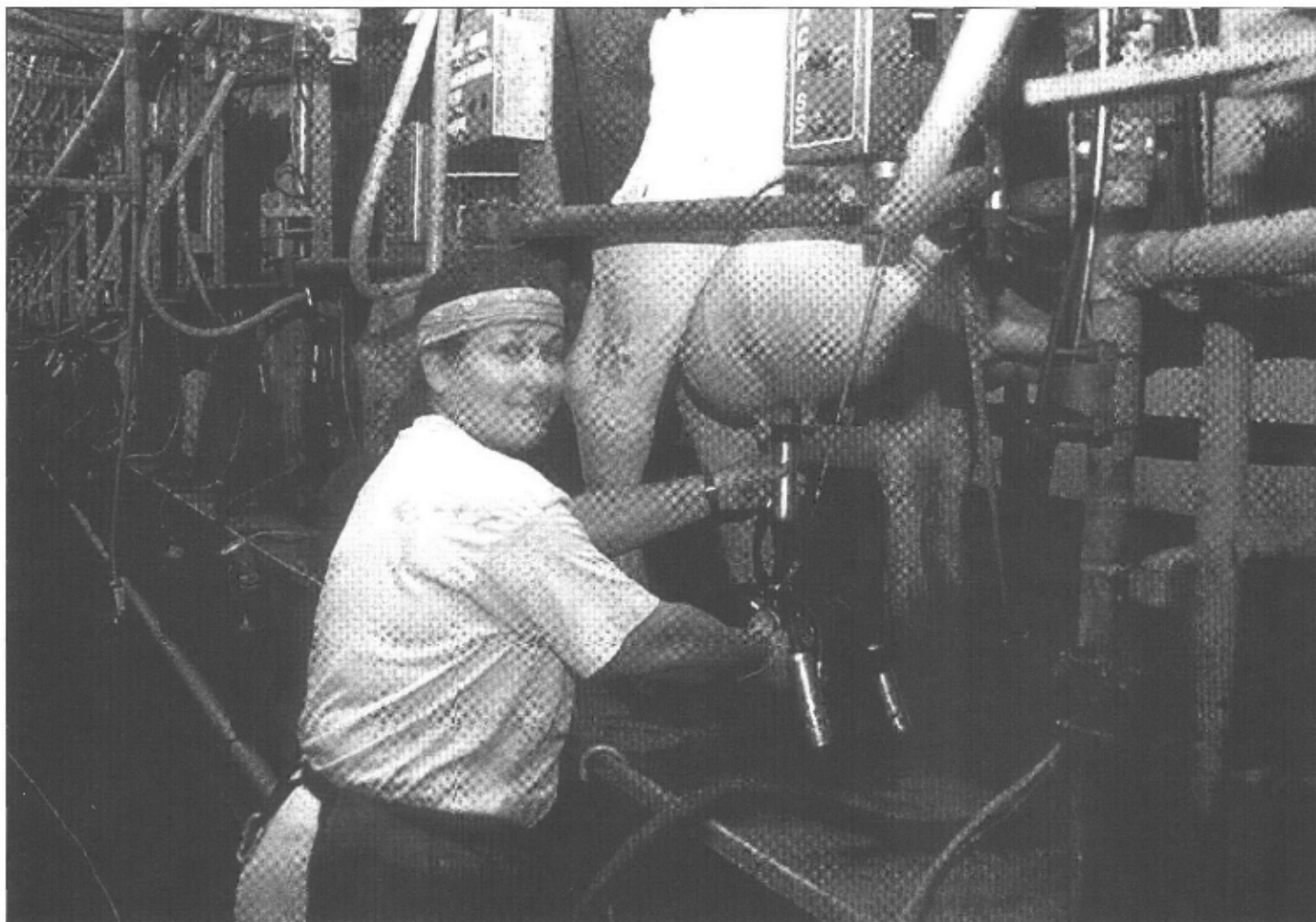
In some cases, the farmland owner may decide to sell the development rights for less than its fair market value in order to supply the required local match. The IRS requirements in such a situation are a conservation easement that complies with Section 170(h) of the Internal Revenue Code and a

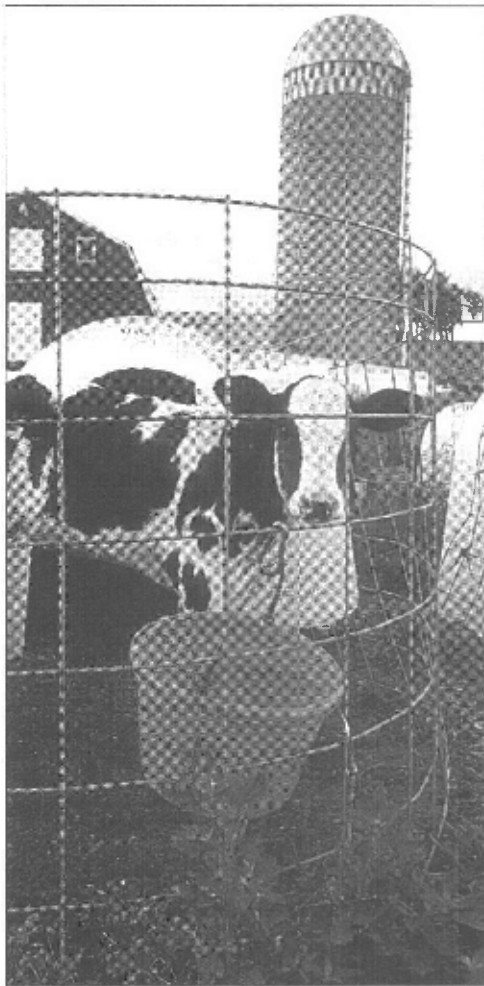
"qualified appraisal" that meets IRS standards. The seller can then take a tax deduction for the amount of the "bargain" or gift. Other limits apply to allowable income tax deductions. Farmland owners should obtain their own tax and legal advice before proceeding.

Estate Planning

Sales of development rights or conservation easements also create estate-planning opportunities. They reduce the value of farmland for estate valuation purposes, and thus will reduce potential estate tax on the restricted farmland if IRS requirements are met. (The requirements for an estate tax deduction are similar, but not identical, to those required for an income tax deduction.) Here too, farmland owners should consult with tax and legal advisers before taking action.

Proceeds from the sale of development rights have been used to purchase or trade for additional land, invest in the farm business, help facilitate the sale of the land to another farmer, establish a retirement fund, purchase life insurance or create an inheritance for non-farming children as part of a farm transfer and estate plan.





CHAPTER 5



Tax Relief

TAX RELIEF IS AN IMPORTANT ISSUE FOR FARMERS. Farms need land to operate, and property taxes on farmland are a significant expense. Taxes on farm buildings are often substantial as well. Farmers often say, "Cows don't go to school," which reflects the concept that taxes on agricultural land should be proportionate to its demand on municipal services and its ability to generate income. Because farmland tends to provide more in property tax revenues than it requires in public services, keeping it in production may help control the cost of community services.

Since overtaxed agricultural land may be more susceptible to conversion to non-agricultural uses, tax relief measures may also be considered a farmland protection tool. The expense of property taxes may discourage farmers from buying land and can force existing farmers to sell. Farmers' savings from property tax relief programs can be significant and may make the difference between staying in business or selling out. Several state and local programs now exist to offer various kinds of property tax relief for farmers.

Agricultural Assessment

New York's Agricultural Districts Law established agricultural assessment as a way to provide property tax relief for farmers. Agricultural assessment allows farmland to be taxed for its agricultural value rather than its market value. Any land used for agricultural production may qualify if it meets the acreage and income requirements established by the Agricultural Districts Law. Land does not have to be located in an agricultural district to receive the assessment.

Agricultural assessment, including information on qualifying, is covered in more detail in Chapter One.

Farmers' School Tax Credit

In 1996, the Farmers' Protection and Farm Preservation Act created the farmers' school tax credit. This allowed eligible farmers to obtain an income tax credit (or corporation franchise tax credit) for school district property taxes.

The credit applies to school taxes paid by the farmer on land, structures and buildings used for agricultural production in New York. Farmhouses used as personal residences do not qualify. However, farmers may qualify for the New York State School Tax Relief (STAR) program to receive a partial exemption on the assessment of their houses.

The farmers' school tax credit is fully funded by the state. It is neither a real property tax exemption nor is it affiliated with the agricultural assessment program. The credit does not diminish local school district revenue and will not shift the school tax burden to farmers' neighbors.

Eligibility

In 1998, the requirements of the farmers' school tax credit were changed. For 1998 and beyond, eligible farmers (either individual or corporate) must receive at least two-thirds of their excess federal gross income from farming.¹ The new requirements will make more farmers eligible for the program, especially part-time farmers who earn less than \$30,000 from non-farm employment.

Base acreage is used to determine the amount of the total credit. Since 1999, the base acreage amount has been 250 acres. The credit equals the amount of school taxes paid on the first 250 acres of qualified agricultural property. After 250 acres have been claimed, the credit equals 50 percent of school taxes paid on remaining land.

When the farmer's New York adjusted gross income exceeds \$100,000 the credit becomes limited. It decreases by two percent for each \$1,000 of income earned over \$100,000 and phases out completely at \$150,000.

Claiming the Credit

The credit is claimed yearly on the farmer's personal income tax return (or corporation franchise tax return). Individuals, estates and trusts compute the credit on Form IT-217 (Claim for Farmers' School Tax Credit). Corporations compute the credit on Form CT-47 (Claim for Farmers' School Tax Credit). For more information, please call New York State Department of Taxation and Finance (1-800-462-8100) and ask for *Publication 51*.

Farm Building Exemptions

Several provisions in the Real Property Tax Law exempt farm buildings or structures from property taxes. Section 483 exempts new and rebuilt farm buildings for ten years. Section 483-a exempts entirely certain agricultural structures from taxation, including farm silos, feed grain storage bins, commodity sheds, bulk milk tanks and coolers, and manure storage and handling facilities. Section 483-c also exempts temporary greenhouses.

To claim each of these exemptions, owners must apply to their local assessors.

Historic Barns

The Real Property Tax Law also offers a limited exemption for the rehabilitation of historic barns. Local governments and school districts may authorize a 10-year exemption for the increase in value to a reconstructed or rehabilitated barn. This does not apply to buildings that have already received exemptions, to barns used for residences or to renovations that alter historic appearances.

In addition, by local option, a tax credit can be obtained to cover 25 percent of the rehabilitation costs of certain historic barns. For more information, please contact Taxation & Finance.

Local Tax Abatement

The towns of Perinton, Penfield, Webster and Orchard Park in western New York have enacted local tax abatement programs in exchange for term conservation easements. Authorized by Section 247 of the General Municipal Law, these programs offer reductions in property taxes to participating landowners.

In Saratoga County, the town of Clifton Park recently enacted a local tax abatement program for owners of 15 or more acres of farmland or open space who agree to keep



¹ Excess federal gross income equals federal gross income minus income (up to \$30,000) from wages, salaries, tips and other employee compensation; interest and dividends; pension payments, including social security and income included for self-employment tax purposes.

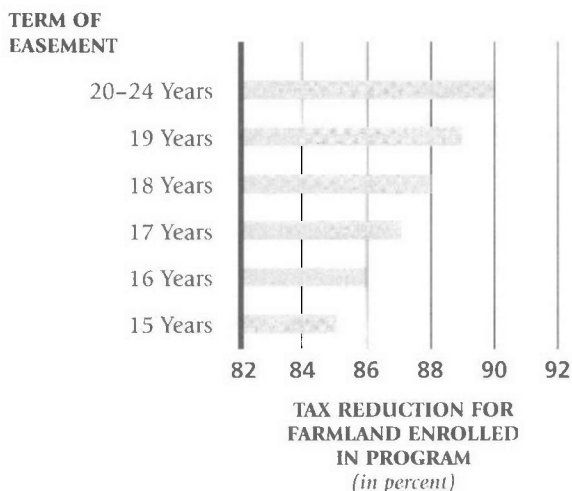
their land in farming, or open, for at least 15 years. Two adjacent landowners can apply if their combined acreage meets the 15-acre minimum. (See *Figure Four* for the reduction schedule.) Landowners who convert their land prematurely face penalties.

In Clifton Park, most commercial farmers—already eligible for agricultural assessment and the Farmers' School Tax Credit—have not participated in the new local program. The 15-year minimum term may have inhibited participation, especially since the farmers are already receiving the benefits of agricultural assessment.

Nevertheless, more than 1,437 acres were approved for the program in its first year of existence, including 741 acres of farmland. This farm acreage, mainly ineligible for agricultural assessment, will remain in agriculture and may provide a buffer for the town's remaining commercial farms as development encroaches.

FIGURE FOUR

Tax Abatement Schedule— Town of Clifton Park





CHAPTER 6

Land Use Planning

AT THE LOCAL LEVEL, PLANNING AND ZONING are important farmland protection tools. When a local area strives to sustain its agricultural economy and protect farmland, these objectives should be reflected in the planning and zoning process.

Comprehensive Plans

Comprehensive plans, also known as master or general plans, allow municipalities to create a long-term vision for their future.¹ They outline local government policies, objectives and guidelines regarding development. Typically, they identify areas best suited for a variety of land uses, including agriculture, forestry, residential, commercial, industrial and recreational activities.

Comprehensive plans can establish a commitment to local agriculture by protecting natural resources and promoting farm business opportunities. Comprehensive plans can form the basis of a local farmland protection strategy by identifying areas to be protected for agriculture and areas where development will be encouraged. They also should aim to conserve natural resources while providing affordable housing and adequate public services. Such plans need not be long, thick documents. For instance, the town of Stuyvesant's comprehensive plan consists of a one-page map that outlines the general use of various land areas as desired by residents.

Legally, all zoning requirements must be in accordance with a comprehensive plan. However, problems may arise when translating the language of the comprehensive plan into the details of zoning and subdivision regulations. For instance, what does it really mean to "foster and support" agriculture, and how does a community strike the balance between individual property rights and community goals?

Zoning

Zoning is a form of land use control used by local governments. Zoning ordinances segment counties, cities and towns into areas devoted to specific land uses. They also establish standards and densities for development.

Zoning ordinances, lot size requirements and road specifications may affect agriculture immensely and should be reviewed carefully. Many local governments and planning boards assume that farming is a residential land use. Worse, they consider agriculture a temporary land use until further suburban or non-farm development occurs. As a result, farmland is often zoned in rural/residential districts, which may encourage premature conversion of the land.

Zoning can be used as a form of farmland protection. For instance, maintaining a lower density of development in an area may be beneficial to farming.

¹ Section 272-a of the Town Law outlines the requirements for a comprehensive plan in New York state.

Fewer neighbors mean fewer potential conflicts. Local governments can reduce the density of development in two ways: by increasing the minimum lot size or by reducing density without requiring large lots that may prove to be "too small to farm and too big to mow."

For example, say the desired land density is one unit per five acres and the parcel in question is 100 acres. This parcel could be divided into either 20 five-acre parcels or 20 one-acre parcels and an 80-acre parcel. In both examples, the result is 20 building lots (not considering the 80-acre parcel as a separate building lot) with a density of one unit per five acres. In the latter example, however, a relatively large, agriculturally viable parcel remains.

Several different zoning techniques that may be used to encourage the protection of farmland are outlined below.

Agricultural Protection Zoning (APZ)

Agricultural protection zoning ordinances designate areas where farming is the primary land use. They discourage development that could impair the land's use for commercial agriculture. APZ ordinances also restrict the density of residential development in agricultural zones. They generally require building on small lots as opposed to dividing tracts into large, equally sized lots. Most ordinances make use of a fixed density, allowing, for instance, one dwelling for every 25 acres. Others are based on a sliding scale, with the dwelling and acreage allowances more flexible.

Agricultural protection zoning stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development. For APZ to be effective, the area's farming industry must be profitable, and farmers must be committed to keeping their land in production.

Sliding Scale Zoning

Sliding scale zoning uses a scale to determine the number of lots that potentially could be developed in an area. Owners of smaller parcels are allowed to divide more land into lots than are owners of larger parcels. To keep farmland in productive use, maximum lot sizes (usually two or three acres) typically are established. Non-farm development is directed to less productive land.

Table Two indicates how the sliding scale approach can be used.

Cluster Zoning

Cluster (open space) zoning ordinances allow or require houses to be grouped close together on small lots to protect open land. They increase density on part of a parcel while leaving the rest undeveloped. This allows the construction of

TABLE TWO

Sliding Scale Zoning— Sample Density

AREA OF PARCEL	# OF LOTS PERMITTED
1 to 10 acres	2 to 5
10.1 to 20 acres	3 to 6
20.1 to 40 acres	4 to 7
40.1 to 80 acres	5 to 8
80.1 to 160 acres	6 to 9
160.1 or more	7 to 10

the same number of houses, while minimizing the impact to the area's natural resources. New York Town Law, Section 281, allows municipalities to permit, or require, cluster development.

Cluster subdivisions may keep land open for future agricultural use, but generally they are not designed to support commercial agriculture. In addition, clustering may create tension between residential and agricultural land uses if new neighbors object to the sights, sounds and smells of commercial farming. To increase its usefulness as a farmland protection tool, provisions should be made to protect commercial farming or recognize that cluster arrangements may be more appropriate near less-intensive farming operations.

Large-Lot Zoning

Generally, large-lot zoning (that designates minimum lot sizes as small as five to ten acres) is not considered a farmland protection technique. In fact, it may encourage the premature conversion of farmland since it often results in the purchase of more residential acreage than homebuilders actually want or need. Large-lot zoning often is used in conjunction with lists of "permitted by right" uses that fail to view agricultural areas as important commercial zones worthy of special protection from incompatible uses.

Subdivision Regulations

Unlike zoning ordinances, which address whether specific uses are permitted, subdivision regulations specify how development will actually occur. For example, zoning ordinances designate how many lots can be developed on a parcel, but subdivision regulations determine where those



lots will be located and how the land is developed. A number of techniques have been incorporated into subdivision regulations to lessen the impact of development on agriculture.

Overlay Districts

Some communities have used agricultural overlay districts to direct development away from prime farmland. While overlays lessen the impact of development on agriculture, they generally regulate how—not if—farmland is developed. So far, such districts have not been used to change underlying density requirements or limit non-farm uses. Agricultural overlay districts can be used to trigger cluster-zoning provisions, buffer strips or other performance standards covered in this section.

Performance Standards

Performance standards can minimize the impact of development on farming. They may be used to steer development away from prime agricultural soils and existing farm operations. They usually are applied on a case-by-case basis, and they require discretionary decisions by a local planning board.

Some factors that can be used as performance standards:

- Potential for conflict with agriculture
- Need to minimize the amount of converted agricultural soils
- Agricultural productivity of the land and soils involved

- Compatibility with existing or permitted uses on adjacent property

Buffers

In rapidly growing areas, development inevitably will occur adjacent to active farm operations. Based on the concept that “good fences make good neighbors,” buffers create physical barriers between potentially incompatible land uses. Buffers may be created by strips of land (from 50 to 500 feet wide) or by vegetation such as existing hedgerows, planted trees and shrubs. Some subdivision ordinances require the developers to provide the buffers. To be effective, buffers must be designed on a site-specific basis and adapted to address different types of agricultural operations. In some cases, they simply may not be effective.

Mitigation Techniques

Recently, two innovative approaches have been enacted to mitigate farmland loss. In 1995, the city of Davis, California, established an agricultural land mitigation requirement as part of a “Right to Farm and Farmland Preservation” ordinance. Adopting a “no net loss of farmland” approach, the Davis ordinance requires developers to permanently protect one acre of farmland for every acre of agricultural land they convert to other uses. Generally, developers place an agricultural conservation easement on land in another part of the city, although paying a fee may also satisfy

mitigation. Protected farmland must meet certain requirements; for instance, it must contain soil comparable to the developed land and be located in one of the city's agricultural zones.

In New York, the state legislature has created a mitigation requirement in the Agricultural Districts Law. Section 305(4)(h-1) requires mitigation when land is taken by eminent domain for use as a landfill. The provision became effective January 1, 1998, representing the first time that a mitigation requirement has been applied to farmland in New York. The Army Corps of Engineers has also utilized the concepts of mitigation and "no net loss" routinely for the protection of wetlands. Such mitigation provisions are a way to balance growth and resource protection.

Transfer of Development Rights (TDR)

Transfer of development rights programs allow landowners to transfer the right to develop one parcel of land to a different parcel of land. (Conversely, cluster zoning usually shifts density within a parcel.) TDR programs can protect farmland by shifting development from agricultural areas to areas planned for growth.

Section 261-a of the Town Law and section 7-703 of the

Village Law explicitly empower municipalities to authorize transfer of development rights. Such programs are defined in these provisions as "the process by which development rights are transferred from one lot, parcel or area of land in any sending district to another lot, parcel, or area of land in one or more receiving districts."

To implement TDR, receiving and sending districts are designated and mapped in accordance with a comprehensive plan. State law dictates that the sending district may include agricultural land and that the receiving districts must have the infrastructure needed to support increased development. Development rights are documented as conservation easements that are enforceable by the town or other designated entity. They may be bought or sold by the municipality for deposit in a development rights bank.

Flexibility is important throughout the TDR process. For TDR to work, communities must build consensus on its use as a way to protect resources and direct future growth. A market must exist for both the development rights (either in the private sector or via a municipal development rights bank) and the higher density development that will result. While the TDR technique holds promise in theory, it has not been utilized in New York due to the complexity of its administration and its unproven track record.

Examples of Towns That Have Incorporated Farmland Protection Into the Land Use Planning Process

Town of Pittsford After adopting an updated comprehensive town plan in 1995, the Pittsford Town Board developed a rating formula to evaluate the town's remaining land resources. The highest rated parcels were identified in Pittsford's *Greenprint for the Future* plan in 1996. The *Greenprint* steered development away from areas of ecological importance, recommending that approximately 60 percent of the town's remaining undeveloped land be protected. In 1996, the town board approved \$9.9 million in bonds to purchase development rights and permanently protect seven farms totaling 1,100 acres.

Town of Stuyvesant In 1993, Stuyvesant (located south of Albany in northern Columbia County) was accepted into the "model communities program" of the Hudson River Greenway Communities Council, which provided funding and technical assistance for the town to develop a comprehensive plan. The plan identified agriculture as the town's primary land use; the town has since implemented a right-to-farm law and passed a resolution declaring Stuyvesant to be an "agricultural community." The town also is considering farmland protection techniques such as incentives for residential clustering, low-density zoning and PDR.

Town of Ithaca Located in the heart of the Finger Lakes Region, the town of Ithaca's 1997 *Park, Recreation and Open Space Plan* incorporated recommendations from a 1992 report, *Planning for Agriculture in the Town of Ithaca*, that emphasized the importance of agriculture to the town's economy and quality of life. The report made several policy recommendations, including revising zoning regulations, integrating agricultural policy statements into the town's comprehensive plan, creating a voluntary PDR program and establishing a permanent town agriculture committee (which was created in 1993). The 1997 open space plan estimated the acquisition of development rights to important lands would cost the town \$3.7 million over 20 years, approximately \$15 per resident per year—a somewhat modest investment on a per capita basis. The town is currently reviewing a draft of new zoning regulations for its agricultural district to better protect agricultural land, and is setting up a structure for its PDR program.

The State Environmental Quality Review Act (SEQRA)

The New York State Environmental Quality Review Act is intended to promote a thorough review of the environmental impacts of proposed projects before they are approved or funded. In practice, most actions that lead to the conversion of farmland, or indirectly affect farm operations, do not require Environmental Impact Statements (EIS). Small- to medium-sized subdivisions (fewer than 12 units) and large-lot subdivisions are exempt from filing the statements.

However, local governments may designate farmland as a critical environmental area (CEA). This will trigger closer

analysis of potential environmental impacts in the CEA. Agricultural farm management practices—including repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming—are not subject to completion of an EIS and are otherwise exempt from environmental review under SEQRA.

Unfortunately, an EIS usually makes only a cursory review of the proposed project's impact on agriculture. In most cases, the review is limited to the number of acres directly taken out of production, rarely considering the long-term, cumulative impacts on agriculture.



"Comprehensive plans can form the basis of a local farmland protection strategy by identifying areas to be protected for agriculture and areas where development will be encouraged.

They also should aim to conserve natural resources while providing affordable housing and adequate public services."

SECTION THREE

Agricultural Economic
Development (AFED)





CHAPTER 7



Agricultural Economic Development— Strategies

FARMING IS THE ECONOMIC BACKBONE in many communities throughout the state, supporting a network of farm-related businesses and services. Yet many of these farms are in danger, due to economic factors that have resulted in lower profits for many farmers. Dairy farmers, for example, suffer from volatile milk prices, ever increasing costs of production, and competition from other regions with lower land costs.

Around the state, some communities have responded by initiating farmland protection efforts tied to the economic development of agriculture. Agricultural economic development (AED) refers to initiatives that seek to improve the profitability of farming. The goal is to help keep farmers in business so farmers can keep their land in farming.

Many county agricultural and farmland protection boards (AFPBs) have incorporated a broad variety of agricultural economic development programs and initiatives into their agricultural and farmland protection plans. This chapter outlines some of the strategies that have been employed in different parts of the state to promote the economic health of agriculture. Agricultural economic development, however, is not limited to the strategies listed here.

Agricultural Economic Development Specialists

A growing number of local governments have begun incorporating agriculture into their traditional economic development plans and initiatives. Some of these communities have invested in full-time or part-time staff or hired consultants to conduct programs that strengthen the profitability of local agriculture.

Known as "agricultural development specialists," some of the professionals are Cornell Cooperative Extension agents while others have been hired by economic development agencies, planning departments, chambers of commerce or nonprofit organizations. Such specialists have employed a wide range of techniques to strengthen the profitability of farming, including advising farmers on new products, services, marketing strategies and management techniques.

Examples

ONEIDA COUNTY—As a result of recommendations made in the county's Agricultural and Farmland Protection Plan, Oneida County has maintained an agricultural economic development position within Cornell Cooperative Extension since March 1998. Since then, the specialist has developed programs to attract farmers and agribusinesses to the area and has been helping to create markets for local farm projects. For instance, the specialist established an arrangement with the New York State Department of Corrections to have county farmers supply food directly to the local prison system. The specialist acts as a "co-op" to mediate between the two and keep track of deliveries and amounts.

In 1998, four growers supplied approximately 11,000 dozen ears of corn to the prison system as well as smaller amounts of cabbage and peppers; the goal has been to expand the program for following years.

ORANGE COUNTY—As a primary recommendation of its agriculture and farmland protection plan, the Orange County AFPB secured funding in 1997 from the county planning department, farm bureau and industrial development agency to hire an agricultural economic development director with an office located in the chamber of commerce. The director's objectives have been to help retain county agribusinesses, increase farmer profitability, encourage new market development and on-farm processing, and educate the non-farm public about the benefits of agriculture. The director also has spent considerable time assisting farmers and towns with the application processes for funds from the New York State Agricultural and Farmland Protection Program. As a result, Orange County received nearly \$3 million in state and federal funds from 1996 to 1998 to acquire the development rights to approximately 700 acres of farmland.

A g r i t o u r i s m

Agricultural tourism has become increasingly popular in farming communities that border urban areas. Described as anything that combines agriculture and tourism, agritourism can stimulate the rural economy by attracting tourists to an area. Educational and recreational offerings such as hay rides, crop mazes, tours and bed and breakfast facilities can attract new customers to farm businesses and help promote farming and farm products.

Examples

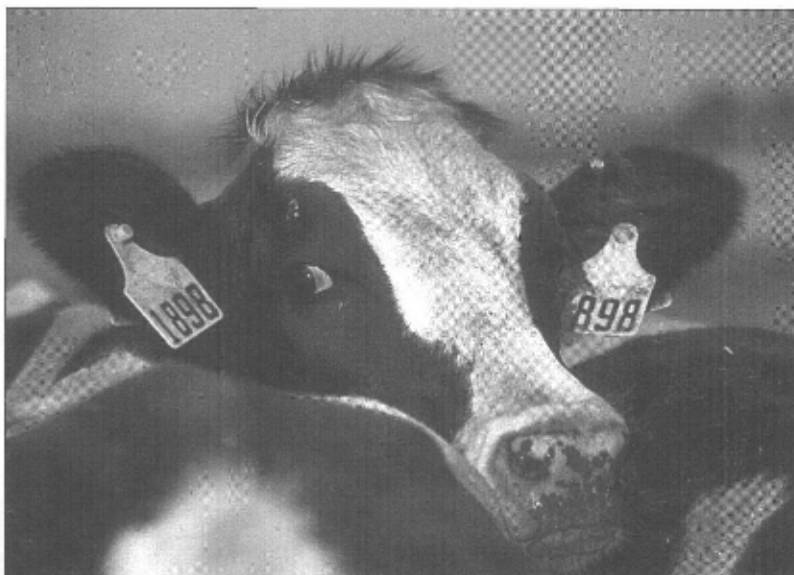
SARATOGA COUNTY—This capital-region county, located on the fringe of nearby urban areas, has been the site of several successful agricultural promotion efforts. The annual Clifton Park Farmfest, organized and supported by the town, promotes the town's pride in its agricultural heritage and draws more than 6,000 people to a two-day tour of selected town farms. The annual Saratoga County "Our Dairy Best" Farm Breakfast and Tour, held at a different county dairy farm every year, draws more than 3,000 people, who feast on a breakfast of local agricultural products and tour farm facilities. Another county project, the *Saratoga Farms Resource Guide* (an outgrowth of the county Agricultural and Farmland Protection Plan), lists the multitude of goods and services offered by

various county farms, at no cost to the farmers.

TIOGA COUNTY—In Tioga County, the nonprofit South Central New York Resource Conservation and Development Council has initiated an "agri-cluster" pilot project that will help rural, family-owned businesses in Candor, New York, develop and enhance their operations. The ultimate goal of the project is to increase tourism to the area. The project involves the collaboration of both farm and non-farm businesses, and has involved a multitude of agencies, including the Candor Chamber of Commerce, the Tioga County Economic Development and Planning Offices, and the Tioga County Tourism Office.

D i r e c t M a r k e t i n g

A significant percentage of the state's farmers market their products directly to consumers, and more are doing so all the time. This includes the multitude of vegetable and fruit growers who attend farmers' markets across the state, sell their products at roadside stands or have "pick-your-own" operations. Growers who market their agricultural products directly to customers usually receive higher prices than farmers who sell wholesale. Assisting these farmers with the marketing of their goods can help them improve their profitability. Counties and towns can encourage direct marketing by permitting roadside stands, greenhouses, pick-your-own operations and other agricultural uses in their zoning by-laws. In addition, many communities have developed and distributed publications that show the location of agricultural retail businesses.



Example

WAYNE COUNTY—In a region where approximately one-third of agricultural revenue stems from fruit sales, it has made sense for the county to focus on assisting its farmers in direct-marketing its products and attracting tourism to its farms. Wayne County has put together a tourism and agritourism package—developed by the county agricultural development specialist, tourism director and Cornell Cooperative Extension agents—for local businesses interested in improving their marketing efforts. Though not geared exclusively to farmers, the package has included information useful to them. The project also has put together a series of workshops focusing on topics such as marketing and marketing plans, attracting tourism and public relations. Approximately a quarter of those attending the first workshops were farmers interested in attracting more customers to their farm stores/stands or farm operations.

Diversification

Farm operations that specialize in commodities such as corn or milk are vulnerable to market variations caused by market forces or inclement weather. Diversification is a means for farmers to reduce risk and increase profits. Diversification can mean planting new crops or raising a different mix of livestock, developing new products or services or targeting new markets.



Examples

SUFFOLK COUNTY—As a quintessential example of farming on the “urban fringe,” farms in Suffolk County on the eastern end of Long Island contend with some of the most intense development pressure in the state. Still, for the past two decades, the county has remained the highest-grossing agricultural county in New York. Many of the island’s farmers have survived by converting out of standard, land-extensive crops. Since the 1970s (when agricultural production on the island was primarily geared toward potatoes), the county’s agriculture has undergone a rather dramatic changeover to horticulture. Two-thirds of the county’s overall agricultural income now involves greenhouse and nursery products, which generally require less land for production. Farms on the island have also survived by emphasizing their retail sales and targeting the huge urban market nearby. A number of the region’s farms have moved toward the production of specialty herbs and vegetables for New York City restaurants and ethnic markets.

ONEIDA COUNTY—In Oneida County, the Agricultural Economic Development Specialist has worked with farmers on several expansion and diversification projects, from soybean

processing to aquaculture. Existing economic development resources—such as the Small Business Administration (SBA), Empire State Economic Development, USDA Rural Development and Oneida County Economic Development Growth Enterprises Corp. (EDGE)—have been targeted as potential sources of funding for the county’s agricultural ventures.



Farm Match/Link Programs

Across the state, the population of farmers has been aging, and many farmers have no successors willing or prepared to take over the farms. Since New York agriculture is primarily family-based, farming is threatened when heirs decide to leave the business. Operations that require major investments in equipment, livestock and land are extremely difficult to start from scratch.

Several communities across the state have begun addressing the challenge of finding people to take over farms when the owners have no heirs. Some have launched promotional campaigns to attract farmers and agribusinesses being squeezed out by development in other counties. Others have attempted to match farmers nearing retirement with a younger generation of farmers looking to start their own businesses.

Example

WASHINGTON COUNTY—As one of the first counties in the state to focus on agricultural economic development as a means to protect farmland and farming, Washington County has developed a variety of initiatives to improve the profitability of agriculture. They launched a "Come Farm with Us" promotional campaign that placed advertisements in agricultural magazines throughout New England and southern New York. The ads emphasized the county's easy accessibility to support services such as vet clinics and feed suppliers and targeted farmers from more developed areas. The county also initiated a farm match program that was one of the first of its kind in the nation.

Loan Programs and Economic Development Initiatives

Farmers need access to capital to purchase land and equipment and to invest in the overall development of their businesses. Yet commercial banks often are reluctant to lend money to farmers for agricultural enterprises. Public economic development programs are generally targeted to the industrial and service sectors and do not consider loans to agricultural businesses. Local governments can assist in agricultural economic development by treating farms as other businesses, making loan funds, tax incentives and technical assistance available to producers.

Examples

ORANGE COUNTY—Farm operations in Orange County have become increasingly reliant on migrant workers as a primary



"Local governments can assist in agricultural economic development by treating farms as other businesses, making loan funds, tax incentives and technical assistance available to producers."

source of labor. Many farmers have discovered that good housing is crucial to the stability of their workforce, but at times expensive to maintain. Since 1993, the county's Office of Community Development has invested in the Farmworker Housing Rehabilitation Program that provides growers with grants of up to 75 percent of the cost to renovate worker housing. Since the program began, over 250 housing units have been rehabilitated with more than \$900,000 in Community Development Block Grant funds. Municipalities across the nation have since looked to the program as a model for their own projects.

SULLIVAN COUNTY—In 1998, Sullivan County's Division of Planning and Community Development received a \$600,000 block grant from the Department of Housing and Urban Development to establish an agribusiness revolving loan fund for the poultry industry. The first round of low-interest loans through the program will result in the creation of 408 new jobs. Sullivan County hopes to establish a revolving loan fund for the dairy industry as well, since dairy farms produce one of the highest income and employment multipliers of any industry. The fund would help sponsor programs such as mini-dairies and milk marketing cooperatives.

Marketing to Restaurants and Food Retailers

Much of the retail price of food pays for marketing and distribution. Farmers who sell directly to food retailers often can capture more profit. Encouraging restaurants and stores to feature local produce and meats can help farmers build a retail customer base. In addition, grower cooperatives can help farmers increase their access to high-volume retailers that may find it too difficult to buy from individual producers.

Examples

COLUMBIA COUNTY—In Columbia County, Cornell Cooperative Extension operates the Hudson Valley farmer-to-retailer linkage program. The project seeks to create direct marketing links between Hudson Valley producers and metropolitan area retailers. Retailers benefit by connecting with local sources for their products, while farmers gain from developing contracted markets. The project also strives to expand Hudson Valley agritourism opportunities by encouraging stores to feature farms through publicity programs that make use of pictures, food tastings and special events.

NEW YORK CITY WATERSHED—In the five-county upstate region that contains most of New York City's water reservoirs, the Watershed Agricultural Council (WAC) has initiated a farmers' cooperative called "Catskill Family Farms." Farms certified by WAC to use the name are participating in a unique program that protects water quality, preserves farmland, and strives to maintain the economic viability of the region's natural resources. The pilot program helps watershed farmers sell produce and dairy products directly to gourmet restaurants and shops in New York City.



Promotion and Labeling

Promotional campaigns can help foster customer support for locally produced agricultural products. Some regions have designed logos or labels to designate farm products grown in their area. In addition, a few areas have begun to certify qualifying farmers with "eco-labels" that allow consumers to know their purchases support farmers and environmental stewardship.

Examples

HUDSON VALLEY—In the Hudson Valley, a multi-county effort (Dutchess, Ulster, Orange and nearby counties) seeks to strengthen the region's agriculture by operating a promotional and marketing campaign to encourage consumers to purchase Hudson Valley agricultural products. The campaign produced a multi-colored Hudson Valley Harvest logo to be used on stickers and signs for farm stands, supermarkets, retailers and restaurants. Many local newspapers and radio stations have publicized the project, which has been a collaboration of farmers, consumers and agencies committed to supporting local agriculture. Funding for the campaign has come from the Dutchess County Tourism Agency, Dutchess County Economic Development Corporation, Dutchess County Cornell Cooperative Extension and private foundation grants.

MONTEZUMA SWAMP—Farmers who practice "wildlife friendly" farming within the Montezuma National Wildlife Refuge in western New York will be able to market their products with a regional "Montezuma eco-label." The project is a joint collaboration between the refuge, farmers, NYS Department of Environmental Conservation, the United States Fish & Wildlife Service, USDA Natural Resources Conservation Service, Ducks Unlimited, Wayne County Planning Department and Cornell Cooperative Extension.



CHAPTER 8

Agricultural Economic Development— Programs and Contacts

CHAPTER EIGHT HIGHLIGHTS some of the programs available statewide to help farmers increase their profitability. It is not meant to be exhaustive. Many more programs with a regional or local focus exist throughout New York.

New York State Department of Agriculture & Markets Programs

Agriculture & Markets administers its own programs to provide economic development for the state's agricultural industry. While both the Agricultural Districts Program and the Agricultural and Farmland Protection Program help improve farm profitability, the state also maintains several programs specifically intended to provide agricultural economic development to farmers.

For more information on any of these programs, please contact New York State Department of Agriculture & Markets, 1 Winners Circle, Albany, NY 12235; (518) 457-3880 or toll-free (800) 554-4501; www.agmkt.state.ny.us.

The Agricultural Childcare Program

As the sixth largest day-care program in the nation, the Agricultural Childcare Program furnishes care for the children of New York farm workers. The program provides a full range of early childhood development services to nearly 1,800 children per year. Surveys of farmers have demonstrated that the program helps them attract workers, a crucial component to the success of any business.

Agricultural Economic Development Program

A 1999 amendment to the New York State Agriculture and Markets Law, Article 25-AAAA, created the New York State Farmland Viability program. A collaboration between the Department of Economic Development (DED), the Urban Development Corporation, other economic development agencies and Agriculture & Markets, the program will strive to promote the development of the agricultural industry, increase public awareness of the importance of agriculture and review regulatory barriers that may hinder the development of the agricultural industry. It also will focus on developing financing mechanisms to promote the diversification, expansion and sale of New York agricultural products.

Agricultural Export Markets

Agriculture & Markets works to expand agricultural export markets for New York producers and processors. As members of the Eastern United States Agricultural and Food Export Council, the department has obtained approximately \$1 million in federal grant funds annually for New York producers to promote their branded products in foreign countries.

Agriculture & Markets also takes a visible role in various export-oriented activities such as foreign food festivals and major American and foreign trade shows. To heighten awareness among foreign buyers of New York food products, they published a multilingual export directory in 1993 as well as a specialty food directory, both of which feature contact information on New York state food companies.

Agricultural Marketing Orders

Agriculture & Markets uses marketing orders to help some producers promote their products. Under the Agriculture and Markets Law, commodity groups can create marketing orders to generate funds for product advertising, promotion, research and development. Funded entirely by the producers themselves, the orders only may be created by the majority vote of those producers responsible for their funding.

Agriculture & Markets acts as the go-between, assuring that the orders' rules are adhered to and funds are managed properly. Five orders are currently being administered: Apple Marketing, Apple Research and Development, Sour Cherry Marketing, Onion Research and Development, and Dairy Promotion.

Agricultural Workforce Certification Program (AWCP)

Cornell Cooperative Extension and Empire State Development are partners in this program, which trains and places workers in agricultural employment. Initiated as a pilot project in 1992, the program provides hands-on training at

farms and other agribusinesses under the guidance of industry professionals. From 1997 to 1998, the program trained 710 workers (on a budget of \$115,000) and placed 92 percent of them in dairy farms, nurseries, greenhouses and other agribusinesses.

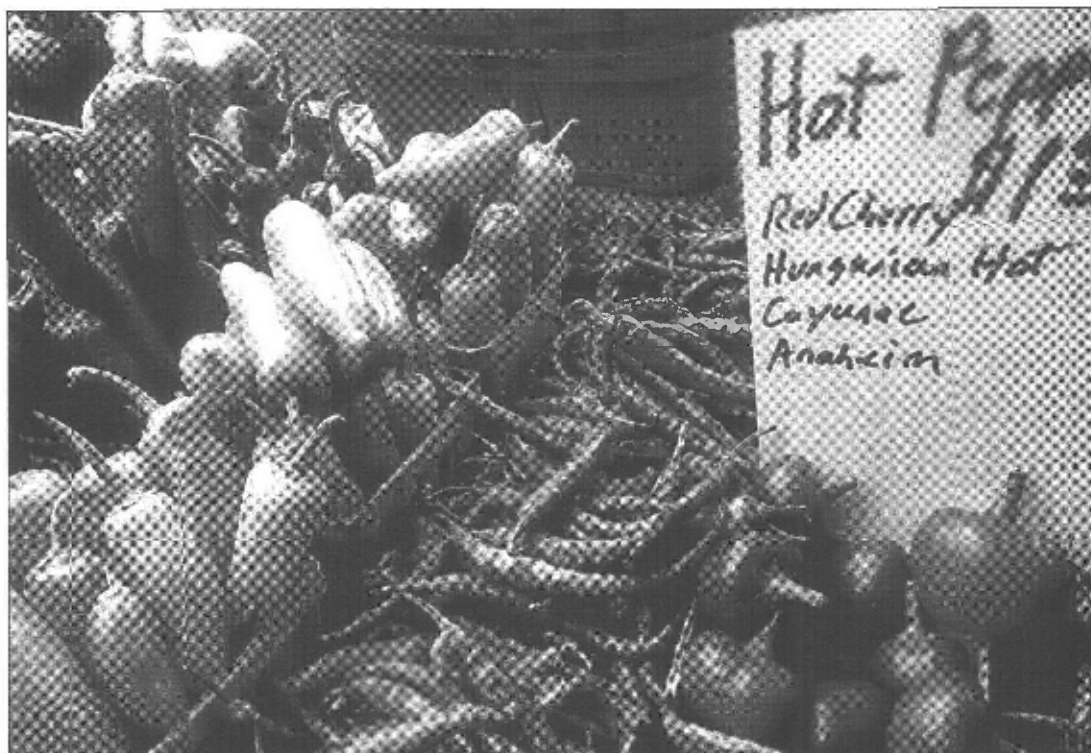
The Farmers' Market Nutrition Program (FMNP)

In conjunction with the USDA, the State Health Department, the State Office for the Aging and Cornell Cooperative Extension, Agriculture & Markets administers this program to allow low-income families (enrolled in the Women, Infants, and Children Program—WIC) and senior citizens to purchase fresh fruits and vegetables at farmers' markets.

In 1998, 752 farmers redeemed \$3.5 million in program checks for the purchase of produce at 212 farmers' markets. This program benefits many—the farmers who have expanded their fruit and vegetable sales, the WIC participants who have increased their consumption of fresh produce and local organizations who benefit from the increased commercial activity of farmers' markets across the state.

New York State Guide to Farm-Fresh Food

Published biannually by Agriculture & Markets in four regional editions—Metro, Eastern, Central and Western—the guide provides information on more than 1,300 farmers' markets, roadside farmstands, "pick-your-own" operations, farm tour sites, cider mills, wineries and other farm outlets located across the state. Agriculture & Markets prints and



distributes approximately 75,000 copies of the book for each two-year period. In 1997, the information became available on the Internet (www.agmkt.state.ny.us).

Pride of New York

As a promotional campaign for New York farm products, the Pride of New York program developed a Statue of Liberty logo to help consumers identify agricultural products produced and processed in New York, from Christmas trees to apples. For a one-time fee of \$25, growers, packers, processors and retailers of New York state farm products receive labels and other materials, at cost, to label their products.



A 1999 amendment to the Agriculture and Markets Law recognized the high quality of many regional products by authorizing that regional labeling may be used in conjunction with the state brand or any private label marketed under the state food and farm products promotion program.

Tailgate Farmers' Market Project

In conjunction with the New York State Thruway Authority, this program established farmers' markets at various New York State Thruway travel plazas. In 1999, weekend markets were held in the fall at eight Thruway travel plazas. In addition, the New Baltimore Travel Plaza near Albany operated a seasonal, daily farmers' market inside a permanent structure. Participation in the program is limited to New York farmers, growers of fresh fruits, vegetables, herbs and horticultural products. Preference is given to farmers who are participating in the "Pride of New York" campaign.

Cornell University Programs

Cornell University has established many programs to foster the development of agricultural and rural economies across the state. Here are several.

AGRICULTURAL INDUSTRY DEVELOPMENT, ENHANCEMENT AND RETENTION (AIDER)

Cornell Cooperative Extension, 7 Kennedy Hall
343 Roberts Hall, Ithaca, NY 14853
(607) 255-2231

www.cce.cornell.edu/spc/aider/index.html

This program helps local communities integrate agriculture into comprehensive economic development strategies. Program participants survey the concerns and

hindrances of agribusinesses in their communities, and then develop strategies to encourage their growth. Depending on the community, the AIDER process takes approximately two years. The program places special emphasis on strengthening already existing agriculturally related firms. Implementation teams may provide a variety of support measures for such agribusinesses, including business management seminars, technical training, creation of new market opportunities, reducing costs and workforce quality issues.

CORNELL COOPERATIVE EXTENSION

Cornell University, Kennedy Hall,
Box 8, Ithaca, NY 14853
(607) 255-2237

or contact your local county extension office

In nearly every county across the state, Cornell Cooperative Extension offices offer a multitude of agriculture-related outreach programs, including farm business management training designed to help producers increase the profitability of their businesses. Topics, which often include business planning, marketing, labor regulations, taxes, expansions and others, are delivered through newsletters, seminars and individual counseling.

FARMING ALTERNATIVES

Cornell University
Department of Rural Sociology, Warren Hall
Ithaca, NY 14853
(607) 255-9832

www.cals.cornell.edu/dept/ruralsoc/fap/fap.html

As Cornell's "Agriculture Development and Diversification Program," Farming Alternatives works with cooperative extension field staff and a growing number of community-level groups to develop agricultural economic development strategies including agritourism, direct and cooperative marketing, and ethnic market opportunities.

The program also conducts study tours for leaders of community-based agricultural development efforts, who often can benefit greatly by witnessing firsthand how other communities are addressing such issues.

In 1998, Farming Alternatives launched the Northeast Training and Support Network for Agriculture Development in conjunction with the Northeast Sustainable Agriculture Working Group. The network helps professional agricultural development specialists strengthen their skills, share their knowledge and improve their professional networks of contacts.

**ENTREPRENEURSHIP
TRAINING NETWORK**

Cornell University
307 Warren Hall
Ithaca, NY 14853
(607) 255-8047
www.etn.cornell.edu

The network uses a nationally recognized curriculum (NxLevel) to offer training for entrepreneurs seeking to develop their business skills. They offer a specialized course for farmers titled "Tilling the Soil of Opportunity: A Guide for Agricultural Entrepreneurs." The network utilizes training sites around the state. Call to locate the site nearest you.

NY FARMNET

Cornell University
414 Warren Hall, Ithaca, NY 14853
(800) 547-FARM
www.nyfarmnet.org

As an information, referral and consulting program, NY FarmNet provides a free, confidential helpline (see above) for members of New York's farm community. NY FarmNet consultants are located across the state and are available to work with farmers and their families on issues related to personal or business transitions and challenges. They provide financial consulting and also offer farmers help dealing with farm changes, farm transfer and exit planning.

NY FarmNet also administers the NY FarmLink program, a transition network designed to help farmers get into or out of farming. For a processing fee of \$30, the network provides an application and access to the FarmLink database for young farmers looking for a business or for older farmers looking for someone to take over their business. FarmLink then provides comprehensive farm transfer assistance. For more information, call the toll-free number listed above.

NEW YORK STATE FOOD VENTURE CENTER (FVC)

Cornell University/NYSAES
Department of Food Science and Technology
Geneva, NY 14456-0462
(315) 787-2273
www.nysaes.cornell.edu/fst/fvc/



The center is a resource for entrepreneurs interested in starting small-scale food processing enterprises. The FVC supports food-processing entrepreneurs by offering technical and business assistance. Services include library and literature searches, laboratory analyses and pilot plant development. The center also provides support in business planning, and helps companies negotiate the maze of licensing requirements and regulations.

PRO-DAIRY

Cornell University
272 Morrison Hall, Ithaca, NY 14853
(607) 255-4285
www.ansci.cornell.edu/prodairy/index.htm

A joint venture of Agriculture & Markets, Cornell's College of Agriculture and Life Sciences and participating agriservice organizations, this educational program works to increase the profitability and competitiveness of New York's dairy industry. To do so, it offers opportunities for members of the industry to increase their management skills. Since 1988, more than 3,900 farms have participated in PRO-DAIRY workshops. The organization estimates that participating farms have demonstrated an improvement of \$11,000 in annual farm income.

Other Statewide Resources**NY AGRIDEVELOPMENT CORPORATION**

1604 State Tower Bldg., Syracuse, NY 13202
(315) 477-0184

This new private sector organization was founded in 1999 to work on specific projects and opportunities for agribusiness growth across New York. They seek to increase the number and profitability of agribusiness companies, the number of people employed by those companies, the level of investment in agricultural projects and ventures, and the viability of agriculture in New York. The corporation is affiliated with the Metropolitan Development Association (MDA) of Syracuse and Central New

York, a state economic development, planning and research organization.

AGRI-EDGE DEVELOPMENT

Dairylea Cooperative, PO Box 4844, Syracuse, NY 13221;
(315) 433-0100 or toll-free (888) 858-7811 x507

The goal of this program is to help agricultural operations start up, expand, diversify or improve their businesses. Agri-Edge helps promising agricultural ventures (with solid business plans already in place) identify and secure financing, plan and structure projects and business relationships, and locate management expertise. Agri-Edge will review a proposed project and determine what kind of assistance, if any, can be provided.

FARMERS' MARKET FEDERATION OF NEW YORK

2100 Park Street, Syracuse, NY 13208
(315) 475-1101
www.NYFarmersMarket.com

The federation's mission is to offer services and programs that support and promote New York's farmers' markets. The federation offers members a newsletter, sponsors

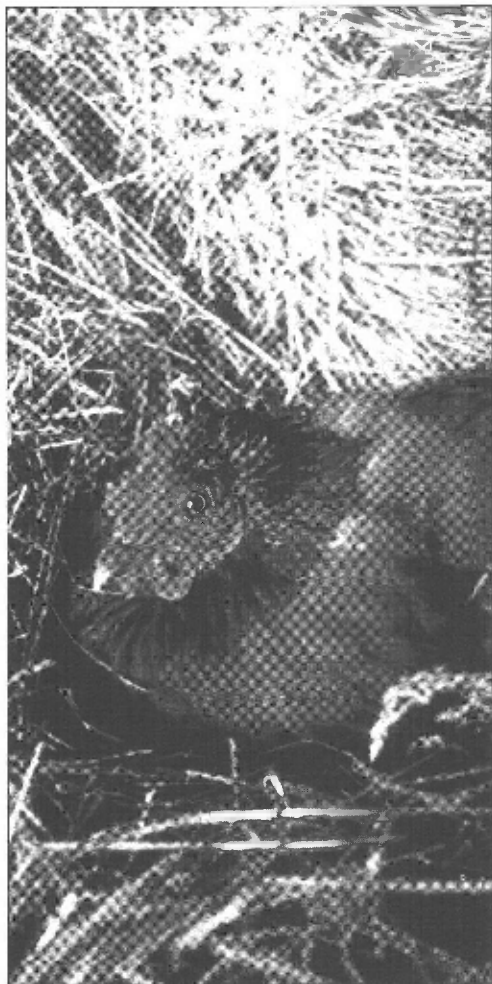
conferences on direct marketing and holds regional meetings. As of 1999, August 1–7 had been proclaimed New York State Farmers' Market Week by the New York State Senate; during this week the Farmer's Market Federation sponsors celebrations and agricultural appreciation events at markets around New York.

NY FARMS!

PO Box 1491, Auburn, NY 13021
(315) 255-9267
or toll free 1-888-NYFARMS (693-2767)

This diverse, statewide coalition—farmers, agricultural organizations, businesses, educational agencies, nonprofit organizations, environmentalists, consumer groups, community planners, economic developers and public entities such as Cornell Cooperative Extension—promotes farming, protects New York farmland, and fosters consumer loyalty to New York farm products. The organization provides mini-grants for "Buy NY" projects and works with various groups to develop regional product identities.





APPENDIX



Drafting and Monitoring Agricultural Conservation Easements

PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS compensate landowners for permanently limiting the non-agricultural uses of their land. In doing so, a deed restriction called an agricultural conservation easement is placed on the property. Most conservation easements are permanent. The holder of the easement retains the right to enforce the restrictions set out in the easement.

You can obtain sample agricultural conservation easements by contacting New York State Department of Agriculture & Markets or American Farmland Trust.

Drafting the Easement¹

Agricultural conservation easements are drafted to protect soil and other natural resources and to allow for the evolution of agriculture as an economic enterprise. They also restrict subdivision to prevent land fragmentation. In general these easements are farmer oriented. They are written with the knowledge that farmers must make countless daily decisions about how they work the land and respond to changing markets and conditions.

Some of the most important drafting issues that are addressed by the agricultural conservation easement include:

- Easement statement of purpose
- Construction of agricultural buildings
- Residential construction
- Subdivision
- Definitions of agriculture and farming practices
- Dispute resolution
- Term of the easement
- Acceptable non-agricultural uses such as recreation or forest management
- Monitoring procedures

Other important issues that are addressed include management of farm woodlands, on-farm mining, treatment of trash and waste and amendments/waivers.

Statement of Purpose

Agricultural conservation easements should state clearly that active agricultural use is the primary purpose of the land. This will provide a standard for future interpretation. Over time, both the easement holder and the farmer will evaluate the easement to ensure that ongoing uses of land are consistent with its stated purpose. Other conservation purposes can be included as secondary, but easements that do not list agriculture as the primary purpose create the potential for future conflicts between farming and other conservation objectives such as wildlife habitat, scenic views or water quality.

¹ The following section describing the drafting of agricultural conservation easements was modified, with permission, from "Agricultural Easements: Allowing a Working Landscape to Work," by Judy Anderson and Jerry Cosgrove in *Exchange, The Journal of the Land Trust Alliance*, Vol. 17, No. 3, Washington, DC, 1998.

Construction of Agricultural Buildings

One of the most critical issues for farmers is the degree of flexibility they will have in adding or altering agricultural structures. Agricultural easements recognize the need to provide maximum flexibility on this issue. Many agricultural easements allow farmers to construct, modify or demolish farm buildings without prior permission from the easement holder.

However, a few farmland protection programs require permission prior to construction. Others require advance permission for any construction outside a designated farmstead building area—to be allowed only if performance standards set forth in the easement are met. (For example, if the proposed structure does not affect important soil resources.) Another approach allows construction of agricultural buildings outside the building area without prior permission if they are under a certain size, necessary for the farming enterprise, and consistent with the purpose of the easement. Prior approval would be required for larger buildings.

Drafters of agricultural easements need to work with the farming community to determine the best way to allow for the future construction of agricultural buildings on protected farmland.

Residential Construction

Agriculture & Markets requires agricultural conservation easements to allow farm employee housing. However, the easements vary in their treatment of residential structures not necessarily designated for farm workers, such as the principal farmhouse. Agricultural easements attempt to minimize land fragmentation by allowing for only a few future non-farm employee residences that could eventually be subdivided. The location of these future houses needs to be considered carefully, factoring in not only avoidance of land fragmentation but also wind dispersal of noise, chemicals, dust and odors.

There are three basic approaches for allowing residential structures on protected land:

- **Omit non-worker house sites from the easement.** Survey out the future house sites on a typical rural lot that allows for septic system construction. This approach simplifies easement monitoring since no future residential dwellings (other than farm employee housing) are permitted on the property.
- **Include designated house sites within the easement “up front.”**
- **Create a building “envelope” large enough to allow for a farmstead that includes both resi-**

dence and farm buildings, or that allows for the expansion of an existing farmstead. The building envelope would need to provide room for farm family housing, farm-based enterprises, and housing for farm employees and their family members.

Subdivision

Provisions that govern subdivision vary, but they usually address two concerns. First, they reduce the potential for land fragmentation that would render the farmland unusable as a commercial agricultural enterprise. Some agricultural easements allow subdivision if it does not harm the property's long-term agricultural viability, or if the size of the subdivision is limited. However, the definition of a viable farming unit may very well change in the future.

Second, the provisions minimize the likelihood that protected farmland is converted to “rural estates” and withdrawn, perhaps permanently, from commercial farming. Subdivision needs to be evaluated for its effect on long-term commercial farming and its potential to encourage non-farm ownership. Farm support housing (for farm employees or family housing) usually should not be subdivided from the property as separate, stand-alone residential properties. Such subdivision will further fragment the land base and possibly create future conflicts between farmers and neighbors.

Defining Agriculture and Farming Practices

Agricultural easements usually define current and anticipated agricultural practices to avoid future confusion about whether a farming practice is allowed. They usually do so in ways recognizable to the farm community. These standards are flexible and site specific. An agricultural definition clause may include a non-inclusive list of permitted uses, or may link its definition of agriculture to outside definitions that will be modified over time to reflect changes in agriculture. For example, the Agricultural Districts Law defines sound agricultural practices on a case-by-case basis; the USDA NRCS updates its farm conservation plans periodically to reflect changes in agricultural practices. By utilizing recognized standards, the easement holder may avoid difficult discussions with farmers about “who knows best” how to farm.

Dispute Resolution

Drafters of agricultural conservation easements may wish to consider adding a dispute resolution clause to the document. Such a clause may serve as a “safety valve” to deal with potential future conflicts by allowing a mutually identified and predetermined party (such as an AFPB, an agricultural

advisory committee, or Agriculture & Markets) to mediate future disagreements. Dispute resolution clauses are often non-binding, but create an alternative to costly and contentious litigation.

Monitoring the Easement

The holder of an easement is obligated to monitor the land involved and uphold and enforce the terms of the agreement. Good stewardship, the process of holding and maintaining an easement, will help ensure the perpetual nature of the easement. The municipality or organization holding the easement should set up a system for administering, monitoring and enforcing the easement terms. That involves creating baseline documentation, maintaining a good working relationship with the landowner, monitoring the property, and, if needed, addressing violations.

Creating a Baseline File²

A baseline file notes the condition of the property at the time the easement is executed. This documentation allows future monitors to better determine if any violations have occurred. The file should include a map of the property under easement, photographs that correspond to the map, general information on the property and the signature of all parties involved acknowledging the state of the property.

Some baseline documents require the signature of the landowner and easement holder on each page as well as on the back of each photograph. This helps ensure the authenticity of the document.

Monitoring the Property

Annual site visits generally are made to inspect the property under easement. Monitoring reports are added to the baseline file. Any significant changes are noted and photographed.

Communicating with Landowners

Easement holders must make sure that landowners clearly understand the terms of the documents. This is especially important when protected farmland changes hands. Maintaining a good working relationship with the landowner will help easement holders ensure that the terms are being met.

Addressing Violations

If any violations are found, the holder of the easement should work with the landowner to remedy the problem. Legal action may be considered if the landowner refuses to comply. Failure to enforce an easement undermines its purpose, affects the credibility of the program and erodes public support for PDR.



² This section on easement monitoring was modified, with permission, from "Baseline Documentation and Monitoring—Keys to a Successful Future Defense," by Judy Anderson and Rebecca Thornton in *Exchange, The Journal of the Land Trust Alliance*, Vol. 17, No. 3, Washington, DC, 1998.

SUGGESTED READING

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RESOURCES

The New York State Department of Agriculture & Markets maintains a statewide agricultural farmland protection program, including financial assistance to counties for their farmland protection efforts. For more information, contact:

**Agriculture & Markets
Division of Agricultural Protection and Development Services**

1 Winners Circle, Albany, NY 12235
(518) 457-7076
www.agmkt.state.ny.us

The following organizations and agencies may also be of valuable assistance:

American Farmland Trust Northeast Field Office

110 Spring Street, Saratoga Springs, NY 12866
(518) 581-0078
www.farmland.org

Cornell Cooperative Extension

Box 8, Kennedy Hall, Cornell University, Ithaca, NY 14853
(607) 255-2237
www.cce.cornell.edu

Land Trust Alliance of New York

PO Box 792, Saratoga Springs, NY 12866
(518) 587-0774
www.lta.org

LandWorks

American Farmland Trust

One Short Street, Northampton, MA 01060
(413) 586-9330
www.farmland.org/landworks.html

New York Farm Bureau

Route 9W, PO Box 992, Glenmont, NY 12207
(518) 436-8495
www.fb.org

New York Planning Federation

488 Broadway, Suite 313, Albany, NY 12207
(518) 432-4094
www.nypf.org

New York State Department of Environmental Conservation

Office of Natural Resources

50 Wolf Road, Room 604, Albany, NY 12233
(518) 474-2121
www.dec.state.ny.us

New York State Department of Taxation & Finance

Taxpayer Assistance Bureau

W.A. Harriman Campus, Albany, NY 12227
(800) 225-5829
www.tax.state.ny.us

New York State Soil & Water Conservation Committee

1 Winners Circle, Albany, NY 12235
(518) 457-3738
www.agmkt.state.ny.us/soilwater/home.html

USDA Farm Service Agency

441 South Salina Street, 5th Floor, Suite 356, Syracuse, NY 13202
(315) 477-6300
www.fsa.usda.gov

USDA Natural Resources Conservation Service

441 South Salina Street, 5th Floor, Suite 354, Syracuse, NY 13202
(315) 477-6504
www.nrcs.usda.gov

AMERICAN FARMLAND TRUST

American Farmland Trust is the largest private, nonprofit conservation organization dedicated to protecting the nation's strategic agricultural resources. Founded in 1980, AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. Its activities include public education, technical assistance, policy research and development and direct land protection projects. Basic AFT membership is \$20 a year. AFT provides a variety of professional services to state and local governments and public agencies, private organizations, land trusts and individual landowners. Services include customized information products and workshops on farmland protection and estate planning; policy research, development and evaluation; farmland protection program implementation; and conservation real estate consulting.

For membership information or for more information on farmland protection activities in New York and New England, contact the Northeast Field Office or connect to AFT's home page at: www.farmland.org.

This handbook is a publication of AFT's Northeast Field Office. To find out more about AFT publications, products and services, call 800-370-4879.

**American Farmland Trust
Northeast Field Office**

110 Spring Street
Saratoga Springs, NY 12866
(518) 581-0078
(518) 581-0079 fax

**American Farmland Trust
Publications and Programs**

Herrick Mill, One Short Street
Northampton, MA 01060
(413) 586-9330
(413) 586-9332 fax

**American Farmland Trust
National Office**

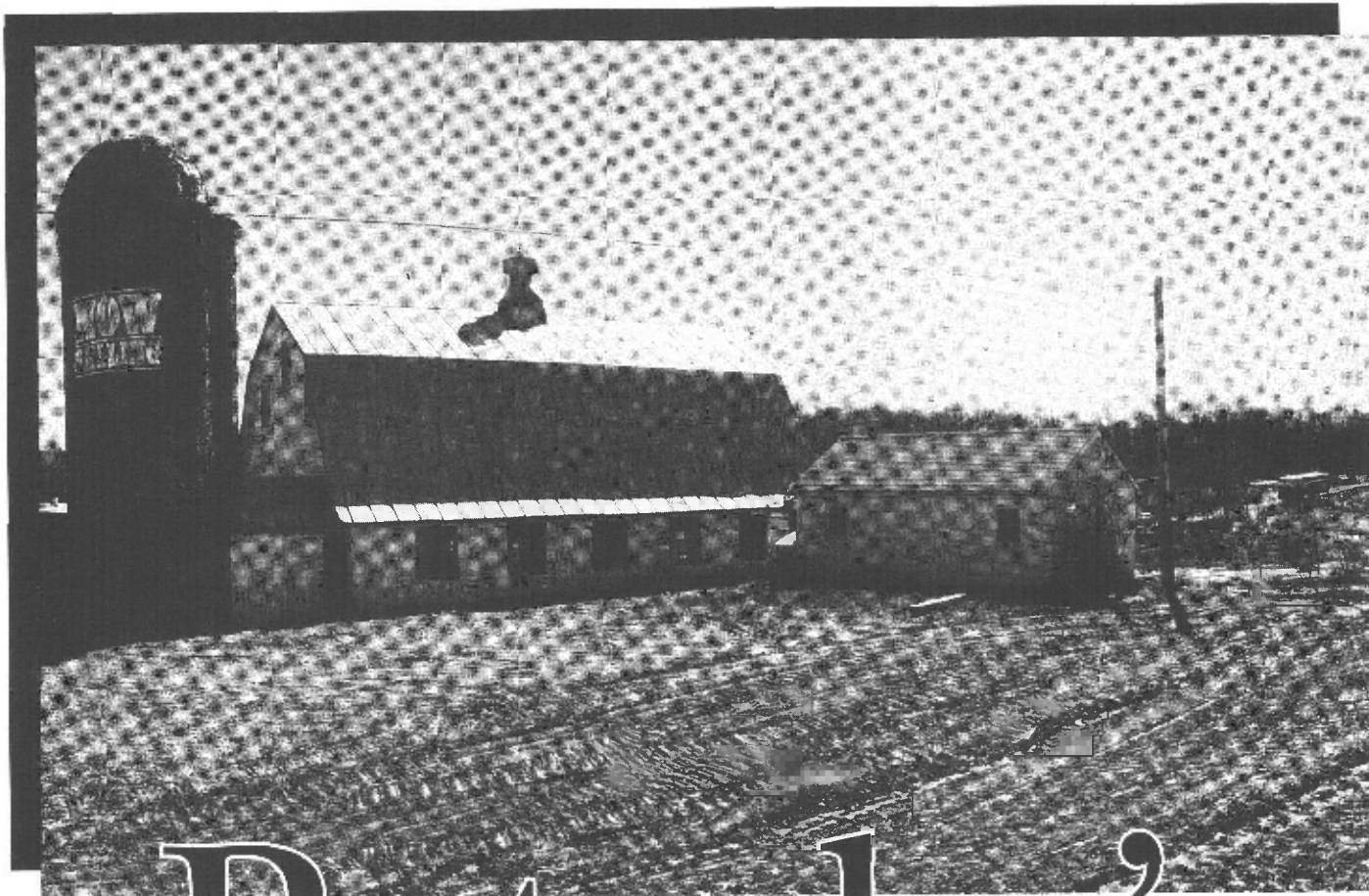
1200 18th Street, N.W., Suite 800
Washington, DC 20036
(202) 331-7300
(202) 659-8339 fax

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Manufactured in the United States on recycled paper and printed with soybean ink.



But who's paying?

Studies show farms use as little as 21 cents in municipal services for every dollar they contribute to local taxes. But residential developments cost considerably more—as much as \$1.67 for each dollar of local taxes they generate.

So who pays when a farm in your area is sold for housing development? You do.

Support American Farmland Trust

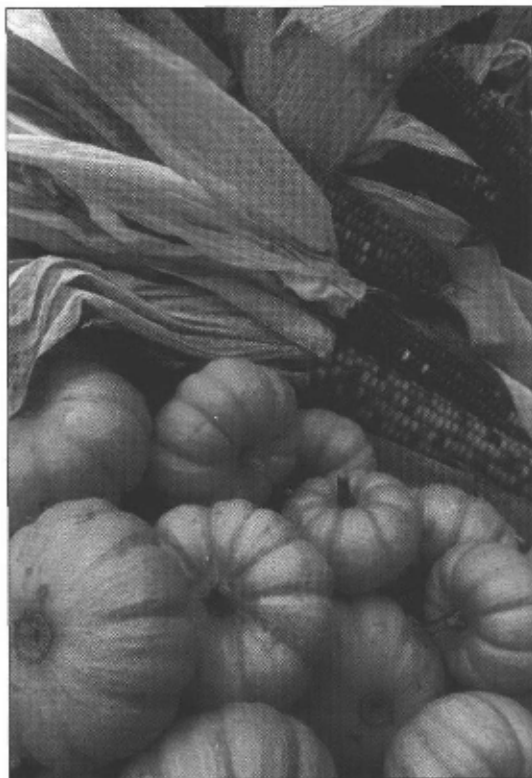


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