

FARMLAND  
INFORMATION  
CENTER

FACT  
SHEET

COST OF

COMMUNITY

SERVICES

STUDIES



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**DESCRIPTION**

Cost of Community Services (COCS) studies are a case study approach used to determine the fiscal contribution of existing local land uses. A subset of the much larger field of fiscal analysis, COCS studies have emerged as an inexpensive and reliable tool to measure direct fiscal relationships. Their particular niche is to evaluate working and open lands on equal ground with residential, commercial and industrial land uses.

COCS studies are a snapshot in time of costs versus revenues for each type of land use. They do not predict future costs or revenues or the impact of future growth. They do provide a baseline of current information to help local officials and citizens make informed land use and policy decisions.

**METHODOLOGY**

In a COCS study, researchers organize financial records to assign the cost of municipal services to working and open lands, as well as to residential, commercial and industrial development. Researchers meet with local sponsors to define the scope of the project and identify land use categories to study. For example, working lands may include farm, forest and/or ranch lands. Residential development includes all housing, including rentals, but if there is a migrant agricultural work force, temporary housing for these workers would be considered part of agricultural land use. Often in rural communities, commercial and industrial land uses are combined. COCS studies findings are displayed as a set of ratios that compare annual revenues to annual expenditures for a community's unique mix of land uses.

COCS studies involve three basic steps:

1. Collect data on local revenues and expenditures.
2. Group revenues and expenditures and allocate them to the community's major land use categories.
3. Analyze the data and calculate revenue-to-expenditure ratios for each land use category.

The process is straightforward, but ensuring reliable figures requires local oversight. The most complicated task is interpreting existing records to reflect COCS land use categories. Allocating revenues and expenses requires a significant amount of research, including extensive interviews with financial officers and public administrators.

**HISTORY**

Communities often evaluate the impact of growth on local budgets by conducting or commissioning fiscal impact analyses. Fiscal impact studies project public costs and revenues from different land development patterns. They generally show that residential development is a net fiscal loss for communities and recommend commercial and industrial development as a strategy to balance local budgets.

Rural towns and counties that would benefit from fiscal impact analysis may not have the expertise or resources to conduct a study. Also, fiscal impact analyses rarely consider the contribution of working and other open lands uses, which are very important to rural economies.

American Farmland Trust (AFT) developed COCS studies in the mid-1980s to provide communities with a straightforward and inexpensive way to measure the contribution of agricultural lands to the local tax base. Since then, COCS studies have been conducted in at least 102 communities in the United States.

**FUNCTIONS & PURPOSES**

Communities pay a high price for unplanned growth. Scattered development frequently causes traffic congestion, air and water pollution, loss of open space and increased demand for costly public services. This is why it is important for citizens and local leaders to understand the relationships between residential and commercial growth, agricultural land use, conservation and their community's bottom line.

# COST OF COMMUNITY SERVICES STUDIES

For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

[www.farmlandinfo.org](http://www.farmlandinfo.org)

(800) 370-4879

COCS studies help address three claims that are commonly made in rural or suburban communities facing growth pressures:

1. Open lands—including productive farms and forests—are an interim land use that should be developed to their “highest and best use.”
2. Agricultural land gets an unfair tax break when it is assessed at its current use value for farming or ranching instead of at its potential use value for residential or commercial development.
3. Residential development will lower property taxes by increasing the tax base.

While it is true that an acre of land with a new house generates more total revenue than an acre of hay or corn, this tells us little about a community’s bottom line. In areas where agriculture or forestry are major industries, it is especially important to consider the real property tax contribution of privately owned working lands. Working and other open lands may generate less revenue than residential, commercial or industrial properties, but they require little public infrastructure and few services.

COCS studies conducted over the last 20 years show working lands generate more public revenues than they receive back in public services. Their impact on community coffers is similar to

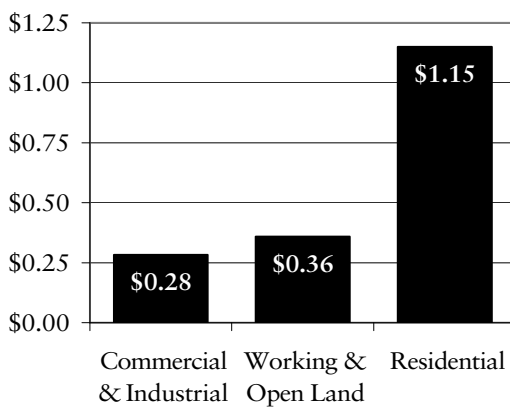
that of other commercial and industrial land uses. On average, because residential land uses do not cover their costs, they must be subsidized by other community land uses. Converting agricultural land to residential land use should not be seen as a way to balance local budgets.

The findings of COCS studies are consistent with those of conventional fiscal impact analyses, which document the high cost of residential development and recommend commercial and industrial development to help balance local budgets. What is unique about COCS studies is that they show that agricultural land is similar to other commercial and industrial uses. In every community studied, farmland has generated a fiscal surplus to help offset the shortfall created by residential demand for public services. This is true even when the land is assessed at its current, agricultural use.

Communities need reliable information to help them see the full picture of their land uses. COCS studies are an inexpensive way to evaluate the net contribution of working and open lands. They can help local leaders discard the notion that natural resources must be converted to other uses to ensure fiscal stability. They also dispel the myths that residential development leads to lower taxes, that differential assessment programs give landowners an “unfair” tax break and that farmland is an interim land use just waiting around for development.

One type of land use is not intrinsically better than another, and COCS studies are not meant to judge the overall public good or long-term merits of any land use or taxing structure. It is up to communities to balance goals such as maintaining affordable housing, creating jobs and conserving land. With good planning, these goals can complement rather than compete with each other. COCS studies give communities another tool to make decisions about their futures.

Median COCS Results



*Median cost—per dollar of revenue raised—to provide public services to different land uses.*

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>Colorado</b>				
Custer County	1 : 1.16	1 : 0.71	1 : 0.54	Haggerty, 2000
Saguache County	1 : 1.17	1 : 0.53	1 : 0.35	Dirt, Inc., 2001
<b>Connecticut</b>				
Bolton	1 : 1.05	1 : 0.23	1 : 0.50	Geisler, 1998
Durham	1 : 1.07	1 : 0.27	1 : 0.23	Southern New England Forest Consortium, 1995
Farmington	1 : 1.33	1 : 0.32	1 : 0.31	Southern New England Forest Consortium, 1995
Hebron	1 : 1.06	1 : 0.47	1 : 0.43	American Farmland Trust, 1986
Litchfield	1 : 1.11	1 : 0.34	1 : 0.34	Southern New England Forest Consortium, 1995
Pomfret	1 : 1.06	1 : 0.27	1 : 0.86	Southern New England Forest Consortium, 1995
<b>Georgia</b>				
Carroll County	1 : 1.29	1 : 0.37	1 : 0.55	Dorfman and Black, 2002
Grady County	1 : 1.72	1 : 0.10	1 : 0.38	Dorfman, 2003
Thomas County	1 : 1.64	1 : 0.38	1 : 0.66	Dorfman, 2003
<b>Idaho</b>				
Canyon County	1 : 1.08	1 : 0.79	1 : 0.54	Hartmans and Meyer, 1997
Cassia County	1 : 1.19	1 : 0.87	1 : 0.41	Hartmans and Meyer, 1997
<b>Kentucky</b>				
Lexington-Fayette	1 : 1.64	1 : 0.22	1 : 0.93	American Farmland Trust, 1999
Oldham County	1 : 1.05	1 : 0.29	1 : 0.44	American Farmland Trust, 2003
<b>Maine</b>				
Bethel	1 : 1.29	1 : 0.59	1 : 0.06	Good, 1994
<b>Maryland</b>				
Carroll County	1 : 1.15	1 : 0.48	1 : 0.45	Carroll County Dept. of Management & Budget, 1994
Cecil County	1 : 1.17	1 : 0.34	1 : 0.66	American Farmland Trust, 2001
Cecil County	1 : 1.12	1 : 0.28	1 : 0.37	Cecil County Office of Economic Development, 1994
Frederick County	1 : 1.14	1 : 0.50	1 : 0.53	American Farmland Trust, 1997
Harford County	1 : 1.11	1 : 0.40	1 : 0.91	American Farmland Trust, 2003
Kent County	1 : 1.05	1 : 0.64	1 : 0.42	American Farmland Trust, 2002
Wicomico County	1 : 1.21	1 : 0.33	1 : 0.96	American Farmland Trust, 2001
<b>Massachusetts</b>				
Agawam	1 : 1.05	1 : 0.44	1 : 0.31	American Farmland Trust, 1992
Becket	1 : 1.02	1 : 0.83	1 : 0.72	Southern New England Forest Consortium, 1995
Deerfield	1 : 1.16	1 : 0.38	1 : 0.29	American Farmland Trust, 1992
Franklin	1 : 1.02	1 : 0.58	1 : 0.40	Southern New England Forest Consortium, 1995
Gill	1 : 1.15	1 : 0.43	1 : 0.38	American Farmland Trust, 1992
Leverett	1 : 1.15	1 : 0.29	1 : 0.25	Southern New England Forest Consortium, 1995
Middleboro	1 : 1.08	1 : 0.47	1 : 0.70	American Farmland Trust, 2001
Southborough	1 : 1.03	1 : 0.26	1 : 0.45	Adams and Hines, 1997
Westford	1 : 1.15	1 : 0.53	1 : 0.39	Southern New England Forest Consortium, 1995
Williamstown	1 : 1.11	1 : 0.34	1 : 0.40	Hazler et al., 1992
<b>Michigan</b>				
Marshall Twp., Calhoun Cty.	1 : 1.47	1 : 0.20	1 : 0.27	American Farmland Trust, 2001
Newton Twp., Calhoun Cty.	1 : 1.20	1 : 0.25	1 : 0.24	American Farmland Trust, 2001
Scio Township	1 : 1.40	1 : 0.28	1 : 0.62	University of Michigan, 1994

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>Minnesota</b>				
Farmington	1 : 1.02	1 : 0.79	1 : 0.77	American Farmland Trust, 1994
Lake Elmo	1 : 1.07	1 : 0.20	1 : 0.27	American Farmland Trust, 1994
Independence	1 : 1.03	1 : 0.19	1 : 0.47	American Farmland Trust, 1994
<b>Montana</b>				
Carbon County	1 : 1.60	1 : 0.21	1 : 0.34	Prinzing, 1999
Gallatin County	1 : 1.45	1 : 0.16	1 : 0.25	Haggerty, 1996
Flathead County	1 : 1.23	1 : 0.26	1 : 0.34	Citizens for a Better Flathead, 1999
<b>New Hampshire</b>				
Deerfield	1 : 1.15	1 : 0.22	1 : 0.35	Auger, 1994
Dover	1 : 1.15	1 : 0.63	1 : 0.94	Kingsley et al., 1993
Exeter	1 : 1.07	1 : 0.40	1 : 0.82	Niebling, 1997
Fremont	1 : 1.04	1 : 0.94	1 : 0.36	Auger, 1994
Groton	1 : 1.01	1 : 0.12	1 : 0.88	New Hampshire Wildlife Federation, 2001
Stratham	1 : 1.15	1 : 0.19	1 : 0.40	Auger, 1994
Lyme	1 : 1.05	1 : 0.28	1 : 0.23	Pickard, 2000
<b>New Jersey</b>				
Freehold Township	1 : 1.51	1 : 0.17	1 : 0.33	American Farmland Trust, 1998
Holmdel Township	1 : 1.38	1 : 0.21	1 : 0.66	American Farmland Trust, 1998
Middletown Township	1 : 1.14	1 : 0.34	1 : 0.36	American Farmland Trust, 1998
Upper Freehold Township	1 : 1.18	1 : 0.20	1 : 0.35	American Farmland Trust, 1998
Wall Township	1 : 1.28	1 : 0.30	1 : 0.54	American Farmland Trust, 1998
<b>New York</b>				
Amenia	1 : 1.23	1 : 0.25	1 : 0.17	Bucknall, 1989
Beekman	1 : 1.12	1 : 0.18	1 : 0.48	American Farmland Trust, 1989
Dix	1 : 1.51	1 : 0.27	1 : 0.31	Schuyler County League of Women Voters, 1993
Farmington	1 : 1.22	1 : 0.27	1 : 0.72	Kinsman et al., 1991
Fishkill	1 : 1.23	1 : 0.31	1 : 0.74	Bucknall, 1989
Hector	1 : 1.30	1 : 0.15	1 : 0.28	Schuyler County League of Women Voters, 1993
Kinderhook	1 : 1.05	1 : 0.21	1 : 0.17	Concerned Citizens of Kinderhook, 1996
Montour	1 : 1.50	1 : 0.28	1 : 0.29	Schuyler County League of Women Voters, 1992
Northeast	1 : 1.36	1 : 0.29	1 : 0.21	American Farmland Trust, 1989
Reading	1 : 1.88	1 : 0.26	1 : 0.32	Schuyler County League of Women Voters, 1992
Red Hook	1 : 1.11	1 : 0.20	1 : 0.22	Bucknall, 1989
<b>Ohio</b>				
Clark County	1 : 1.11	1 : 0.38	1 : 0.30	American Farmland Trust, 2003
Knox County	1 : 1.05	1 : 0.38	1 : 0.29	American Farmland Trust, 2003
Madison Village	1 : 1.67	1 : 0.20	1 : 0.38	American Farmland Trust, 1993
Madison Township	1 : 1.40	1 : 0.25	1 : 0.30	American Farmland Trust, 1993
Shalersville Township	1 : 1.58	1 : 0.17	1 : 0.31	Portage County Regional Planning Commission, 1997

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>Pennsylvania</b>				
Allegheny Township	1 : 1.06	1 : 0.14	1 : 0.13	Kelsey, 1997
Bedminster Township	1 : 1.12	1 : 0.05	1 : 0.04	Kelsey, 1997
Bethel Township	1 : 1.08	1 : 0.17	1 : 0.06	Kelsey, 1992
Bingham Township	1 : 1.56	1 : 0.16	1 : 0.15	Kelsey, 1994
Buckingham Township	1 : 1.04	1 : 0.15	1 : 0.08	Kelsey, 1996
Carroll Township	1 : 1.03	1 : 0.06	1 : 0.02	Kelsey, 1992
Hopewell Township	1 : 1.27	1 : 0.32	1 : 0.59	The South Central Assembly for Effective Governance, 2002
Maiden Creek Township	1 : 1.28	1 : 0.11	1 : 0.06	Kelsey, 1998
Richmond Township	1 : 1.24	1 : 0.09	1 : 0.04	Kelsey, 1998
Shrewsbury Township	1 : 1.22	1 : 0.15	1 : 0.17	The South Central Assembly for Effective Governance, 2002
Stewardson Township	1 : 2.11	1 : 0.23	1 : 0.31	Kelsey, 1994
Straban Township	1 : 1.10	1 : 0.16	1 : 0.06	Kelsey, 1992
Sweden Township	1 : 1.38	1 : 0.07	1 : 0.08	Kelsey, 1994
<b>Rhode Island</b>				
Hopkinton	1 : 1.08	1 : 0.31	1 : 0.31	Southern New England Forest Consortium, 1995
Little Compton	1 : 1.05	1 : 0.56	1 : 0.37	Southern New England Forest Consortium, 1995
Portsmouth	1 : 1.16	1 : 0.27	1 : 0.39	Johnston, 1997
West Greenwich	1 : 1.46	1 : 0.40	1 : 0.46	Southern New England Forest Consortium, 1995
<b>Texas</b>				
Bandera County	1 : 1.10	1 : 0.26	1 : 0.26	American Farmland Trust, 2002
Bexar County	1 : 1.15	1 : 0.20	1 : 0.18	American Farmland Trust, 2004
Hays County	1 : 1.26	1 : 0.30	1 : 0.33	American Farmland Trust, 2000
<b>Utah</b>				
Cache County	1 : 1.27	1 : 0.25	1 : 0.57	Snyder and Ferguson, 1994
Sevier County	1 : 1.11	1 : 0.31	1 : 0.99	Snyder and Ferguson, 1994
Utah County	1 : 1.23	1 : 0.26	1 : 0.82	Snyder and Ferguson, 1994
<b>Virginia</b>				
Augusta County	1 : 1.22	1 : 0.20	1 : 0.80	Valley Conservation Council, 1997
Clarke County	1 : 1.26	1 : 0.21	1 : 0.15	Piedmont Environmental Council, 1994
Culpeper County	1 : 1.22	1 : 0.41	1 : 0.32	American Farmland Trust, 2003
Frederick County	1 : 1.19	1 : 0.23	1 : 0.33	American Farmland Trust, 2003
Northampton County	1 : 1.13	1 : 0.97	1 : 0.23	American Farmland Trust, 1999
<b>Washington</b>				
Skagit County	1 : 1.25	1 : 0.30	1 : 0.51	American Farmland Trust, 1999
<b>Wisconsin</b>				
Dunn	1 : 1.06	1 : 0.29	1 : 0.18	Town of Dunn, 1994
Dunn	1 : 1.02	1 : 0.55	1 : 0.15	Wisconsin Land Use Research Program, 1999
Perry	1 : 1.20	1 : 1.04	1 : 0.41	Wisconsin Land Use Research Program, 1999
Westport	1 : 1.11	1 : 0.31	1 : 0.13	Wisconsin Land Use Research Program, 1999

American Farmland Trust's Farmland Information Center acts as a clearinghouse for information about Cost of Community Services studies. Inclusion in this table does not necessarily signify review or endorsement by American Farmland Trust.

## Appendix C.

### **North East Agricultural Community Stakeholder Interview Summary**

In the fall of 2008, 18 individuals in North East including farmers, agri-business owners, veterinarians and landowners were interviewed about their perspective of the current and future state of agriculture in the Town of North East. Commodities raised by those interviewed included dairy, equine, vegetables, livestock and nursery production. Ten of these interviews were conducted by Liz Brock, Field Representative for the American Farmland Trust, with the remaining conducted by Lynn Mordas and Kent Kay from the Steering Committee. The following common themes came out of these conversations. Where indicated, specific quotes from interviewees have been used to illustrate key concepts. They are intentionally left anonymous to protect the integrity of these confidential interviews.

**The communities of North East and Millerton have changed significantly over the last 50 years.** “Used to be you were able to do work with a hand shake – we knew all our neighbors.” Those interviewed shared nostalgia of the past, going to Millerton on a Friday night, doing their shopping and catching up with neighbors about the latest farm practices. The village has changed to accommodate a new population of people in town relocating or purchasing second homes in the region from urban areas – shifting from stores providing basic needs to boutiques and antiques. Traffic has increased on Route 22, especially on Friday nights as weekenders arrive. As farms have gone out of business, the farm community has become increasingly segregated with at least two producers interviewed indicating that they have no real relationships with other farmers in town.

**Farmers in North East face significant economic challenges.** “With dairy prices at \$16 per hundred weight [of milk] and the cost of production at \$18 per hundred – the math just doesn’t work.” Many of the economic challenges that face farmers are beyond the control of the town, including commodity pricing and the costs of worker’s compensation. However, one of the biggest concerns raised by those interviewed dealt with the increased value of their land and buildings. As one farmer put it, “Can’t grow crops on \$20,000 per acre land.” There is concern over how the next generation will be able to purchase the farm. In addition, farmers felt it was important for farm buildings to be appropriately assessed as agricultural structures. In one example, the recent revaluation increased the value of farm buildings at one location over \$1.2 million. Agricultural structures should also be dealt with differently during the planning process at the town, including lower building permit fees compared to new residences.

**The availability and affordability of quality labor to work on farms and prospects for succession limit the future of agriculture in North East.** “Farming depends on a generational influx of energy and enthusiasm – without that you get tired over time.” About half those interviewed had some kind of succession plan in place to transition the farm to the next generation. The remaining operations said that the farm would probably go out of business when they were ready to retire – from a lack of interest or availability of a next generation of the family to take over. There is a sense of a lack of interest by students and educators in farm education programs including formal agricultural courses, 4H and Future Farmers of America youth organizations. Housing for farm labor was another significant challenge to maintaining quality help as a result of the lack of affordable housing in the area and the inability to subdivide small lots for the next generation. In three cases, farmers had decreased their operations in size or services offered in order to reduce the dependence upon labor outside what the immediate family could provide.

**In part because of these challenges, the nature of agriculture is changing in North East, shifting away from commodity operations and towards direct retail.** “It’s all about having a

## Appendix C.

good product at the right price.” Farmers shared they’ve seen an increase in the number of farmers doing some version of direct retail of their products – either through farmer’s markets, working with restaurants or marketing directly from the farm. However, those farmers involved in direct retail shared challenges in making this economical. While Greenmarkets in metropolitan New York offers access to consumers with interest in and capital for buying local farm products, farmers interviewed said that the distance traveled and the competition faced at these markets made it unprofitable. Many farmers sold products closer to home at farmer’s markets and restaurants in Red Hook and Woodstock, or even more locally on the farm itself. One farmer remarked, “I used to do farmer’s markets in New York City - I can make more money here at the farm. I don’t compete with anyone at my location.” The Millerton Farmers Market in the village was thought of as “a nice gesture” and “helps educate the second homeowner community”, but some farmers interviewed did not see it as profitable, even with the offer of volunteers to staff booths on their behalf. Others, however, did express that their participation was not only quite profitable, but was enhanced by the volunteers. It should be noted that the volunteer students were also participating in agricultural education programs and farm internships as components of their tenure at the market. Two farmers questioned how many farm stands the town could sustain and whether small-scale vegetable operations will truly preserve farmland in town.

**New residents pose both challenges and opportunities for farmers in town.** “Land is not necessarily lost in town – just inconvenienced.” The development of farmland into second home estates has led in many cases to continuing the agricultural use of the non-developed land. New residents are interested in receiving the agricultural assessment tax exemption that comes from being their lands being farmed and also appreciate the aesthetic that crops and grazing livestock provide. One farmer indicated that he works with approximately 90 landowners in the region, managing their properties as if they were his own - a requirement for maintaining successful relationships according to him. New residents also represent new consumers that are interested in purchasing local food and plants, participating in equine events and having farm “experiences” including agri-tourism and farm tours. Many farmers are capitalizing on this market to improve their bottom lines. New residents have brought challenges as well on occasion. Two farmers shared they had been reported by neighbors to the American Society for the Prevention of Cruelty to Animals regarding perceived animal welfare issues. In both cases, the farmers were found to be handling animals appropriately, but the cost and time in dealing with these incidents were troubling.

**Farmers are interested in tools that would improve their profitability and support farm businesses.** “We feel optimistic about the future of agriculture in North East, even if it’s not in milk.” Farmers expressed interest in finding ways of diversifying their income and reducing their expenses and they saw opportunities for the town to assist them. Examples of this support include, supporting alternative energy strategies, expanding the definition of agriculture to include composting and small-scale agriculture, allowing for the expansion of greenhouses/retail markets to sell farm products on the farm and applying appropriate fees for building permits on farm structures. Some farmers were interested in permanent farmland protection tools, such as Purchase of Development Rights programs, but two farmers were not interested in this tool as they saw it limiting the opportunities for the next generation. Farmers were favorable to passing a Right to Farm law to establish Town support of agriculture in the future and to increasing opportunities for farmers to be involved in the Town decision-making processes. Finally, all farmers – regardless of scale – said that the availability of farmland for rent was critical to the success of their operations. “Leasing is the only option because land is so expensive.” There is a need to protect and support relationships between new non-farm landowners and farm operations.

## Appendix D.

### Analysis of Strengths, Weaknesses, Opportunities and Threats to Agriculture in North East *data gathered from community at steering committee and public meetings*

<b>INTERNAL FACTORS</b>	
<b>Strengths</b>	<b>Weaknesses</b>
Defines the community/sense of place	Inflated land values and high property taxes
Opportunity to provide local food	Lack of processing facilities
Environmental protection benefits	Lack of labor pool willing to work on farms
Quality agricultural natural resources	Minimal agricultural education in schools
Flexibility of farm businesses to adapt to new business environments	Lack of agricultural support infrastructure and services
Available strong markets for products (NYC, Greenmarkets, etc.)	Difficulty in getting products into local markets
Residential development has retained farmable parcels	Barriers for entry of new farmers are high
Good farmer/neighbor relationships for now	
<b>EXTERNAL FACTORS</b>	
<b>Opportunities</b>	<b>Threats</b>
Increased consumer demand for local food	Lack of farmer involvement on town boards and committees
Close to new markets for products (Wholefoods, CIA, etc)	Residential development pressure; mainly in the form of estate/recreation homes
Expansion in demand for organic - especially meat products	Lack of next generation interested in taking over farm operations
Agritourism/ Agri-"tainment"	Limited availability of workforce housing in region
Cooperatives between farmers to reduce the cost of needed services and achieve joint marketing	Economic viability of traditional agricultural commodities
New crop development, including berries, hops	Increased dependence on leased land to grow crops and manage wastes
Renewable energy, including wind, solar, biofuels, etc.	Zoning limits options to diversity farm operation and increase viability
Town to assist in marketing of local farms and farm products	
Value-added processing facilities	
Link second homeowners with local farmers	
Docking station for potential mobile slaughtering facility	

Strengths and weakness are factors that may be internal to the community, while opportunities and threats may be factors that are external to the community

## **The Dutchess County Partnership for Manageable Growth**

### **I. Introduction**

The Dutchess County Partnership for Manageable Growth is designed to assist the County and its municipalities implement the recommendations of adopted planning documents including *Directions: The Plan for Dutchess County*, the *Dutchess County Agriculture and Farmland Protection Plan*, *Greenway Connections*, and the *Dutchess County Water and Wastewater Plan*. It enhances the current Open Space and Farmland Protection Matching Grant Program with the addition of a water and wastewater partnership program for the improvement of water and sewer services throughout the County and initiatives to further Greenway Partnerships between the County and its municipalities.

### **II. Open Space and Farmland Protection**

The Open Space and Farmland Protection Matching Grant Program was established as a proposal of the County Executive and adopted in December 1999 (Resolution 990382) to implement the *Dutchess County Agriculture and Farmland Protection Plan* and to protect important agricultural and open space resources. All applications are reviewed upon receipt, pending confirmation of sufficient primary funding which establishes the basis for the partnership and which is required to make the projects viable. Applications submitted to the Dutchess County Planning Board are reviewed in accordance with the Program Guidelines (Attachment A) and Criteria (Attachment B). The program will also be integrated with the County's Capital Budget planning process.

The program for farmland protection will provide a matching portion of fee simple, development rights, or conservation easement purchase price up to fifty percent (50%) of the total project cost. Applicants will have secured the remainder from public or private sources that must be identified at the time of application for County funds.

The program for open space protection will provide a matching portion of fee simple, development rights, or conservation easement purchase price up to fifty percent (50%) of the total project cost. All municipal open space acquisitions will require municipal funding support. Municipal open space grants may be increased from one third to one half (50%) of the project cost provided that there is at least twenty-five percent (25%) of municipal participation. Municipal applications for open space funds shall require participation in the Greenway Compact by the local government.

Municipal sponsors may include Towns and Villages as well as County entities including the Agriculture and Farmland Protection Board, the Soil and Water

Conservation District, and the Environmental Management Council. Applicants may include land trusts and other not for profit organizations. Public/private collaboration is strongly encouraged.

Funding award contracts with Dutchess County will be based on the specifics of each proposal and the requirements of the primary funding source. An implementation team will include representatives of the Dutchess County Attorney's Office, the Department of Planning and Development, the sponsoring organization or municipality, and others as appropriate. Funding will be awarded after approval by the Legislature and execution of the contract.

***Applications will be considered in two annual cycles:***

**Applications for the first round of open space and/or farmland protection matching grants must be postmarked by January 31<sup>st</sup>.**

**Applications for the second round of open space and/or farmland protection matching grants must be postmarked by July 31<sup>st</sup>.**

Applications should include complete copies of all applications submitted for primary funding as well as any additional information requested by Dutchess County. (See Application components.) Please submit one (1) original and ten (10) additional copies of applications for matching funds to:

**DCPMG Open Space and Farmland Protection Program  
Dutchess County Planning Board  
27 High Street  
Poughkeepsie New York 12601**

### **Attachment A: Program Guidelines**

- The Dutchess County Partnership for Manageable Growth for Open Space and Farmland Protection will be dedicated to either fee simple purchase or purchase of the development rights or conservation easements of priority resources in partnership with project sponsors and funding organizations.
- Applications will be reviewed and recommended by the Dutchess County Planning Board. The amount of grant funds recommended shall be determined at the discretion of the Dutchess County Planning Board. The Board's recommendations will be forwarded to the County Executive and County Legislature when an appropriate agreement has been negotiated.
- To insure equitable and cost efficient distribution of County funds, a series of criteria based specifically on Dutchess County conditions and priorities will be applied to each proposal. Selection will be based on the property's

conformance to established criteria (see Attachment B: Criteria for Open Space and Farmland Protection).

- The acquisition of any easements, development rights or other interests in land shall require the approval of the Dutchess County Executive and the Dutchess County Legislature. Dutchess County will serve as Lead Agency under the New York State Environmental Quality Review Act.
- The program for farmland protection will provide a matching portion of fee simple, development rights, or conservation easement purchase price up to fifty percent (50%) of the total project cost. Applicants will have secured the remainder from public or private sources that must be identified at the time of application for County funds.
- The program for open space protection will provide a matching portion of fee simple, development rights, or conservation easement purchase price up to fifty percent (50%) of the total project cost. All municipal open space acquisitions will require municipal funding support. Municipal open space projects may be funded up to one third of the total project cost. Municipal open space grants may be increased to fifty (50%) of the project cost provided that there is at least twenty-five percent (25%) of municipal participation.
- Municipal applications for open space funds shall require municipal participation in the Greenway Compact by the local government.
- Municipal sponsors may include Cities, Towns and Villages. Municipalities may partner with other entities, but will be considered the lead applicant.
- County agents such as the Agriculture and Farmland Protection Board, the Soil and Water Conservation District, and the Environmental Management Council and not for profit organizations including land conservancies may sponsor farmland applications in cooperation with landowners.
- Municipal endorsement of farm and open space acquisition proposals is desirable but will not be required.
- Dutchess County's match shall be based on land interest only and shall be based on current appraised value.
- There shall be two application rounds per year. All applications will be reviewed upon receipt by the Planning Board, but no county funds will be committed until funding partners have been identified and additional funding sufficient to complete the proposed acquisition has been confirmed.

- An implementation team will be established for each acquisition recommended by the Dutchess County Planning Board. Team members will include key stakeholder organizations, the County Attorney's Office, the Department of Planning and Development, and other interested parties.

<b>Attachment B</b>					
<b>Criteria for Dutchess County Open Space and Farmland Protection**</b>					
<b>Items to be ranked on a scale from 'A' (highest value) to 'E'(lowest value)</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Local and Regional Support</b>					
Priorities established in municipal Comprehensive Plans					
Inclusion in NYS Open Space Plan					
Inclusion in municipal, county, or regional trail system					
Municipal designation scenic road and/or vistas					
Additional funding source(s) confirmed					
<b>Resource Protection</b>					
Scenic viewshed					
Key gateway area					
Watershed, aquifer protection					
Wildlife habitat					
Historic resource					
Recreational value/public access					
<b>Agricultural Significance</b>					
Soil quality					
Economic viability of farm operation					
Location in or near critical mass of productive farmland					
Potential continuity of farm operation					
<b>Development Pressure</b>					
Importance to rural character of municipality					
Accelerated residential growth					
Commercial expansion on key roadways					
Imminent threat					

### **III. Municipal Planning Grants**

To encourage implementation of smart growth policies based on County Planning documents including the Greenway Compact, Directions, and the Agricultural and Farmland Protection Plan, the Dutchess County Planning Board will consider municipal planning grants to support local initiatives noted below:

#### **Open Space and Farmland Protection Planning**

Greenway Compact municipalities may apply to the Dutchess County Planning Board for fifty percent (50%) matching grants, not to exceed a County share of \$10,000, for adoption and implementation of open space and farmland protection strategies consistent with the Greenway Compact. At least fifteen percent (15%) of funding must be provided by the local municipality, in addition to any in-kind services provided. Initiatives may include but are not limited to municipal open space and farmland protection plans, resource protection overlay districts, limited development plans, transfer of development rights, and zoning, master plan, and subdivision regulation revisions that support the protection of resources and the agriculture industry.

Farm Development Plans guide potential development away from active farmland and incorporate residential cluster or conservation design standards for any future subdivision. Dutchess County will provide up to \$3,000 to fund farm development plans and financial analyses, provided that those plans are approved by municipal planning boards and recorded on deeds and official maps.

#### **Development of Generic Environmental Impact Statements**

Greenway Compact municipalities may apply to the Dutchess County Planning Board for fifty percent (50%) matching grants, not to exceed a County share of \$10,000, for the development of Generic Environmental Impact Statements to facilitate the approval process for cluster development, resource protection overlay districts, reuse of existing community centers, and/or affordable housing. At least fifteen percent (15%) of funding must be provided by the local municipality in addition to any in-kind services provided.

Proposals must be consistent with Greenway Connections. In the event that municipalities receive reimbursement from developers for the GEIS, the County shall be entitled to receive reimbursement for its share of the pro-rated cost.

### **IV. Water and Wastewater Facility Planning and Development**

In October of 1992, the Dutchess County Water and Wastewater Authority released a report titled the *Dutchess County Water and Wastewater Plan* identifying future water and sewer needs in Dutchess County. The report

outlined the need to fund pre-construction and feasibility studies and to assist communities with loans and grants.

In addition to projects initiated by the Water and Wastewater Authority and to further implement the objectives outlined in the Water and Wastewater Plan, Dutchess County will create a Water and Wastewater Facility Planning and Development Program for the county and local communities. It will be administered by the Dutchess County Water and Wastewater Authority in accordance with Program Guidelines (Attachment C) and Program Funding Criteria (Attachment D). It will also be integrated with the County's Capital Budget planning process.

### **Attachment C: Program Guidelines**

- The Water and Wastewater Facility Planning and Development program will provide funding for pre-construction/feasibility studies as well as funding for community systems in the form of loans and grants.
- Projects receiving construction grants from Dutchess County shall be managed and maintained by Dutchess County through the Dutchess County Water and Wastewater Authority.
- Applications for funding for pre-construction/feasibility studies shall be reviewed for consideration and recommendation by the Dutchess County Water and Wastewater Authority.
- The County will provide up to fifty percent of the cost of pre-construction/feasibility studies and up to twenty-five percent of the cost of construction projects, provided that maximum community, district, and other available financial resources have been fully explored and committed. The County shall receive pro-rated reimbursement for any funded study receiving reimbursement from another funding source. Any funded community and/or district shall include study costs in construction requests where applicable and appropriate.
- To ensure equitable and cost effective distribution of county funds, applications for loans and grants from municipalities shall be reviewed by the Authority. The authority shall evaluate proposals according to the criteria listed in Attachment D. The Authority will forward its recommendations to the County Executive and the Legislature.
- Loans and grants from the Water and Wastewater Facility Planning and Development program shall be used to buy down the capital costs of municipal water and wastewater systems or to purchase future capacity in said system in order to provide service at affordable rates as determined by the State Comptroller. No monies will be provided for system maintenance, operational, and repair requirements.

- Loans and grants shall require the approval of the Dutchess County Executive and the Dutchess County Legislature. Dutchess County shall serve as Lead Agency for coordinated review under the New York State Environmental Quality Review Act (SEQRA) and shall approve said loans and grants.
- In order to be eligible to receive loans and/or grants under the Water and Wastewater Facility Planning and Development Program, municipalities must participate as Greenway Compact communities.

<b>Attachment D</b>					
<b>Criteria for Dutchess County Water and Wastewater Facility Planning &amp; Development*</b>					
<b>*Items to be ranked on a scale from 'A' (highest value) to 'E' (lowest value)</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Local and Regional Support</b>					
Consistent with County service area plan. (Projects can be phased.)					
Consistent with local land use plan.					
Support from local officials; formation of district or assessment zone.					
Intermunicipal cooperation.					
<b>Feasibility</b>					
Readiness to proceed.					
Favorable cost-effectiveness ratios.					
Complementary water supply protection/land use regulations and water conservation plans approaches are provided.					
Project meets future expansion needs (e.g., pipe-sized for expansion)					
<b>Resource Protection</b>					
Promotes energy efficiency.					
Addresses critical environmental/health problems.					
Promotes open space/agricultural preservation					
Promotes natural resource protection					
<b>Municipal Benefits</b>					
Strengthens community center.					
Stimulates economic activity.					
Assists with affordable housing.					

## **Funding**

The amount of funding necessary to implement the objectives of the Dutchess County Partnership for Manageable Growth will be reviewed on an annual basis in relationship to the extent viable potential projects have been identified and established. This review will be incorporated into the annual planning process for both the Capital Budget and the Operating Budget. The program may be funded through the operating budget appropriations and/or through Bond allocations.

## **V. Application Components**

### **A. Cover Sheet**

- Title of Proposed Project
- Category: Open Space or Farmland
- Location of proposed project
- Parcel number(s) and acreage
- Name of land owner
- Sponsoring organization and/or municipality if applicable and contact person
- Address, telephone number, FAX number of applicant(s)
- Total estimated cost of proposed project
- Amount and source(s) of primary funding
- Amount of matching grant requested
- Signature of land owner(s)

### **B. Project Summary: a brief description of the proposal including:**

- Description of property and current use
- Property's local and regional importance as an open space and/or agricultural resource
- Development pressures or imminent threats to resource
- Steps taken to secure requisite private and/or public funding
- Compliance with municipal planning documents including comprehensive plans, open space or resource protection plans, Local Waterfront Revitalization Plans (LWRPs), etc.
- Compliance with County plans including **Directions**, the **Agriculture and Farmland Protection Plan**, and the **Greenway Compact Program**

### **C. Complete copy of application(s) submitted for primary funding**

**D. Maps and visual documentation listed below. If included in application submitted for primary funding, indicate location by page number.**

- Location map
- Tax parcel map
- Topographic map
- Soils map if farmland
- Photographs including existing structures
- Aerial photographs if available

**E. Budget detailing the total estimated cost of completed project including the following items. Please indicate any additional expenses required by primary funding source:**

- Land acquisition: estimated cost per acre and total Note: **Appraisals are not required at this time but will be required if matching funds are awarded.** If available, please include summary and identify certified appraiser.
- Survey
- Baseline Mapping and Documentation
- Title Search and Insurance
- Administrative costs including negotiation of contracts
- Stewardship/Monitoring Program costs

**F. Documentation of funding awards including amounts, program requirements, and anticipated timetable for receipt of funds.**

If applications for primary funding are pending, indicate source(s), amount(s) requested, and projected date of award announcement(s). Include copies of all successful and pending applications for primary funding with this application as well as documentation of confirmed awards.

**G. Environmental Assessment Form (EAF), Part One**

The Dutchess County Legislature will act as Lead Agency in a coordinated environmental review of each recommended proposal pursuant to SEQRA. An EAF - Part 1 form, to be completed by the applicant, is included in this application packet.

**H. Stewardship/Monitoring Plan**

Describe plan for monitoring land to insure compliance with terms of conservation easement and plan for the maintenance of acquired public property. Identify the name of the responsible organization or

municipality as well as projected costs and sources of stewardship fund for continuing oversight. (See Maintenance and Monitoring.)

Note: NYS funding awards may be used for monitoring only if costs have been included in the budget submitted with application for primary funding.

## **I. Letters of Support**

## **VI. Awards**

Applicants recommended by the Planning Board to receive matching funds will be assisted by an implementation team that will include representatives from the Dutchess County Attorney's Office, the Department of Planning and Development, and the sponsoring organization or municipality, and others as deemed appropriate.

The Dutchess County Legislature will act as Lead Agency in a coordinated environmental review of successful proposals as required by the New York State Environmental Quality Review Act (SEQRA). The County will be responsible for completing Part 2 (and Part 3 if necessary) of the Environmental Assessment Form for each recommended application.

A project-specific contract defining all project terms and conditions and responsibilities of the applicant and other involved parties will be developed by the County for all proposals awarded matching funds. The final contract agreement will specify information which must be supplied by the grantee in order to access County funding awards, including but not limited to:

- Detailed budget report
- Appraisal by a New York State Certified General Real Estate Appraiser
- Title policy insuring, at a minimum, the County's interest in the property or property rights being acquired
- Approved conservation easement when applicable
- Approved monitoring or stewardship plan designating responsible organization(s)

Upon agreement by the applicant and the County to the provisions of the contract, it will be submitted for approval to the Dutchess County Legislature and to primary funding organization(s) as required.

## **VII. Maintenance and Monitoring of Acquisitions**

The particular terms of each matching grant award will depend on several factors, including the requirements imposed by the primary funding organization. Where appropriate, the County's interest in the grant property may include a third

party enforcement right to insure that the terms of its contract with the applicant will continue to be met and may also include the right to share in the pro rata proceeds of any easement that is extinguished.

Dutchess County does not intend to assume responsibility for either the maintenance of publicly held properties or the monitoring of properties placed under conservation easement. It will be the responsibility of applicants to submit a maintenance and/or monitoring proposal and to **include anticipated costs in the total cost of the proposed acquisition**. In the case of **collaborative efforts** i.e. between land trusts and municipalities, specific responsibilities for oversight will be negotiated during the award implementation process.

In the case of **conservation easements on open space and/or agricultural land**, the County or a municipality may enter into a contract with a land trust to monitor compliance with the terms of the easement. The land trust's annual expenses would be paid from a stewardship endowment established at the time of the closing. Costs will vary according to the size and complexity of properties involved. Interest from the endowment would cover the following activities:

- Annual monitoring--fly-over, site visit, etc.
- Annual compliance report to County
- Discussion of any violations with land owner
- Notifying County of failure to resolve problems cited
- Monitoring change of ownership, meeting with new owner

For example, the budget submitted to the NYS Department of Agriculture and Markets for the Mead Orchard Grant included \$4,000 for monitoring based on the size of the property. Placed into an endowment account, these funds would provide enough income to cover the monitoring land trust's annual costs.

In the case of **fee simple acquisition of property by a land trust**, the land trust would assume responsibility for maintenance, monitoring, and liability. In the case of **acquisition by a municipality**, maintenance, monitoring, and liability would be the responsibility of the municipality.

Again, the details of each acquisition will differ. Agreements between the County and applicants will be negotiated individually following award announcements.

# Land or PDR Acquisition Categories

## DEC Land Acquisition Categories

### Unique Character

Freshwater Wetlands

Tidal Wetlands

Pine Barrens

Exceptional Forest Character

Wildlife Habitat

Unique Area

Exceptional Scenic Beauty

Forest Preserve

Coastal Waterfront Protection

Inland Waterfront Protection

### Open Space

State Land Access

Stream Rights

Inland Waterway Access

Tidal Waterway Access

Open and Natural Land

Trailways

Greenways/Parklands

Aquifer Recharge Area

Watershed Protection

Working Landscape

### OPRHP Land Acquisition Categories

Open Space/Natural Areas

Trailways

Metro Shoreline

Metro Park

Historic Preservation

Waterways

### NYS Department of Agriculture and Markets/Environmental Protection Fund Categories

Prime or Important Agricultural Soils

Economically Viable Farm Operation

Proximity to Critical Mass

Historic Resource

Parkland

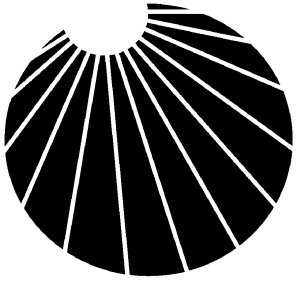
**Additional Categories Specific to Dutchess County**

Gateway Conservation Areas

Prime Farmland Areas

Properties Identified in Local Comprehensive or Resource Protection Plans i.e.

- Open Space
- Productive Farmland
- Local and Greenway Trails
- Aquifers/Watersheds
- Scenic Roads/Viewshed



## FARMLAND INFORMATION CENTER

# FACT SHEET

## AGRICULTURAL CONSERVATION

## EASEMENTS



FARMLAND INFORMATION CENTER  
One Short Street Suite 2  
Northampton, MA 01060  
(800) 370-4879  
[www.farmlandinfo.org](http://www.farmlandinfo.org)

NATIONAL OFFICE  
1200 18th Street, NW, Suite 800  
Washington, DC 20036  
(202) 331-7300  
[www.farmland.org](http://www.farmland.org)

### DESCRIPTION

A conservation easement is a deed restriction landowners voluntarily place on their property to protect resources such as productive agricultural land, ground and surface water, wildlife habitat, historic sites or scenic views. They are used by landowners (“grantors”) to authorize a qualified conservation organization or public agency (“grantee”) to monitor and enforce the restrictions set forth in the agreement. Conservation easements are flexible documents tailored to each property and the needs of individual landowners. They may cover an entire parcel or portions of a property. The landowner usually works with the prospective grantee to decide which activities should be limited to protect specific resources. Agricultural conservation easements are designed to keep land available for farming.

### RESTRICTIONS

In general, agricultural conservation easements limit subdivision, non-farm development and other uses that are inconsistent with commercial agriculture. Some easements allow lots to be reserved for family members. Typically, these lots must be small—one to two acres is common—and located on the least productive soils. Agricultural conservation easements often permit commercial development related to the farm operation and the construction of farm buildings. Most do not restrict farming practices, although some grantees ask landowners to implement soil and water conservation plans. Landowners who receive federal funds for farm easements must implement conservation plans developed by the USDA Natural Resources Conservation Service.

### TERM OF THE RESTRICTIONS

Most agricultural conservation easements are permanent. Term easements impose restrictions for a specified number of years. Regardless of the duration of the easement, the agreement is legally binding on future landowners for the agreed-upon time period. An agricultural conservation easement can be modified or terminated by a court of law if the land or the neighborhood changes and the conservation objectives of the easement become impossible to achieve. Easements may also be terminated by eminent domain proceedings.

### RETAINED RIGHTS

After granting an agricultural conservation easement, landowners retain title to their property and can still restrict public access, farm, use the land as collateral for a loan or sell their property. Land subject to an easement remains on the local tax rolls. Landowners continue to be eligible for state and federal farm programs.

### VALUATION

Landowners can sell or donate an agricultural conservation easement to a qualified conservation organization or government body. In either case, it is important to determine the value of the easement to establish a price or to calculate tax benefits that may be available under federal and state law. The value of an agricultural conservation easement is generally the fair market value of the property minus its restricted value, as determined by a qualified appraiser. In general, more restrictive agreements and intense development pressure result in higher easement values.

### TAX BENEFITS

Grantors can receive several tax advantages. Donated agricultural conservation easements that meet Internal Revenue Code section 170 (h) criteria are treated as charitable gifts. Term easements do not qualify. Donors can deduct an amount equal to up to 30 percent of their adjusted gross income in the year of the gift. Corporations are limited to a 10-percent deduction. Easement donations in excess of the annual limit can be applied toward federal income taxes for the next five years, subject to the same stipulations. Most state income tax laws provide similar benefits.

Some state tax codes direct local tax assessors to consider the restrictions imposed by a conservation easement. This provision generally lowers property taxes on restricted parcels if the land is not already enrolled in a differential assessment program. Differential assessment programs direct local tax assessors to assess land at its value for agriculture or forestry, rather than its “highest and best” use, which is generally for residential, commercial or industrial development.

The donation or sale of an agricultural conservation easement usually reduces the value of land for estate tax purposes. To the extent that the restricted value is lower than fair market value, the estate will be subject to a lower tax. In some cases,

# AGRICULTURAL CONSERVATION EASEMENTS

For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

[www.farmlandinfo.org](http://www.farmlandinfo.org)

(800) 370-4879

an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability. However, as exemption levels increase, there may be less incentive from an estate tax perspective.

Recent changes to federal estate tax law, enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, expanded an estate tax incentive for landowners to grant conservation easements. The new law removes geographic limitations for donated conservation easements eligible for estate tax benefits under Section 2031(c) of the tax code. Executors can elect to exclude 40 percent of the value of land subject to a donated qualified conservation easement from the taxable estate. This exclusion is limited to \$500,000. The full benefit offered by the new law is available for easements that reduce the fair market value of a property by at least 30 percent. Smaller deductions are available for easements that reduce property value by less than 30 percent.

## HISTORY

Every state has a law pertaining to conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act served as a model for state legislation allowing qualified public agencies and private conservation organizations to accept, acquire and hold less-than-fee simple interests in land for the purposes of conservation and preservation. Since the Uniform Conservation Easement Act was approved, 21 states have adopted conservation easement enabling laws based on this model and 23 states have drafted and enacted their own enabling laws.\* Accepting donated conservation easements is one of the major activities of land trusts. Land trusts exist in all 50 states. They monitor and enforce the terms of easements. Some also purchase conservation easements.

## BENEFITS

- Conservation easements permanently protect important farmland while keeping the land in private ownership and on local tax rolls.
- Conservation easements are flexible, and can be tailored to meet the needs of individual farmers and ranchers and unique properties.
- Conservation easements can provide farmers with several tax benefits including income, estate and property tax reductions.

- By reducing nonfarm development land values, conservation easements help farmers and ranchers transfer their operations to the next generation.

## DRAWBACKS

- While conservation easements can prevent development of agricultural land, they do not ensure that the land will continue to be farmed.
- Agricultural conservation easements must be carefully drafted to ensure that the terms allow farmers and ranchers to adapt and expand their operations and farming practices to adjust to changing economic conditions.
- Donating an easement is not always a financially viable option for landowners.
- Monitoring and enforcing conservation easements requires a serious commitment on the part of the easement holder.
- Subsequent landowners are not always interested in upholding easement terms.
- Conservation easements do not offer protection from eminent domain. If land under easement is taken through eminent domain, both the landowner and the easement holder must be compensated.

\* Sources: Uniform Law Commissioners and the Land Trust Alliance

## DESCRIPTION

New York State's Farmland Protection Program 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 viability of agriculture and protect the industry's land base.

Under this program, funds are available to develop county agricultural and farmland protection plans and implement farmland protection projects. Since the enactment of the Agricultural Protection Act, more than 49 counties have received planning grants to develop agricultural and farmland protection plans. 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 (PDR) to farmland.

Purchase of development rights (PDR) 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 build on the property consistent with local regulations. Each of these rights can be separated from the rest of the bundle of rights and sold or leased. When one right is restricted or removed from the land, all other rights and obligations of property ownership remain.

When farmland owners sell their development rights, they retain all other rights of ownership and can continue to farm their land as they did before. The land remains private and on the tax rolls; its taxable value should be based on the remaining rights.

The purchase of development rights to a piece of farmland places a deed restriction – known as a conservation easement – on the property, permanently protecting the land for agriculture. Conservation easements may be held only by a public body (Federal, State, County or Municipal government) or a not-for-profit conservation organization, often called a land trust. The holder is obligated to uphold and enforce the terms of the easement.

## VALUATION

The value of a conservation easement equals the fair market value of the property minus its restricted value, as determined by a qualified appraiser. For example, if the full market value of a parcel of farmland is \$300,000 when developable but worth only \$100,000 if restricted to agricultural use, then the farmer is eligible to be paid the difference of \$200,000 for selling the development rights.

## AGRICULTURAL CONSERVATION EASEMENTS

Because agriculture is evolving, it needs a flexible conservation easement that is tailored to its ever-changing conditions. Agricultural conservation easements have been developed to meet these needs. Generally, they have the following features:

- Limit future uses of the land that are inconsistent with or damage the agricultural value or productivity of the land
- 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
- Retain private ownership of the farm subject to the easement restrictions

# FACT SHEET

## NEW YORK STATE'S

## FARMLAND

## PROTECTION

## PROGRAM:

## PURCHASE OF

## DEVELOPMENT

## RIGHTS

SEPTEMBER 2004

  
American Farmland Trust  
NORTHEAST REGIONAL OFFICE

6 Franklin Square, Suite E  
Saratoga Springs, NY 12866

Tel: (518) 581-0078

Fax: (518) 581-0079

Web: [www.farmland.org](http://www.farmland.org)

E-mail: [neaft@farmland.org](mailto:neaft@farmland.org)

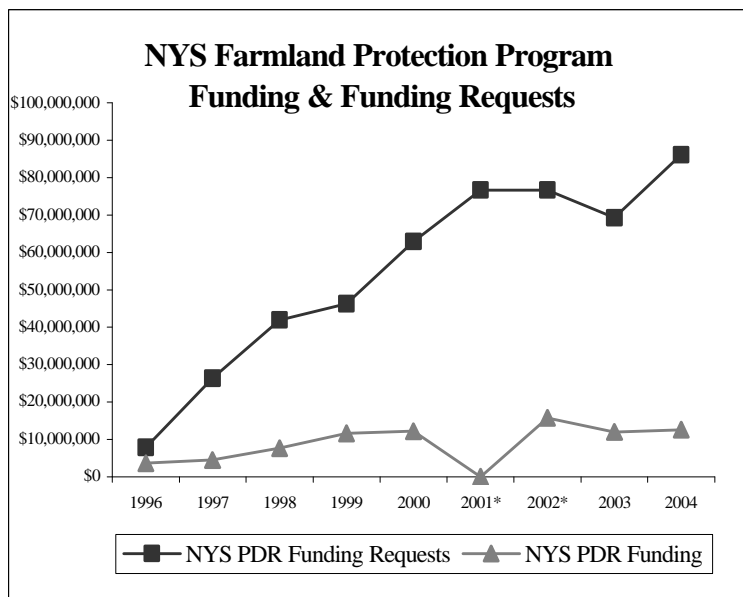
**HISTORY**

Suffolk County first pioneered PDR in the mid-1970s. Maryland, Massachusetts and Connecticut followed Suffolk County's lead by establishing programs within one to two years later. Since then 24 state and 44 local governments have established state or local PDR programs focused on protecting farmland.

New York's Farmland Protection Program was first funded in 1996. Funds for the Purchase of Development Rights program have been allocated from the state's Environmental Protection Fund (EPF) and the open space account of the Clean Water/ Clean Air Bond Act. However, as funds from the Clean Water,/Clean Air Bond Act have been committed, the state's EPF budget is currently the only funding source for the PDR program.

Under existing law, approximately \$125 million of state revenues are automatically deposited into the EPF each year. 90% of these revenues (\$112 million per year) are derived from a portion of the state's Real Estate Transfer Tax. Other revenue streams dedicated to the EPF include sources such as income from the sale of surplus state lands, the leasing of underwater state-owned lands, and New York's "open space" license plates. EPF funds are used for a variety of Purposes including farmland and open space protection, parks projects and solid waste management among others.

Since the inception of New York State's Farmland Protection Program, the state has awarded nearly \$68 million to counties and towns for protecting 28,000 acres of farmland on over 136 farms in 15 counties. In each grant round, requests have far exceeded the available funding. For example, in 2004 requests totaling nearly \$86 million competed for \$12.6 million in funding. Based on widespread interest in this program around the state, funding requests are expected to continue to increase.



\*There was no funding for New York State's Farmland Protection Program in 2001, causing 2001 grant requests to be carried over to 2002. In 2002, \$8 million was allocated for the Farmland Protection Program's annual budget an additional \$8 million to offset the lack of 2001 funding.

**WHO CAN APPLY FOR PDR GRANTS**

- A county Agricultural and Farmland Protection Board (AFPB) that has an approved county agricultural and farmland protection plan.
- A municipality that has adopted a local farmland protection plan (a comprehensive plan or other land-use ordinances that consider agricultural uses and needs; the project must be endorsed by the county AFPB).
- Local land trusts and other non-profit 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 in support of a project for which funding is requested.

**FEDERAL FARM AND RANCH LAND PROTECTION PROGRAM**

The 1996 Farm Bill created a federal Farm and Ranch Land Protection Program (FRPP) to provide funding to purchase development rights on productive farmland. FRPP provides up to 50 percent of a project's development rights value. The 2002 farm bill increased FRPP funding greatly, with approximately \$100 million allocated per year from 2003 to 2007. A number of successful applicants to the NYS PDR program have used FRPP funds to meet the 25% local match Requirement.

For more information about FRPP, contact the USDA Natural Resources Conservation Service :

[www.nrcs.usda.gov/programs/frpp/](http://www.nrcs.usda.gov/programs/frpp/)

**FUNDING ARRANGEMENT**

Typically, the value of a conservation easement equals the property's fair market value minus its restricted value (the value once it can no longer be developed). New York's Farmland Protection Program pays farmers up to 75 percent of the cost to complete the purchase of development rights transaction. The remaining 25 percent must come from other sources—possibly a private source, a municipality, the federal Farm and Ranch Lands Protection Program, a development rights donation by a neighboring landowner or from a "bargain sale" by the farmer (who may use the donation value as a tax deduction).

**PDR APPLICATION PROCESS**

The NYS Department of Agriculture & Markets annually issues a request for proposals (RFP) to seek applications from eligible municipalities or county AFPBs. Local governments considering responding to the RFP often solicit interest from farm landowners within their jurisdiction prior to the release of the RFP. Informational meetings may be held to discuss the program, answer questions and request letters of interest or pre-applications. If letters or pre-applications are requested, the local review body (AFPB or town government) reviews submitted materials and makes decisions about which projects to submit to the Department of Agriculture and Markets. Mapping, grant-writing or other assistance is often provided to assist selected landowners in developing competitive applications.

Department of Agriculture & Markets staff perform on-site reviews of each of the eligible parcels submitted. Farms are then scored and ranked using state criteria. Priority is given to projects that preserve viable agricultural land, are in areas facing significant development pressure and serve as buffers for a significant natural public resource. In addition, projects are evaluated by:

- 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

Once a project is selected, the Department of Agriculture & Markets signs a contract with the successful government applicant. Then the local government and project partners work with the landowner to secure local matching funds and complete other project tasks.

**STEPS IN PARTICIPATING IN THE NYS FARMLAND PROTECTION PROGRAM**

1. Farmer informs AFPB and/or municipality of interest
2. Municipality /AFPB submits an application to New York State Department of Agriculture & Markets (NYSDAM)
3. NYSDAM scores, ranks, and selects farms
4. NYSDAM sends contracts to AFPB/ municipalities
5. Land planning and conservation easement discussions completed with landowner
6. Appraisal and title work completed
7. Documents are finalized and sent to NYSDAM for review
8. NYSDAM approves documents and requests that the comptroller issue payment to the municipality
9. Municipality pays landowner and landowner signs easement at closing

**Timeframe** – The process of selling an easement usually takes between 14 to 24 months.

**EXAMPLES OF SUCCESSFUL FARMLAND PROTECTION PROGRAM APPLICATIONS**

*For more information about New York's Farmland Protection Program, or to request a copy of the most recent RFP, contact:*

**NYS Agriculture & Markets, Agricultural Protection Unit**

10 B Airline Drive  
Albany, New York 12235  
Tel: (518) 457-2713  
[www.agmkt.state.ny.us/](http://www.agmkt.state.ny.us/)

*For more information about farmland protection in New York, contact:*

**American Farmland Trust Northeast Office**

6 Franklin Square, Suite E  
Saratoga Springs, NY 12866  
Tel: (518) 581-0078  
Fax: (518) 581-0079  
[www.farmland.org](http://www.farmland.org)  
[neaft@farmland.org](mailto:neaft@farmland.org)

*For more information about farmland protection nationwide, go to the:*

**Farmland Information Center**  
[www.farmlandinfo.org](http://www.farmlandinfo.org)

*For more information about a land trust in your area, contact:*

**The Land Trust Alliance**  
110 Spring Street  
Saratoga Springs, NY 12866  
Tel: (518) 587-0774  
[northeast@lta.org](mailto:northeast@lta.org)  
[www.lta.org](http://www.lta.org)

- *Town of Macedon* – Excellent working partnerships and community support have led to several successful applications submitted by the town of Macedon in Wayne County. A multi-faceted partnership between the town, Genesee Land Trust and county has resulted in grant awards from both state and federal programs that total nearly \$1.5 million to protect over 2,000 acres of farmland. A survey of residents, which demonstrated community support for farms and rural character, was instrumental in the success of Macedon's farmland protection efforts.
- *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. Instead, these municipalities have hired the Peconic Land Trust to help manage aspects of their farmland protection programs – from project selection and design to negotiation to stewardship obligations after the deal is done.
- *Orange County* – When Warwick farmer Tunis Sweetman 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, Sweetman 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%) as full payment, in effect making a donation of the remaining value. After review, the Department of Agriculture & Markets decided to accept the bargain sale as fulfilling the local match requirement. As a result, at least four farms in Orange County were awarded funding in the first round using the bargain sale as the local match.
- *Town of Ancram* – Following Tunis Sweetman's example, the Columbia County Land Conservancy asked the Department of Agriculture & Markets if an owner of contiguous farmland could supply the local match by donating a conservation easement on her property. They answered in the affirmative, and one Ancram landowner was financially able and willing to donate a conservation easement on her land in order to provide the local match requirement for the purchase of development rights on neighboring farms.
- *Washington County*– Two adjacent farm properties on 654 acres. These farms are operated by one dairy, which milks an average of 250 cows and produces over 4 million pounds of milk annually. This property is a critical buffer to the Battenkill, which is included in the New York State Open Space Plan and is part of a Nationwide Rivers Inventory designed by the US Department of the Interior and the National Park Service.



## APPENDIX F.

### Community Preservation Act Law for the Town of North East.

#### NYS Consolidate Law TWN (Town) Article 4 (North East)

##### § 64-j. Town of Northeast preservation funds.

1. As used in this section, the following words and terms shall have the following meanings:
  - (a) "Town" means the town of Northeast.
  - (b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.
  - (c) "Board" means the advisory board required pursuant to subdivision six of this section.
  - (d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.
  - (e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bb of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.
2. The town board of the town of Northeast is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-three of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any Other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.
3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.
4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the

fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of lands of exceptional scenic value;
- (e) preservation of freshwater marshes or other wetlands;
- (f) preservation of aquifer recharge areas;
- (g) preservation of undeveloped beach-lands or shoreline;
- (h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (i) preservation of unique or threatened ecological areas;
- (j) preservation of rivers and river areas in a natural, free-flowing condition;
- (k) preservation of forested land;
- (l) preservation of public access to lands for public use including stream rights and waterways;
- (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and
- (n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to

each parcel selected for inclusion in such plan. **Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority.** Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-bb of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the

purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

## **ARTICLE 31-A-3 TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF NORTHEAST**

### **\* § 1439-aa. Definitions.**

When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and

(b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Northeast. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.
6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.
7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.
8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.
9. "Fund" means a community preservation fund created pursuant to section sixty-four-j of the town law.
10. "Recording officer" means the county clerk of the county of Dutchess.
11. "Town" means the town of Northeast, county of Dutchess.
12. "Treasurer" means the treasurer of the county of Dutchess.
13. "Town supervisor" means the town supervisor of the town of Northeast.
14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bb of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

\* NB Repealed December 31, 2028

**\* § 1439-bb. Imposition of tax.**

Notwithstanding any other provisions of law to the contrary, the town of Northeast, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of two percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred thirty-nine-ee of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-j of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

\*NB Repealed December 31, 2028

**\* § 1439-cc. Payment of tax.**

1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical

to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

\*NB Repealed December 31, 2028

**\* § 1439-dd. Liability for tax.**

1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

\*NB Repealed December 31, 2028

**\* § 1439-ee. Exemptions.**

1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement,

(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed,

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption from the tax which is equal to the median sales price of residential real property within the applicable county, as determined by the office of real property services pursuant to section four hundred twenty-five of the real property tax law, shall be allowed on the consideration of the conveyance of improved or unimproved real property or an interest therein.

\* NB Repealed December 31, 2028

**\* § 1439-ff. Credit.**

A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of

the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

\* NB Repealed December 31, 2028

**\* § 1439-gg. Cooperative housing corporation transfers.**

1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred thirty-nine-aa of this article or anything to the contrary contained in subdivision five of section fourteen hundred thirty-nine-aa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding

the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

\* NB Repealed December 31, 2028

**\* § 1439-hh. Designation of agents.**

The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred thirty-nine-cc of this article.

\* NB Repealed December 31, 2028

**\* § 1439-ii. Liability of recording officer.**

A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

\* NB Repealed December 31, 2028

**\* § 1439-jj. Refunds.**

Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such requirements as he or she may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

\* NB Repealed December 31, 2028

**\* § 1439-kk. Deposit and disposition of revenue.**

1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-bb of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred thirty-nine-bb of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-bb of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-j of the town law.

\* NB Repealed December 31, 2028

**\* § 1439-II. Judicial review.**

1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-nine-cc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefore is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of insurance as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a

proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

\* NB Repealed December 31, 2028

**\* § 1439-mm. Apportionment.**

A local law adopted by the town of Northeast, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

\* NB Repealed December 31, 2028

**\* § 1439-nn. Miscellaneous.**

A local law adopted by the town of Northeast, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

\* NB Repealed December 31, 2028

**\* § 1439-oo. Returns to be secret.**

1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

\* NB Repealed December 31, 2028

## **New York State Town Law Section 261-b**

S 261-b. Incentive zoning; definitions, purpose, conditions, procedures.

1. Definitions. As used in this section:

(a) "Incentives or bonuses" shall mean adjustments to the permissible population density, area, height, open space, use, or other provisions of a zoning ordinance or local law for a specific purpose authorized by the town board.

(b) "Community benefits or amenities" shall mean open space, housing for persons of low or moderate income, parks, elder care, day care or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the town board.

(c) "Incentive zoning" shall mean the system by which specific incentives or bonuses are granted, pursuant to this section, on condition that specific physical, social, or cultural benefits or amenities would inure to the community.

2. Authority and purposes. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for the granting of incentives, or bonuses pursuant to other enabling law, a town board is hereby empowered, as part of a zoning ordinance or local law adopted pursuant to this article, or by local law or ordinance adopted pursuant to other enabling law, to provide for a system of zoning incentives, or bonuses, as the town board deems necessary and appropriate consistent with the purposes and conditions set forth in this section. The purpose of the system of incentive, or bonus, zoning shall be to advance the town's specific physical, cultural and social policies in accordance with the town's comprehensive plan and in coordination with other community planning mechanisms or land use techniques. The system of zoning incentives or bonuses shall be in accordance with a comprehensive plan within the meaning of section two hundred sixty-three of this article.

3. Implementation. A system of zoning incentives or bonuses may be provided subject to the conditions hereinafter set forth.

(a) The town board shall provide for the system of zoning incentives or bonuses pursuant to this section as part of the zoning ordinance or local law. In providing for such system the board shall follow the procedure for adopting and amending its zoning ordinance or local law, including all provisions for notice and public hearing applicable for changes or amendments to a zoning ordinance or local law.

(b) Each zoning district in which incentives or bonuses may be awarded under this section shall be designated in the town zoning ordinance or local law and shall be incorporated in any map adopted in connection with such zoning ordinance or local law or amendment thereto.

(c) Each zoning district in which incentives or bonuses may be authorized shall have been found by the town board, after evaluating the effects of any potential incentives which are possible by virtue of the provision of community amenities, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection. Further, the town board shall, in designating such districts, determine that there will be no significant environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted.

(d) A generic environmental impact statement pursuant to the provisions of 6 NYCRR 617.15 shall be prepared by the town board for any zoning district in which the granting of incentives or bonuses have a significant effect on the environment before any such district is designated, and such statement shall be supplemented from time to time by the town board if there are material changes in circumstances that may result in significant adverse impacts. Any zoning ordinance or local law enacted pursuant to this section shall provide that any applicant for incentives or bonuses shall pay a proportionate share of the cost of preparing such environmental impact statement, and that such charge shall be added to any site-specific charge made pursuant to the provisions of section 8-0109 of the environmental conservation law.

(e) The town board shall set forth the procedure by which incentives may be provided to specific lands. Such procedure shall describe:

- (i) the incentives, or bonuses, which may be granted by the town to the applicant;
- (ii) the community benefits or amenities which may be accepted from the applicant by the town;
- (iii) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the town;
- (iv) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and
- (v) provision for a public hearing, if such public hearing is required as part of a zoning ordinance or local law adopted pursuant to this section and give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

(f) All other requirements of article eight of the environmental conservation law shall be complied with by project sponsors for actions in areas for which a generic environmental impact statement has been prepared including preparation of an environmental assessment form and a supplemental environmental impact statement, if necessary.

(g) Prior to the adoption or amendment of the zoning ordinance or local law pursuant to this section to establish a system of zoning incentives or bonuses the town board shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the town. Further, the town board shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section.

(h) If the town board determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the board may require, in lieu thereof, a payment to the town of a sum to be determined by the board. If cash is accepted in lieu of other community benefit or amenity, provision shall be made for such sum to be deposited in a trust fund to be used by the town board exclusively for specific community benefits authorized by the town board.

4. Invalidations. Nothing in this section shall be construed to invalidate any provision for incentives or bonuses heretofore adopted by any town board.

§ 180-30. Open space incentive option.

The Town of Milton finds that conventional subdivision of land in the Town encourages development patterns that are detrimental to Milton's rural character. The purpose of the open space incentive option is to allow future subdivision in the Town of Milton to be creatively designed so that new homes are located in the landscape in a way that protects the rural character of Milton. The Town of Milton's Rural Development Design Guidelines (Appendix B) Editor's Note: Appendix B is included at the end of this chapter. shall be used to assist the Planning Board and the applicant in understanding appropriate open space incentive subdivision design. The open space incentive option provides the Planning Board with the ability to increase the maximum density of the R2 Zoning District in return for permanent open space protection, allowing the protection of the rural landscape and natural resources. A. Site capacity. (1) Under the open space incentive option, the maximum density for the R2 Zoning District remains 0.2 dwelling units (du's) per acre -- the equivalent of one house per five acres of land. The Planning Board may grant a density bonus of up to 50% above the maximum density (in terms of the number of dwelling units) as long as a minimum of 50% of the original land becomes permanently protected open space.

(2) To calculate the potential number of residential lots which may be allowed under the incentive option, first multiply the total number of acres in the original parcel by the maximum number of dwelling units per acre allowed in the R2 district. For example, if you have 50 acres, multiply 50 by 0.2. The result is 10 dwelling units. The Planning Board may then grant up to a 50% bonus (in terms of the number of dwelling units) in addition to the original 10 units. In this case, 50% of 10 units equals five additional units Editor's Note: When this calculation results in a fraction, the number shall be rounded down to the nearest whole number, for example, 50% of 9 = 4.5, however for this purpose the result shall be four additional units. . The potential number of dwelling units that may be permitted by the Planning Board is now 15 as long as a minimum of 25 acres (50% of the original parcel) remains permanently protected open space.

(3) For the purposes of determining potential density, the parcel shall not be restricted by the site's topographic, geologic and hydrological characteristics, and it may include areas subject to flooding or comprised of designated wetlands, ponds, streams or steep slopes.

(4) This maximum number of permissible dwelling units shall be the number of potential dwelling units that meet the requirements specified within the District Schedule of Area and Bulk Regulations Editor's Note: Said schedule is included at the end of this chapter. for the R2os district and the requirements of Chapter 154, Subdivision of Land, for the provision of streets and other required facilities and improvements. The number of permissible dwelling units may be fewer than the number of potential dwelling units.

(5) The final plat, submitted for approval to the Planning Board, shall bear the following notation: "This plat was created under the open space incentive option of the Town of Milton Zoning Code, and any further subdivision of these lots is hereby prohibited."

B. Parcels in the R2 District consisting of 10 acres or more may be eligible for the open space incentive density bonus assuming the applicant meets the following conditions and limitations to the Planning Board's satisfaction: (1) Selection of permanent conservation area. (a) Conservation of important natural, cultural and scenic resources shall be the starting point for the design of subdivisions using the open space incentive option. Protection of wetlands, floodplains, steep slopes and streams as described in § 180-22 shall be the guiding principle in designating a subdivision's conservation area. Additional lands that contribute to the unique character of the parcel to be subdivided may also be included in the subdivision's conservation area. A minimum of 50% of the original parcel shall be designated for permanent conservation.

(b) The selection of land to be designated as the conservation area shall be made by the applicant and the Planning Board during sketch plat review.

(c) The land ultimately designated for conservation shall be subject to the approval of the Planning Board.

(d) The Planning Board and the applicant shall use the Rural Development Design Guidelines (Appendix B) Editor's Note: Appendix B is included at the end of this chapter. to identify appropriate conservation lands. The Planning Board shall make its decision based upon consideration of the Rural Development Design Guidelines (Appendix B) and on the Town's desire to conserve its important open space resources, including, but not limited to: [1] Existing farms.

[2] Land suitable for agricultural use.

[3] Land for recreational uses including potential trail linkages to adjoining lands.

[4] Environmentally sensitive lands.

[5] Lands that are inappropriate for development.

[6] Lands that adjoin other conservation lands and larger tracts of land which have the potential to create continuous networks of open space.

[7] Rural character of the surrounding area.

[8] Scenic rural roads and viewsheds.

(e) Land designated as conservation shall be limited to the following uses: [1] Farm operation land. Farm operation land, for the purposes of this section, shall not include agricultural buildings except fences.

[2] Public open space.

[3] Private open space.

[4] Forestry or forest farming operations with an approved management plan that is on file with the Town Clerk.

(2) Selection of development area. (a) Once land designated for conservation has been selected, the land within a parcel to be designated for development shall be selected by the applicant and the Planning Board during sketch plat review.

(b) The Rural Development Design Guidelines (Appendix B) Editor's Note: Appendix B is included at the end of this chapter. shall be used to assist the Planning Board and the applicant in identifying appropriate lands for development on the site.

(c) The land designated for development shall be subject to the approval of the Planning Board. The Planning Board shall make its decision based upon consideration of the Rural

Development Design Guidelines (Appendix B) and based on the Town's desire to: [1] Avoid locating buildings in open fields. Preference will be to locate structures at the edges of fields along more heavily vegetated areas.

[2] Site buildings so that they do not protrude above treetops and the crestlines of hills. Buildings shall be sited so as to use existing vegetation to buffer the view of new structures from pre-existing public places and roads.

[3] Retain and reuse existing farm roads and country lanes instead of constructing new roads or driveways.

[4] Minimize clearing of vegetation at the edge of existing roads, clearing only as much as necessary to create a driveway entrance with adequate sight distance.

[5] Minimize the disturbance of natural features of the landscape.

[6] Minimize the number of curb cuts on existing Town, county and state roads.

[7] Use curves in the driveway and new roads to increase the screening of buildings.

[8] Consider the potential impact of new homes on existing neighbors when new structures are located.

[9] Avoid locating new homes near existing farms and farmlands.

[10] Build new homes only on lands that are most suitable for development and associated wells and septic systems.

C. Conservation lands. (1) Conservation lands may be held in private ownership, by a land trust or, if proposed for public ownership, shall be dedicated to the Town of Milton, Saratoga County, or the State of New York.

(2) Conservation areas in private ownership. (a) Where conservation lands result from the application of open space incentive zoning requirements, or are otherwise existing, and which are not dedicated to the Town, they shall be described in an appropriate recordable instrument (a conservation easement) executed by the owner and delivered to the Town of Milton. The Town of Milton shall not grant final approval for any development under this section until the recordable instrument is received by the Town.

(b) If the Town so requests, it shall be named, on all such conservation easements, as either a coholder of the easement or a third party enforcer.

(c) The aforesaid conservation easement shall be created in accordance with Title 3 Article 49 of the New York Environmental Conservation Law § 49-0301 et seq.

(d) Conservation lands shall also be so designated on the Official Map of the Town of Milton.

(e) Where the conservation land is contained in a separate individual parcel or parcels, which is owned jointly by two or more private owners, a provision shall be made for a homeowners' association or a similar mechanism for the long-term stewardship of the conservation land.

## Appendix H. Agricultural Definitions

### Agriculture and Markets Law: Article 25 – AA: Section 301. Definitions (*bolding added editorially*)

§ 301. Definitions. When used in this article:

1. "Agricultural assessment value" means the value per acre assigned to land for assessment purposes determined pursuant to the capitalized value of production procedure prescribed by section three hundred four-a of this article.

2. "**Crops, livestock and livestock products**" shall include but not be limited to the following:

- a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- b. Fruits, including apples, peaches, grapes, cherries and berries.
- c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
- d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
- e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.
- f. Maple sap.
- g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
- h. Aquaculture products, including fish, fish products, water plants and shellfish.
- i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.
- j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony.

3. "Farm woodland" means land used for the production for sale of woodland products, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products.

4. "**Land used in agricultural production**" means not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products. Land used in agricultural production shall also include:

a. Rented land which otherwise satisfies the requirements for eligibility for an agricultural assessment.

a-1. Land used by a not-for-profit institution for the purposes of agricultural research that is intended to improve the quality or quantity of crops, livestock or livestock products. Such land shall qualify for an agricultural assessment upon application made pursuant to paragraph (a) of subdivision one of section three hundred five of this article, except that no minimum gross sales value shall be required.

b. Land of not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not independently satisfy the gross sales value requirement, where such land was used in such production for the preceding two years and currently is being so used under a written rental arrangement of five or more years in conjunction with land which is eligible for an agricultural assessment.

c. Land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural assessment.

d. Farm woodland which is part of land which is qualified for an agricultural assessment, provided, however, that such farm woodland attributable to any separately described and assessed parcel shall not exceed fifty acres.

e. Land set aside through participation in a federal conservation program pursuant to title one of the federal food security act of nineteen hundred eighty-five or any subsequent federal programs established for the purposes of replenishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities and such land shall qualify for agricultural assessment upon application made pursuant to paragraph a of subdivision one of section three hundred five of this article, except that no minimum gross sales value shall be required.

f. Land of not less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more, or land of less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more.

g. Land under a structure within which crops, livestock or livestock products are produced, provided that the sales of such crops, livestock or livestock products meet the gross sales requirements of paragraph f of this subdivision.

h. Land that is owned or rented by a farm operation in its first or second year of agricultural production, or, in the case of a commercial horse boarding operation in its first or second year of operation, that consists of (1) not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more; or (2) less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of fifty thousand dollars or more; or (3) land situated under a structure within which crops, livestock or livestock products are produced, provided that such crops, livestock or livestock products have an annual gross sales value of (i) ten thousand dollars or more, if the farm operation uses seven or more acres in agricultural production, or (ii) fifty thousand dollars or more, if the farm operation uses less than seven acres in agricultural production; or (4) not less than seven acres used as a single operation to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more.

i. Land of not less than seven acres used as a single operation for the production for sale of orchard or vineyard crops when such land is used solely for the purpose of planting a new orchard or vineyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.

j. Land of not less than seven acres used as a single operation for the production and sale of Christmas trees when such land is used solely for the purpose of planting Christmas trees that will be made available for sale, whether dug for transplanting or cut from the stump and when such land is owned or rented by a newly established farm operation in its first, second, third, fourth or fifth year of agricultural production.

k. Land used to support an apiary products operation which is owned by the operation and consists of (i) not less than seven acres nor more than ten acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more or (ii) less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more. The land used to support an apiary products operation shall include, but not be limited to, the land under a structure within which apiary products are produced, harvested and stored for sale; and a buffer area maintained by the operation between the operation and adjacent landowners. Notwithstanding any other provision of this subdivision, rented

land associated with an apiary products operation is not eligible for an agricultural assessment based on this paragraph.

5. "Oil, gas or wind exploration, development or extraction activities" means the installation and use of fixtures and equipment which are necessary for the exploration, development or extraction of oil, natural gas or wind energy, including access roads, drilling apparatus, pumping facilities, pipelines, and wind turbines.

6. "Unique and irreplaceable agricultural land" means land which is uniquely suited for the production of high value crops, including, but not limited to fruits, vegetables and horticultural specialties.

7. "Viable agricultural land" means land highly suitable for agricultural production and which will continue to be economically feasible for such use if real property taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of non-agricultural development.

8. "Conversion" means an outward or affirmative act changing the use of agricultural land and shall not mean the nonuse or idling of such land.

9. "Gross sales value" means the proceeds from the sale of:

a. Crops, livestock and livestock products produced on land used in agricultural production provided, however, that whenever a crop is processed before sale, the proceeds shall be based upon the market value of such crop in its unprocessed state;

b. Woodland products from farm woodland eligible to receive an agricultural assessment, not to exceed two thousand dollars annually;

c. Honey and beeswax produced by bees in hives located on an otherwise qualified farm operation but which does not independently satisfy the gross sales requirement;

d. Maple syrup processed from maple sap produced on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation;

e. Or payments received by reason of land set aside pursuant to paragraph e of subdivision four of this section;

f. Or payments received by thoroughbred breeders pursuant to section two hundred fifty-four of the racing, pari-mutuel wagering and breeding law; and

g. Compost, mulch or other organic biomass crops as defined in subdivision sixteen of this section produced on land used in agricultural production, not to exceed five thousand dollars annually.

11. "**Farm operation**" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, "timber processing" as defined in subdivision fourteen of this section and "compost, mulch or other biomass crops" as defined in subdivision sixteen of this section. For purposes of this section, such farm operation shall also include the production, management and harvesting of "farm woodland", as defined in subdivision three of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

12. "Agricultural data statement" means an identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval by the planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law is proposed, as provided in section three hundred five-a of this article.

13. "**Commercial horse boarding operation**" means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to

include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or in its first or second year of operation may qualify as a farm operation if it is an agricultural enterprise, consisting of at least seven acres, and boarding at least ten horses, regardless of ownership, by the end of the first year of operation.

14. "Timber processing" means the on-farm processing of timber grown on a farm operation into woodland products, including but not limited to logs, lumber, posts and firewood, through the use of a readily moveable, nonpermanent saw mill, provided that such farm operation consists of at least seven acres and produces for sale crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products.

15. "**Agricultural tourism**" means activities conducted by a farmer on-farm for the enjoyment or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.

\* 16. "Apiary products operation" means an agricultural enterprise, consisting of land owned by the operation, upon which bee hives are located and maintained for the purpose of producing, harvesting and storing apiary products for sale.

\* NB There are 2 sb 16's

\* 16. "**Compost, mulch or other organic biomass crops**" means the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials. For purposes of this section, "compost" shall be processed by the aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.

\* NB There are 2 sb 16's

## **New York Direct Marketing Association Model Zoning for Roadside Stands and Farm Markets**

### **Permitted Uses**

The following sections contain proposed language that would incorporate into a zoning ordinance, as permitted uses, roadside stands and farm markets. The language should be inserted into the district regulations for each zoning district within the community where roadside stands or farm markets exist, or are being considered as allowed uses.

Included in the proposed language are statements of purpose for each of the two types of markets. These statements provide the community's rationale for allowing the uses within the framework of their zoning regulations.

### **Roadside Stand**

The purpose of a roadside stand is to allow farmers, who are actively farming, low cost entrance into direct marketing their farm products. It is characterized as a direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation is seasonal in nature and features on-farm produced as well as locally produced agricultural products, enhanced agricultural products and handmade crafts. Permitted activities include: the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass produced items that reflect the history and culture of agriculture and rural America; crafts; pick-your-own fruits, vegetables and nuts; community supported agriculture (CSA)

### **Farm Market**

The purpose of a farm market is to provide opportunities for actively producing farms to retail their products directly to consumers and enhance income through value-added products, services and activities. Permitted activities include: the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass produced items that reflect the history and culture of agriculture and rural America; crafts; agricultural commerce, agricultural tourism, pick-your-own operation; community supported agriculture; bed & breakfast inn; farm vacations.

The following are allowed as accessory uses to the farm market operation: Petting zoo and animal attractions; children's games and activities; crop mazes; holiday-oriented activities; miniature golf course, incorporating farm themes; food service if growing any portion of the food served, such as vegetables with a deli, fruit in desserts, etc; horseback riding arenas

### **Definitions**

Definitions are critical to ensuring clarity and uniformity in the interpretation of zoning regulations. Clear definitions can inoculate the community from legal actions related to their zoning regulations. At the same time they can protect the individual property owner by ensuring

consistent and uniform application of the regulations. For this purpose the following definitions should be incorporated into the zoning ordinance when it is amended to allow roadside stands or farm markets.

**Actively Producing Farm:** Pursuant to Section 301, Sub. 4 of the Agriculture and Markets Law, the farm must have a minimum of 7 acres in production with \$10,000 in sales, or \$50,000 in sales if under 7 acres of land are in production. In addition, a predominance of the agricultural products being sold at the farm be New York State produced. This would be on an annual basis and would be determined by volume of product.

**Agricultural Commerce:** Additional enterprises permitted at farm markets to attract customers and promote the sale of agricultural products. These include, but are not limited to gift shops, on-farm brewery, Community Supported Agriculture, bakery, florist shop, garden center, nursery, ice cream shop, food processing where the predominant ingredient is grown by the market operator, cider mills, on-site artistry and pick-your-own operations.

**Agricultural Products:** Pursuant to Section 301, Sub. 2 of the Agriculture and Markets Law: Crops, livestock and livestock products, including, but not limited to the following:

- a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- b) Fruits, including apples, peaches, grapes, cherries and berries.
- c) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
- d) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
- e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk, eggs, and furs.
- f) Maple sap
- g) Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
- h) Aquaculture products, including fish, fish products, water plants and shellfish.
- i) Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

**Agriculture-related products:** items sold at a farm market to attract customers and promote the sale of agricultural products. Such items include, but are not limited to all agricultural and horticultural products, animal feed, baked goods, ice cream and ice cream based desserts and beverages, clothing and other items promoting the farm enterprise operating the farm market and agriculture in New York, value-added agricultural products, Christmas trees and related products and on-farm wineries.

**Agricultural Tourism:** Agricultural related tours, events and activities, as well as non-agricultural related activities used to attract people and promote the sales of farm produce and agricultural products. These tours, events and activities include, but are not limited to petting zoos, school tours, outdoor trails, corn mazes, hayrides, pony rides, group picnics, on- and off-site food catering services, musical events, craft shows, outdoor recreation. To be a permitted use, the farm must be actively producing agricultural products for sale. Farm markets where the

seller is not actively producing agricultural products for retail sales will require a special use permit for agricultural tourism activities.

**All-Weather Surface.** Any roadway, driveway, alley or parking lot surface paved with crushed stone, asphalt, concrete or other pervious or impervious material in a manner that will support the weight of anticipated vehicular traffic in all weather conditions and minimize the potential for ruts, potholes or pooling of water.

**Community Supported Agriculture:** The retail sale of agricultural products to customers through a subscription paid in cash or labor, or a combination thereof

**Enhanced Agricultural Products:** An agricultural product that has been altered or processed in a way to increase its value to consumers and increase the profitability of the product to the farmer.

**Farm Brewery:** Facility for the production of malt liquors operated as a subordinate enterprise to a farm by the owner or owners of the farm on which it is located.

**Farm Market:** A permanent structure, operated on a seasonal or year-round basis, that allows for agricultural producers to retail their products and *agriculture*-related items directly to consumers and enhance income through value-added products, services and activities.

**Farm Vacation:** Temporary residency on the premises by paying transient guests for the purpose of observing or participating in the ongoing activities of an agricultural operation and learning about agricultural life.

**Farm Winery:** any place or premises, located on a farm in New York State, in which wine is manufactured and sold, and is licensed by the State Liquor Authority as a farm or commercial winery.

**Glare:** Light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.

**Handcrafted Item:** An object that requires use of the hands, hand tools and human craft skills in its production, and which is usually not adaptable to mass production by mechanical means.

**Pick Your Own Enterprise:** A fruit or vegetable growing farm which provides the opportunity for customers to pick their own fruits or vegetables directly from the plant. Also referred to as a PYO.

**Roadside Stand:** A direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation is seasonal in nature and features on-farm produced as well as locally produced agricultural products, enhanced agricultural products and handmade crafts.

**Seasonal Sign:** any sign that is removed for three consecutive months. These signs must be removed whenever business is closed for seven or more consecutive days. Because seasonal signs will be removed for a minimum of three months at a time, size and quantity restrictions do not apply.

## **Design and Operations Standards**

In addition to clear definition of what would constitute the permitted activities associated with a roadside stand or farm market, specific design and use standards governing the design and operations of such enterprises should also be incorporated into the zoning ordinance.

Recommended standards include:

There shall be no sales of fuel and related products, tobacco products, alcoholic beverages except those listed under permitted uses, lottery tickets, vehicles or related products.

Food franchises are prohibited in any roadside stand or farm market operation.

To ensure public safety, roadside stands will be required to have off-street parking with an all weather surface and adequate ingress and egress with an area for turn-around.

There shall be one 10 x 20 parking area per 200 sq. ft. of selling and display area, with a minimum of 2 spaces. Parking spaces are exclusive of driveways and turnarounds. For the purpose of calculating the required number of parking spaces, production facilities, garden plots, planting beds and outdoor storage area opened to the public are excluded. Pick-your-own operations will require a greater number of off road parking spaces based on expected number of cars per day.

**Parking:** To ensure public safety, farm markets will be required to have off-street parking with adequate ingress and egress with an area for turn-around. A minimum of one 10 x 20 parking area per 200 sq. ft. of selling and display area, with a minimum of two spaces, shall be required. For the purpose of calculating the required number of parking spaces, production facilities, garden plots, planting beds and outdoor storage area opened to the public are excluded. The above notwithstanding, adequate off street parking shall be provided. Parking spaces are exclusive of driveways and turnarounds. Entrances and exits onto roadways must have an all-weather surface. PYO operations will require a greater number of off-road parking spaces based on the expected number of cars per day. Overflow parking should be, minimally, grass covered.

**Setbacks:** Frontyard - 20 feet from the right of way line to front of sales area, excluding production facilities, garden plots, planting beds and outdoor storage areas open to the public. No parking is allowed within frontyard setback or within 20 feet of the edge of roadway, whichever distance is less.  
Sideyard - 20 foot setback from property line.

Rear - 40 foot setback from property line.

Where a roadside stand or farm market is located on a separate parcel of land, maximum lot coverage by buildings shall be 30%. Total coverage, including parking areas, shall not exceed 70%.

Signs: Seasonal signs are allowed, but cannot be placed anywhere it would create a traffic hazard. All other town signage regulations may apply.

Lighting: No outdoor lighting shall produce glare beyond the boundary of the property. No rotating or flashing lights on advertising signage *shall be permitted*.

Buffers: Buffers shall be a minimum of 15 feet in width, and planted with plant materials reaching a minimum of 6' within 5 years and producing a continuous visual barrier, or alternately, include a solid fence or wall with a minimum height of 6'.

(Buffers are recommended in addition to any required setbacks if next door use is substantially different.)

Water: Potable water on site is required.

**These rights and privileges extend to any active farm in any zoning district.**

## **Guidelines for Review of Local Laws Affecting Direct Farm Marketing Activities**

Typically “direct farm marketing” encompasses roadside stands, farm markets, farmers’ markets, and “u-pick” or “pick your own operations”. Direct farm marketing is considered by the Department to be part of a “farm operation” and thus protected from unreasonable local restrictions by Agriculture and Markets Law (AML) §305-a when conducted on the farm.

Direct farm marketing should be allowed in all areas within a county-adopted, State certified agricultural district. However, the degree of regulation of the various forms of direct farm marketing that is considered unreasonable depends on the nature of the proposed activities and the size and complexity of the proposed structure. A requirement to apply for a permit is generally not unreasonable. Depending upon the size and scope of the retail facility, greater regulation, such as site plan review, may be reasonable. The Department urges local governments to take into account the size and nature of the particular farm market when setting and administering such requirements. For example, to require a small farm market, which sells only a minimal amount of off-farm product, to obtain site plan approval may be unreasonably restrictive.

In some cases farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under a local law or area variances, before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. Local laws which the Department has found not to be unreasonably restrictive include those which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code (“Uniform Code”) [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)]<sup>1</sup> and Health Department requirements. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

The following are some of the specific matters that the Department considers when reviewing a local law that affects direct farm marketing:

A. Maximum Dimensions:

Generally the Department will consider whether maximum dimensions imposed by a local law are sufficient to meet existing and/or future farm needs. For example, many roadside stands are located within existing garages, barns,

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<sup>1</sup> Please see *Guidelines for Review of Local Zoning and Planning Laws* for discussion of State Building Code.

and outbuildings that may have dimensions greater than those set by a local ordinance. Buildings specifically designed and constructed to accommodate the sale of farm products may also not meet the local requirements. The size and scope of the farm operation is also considered. Larger farms, for example, cannot effectively market their produce through a traditional roadside stand.

B. Sign Limitations:

Whether or not a limitation on the size and/or number of signs that may be used to advertise a roadside stand is unreasonable depends upon the location of the stand and the type of produce sold. A farmer who is located on a principally traveled road probably will not need as many signs as one who is located on a less traveled road and may need directional signs to direct the public to their stand. The size of a sign needed may depend on whether the farmer needs to advertise the availability of several different types of produce or just one or two products.

C. Product Origin:

Some farmers import produce from other farms to sell at their stands to increase the diversity of products offered or to bridge periods of low supply of commodities produced on-farm. Product diversity may attract potential customers to a roadside stand or farm market. The Department believes the sale of some agricultural products grown off the farm should be allowed, but has not established a percentage of on-farm versus off-farm products for that purpose. The Department considers the facts of a particular case in making a determination whether a local law is unreasonably restrictive, but generally would view requiring a predominance of on-farm products as reasonable. The needs of “start-up” farm operations should also be considered. These farms often start out selling a large percentage of agricultural products grown off the farm in order to develop a customer base and maintain income while their farms are growing. If a percentage of on-farm products were required by a locality, allowing such farms a reasonable period of time to meet the percentage would be reasonable.

The Department considers agricultural commodities produced “on-farm” to include any products that may have been produced by a farmer on their “farm operation,” which could include a number of parcels owned or leased by that farmer throughout a town, county, or the State. The Department considers all such land, when it is located in a State certified agricultural district, as part of the farm operation.

D. On-farm preparation of processed foods:

Some of the larger farm markets may have facilities for the on-site preparation of processed foods (e.g. a kitchen, bakeshop, etc.), as well as facilities for consumption of foods (e.g., a café). The Department considers

these practices as part of the farm operation as long as the products that are prepared are composed primarily of ingredients produced on the farm.

E. Ag-tourism/recreational activities:

Many farm markets offer some form of on-farm recreational activity such as hayrides, a petting zoo, or a cornfield maze. These activities are often an important component of farm markets since they are a useful tool to attract customers. If it can be shown, on a case by case basis, that an activity will "...*contribute* to the production, preparation and marketing of crops, livestock, or livestock products..." [AML §301(11), emphasis added] it may be considered by the Department to be part of the farm operation. However, the activity, e.g., hayrides, a petting zoo, or a cornfield maze, must be used as part of the direct marketing strategy of the farm operation. Crops, livestock or livestock products must be grown or raised and sold through direct marketing to the public at the time the activity is in use since these activities are designed to attract potential customers to the property so they may purchase crops, livestock or livestock products.

## **Guidelines for Review of Local Laws Affecting Temporary Greenhouses**

“Temporary greenhouses” are typically used on farm operations to propagate and grow nursery stock, flowers and vegetables. AML §301(2)(d) defines “horticultural specialties” to include nursery stock, ornamental shrubs, ornamental trees and flowers. Although temporary greenhouses are usually found on nursery operations and farms that produce vegetables, they are also used in the animal industry to raise young stock.

It is common practice for greenhouse operations to purchase seeds, seedlings, bareroot stock, plugs and immature plants from agricultural suppliers and then germinate, propagate, and harden-off the plants on the farm. Once the plants are mature, they are sold in the wholesale and/or retail market. Furthermore, the growing of plants in pots on the farm is also a common practice used by nursery and horticultural operations.

In 1992, the Executive Law was amended to define temporary greenhouses as “specialized agricultural equipment.” [Executive Law §372(17)<sup>1</sup>] Executive Law §372(3) states that temporary greenhouses are not buildings for purposes of the State Building Code. Therefore, temporary greenhouses that are specifically designed, constructed and used for the culture and propagation of horticultural commodities are exempt from requirements for building permits. However, temporary greenhouses are not exempt from local zoning requirements. The erection and use of temporary greenhouses as part of a farm operation, including nursery/greenhouse operations, produce farms and livestock farms, is protected under AML §305-a .

Real Property Tax Law §483-c<sup>2</sup> exempts temporary greenhouses from taxes, special ad valorem levies and special assessments. There is a “one-time” filing of a form, as prescribed by the New York State Office of Real Property Services (ORPS), to receive this exemption. The form must be completed and presented to the Town Assessor. Real Property Form 483-c may be obtained from the ORPS’s web site at [www.orps.state.ny.us](http://www.orps.state.ny.us).<sup>3</sup>

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<sup>1</sup> Executive Law §372(17) defines a "Temporary greenhouse" as "...specialized agricultural equipment having a framework covered with demountable polyurethane materials or materials of polyurethane nature and lacking a permanent and continuous foundation, *which is specifically designed, constructed and used for the culture and propagation of horticultural commodities*. A 'temporary greenhouse' may include, but is not limited to, the use of heating devices, water and electrical utilities, and supporting poles embedded in non-continuous concrete. In no instance will a temporary greenhouse be used for the retail sale of any farm or non-farm products." (emphasis added)

<sup>2</sup> Real Property Law §483-c(1) defines "Temporary greenhouse" as "...specialized agricultural equipment having a framework covered with demountable polyethylene or polypropylene materials or materials of a polyethylene or polypropylene nature *which is specifically designed, constructed and used for agricultural production*. A temporary greenhouse may include, but is not limited to, the use of heating devices, water and electrical utilities, and embedded supporting poles." (emphasis added)

<sup>3</sup> When the web site is accessed, click onto “Forms, Publications and Procedures.” On the next screen, click onto “Agency Forms” and on the following screen, click onto “Agency Form Listing by Number.” Scroll down to RP-483-C for the two-page form and RP-483-C-INS for the instructions.

The following are some of the specific matters that the Department considers when reviewing a local law that affects temporary greenhouses:

A. Minimum Lot Size

Establishing a minimum lot size for farm operations within a zoning district that includes land within a State certified agricultural district is problematic and may be unreasonably restrictive. The definition of "farm operation" in AML §301(11) does not include an acreage threshold. Therefore, the Department has not set a minimum acreage necessary for protection under AML §305-a and conducts reviews on a case-by-case basis. For example, a nursery/greenhouse operation conducted on less than 5 or 10 acres may be protected as a "farm operation" under §305-a if the operation is a "commercial enterprise" and more than a backyard garden or hobby farm. For agricultural assessment purposes, however, AML §301(4) states that a farm must have "land used in agricultural production" to qualify (either seven or more acres and gross sales of an average of \$10,000 or more in the preceding two years *or* have less than seven acres and average gross sales of more than \$50,000 in the preceding two years).

B. Maximum Lot Coverage

Establishing a maximum lot coverage that may be occupied by greenhouses may be unreasonably restrictive. It may be difficult for horticultural operations to recoup their investment in the purchase of land if they are not allowed to more fully utilize a lot/acreage. Farm operations should be allowed the maximum use of available land, consistent with the need to protect the public health or safety. Generally, if setbacks between buildings are met and adequate space is available for interior roads, parking areas (where required), and safe operation of vehicles and equipment, health and safety concerns are not likely.

C. Maximum Number of Greenhouses

Establishing a maximum number of greenhouses that may be constructed on a farm operation may be unreasonably restrictive. Generally, a farm operation should be allowed to erect all agricultural structures and specialized agricultural equipment (temporary greenhouses), regardless of size, which are necessary to operate, consistent with the need to protect the public health or safety.

D. Setbacks

Minimum setbacks from front, back and side yards have not been viewed as unreasonable unless a setback distance is unusually long. The establishment of lengthy setback distances increases the cost of doing business for farmers because the infrastructure needed to support the operation is usually located within, and adjacent to, the farmstead area or existing farm structures or greenhouses. Excessive setbacks can

also increase the cost of, or make it impracticable to construct, new greenhouses for the farm operation.

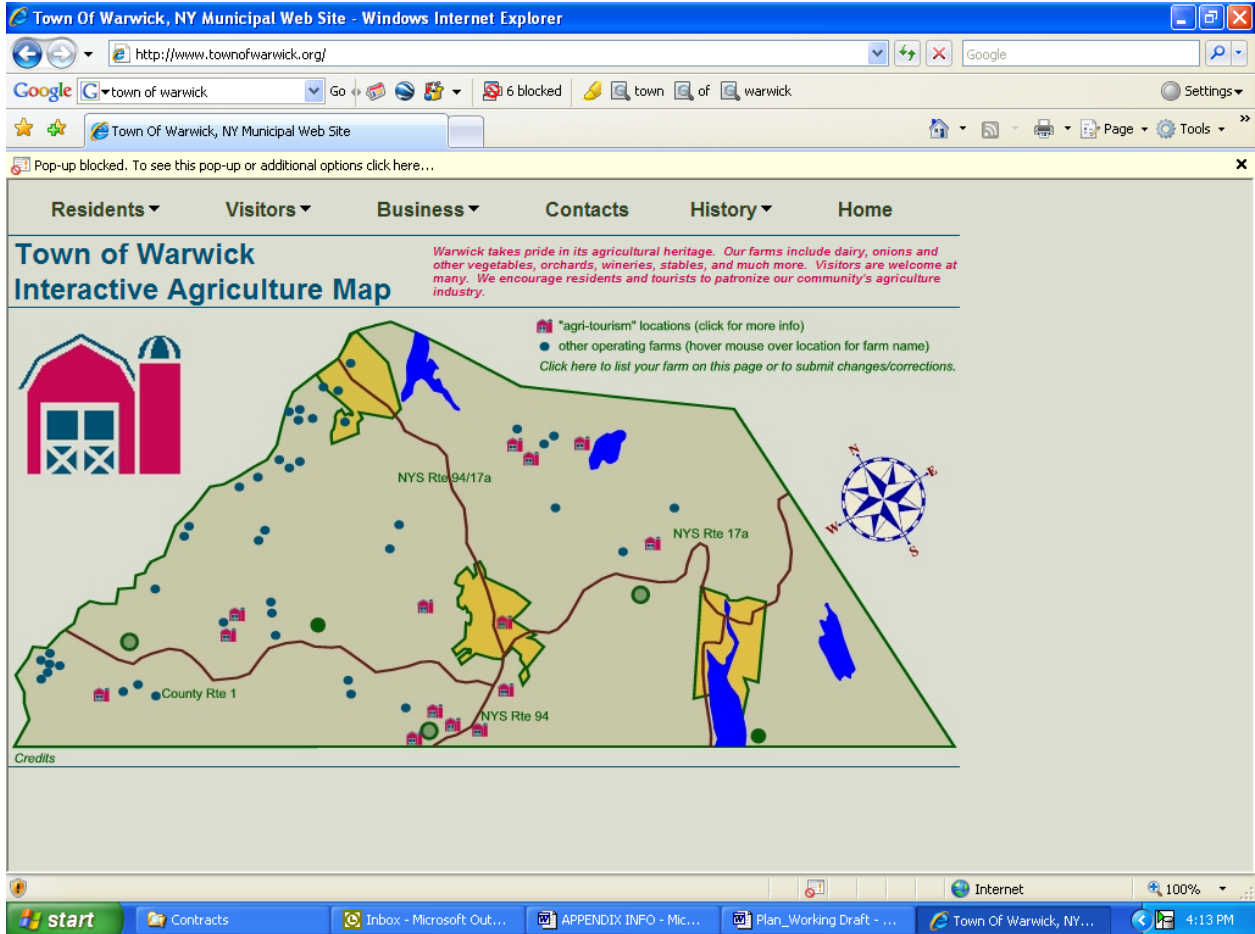
#### E. Screening

A requirement to screen greenhouses from view has been found by the Department to be unreasonably restrictive. Farmers should not be required to bear the extra costs to provide screening unless such requirements are otherwise warranted by special local conditions or necessary to address a threat to the public health or safety. While aesthetics are an appropriate and important consideration under zoning and planning laws, the purpose of the Agricultural Districts Law is to conserve and protect agricultural lands by promoting the retention of farmland in active agricultural use.

#### F. Greenhouses/Nursery Operations as a Permitted Use

The use of greenhouses as part of a farm operation should be a principal permitted use in all local zoning districts located in a county adopted, State certified agricultural district, since the purpose of such districts is to encourage the development and improvement of agricultural land. Agricultural uses and structures within an agricultural district should generally not be subject to special use permits, use variances or non-conforming use requirements.

# Appendix I: Town of Warwick Online Farm Map (www.townofwarwick.org)



ARTICLE I, Right to Farm [Adopted 3-14-2001 by L.L. No. 2-2001]

§ 106-1. Legislative intent and purposes.

A. The Eden Town Board finds, declares, and determines that agriculture is vital to the Town of Eden, New York, because it is a livelihood and provides employment for agriservice; provides locally produced, fresh commodities; agricultural diversity promotes economic stability; agriculture maintains open space and promotes environmental quality, and agricultural land does not increase the demand for services provided by local governments. In order to maintain a viable farming economy in the Town of Eden, farmers must be afforded protection allowing them the right to farm. When nonagricultural land uses extend into agricultural areas, agricultural operations may become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operation or are discouraged from making investments in agricultural improvements.

B. It is the purpose of this article to reduce the loss to the Town of Eden of its agricultural resources by limiting the circumstances under which farming may be deemed to be a nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

§ 106-2. Definitions.

A. As used in this article, the following terms shall have the meanings indicated:

**AGRICULTURAL PRACTICES** -- All activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm and the on-farm production, processing, and marketing of agricultural products, including, but not limited to, the collection, transportation, distribution, storage, and land application of animal wastes; storage, transportation, and use of equipment for tillage, planting, harvesting, irrigation, fertilization, and pesticide application; storage and use of legally permitted fertilizers, limes, and pesticides all in accordance with local, state and federal law and regulations and in accordance with manufacturers' instructions and warnings; storage, use, and application of animal feed and foodstuffs, construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products, and livestock, for the sale of agricultural products, and for the use of farm labor, as permitted by local and state building codes and regulations, including the construction and maintenance of fences.

**AGRICULTURAL PRODUCTS** -- Those products as defined in § 301(2) of Article 25-AA of the Agricultural and Markets Law.

**FARM** -- The land, buildings, farm residential buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products.

**FARMER** -- Any person, organization, entity, association, partnership, or corporation engaged in the business of agriculture, for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock, poultry, fur-bearing animals, or fish, the harvesting of timber or the practicing of horticulture or apiculture.

**GENERALLY ACCEPTED AGRICULTURAL PRACTICES** -- Those practices which are feasible, lawful, inherent, customary, necessary, reasonable, normal, safe, and typical to the industry or unique to the commodity as they pertain to the practices listed in the definition of "agricultural practices."

**RESOLUTION COMMITTEE** -- Shall be made up of the Chairman of the Conservation Board or designee, Chairman of the Agricultural Committee or designee, and a member of one other standing committee of the Town designated by the Town Supervisor.

B. Unless specifically defined, above words or phrases used in the article shall be interpreted so as to give them meanings they have in common usage, and to give this article its most reasonable application.

§ 106-3. Authority to engage in agricultural practices.

A. Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within the Town of Eden at all such times and in all such locations as are reasonably necessary to conduct the business of agriculture. For any agricultural practice, in determining the reasonableness of the time, place, and methodology of such practice, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge and improved technologies.

B. Agricultural practices conducted on farmland shall not be found to be a public or private nuisance if such agricultural practices are:

- (1) Reasonable and necessary to the particular farm or farm operation.
- (2) Conducted in a manner which is not negligent or reckless.
- (3) Conducted in conformity with generally accepted agricultural practices.
- (4) Conducted in conformity with all local, state, and federal laws and regulations.
- (5) Conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety of any person; and
- (6) Conducted in a manner which does not unreasonably obstruct the free passage or use of navigable waters or public roadways.

C. Nothing in this article shall be construed to prohibit an aggrieved party from recovering damages for bodily injury or wrongful death.

§ 106-4. Duty of Town officers and boards to consider impact of farm operations on certain applications.

The legislative intent and purposes of this article shall be taken into consideration by each Town officer and/or board in processing any application requesting rezoning, site plan approval and/or special use permit approval when the property which is the subject of such application is located within one mile of an existing farm. Such Town officer and/or board shall, as part of its review of such application, determine whether appropriate and reasonable conditions may be prescribed or required, which would further the purposes and intent of this article as part of an approval of the application. Such appropriate and reasonable conditions shall be determined on a case-by-case basis and may include, but not be limited to, requiring declarations, deed restrictions and/or covenants which run with the land which would notify future purchasers and owners of the subject property that owning and occupying such property might expose them to certain discomforts or inconveniences resulting from the conditions associated with agricultural practices and operations in the Town.

§ 106-5. Informal resolution of disputes.

A. Should any controversy arise regarding any inconveniences or discomforts occasioned by agricultural operation, including, but not limited to, noise, odors, fumes, dust, the operation of machinery, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and/or pesticides, the parties may submit the controversy to the resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action.

B. Any controversy between the parties may be submitted to the resolution committee, whose decision shall be advisory only, within 30 days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.

C. The effectiveness of the resolution committee as a forum for resolution of grievances is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.

D. The controversy shall be presented to the committee by written request of one of the parties within the time limits prescribed above. Thereafter, the committee may investigate the facts of the controversy but must, within 30 days, hold a meeting to consider the merits of the matter and within 20 days of the meeting must render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each party considers to be the pertinent facts.

# Yates County, New York

## Agricultural Development and Farmland Enhancement Plan

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### Model Right to Farm Law

Be it enacted by the Town Board of the Town of \_\_\_\_\_ as follows:

#### Section 1. Legislative Intent and Purpose

The Town Board recognizes farming is an essential enterprise and an important industry which enhances the economic base, natural environment and quality of life in the Town of \_\_\_\_\_. The Town Board further declares that it shall be the policy of this Town to encourage agriculture and foster understanding by all residents of the necessary day to day operations involved in farming so as to encourage cooperation with those practices.

It is the general purpose and intent of this law to maintain and preserve the rural traditions and character of the Town, to permit the continuation of agricultural practices, to protect the existence and operation of farms, to encourage the initiation and expansion of farms and agri-businesses, and to promote new ways to resolve disputes concerning agricultural practices and farm operations. In order to maintain a viable farming economy in the Town of \_\_\_\_\_, it is necessary to limit the circumstances under which farming may be deemed to be nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

#### Section 2. Definitions

1. "Farmland" shall mean land used in agricultural production, as defined in subdivision four of section 301 of Article 25AA of the State Agriculture and Markets Law.
2. "Farmer" shall mean any person, organization, entity, association, partnership, limited liability company, or corporation engaged in the business of agriculture, whether for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock.
3. "Agricultural products" shall mean those products as defined in section 301(2) of Article 25AA of the State Agriculture and Markets Law, including but not limited to:
  - a. Field crops, including corn, wheat, rye, barley, hay, potatoes and dry beans.
  - b. Fruits, including apples, peaches, grapes, cherries and berries.
  - c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
  - d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
  - e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, llamas, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk and milk products, eggs, furs, and poultry products.
  - f. Maple sap and sugar products.
  - g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
  - h. Aquaculture products, including fish, fish products, water plants and shellfish.
  - i. Short rotation woody crops raised for bioenergy.
  - j. Production and sale of woodland products, including but not limited to logs, lumber, posts and firewood.

# Yates County, New York

## Agricultural Development and Farmland Enhancement Plan

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4. "Agricultural practices" shall mean those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Examples of such practices include, but are not limited to, operation of farm equipment, proper use of agricultural chemicals and other crop production methods, and construction and use of farm structures.
5. "Farm operation" shall be defined in section 301 (11) in the State Agriculture and Markets Law.

### **Section 3. Right-to-Farm Declaration**

Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within this Town at all times and all such locations as are reasonably necessary to conduct the business of agriculture. For any agricultural practice, in determining the reasonableness of the time, place, and methodology of such practice, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge, research and improved technologies.

Agricultural practices conducted on farmland shall not be found to be a public or private nuisance if such agricultural practices are:

1. Reasonable and necessary to the particular farm or farm operation,
2. Conducted in a manner which is not negligent or reckless,
3. Conducted in conformity with generally accepted and sound agricultural practices,
4. Conducted in conformity with all local state, and federal laws and regulations,
5. Conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety of any person, and
6. Conducted in a manner which does not reasonably obstruct the free passage or use of navigable waters or public roadways.

Nothing in this local law shall be construed to prohibit an aggrieved party from recovering from damages for bodily injury or wrongful death due to a failure to follow sound agricultural practice, as outlined in this section.

### **Section 4. Notification of Real Estate Buyers**

In order to promote harmony between farmers and their neighbors, the Town requires land holders and/or their agents and assigns to comply with Section 310 of Article 25-AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants as follows: "It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products and also for its natural and ecological value. This 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." This notice shall be provided to prospective purchase of property within an agricultural district or on property with boundaries within 500 feet of a farm operation located in an agricultural district.

A copy of this notice shall included by the seller or seller's agent as an addendum to the purchase and sale contract at the time an offer to purchase is made.

# Yates County, New York

## Agricultural Development and Farmland Enhancement Plan

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### Section 5. Resolution of Disputes

1. Should any controversy arise regarding any inconveniences or discomfort occasioned by agricultural operations which cannot be settled by direct negotiation between the parties involved, either party may submit the controversy to a dispute resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action and prior to a request for a determination by the Commission or Agriculture and Markets about whether the practice in question is sound pursuant to Section 308 of Article 25AA of the State Agriculture and Markets Law.
2. Any controversy between the parties shall be submitted to the committee within thirty (30) days of the last date of occurrence of the particular activity giving rise to the controversy or the date the party became aware of the occurrence.
3. The committee shall be composed of three (3) members from the Town selected by the Town Board, as the need arises, including one representative from the farm community, one person from Town government and one person mutually agreed upon by both parties involved in the dispute.
4. The effectiveness of the committee as a forum for the resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
5. The controversy shall be presented to the committee by written request of one of the parties within the time limits specified. Therefore after, the committee may investigate the facts of the controversy but must, within twenty-five (25) days, hold a meeting at a mutually agreed place and time to consider the merits of the matter and within five (5) days of the meeting render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each consider to be pertinent facts. No party bringing a complaint to the committee for settlement or resolution may be represented by counsel unless the opposing party is also represented by counsel. The time limits provided in this subsection for action by the committee may be extended upon the written stipulation of all parties in the dispute.
6. Any reasonable costs associated with the function of the committee process shall be borne by the participants.

### Section 6. Severability Clause

If any part of this local law is for any reason held to be unconstitutional or invalid, such decision shall not effect the remainder of this Local Law. The Town hereby declares that it would have passed this local law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

### Section 7. Precedence

This Local Law and its provisions are in addition to all other applicable laws, rules and regulations.

### Section 8. Effective Date

This Local Law shall be effective immediately upon filing with the New York Secretary of State.

[HISTORY: Adopted by the Town Board of the Town of Eden 4-13-1994 by L.L. No. 1-1994. Amendments noted where applicable.]

## GENERAL REFERENCES

Public improvement -- See Ch. 158.

### § 5-1. Title.

This chapter shall be known as the "Agricultural Advisory Committee Law of the Town of Eden, New York."

### § 5-2. Purpose.

The purpose of this chapter is to:

A. Recognize the importance of agriculture as both a vital local economic base and as a land form that provides the Town of Eden with much of its rural, rustic character and charm.

B. Assure the continued viability of farming as an industry which is important to the local economy and to the preservation of open space and vistas.

C. Provide for the most beneficial relationship between the use of land and buildings and the agricultural practices of the community and to further encourage the wise use and management of the town's natural resources through modern farming practices.

D. Provide the Town Board, Planning Board and other relevant boards/committees of our government with a conduit for recommendations from the agricultural community on the long- and short-term impact of a variety of matters and questions considered by these groups.

### § 5-3. Formation of Committee; membership; terms of office.

A. The Committee shall be composed of five members appointed by the Town Board as follows:

(1) Five residents of the Town of Eden from the agricultural community, including but not limited to representatives from the greenhouse, crop production and dairy segments

of the industry. The members shall recommend a Chairperson for appointment by the Town Board.

(2)One member of the Planning Board, the Board of Assessors Chairperson, one representative from the Erie County Farm Bureau and one member of the Town Board shall serve as ex officio members.

B.The members appointed to the Committee shall serve for a three-year term. Upon initial formation, one member shall serve for a one-year term, two members for a two-year term and all others for a three-year term. Each year thereafter, reappointments or new appointments will be for three-year terms.

C.Appointments shall be from January 1 through December 31.

D.Members shall serve without salary.

#### § 5-4. Powers and duties.

The Committee shall:

A.Advise the Town Board and the County Agricultural and Farmland Protection Board in relation to the proposed establishment, modification, continuation or termination of any county agricultural district. The Board shall present advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within any proposed or established area.

B.Review of proposed zoning change or development in agricultural districts.

(1)Whenever a proposed zoning, policy change or development (residential, business or industrial) affecting town agricultural zoning districts is presented to the Town Board within or contiguous to a county agricultural district or town agricultural zones, it shall be referred to the Agricultural Advisory Committee for review. The Agricultural Advisory Committee shall have 45 days to respond with a recommendation(s) for the action(s).

(2)The Board shall present advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within any proposed or established area. This recommendation(s) shall include a determination as to whether the proposed action(s) will have an unreasonable adverse effect on the continuing viability of a farm enterprise or enterprises within the county or town agricultural districts. This recommendation(s) shall be advisory only.

C.Review county, state and federal legislation affecting agricultural issues and communicate the effect to the appropriate board and/or the Town Board.

D.Serve as a vehicle for communication between the agricultural community, the town and/or the County Agricultural and Farmland Protection Board.

## **APPENDIX L: Resources for additional information and technical support**

### **American Farmland Trust**

*Providing technical assistance to towns and counties to develop and implement farmland protection plans*

112 Spring St., Suite 207

Saratoga Springs, NY 12866

(518) 581-0078 [www.farmland.org](http://www.farmland.org)

### **Cornell Cooperative Extension of Dutchess County**

*Providing technical assistance to farmers and farm businesses*

2715 Route 44

Millbrook, NY 12545

(845) 677-6563 <http://counties.cce.cornell.edu/dutchess>

### **Dutchess County Department of Planning and Development**

*Providing technical assistance in planning and matching grant funding for farmland protection*

27 High St.

Poughkeepsie, NY 12601

(845) 486-3600 <http://www.co.dutchess.ny.us/CountyGov/Departments/Planning/PLIndex.htm>

### **Dutchess Land Conservancy**

*Providing technical assistance in farmland protection and planning to farmers interested in protecting their properties*

4289 Route 44

Millbrook, NY 12545

(845) 677-3002 <http://www.dutchessland.org/>

### **New York State Department of Agriculture and Markets**

*Providing technical assistance and grant funding for farmland protection, marketing and many others*

10B Airline Dr.

Albany, NY 12235

(518) 457-3880 or 800-554-4501 [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us)

### **New York State Department of State**

*Providing technical assistance in planning*

99 Washington Ave.

Albany, NY 12231-0001

(518) 474-4752 [www.dos.state.ny.us](http://www.dos.state.ny.us)

### **New York State Office of Real Property Services**

*Providing technical assistance in agricultural assessment*

16 Sheridan Ave.

Albany, NY 12210-2714

(518) 474-2982 [www.orps.state.ny.us](http://www.orps.state.ny.us)

### **NY Farm Net**

*Providing counseling and technical assistance in farm succession and business planning, and linking farmers and landowners*

415 Warren Hall

Ithaca, NY 14853-7801

800-547-3276 [www.nyfarmnet.org](http://www.nyfarmnet.org)