

**Appendix B**  
Public Participation



**TOWNS OF OAKFIELD AND ALABAMA AGRICULTURAL PROTECTION PLANS**  
**Steering Committee Meeting**  
**February 4, 2016**

Attending:			
Towns		Consultant Team	
<input checked="" type="checkbox"/>	Robert Kehlenbeck, Town of Alabama (Highways)	<input checked="" type="checkbox"/>	Ellen Parker, Wendel
<input checked="" type="checkbox"/>	Ron Gilbert, Town of Alabama (Planning Board)	<input checked="" type="checkbox"/>	Adam Tabelski, Wendel
<input checked="" type="checkbox"/>	Barry Flansburg, Town of Oakfield (Assessor)	<input checked="" type="checkbox"/>	Wendy Salvati, WWS Planning
<input checked="" type="checkbox"/>	Melissa Haacke, Town of Oakfield (Town Clerk)		

**Project Overview**

- The Team reviewed the project status. We have developed maps in coordination with Genesee County that address:
  - ✓ Agricultural District #2 - boundaries
  - ✓ Zoning
  - ✓ Sub-watersheds
  - ✓ Environmental Features (streams, floodplains, wetlands, aquifers, waterbodies)
  - ✓ Land Cover
  - ✓ Farms (from property assessment data)
  - ✓ Farmland Soils (prime, prime when drained, statewide importance, muck)
  - ✓ Protected lands (parks, wildlife refuges)
  - ✓ Genesee County Smart Growth Areas
  
- It was noted that the assessment data on farms is inconsistent.
- With the new water districts, Oakfield will have almost 100% water coverage; Alabama will have water service to about 70% of existing homes.
- Town of Oakfield provided an update of plans for the water districts, along with a Water District Planning Map that depicts existing and proposed water districts.
- Town of Oakfield provided a summary of where they would like to see new residential development:
  - ✓ South Pearl Road: two parcels just south of the Village line, behind existing residential development along the road. (already has water lines; would need extension of sewer line)
  - ✓ North Pearl Road/ south of Maltby Road: a parcel behind the school just north of the Village line. (can tap off existing water line if new district established; needs sewer)
  - ✓ Drake Street: a parcel on the south side of the road just to the east of the Village line.
  
- These parcels were identified through the process of developing the water districts, and outreach to land owners. Factors considered including their proximity to the Village and the presence of natural buffers (for example, the rail line for the Drake Street parcel).



- The remainder of the Town would remain as agricultural lands. It was noted that no development would occur on the former gypsum mine lands.
- The Town provided an agricultural profile of Oakfield: there are only a few dairy farms; the majority of agricultural lands are in cash crops, such as soy, corn or wheat.
- The farming in Oakfield tends to be corporate in structure. Farm owners tend to own and work lands across several communities, including lands outside Genesee County. Four farm operators control much of the farmland in the Town.
- The farming in the Town of Alabama tends to be family-run farms (estimated 60% family farms, 40% corporate farms)
- Some acreage is owned by out-of-state investors, who rent to local operators, with the intent of obtaining tax write-offs.
- Agriculture is relatively stable. Prices are \$3,000 to \$4,000 per acre for good land. Values have dropped slightly due to a drop in commodity prices. Land rents for \$50 to \$120 per acre, depending on the crop. Prices are higher in Wyoming County, due to the larger proportion of dairy farms, which need acreage to accommodate CAFO regulations.
- The Town of Alabama has four areas where they would like potential growth to concentrate:
  - ✓ Route 77 – north of Basom
  - ✓ Route 77 – at County Road 12 (west and north of Alabama Center)
  - ✓ South Alabama - Ham Road between the two Knowlesville Roads
  - ✓ Wheatville – Knowlesville and Lewiston Roads
- Alabama is in the beginning stages of planning for new water districts and potential for sewers. There has been problems with septic systems in South Alabama, Alabama Center. Water will help issue of contamination of well water from failing septic systems.
- Utilities (water/sewer) being brought in for STAMP will be separate from the Town's system.
- Intent of new utility planning is to serve existing homes, not support further growth. Both communities want to continue to be seen as agricultural communities.

### **Roundtables**

- The roundtables are scheduled for Thursday, March 3<sup>rd</sup>, from 6:00 to 8:00 pm, at the Town of Oakfield Community and Government Center.
- Towns will develop the list of who to invite (farmers, farmland owners, other interested parties)
- Wendel will draft invitation letter and provide to the Towns to distribute.



**GENESEE COUNTY AGRICULTURE AND FARMLAND PROTECTION PLAN UPDATE  
TOWNS OF OAKFIELD AND ALABAMA AGRICULTURAL PROTECTION PLANS  
Roundtable Meeting – Agricultural Representatives**

The meeting began with an overview of the Farmland Protection Plans and the purpose of the meeting. The floor was then opened for questions and comments. The following input was received:

- What problems might arise from the STAMP project? Response: possible conflicts with farm vehicles, increase in complaints about farm operations from employees, new residents to town.
- Concern about sewer extensions
- Education to new residents about right-to-farm
- Education to new residents about septic system maintenance
- Don't put in overly strict regulations on farmers
- Placement of mailboxes in right-of-way impedes ability of farm machinery to pull onto the shoulder.
- Concern about height of utility lines
- Concern about underground utilities: need to be conscious of where they are to avoid disturbing them when working the fields, building culverts, etc.
- Towns cannot overrule private property rights, but do have the right to zone lands.
- There was a question on how conservation easements work. It was explained that they are voluntary. \
- Concern about roadway right-of-way, access to farm fields: as roadways are improved, it is important to make sure sufficient access to farm fields is provided (width, location). Especially where drainage is via roadside ditches, means to cross over ditches into fields is needed. Route 63 repaving raised height of road, making access more difficult. Private owners are needing to make investments to maintain access.
- Processing plants rely on adequate infrastructure also: roads need to have appropriate width, ability to accommodate heavy vehicles.
- Broadband internet needed to operate modern farm operations. Need improved internet access.
- Discussed right-to-farm laws vs. provisions within State/County Ag Districts. Local laws show symbolic support, especially to new residents unfamiliar with farm practices who may be likely to complain.
- Alternative energy sources emerging. As long as 51% or more of the power is used on-farm, energy producing systems (solar, wind, digesters) are allowed.
- Possible future trends: more hydroponics, greenhouse (indoor) production.
- Products in Genesee County: corn, soybean, vegetables, hay, wheat, malt barley, rye, some oats, eggs, lamb, onions, beef cattle.
- Market rates for farm acreage is affecting tax rates.
- **Vision:** Keep lands in agricultural production; Support the next generation of farmers.
- Trend is for fewer, larger farms (consolidation)
- STAMP may increase demand for fresh, local foods.
- Question: how do you differentiate and preserve highly productive farms, vs. lower quality farms/ soils?
- Balanced growth plan will accommodate variety of land uses.

# **PUBLIC INFORMATION MEETING**

## **TOWN OF ALABAMA & TOWN OF OAKFIELD AGRICULTURAL AND FARMLAND PROTECTION PLANS**

**what:**

The Towns of Alabama and Oakfield are each preparing Agricultural and Farmland Protection Plans in recognition of the importance of farming in the communities. The plans will propose strategies for supporting agriculture and protecting important farmlands.

**when:**  
**where:**

**Thursday April 28, 2016 at 7:00**

**Town of Alabama Fire Hall located at 2230 Judge Rd, Basom, NY**



**Please come to learn about the plans and offer your input.**

Written comments may be sent to: [AgPlans@wd-ae.com](mailto:AgPlans@wd-ae.com)

**GENESEE COUNTY AGRICULTURE AND FARMLAND PROTECTION PLAN UPDATE  
TOWNS OF OAKFIELD AND ALABAMA AGRICULTURAL PROTECTION PLANS  
Public Information Meeting  
April 28, 2016**

A public meeting was held on April 28, in the Town of Alabama to inform the general public about the Agriculture and Farmland Protection Plans being prepared for the Town of Alabama and the Town of Oakfield; many farmers also were in attendance. The meeting began with an overview of the Farmland Protection Plan program and the purpose of the meeting. The floor was then opened for questions and comments.

The first topic addressed was issues and opportunities for farming and agriculture in the two Towns. The following input was received:

**1. Issues and Opportunities:**

- **Access roads**
  - Traffic on the road causes conflicts with farm equipment, particularly on Route 77
  - Roads are not always in good shape, making it difficult to move equipment from one field to another
  - The width of paving, narrow shoulders and ditches can make it difficult for equipment to pull out of the way.
  
- **Regulations**
  - DEC and EPA regulations are becoming stricter and more strictly enforced
  - Farmers are complying with regulations on run-off, but general public does not understand the regulations, particularly new residents (not accustomed to rural life).
  
- **Residential Development**
  - Requiring large lot sizes for residential housing hurts farms
  - Attendees noted that cluster development or Planned Unit Developments (PUD) are preferable; by concentrating residential homes, they minimize conflict areas
  - There was support for keeping residential development in the Villages and the City of Batavia, and away from farmland.
  
- **Consolidation of Farms:**
  - Trend is farms are getting larger
  
- **Transition Planning**
  - The older generation of farmers are staying in the family homestead, but renting the acreage to other farms to keep the land in agricultural production
  - Eventually there will have to be a plan for transitioning the land and homestead to the next generation of farmers
  - Future Farmers of America – no longer in the Oakfield-Alabama school system due to funding issues and Common Core (difficult to schedule)

- **Type of farming**
  - The County is seeing more and more organic farming
    - Milk – Not in Alabama and Oakfield, but there are organic dairies in Genesee County
    - Chickens – Kreher’s is the largest organic chicken farming operation in New York
    - Kreher’s is also buying land to be able to grow organic feed for the chickens
    - Cash crops – not a lot, but starting to see vegetables, etc.
  - Major crops grown in Alabama and Oakfield include corn (influenced by ethanol demand); soy beans and alfalfa.
  - Not really any CSA’s in Oakfield or Alabama; more common in Elba, Batavia.
  
- **Support Services**
  - The County is fortunate to be well supplied with agricultural support services. There is some consolidation, but it is still accessible.
  
- **Ditches/Drainage:**
  - Flooding and ditch maintenance are major issues
  - Many of the ditches are on private land, but if they are not well maintained, they can affect others’ fields
  - The wildlife preserves [in the northern portion of the Towns] actually dam up drainageways to manage their wetlands and habitats – can back up ditches on private lands.
  - Government approval is needed before farmers can tile fields or clear hedgerows.
  - Due to increased protection of wetlands, it is getting increasingly difficult to get permission – it can take a year to obtain approvals.
  
- **Nuisance neighbors**
  - Snowmobiles, ATVs, 4-wheelers and other off-road users can tear up fields
  - Existing residents and towns governments are supportive of farming
  - Litter is a big problem
  - Seeing increased through-traffic (e.g. traffic to the Reservation)
  
- **Alternative Energy**
  - Large wind turbine project has been proposed in Alabama
  - Solar farm operations are approaching owners of parcels larger than 20 acres and trying to buy up long-term options (20 years). Terms seem to be \$1500/acre + expenses. Advised residents to seek legal assistance before signing any documents.
  - Solar and wind give farmers an option for supplemental income.
  - Solar in particular has less long-term impacts on the land; can be screened.
  - Alternative energy is a good option for less productive acreage.
  - Could solar panels be placed on proposed buffer lands surrounding the STAMP project?
  
- **Land Use regulations:**
  - There is a 200 foot frontage requirement; with water lines coming to the Towns, could this be lowered?
  - There are lateral restrictions within Agricultural Districts (water will go to existing homes only; not future new development)

- General support for a “Right-to-Farm” law; shows support for farming; informs home buyers. County has a RTF law, but not the Towns.
  - RTF law should include a mediation clause to mediate conflicts.
  - Agricultural Data Statements are required within Agricultural Districts, but not for properties outside the districts.
- **Farm Market:**
    - Concern that there is not enough demand for a farm market within Oakfield/Alabama.
    - There is a market in Batavia that residents use.

The second portion of the meeting addressed attendees’ ideas for the future of farming in the two Towns.

## 2. Ideas for the Future:

- Oakfield: concentrate new growth in and around the Village.
- Alabama: maintain family farms, and keep any new development within the hamlet areas.
- Green Genesee identified green corridors. There is support for protecting these corridors.

## 3. Goals:

- Support farms & farmers
- Emphasize the Farm – Food link; education; school programs, etc.
- Promote the fiscal benefits of farming
- Educate the public about farming – especially residents new to country life
- Recognize the importance of farming as a business – supporting families and the local economy

## 4. Strategies

- Adopt Right to Farm Policies in the Towns
- Establish an Agricultural Protection Committee (or similar entity) to oversee activities
- Encourage landowners to remain in the Agricultural Districts
- Review local zoning, subdivision regulations to be farm-friendly
- Conservation Easements/ PDRs
- Education Programs – especially targeting new buyers (work with real estate attorneys, Realtors)
- Farm-Link: program that can link those selling agricultural lands with buyers who will keep it in farming
- Signage at Town line: We are a Right to Farm Community
- Farm tours to raise awareness: Lamb’s have tours; Dairy Day tours are a success.



**TOWN OF ALABAMA COMPREHENSIVE PLAN UPDATE**  
**Public Information Meeting: October 25, 2016**

A Public Information Meeting was held in the Town of Alabama to obtain public input on the Town's Comprehensive Plan update. The meeting began as an open house, which ran from approximately 6pm to 7pm. Attendees could view maps, have informal discussions with project consultants and complete survey forms. The presentation started at 7pm. After a welcome from Supervisor Sage, Drew Reilly provided an overview of Comprehensive Plans, and why they are important. Wendy Salvati then provided an update on the Agricultural Protection Plan, and next steps for that document. Ellen Parker raised some issues concerning the Town and encouraged attendees to provide comments, questions and concerns. The floor was then opened for comments. Attendees were able to meet informal with representatives from the Town and the consultant team following the meeting.

The following summarizes comments received from attendees.

- A show of hands indicated strong support for agriculture in the Town.
- There was confusion about what growth was allowed within the Smart Growth Areas, and the impact of water. It was noted that for areas outside of the Smart Growth Areas, water lines will be extended to existing homes only; there will be lateral restrictions prohibiting tie-ins to the water lines from future development. There would not be these restrictions within the Smart Growth areas.
- There was discussion about lateral restrictions. Generally, there is sympathy for extending water to more homes (not imposing restrictions).
- It was questioned whether it would be required to tie in to the public system. The Town Attorney indicated that that has not yet been determined.
- It was noted that no sewers are being proposed; a recent study determined the cost to be prohibitive. Lack of sewers will control growth and density.
- There were questions about the timing of the water project. It was noted that the water lines are still being designed. The first service will be to the STAMP project, and then to the hamlets.
- The Town is aware of the situation at Maple Road, where several homes are serviced from one well, and this will be addressed. It is hoped that they will be able to go to bid in January 2017.
- A show of hands indicated very strong support for public water (majority of attendees).
- It was noted that the Town is exploring the feasibility of building more water lines than initially proposed. The initial phase, which was guaranteed as a condition of the STAMP project, would provide water to approximately 70% of Town residents with no cost for debt service to Town residents (construction costs covered under the Incentive Zoning Agreement for STAMP). Residents would only pay for usage fees. The Town may propose additional water lines to provide public water to approximately 90% of Town residents; however, this would require debt service, spread across all residents, to cover the added construction costs. (This topic was raised several times. It was emphasized by Town representatives that they are in early stages of researching the issue and no decision has been made. )

- Residents will be able to keep their existing wells, as long as they are kept separate from the public water system.
- Asked about growth in the Town, attendees had mixed opinions. Some were strongly in favor of limiting growth, while others were in favor of controlled growth, particularly within the Smart Growth areas.
- Attendees noted that local farmers typically are not selling lands, and there are limited development lots available in the Town. None of the farm owners in attendance had any interest in selling off frontage lots at this time.
- Consultants noted that there is not a large differential between value of land for farming and value of land for development purposes, limiting usefulness of a Purchase of Development Rights (PDR) program.
- There was general agreement that growth is appropriate within the hamlets.
- It was suggested that STAMP may increase pressures for growth, as workers may want to live nearer to work, and some rules regarding how growth would occur are needed. The example of Clarence was raised, where there was a 30% increase in population.
- By a show of hands, attendees showed moderate support for trails.
- It was noted that there are not a lot of precedents where a large manufacturing facility was built in a rural community. The Town of Malta was more of a bedroom community, not agricultural.
- It was emphasized that the Town needs to review the Plan on a regular basis to make sure it is addressing current issues as circumstances change.
- Returning to the issue of public water, attendees expressed support for extending water to all residents if feasible.
- In regard to agriculture, an attendee proposed Town monetary support to keep farming viable, and noted that farmers should have the right of way on local roadways to access their fields.
- A question was raised regarding property maintenance. The Town Attorney noted that the Town has a property maintenance law, but generally, the dilapidated houses in the Town are 'zombie' properties in foreclosure, which makes enforcing maintenance requirements difficult. The Town cannot act without providing notification to current owner, and it is difficult to find contact information for the banks who owned the foreclosed properties.
- Development: residents are not in favor of large-scale developments outside of STAMP. Residents value rural character.
- Residents do support redevelopment of the hamlets. In particular, attendees favored improvements that make the hamlets more attractive places to live. There was not a clear consensus on the type of development (residential only vs. mixed use), although seemed to be a preference to keep new development primarily residential rather than commercial.
- There was strong interest in making hamlets 'look nice.' (upgrading character of hamlet areas)
- The issue of improvements to Route 77/63 (Allegany Road) was brought up. If STAMP builds out in full, it is proposed to widen the roadway to four-lanes south of Judge Road. There was concern that this would have major impacts on Basom, since many of the buildings are located close to the road.

- There were questions about the status of wetlands within the STAMP property. It was noted that proposed site layout for STAMP will retain large areas of wetlands.
- The issue of Maple Street, where 17 dwellings are on one well was raised again. The resident was assured that the waterlines will be extended to that neighborhood.
- It was noted by the consultants that a subdivision in the Town of Alabama is defined as no more than 5 parcels in a 5 year period.
- There was opposition to the proposed roundabout at Ledge Road and Route 77. It was noted that the project is being studied by NYS Department of Transportation, but no final decision has been made. Residents were advised to keep informed about DOT plans. DOT has a standard process for studying transportation improvements that includes opportunity for local input.
- Strong interest in having a Town website (currently being developed).
- When questioned on best means for outreach, residents were appreciative of the postcard notification of the meeting.

Summary of primary interests:

1. Water – residents strongly want water, and prefer to see it extended to as many residences as possible.
2. Community Character – residents prefer a rural lifestyle and rural character of the community.
3. Agriculture – strong support for agricultural protection.

# TOWN OF ALABAMA TOWN OF OAKFIELD

## AGRICULTURAL & FARMLAND PROTECTION PLANS

### WELCOME!

Thank you for taking the time to attend this meeting and participate in the project.

#### **What is an Agricultural and Farmland Protection Plan?**

An Agricultural and Farmland Protection Plan examines farming trends in the community and the region, and recommends strategies to protect agriculture. The aim is to preserve high quality agricultural lands (good soils), and to help keep farming a viable activity in the Town.

#### **What do these Plans include?**

These plans (one for each community) were funded by the New York State Department of Agriculture and Markets. We have gathered information about existing conditions (farms, soils, agricultural products, demographics, land use, zoning, natural resources, infrastructure, etc.) We've completed an assessment of the strengths and opportunities for agriculture in each Town (see back), and we have created a listing of strategies each Town can support to help agriculture in their community.



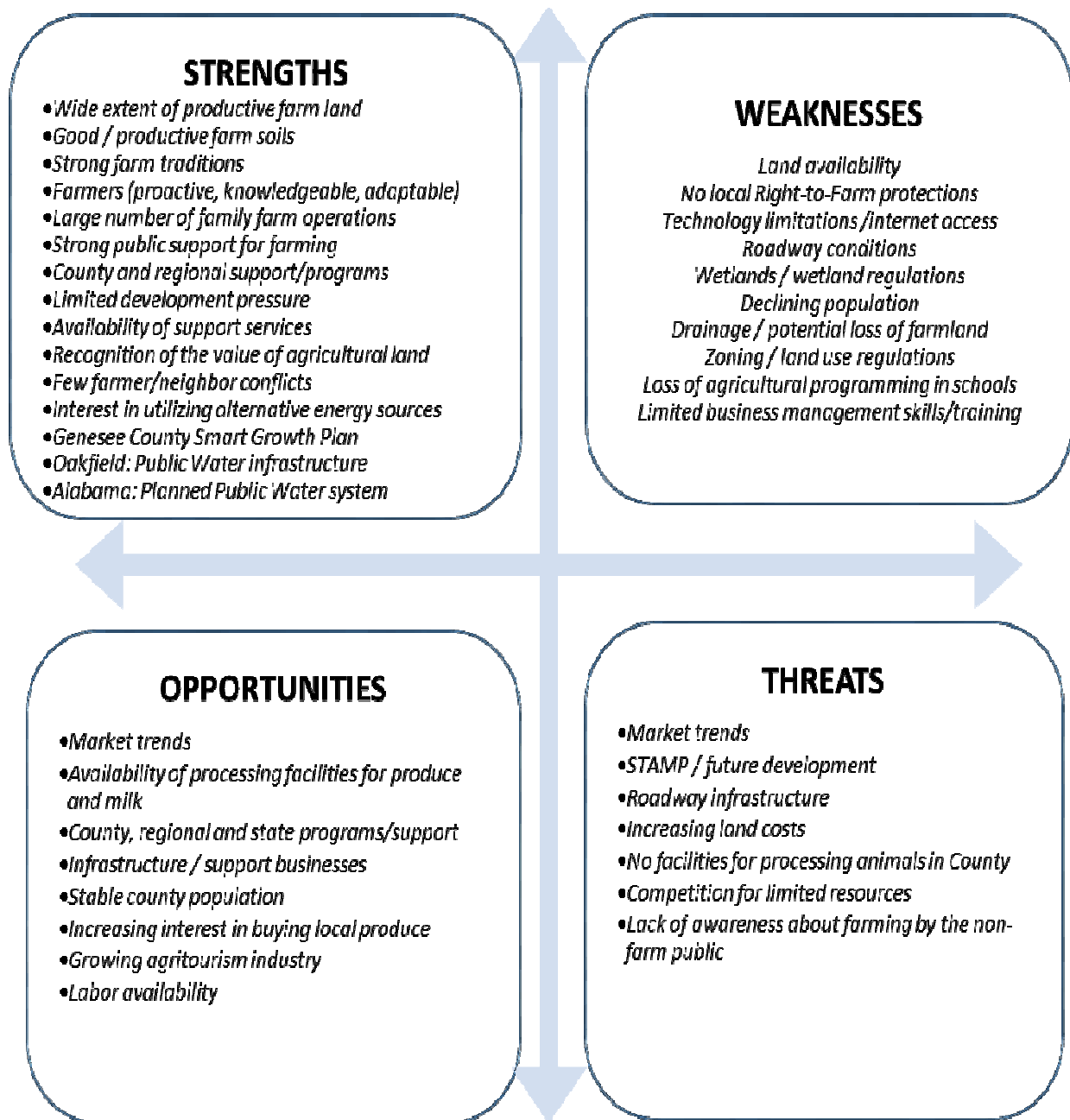
**Tonight's Meeting:** This meeting is being held to give you the opportunity to review the findings and recommendations, and to get feedback.

### OUR AGENDA TONIGHT

1. Project Overview –
  - What we learned about agriculture in Alabama and Oakfield and the County
2. Vision for the Future –
  - Goals for agriculture in the Towns
3. Recommendations –
  - Actions the Towns can take to support agriculture

**Thank you for your input tonight**

# STRENGTHS, WEAKNESSES, OPPORTUNITIES & THREATS TO AGRICULTURE Towns of Alabama and Oakfield



**Appendix C**  
Land Use Regulations

# from Town of Alabama Zoning Law

**Agricultural Use:** Any parcel of land containing at least five (5) acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit.

Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith.

Agricultural uses shall exclude the raising of furbearing animals, riding academies, public stables or dog kennels.

**Alteration:** Structural changes, rearrangements, change of location or addition to a building, other than repairs and modifications in building equipment.

**Amusement Game:** Any mechanical, electric or electronic device used or designed to be operated for entertainment or as a game by the insertion of a coin, slug, token, plate, disc, key or any other article into a slot, crevice, or other opening or by paying money to have it activated. Not included are rides, bowling alleys, any device maintained within a residence for the not-for-profit use of occupants thereof and their guests, any gambling device or juke boxes.

**Animal Shelter:** Building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

**Animal Waste Storage Facility:** Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

**Antenna:** An arrangement of wires or metal rods using in transmitting or receiving electromagnetic waves.

**Apartment House:** See Dwelling, Multi-Family

**Area Variance:** The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Zoning Law.

**Arterial Highway:** A highway which collects and distributes traffic to and from minor highways. For the purposes of the Zoning Law, the following highways shall be considered arterial highways within the Town: NYS Routes #63 and 77.

**Bed and Breakfast:** An owner-occupied one-family dwelling in which a room or rooms are rented on a nightly basis for periods of less than two (2) weeks. Meals may or may not be provided.

**Bio-Remediation:** The use of an ex-situ bio remediation process for the treatment of petroleum contaminated soils.

3. Plantings and bushes used in lieu of a man made fence as set forth above (i.e. a hedge) shall not exceed three (3) feet in height.

C. Fencing – Side and Rear Yards

Fencing located in side or rear yards shall not exceed six (6) feet in height.

**SECTION 412**      **OUTSIDE SOLID FUEL BURNING DEVICES**

Outside solid fuel burning devices shall not be installed in an R District or within 500 feet of such district. When installed outside the R District (and the required 500 foot buffer), such units shall be installed and operated in accordance with the manufacturer's instructions so as to not allow smoke or fumes to enter buildings on surrounding properties.

**ARTICLE V**      **ZONING DISTRICT REGULATIONS**



**SECTION 501**      **AGRICULTURAL-RESIDENTIAL DISTRICT A-R**

The Agricultural-Residential District is designed to accommodate primarily agricultural uses in order to preserve the Town's agricultural base and maintain its rural nature, but residential uses are permitted therein. It is recognized, however, that agricultural and residential uses have a number of inherent conflicts between them. Individuals who plan to develop residential uses within the A-R District should be aware of such inherent conflicts and that residences are a secondary use.

A. Permitted Uses

The following uses are permitted in the Agricultural-Residential District:

1. Farms and all usual agricultural operations.
2. One and two-family dwellings.
3. Single mobile homes in accordance with the provisions of Section 701.
4. Churches and other places of worship, parish houses, convents, rectories and parsonages.
5. Schools, public parks, playgrounds, libraries, municipal buildings and water systems and similar public uses.
6. Farm water supply, conservancy and fire protection ponds located not less than one hundred (100) feet from any street or property lines.
7. Private stables.



8. Home Occupation I (see Section 610).
9. Roadside stands (see Section 615).
10. Accessory uses and buildings.
11. Contractor's Yard.
12. Non-Commercial Wind Energy Systems (See Section 622)

B. Uses Requiring Special Use Permit

The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit authorized by the Planning Board (see Section 808):

1. Multi-family dwelling(s).
2. Home occupation II (see Section 610).
3. Outdoor recreation facility.
4. Indoor recreation facility.
5. Club.
6. Airport landing strip.
7. Dog/Board Kennel.
8. Motor vehicle repair shop (see Section 604).
9. Community center.
10. Professional offices.
11. Nursing home.
12. Public utility (see Section 605).
13. Public stable.
14. Commercial greenhouse.
15. Mobile home park.

16. Junkyard (see Section 609).
17. Cluster residential development (see Section 608).
18. Animal shelter.
19. Adult care facility.
20. Animal waste storage facility outside NYS Ag. & Markets Agricultural Districts (see Section 616).
21. Child day care center.
22. Self-service storage facility.
23. Commercial communication tower (see section 614)
24. Home Business Class I or II (see Section 617)
25. Recreational vehicles and campgrounds (see Section 611).
26. ATV, Snowmobile, Go-Kart, Motorcycle Race Courses (see Section 612).
27. Sporting club (see Section 618).
28. Landscaping and topsoil business (excluding stripping of topsoil from premises).
29. Bio remediation (see Section 619).
30. Commercial Wind Energy Systems (see Section 621)
31. Neighborhood Business (see Section 623)

**SECTION 502      RESIDENTIAL DISTRICT - R**

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 50,000 square feet. The purpose of this district is to encourage residential growth in areas of the Town which have existing concentrations of residential uses. The residential district will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted Uses

The following uses are permitted in the Residential District.

1. One family dwelling.

**Appendix D**  
NYS Department of Agriculture and Markets Information

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**New York State**  
**Department of Agriculture and Markets**  
**10B Airline Drive**  
**Albany, New York 12235**  
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**CIRCULAR 1150**

**ARTICLE 25AA -- AGRICULTURAL DISTRICTS**

**AGRICULTURE AND MARKETS LAW**  
**(AS AMENDED THROUGH January 1, 2009)**  
**AGRICULTURAL DISTRICTS LAW**

Summary of **1999 Amendments** to the Agricultural Districts Law

Section Amended:§301(4)(e) and §301(9)(e)

Description: Provides that land set aside through participation in a federal conservation program, regardless of the income derived from the land, shall be eligible for an agricultural assessment.

Effective Date: 9/7/99

Section Amended:§301(9)(e)

Description: Adds a new paragraph (e) to allow payments received for land set aside under a federal conservation reserve program to be included in calculating the average gross sales value of products produced in determining whether land used as a single farm operation qualifies as "land used in agricultural production."

Effective Date: 9/7/99

Section Amended:§303-a(4)

Description: Renumbers subdivision (4) to subdivision (5)

Effective Date: 7/20/99

Section Amended:§303-a(4)

Description: Adds a new subdivision (4) that states that if the county legislative body does not review a district upon its anniversary date, the agricultural district remains as originally constituted or until such time that the agricultural district is modified or terminated.

Effective Date: 7/20/99

Section Amended:§305(7)

Description: Provides that the real property tax exemption for agricultural land which is used solely for the purpose of replanting or crop expansion as part of an orchard or vineyard may be greater than 20% of the total acreage of such orchard or vineyard when such orchard or vineyard is located within an area declared by the Governor to be a disaster emergency.

Effective Date: 9/7/99 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after 9/7/99.

Section Amended:§308(3)

Description: Renumbers subdivision (3), which was added by Chapter 362 of the Laws of 1998, to subdivision (4)

Effective Date: 4/6/99

Section Repealed: §309(8) & (9)

Description: Repeals the two subdivisions

Effective Date: 7/20/99

Section Amended:§309(10)

Description: Renumbers subdivision (10) to subdivision (8)

Effective Date: 7/20/99

Section Amended §310(1)

Description: Adds language to the agricultural district disclosure statement to notify a prospective buyer of land within an agricultural district that under certain circumstances, the availability of water and sewer services may be limited.

Effective Date: 7/1/00

#### Summary of **2000 Amendments** to the Agricultural Districts Law

Section Amended: §305(1)(d)(v) and §306(2)(b)(iii)

Description: Revises reporting requirement of assessors to the State Board of Real Property Services when land receiving an agricultural assessment is converted to non-agricultural uses.

Effective Date: 7/11/00

Section Amended: §308(1)(b)

Description: Requires the Commissioner to give consideration to a practice conducted under the Agricultural Environmental Management (AEM) Program when making a sound agricultural practice determination.

Effective Date: 11/8/00

#### Summary of **2001 Amendments** to the Agricultural Districts Law

Section Amended: §301(11)

Description: Includes manure processing and handling facilities as part of a “farm operation” for purposes of administering the Agricultural Districts Law.

Effective Date: 10/23/01

Section Amended: §301(11)

Description: Includes “commercial horse boarding operations” as part of a “farm operation” for purposes of administering the Agricultural Districts Law.

Effective Date: 10/31/01

#### Summary of **2002 Amendments** to the Agricultural Districts Law

Section Amended: §301(4)

Description: Eliminates county legislative body approval for the designation of eligible horse boarding operations as land used in agricultural production.

Effective Date: 1/30/03

Sections Amended: §301(4), §301(4)(b), and §301(4)(f)

Description: Reduces the number of acres needed to qualify for agricultural real property assessment from ten acres to 7 or more acres as long as the value of crops produced exceeds \$10,000 on average in the preceding two years. The size of rented land eligible for an agricultural assessment is reduced from 10 acres to 7 acres as long as the smaller parcel yields at least \$10,000 in average annual gross sales independently or in conjunction with land owned by the farmer renting the parcel. The amendment also reduces the number of acres needed to qualify as land used in agricultural production from not less than ten acres to seven or more acres and average gross sales of \$10,000 or

more in the preceding two years or less than seven acres and average gross sales \$50,000 or more in the preceding two years.

Effective Date: 1/1/03

Section Added: §301(9)(f)

Description: Allows payments received by thoroughbred breeders pursuant to Section 247 of the racing pari-mutuel wagering and breeding law to be included in the definition of "gross sales value" for agricultural assessment purposes.

Effective Date: 9/17/02

Section Amended: §301(11)

Description: Amends the definition of farm operation to indicate that such operation may consist of one or more parcels of owned or rented land and such parcels may or may not be contiguous to each other.

Effective Date: 1/1/03

Section Amended: §301(13)

Description: Reduces the minimum acreage required for a commercial horse boarding operation from ten to seven acres.

Effective Date: 1/1/03

Sections Amended: §303(2)(a)(1), §303(4), §303(5)(a) and (b), §303(6)(a) and (b), §303(7) and §303(8)

Description: Amends various sections of the law to allow a landowner to include viable agricultural land within a certified agricultural district prior to its eight, twelve or twenty year review period.

Effective Date: 12/20/02

#### Summary of **2003 Amendments** to the Agricultural Districts Law

Section Added: §301(4)(h)

Description: Adds a new paragraph (h) to allow first year farmers to receive an agricultural assessment if they meet the gross sales value requirements during their first year of operation.

Effective Date: 9/9/03

Sections Amended: §301(5), §305(1)(d)(iv), and §306(2)(c)

Description: Amends various sections of the law so that conversion penalties are not assessed on farmland that is being used in agricultural production and receives an agricultural assessment when such land is converted to wind energy generation facilities.

Effective Date: 9/22/03

Sections Amended: §303-b, §303(2)(a)(1) and §303(4)

Description: Adds a new section 303-b to establish an annual 30-day period during which a farmer can submit proposals to include viable land within a certified agricultural district.

Effective Date: 9/17/03

Sections Amended: §303(5)(b), §303(6)(b) and §303(8)

Description: Repeals various sections of the law to conform with the provisions of a new section 303-b.

Effective Date: 9/17/03

#### Summary of **2004 Amendment** to the Agricultural Districts Law

Section Amended:§301(4)(h)

Description: Amends paragraph (h) to allow a farm operation to receive an agricultural assessment if it meets the acreage and gross sales value requirements during its first or second year of agricultural production.

Effective Date: 2/24/04

Section Amended:§301(4)(i)

Description: Adds a new paragraph (i) to allow start-up farm operations that plant orchard or vineyard crops to immediately become eligible to receive an agricultural assessment in its first, second, third or fourth year of production.

Effective Date: 1/1/05

#### Summary of **2005 Amendments** to the Agricultural Districts Law

Section Amended:§301(2)(e)

Description: Amends paragraph (e) by adding wool bearing animals, such as alpacas and llamas, to the definition of “livestock and livestock products.”

Effective Date: 7/12/05

Section Amended:§301(4)(h) and §301(13)

Description: Amends paragraph (h) to allow a “commercial horse boarding operation” to receive an agricultural assessment if it meets the acreage and gross sales value requirements during its first or second year of agricultural production. The definition of “commercial horse boarding operation” is amended by stating that such operations may qualify as a “farm operation” in its first or second year of operation if it meets the acreage and number of horse requirements.

Effective Date: 8/23/05

Section Amended:§301(11) and §301(14)

Description: Includes “timber processing” as part of a “farm operation” for purposes of administering the Agricultural Districts Law and adds a new section by defining the term “timber processing.”

Effective Date: 8/23/05



Section Amended:§305-b

Description: Adds a new section that authorizes the Commissioner to review and comment upon the proposed rules and regulations of other State agencies which may have an adverse impact on agriculture and farming operations in the State.

Effective Date: 10/4/05 (Shall apply to proposed rules and regulations publicly noticed 60 or more days following the effective date.)

Summary of **2006 Amendments** to the Agricultural Districts Law

Section Amended:§301(4)

Description: Adds a new section (j) to allow newly planted Christmas tree farms to be eligible for agricultural assessment in their first through fifth years of agricultural production.

Effective Date: 1/1/07 and applies to assessment rolls prepared on the basis of taxable status dates occurring on or after such date.

Section Amended:§§301 and 308(1)

Description: Adds a new subdivision (15) to §301 to define “agricultural tourism” and amends §308(1) to add “agricultural tourism” to the list of examples of activities which entail practices the Commissioner may consider for sound agricultural practice opinions.

Effective Date: 8/16/06

Section Amended:§305(1)(a)

Description: Amends paragraph (1)(a) to allow filing of an application after taxable status date where failure to timely file resulted from a death of applicant’s spouse, child, parent, brother or sister or illness of the applicant or applicant’s spouse, child, parent, brother or sister which prevents timely filing, as certified by a licensed physician.

Effective Date: 9/13/06 and applies to assessment rolls prepared on the basis of a taxable status date occurring on or after such date.

Section Amended:§305(7)

Description: Amends paragraph (7) to extend the 100% exemption for newly planted orchards and vineyards from 4 to 6 years.

Effective Date: 9/13/06 and applies to assessment rolls prepared on the basis of a taxable status date occurring on or after 1/1/06.

Section Amended:§310(1), §308(5)

Description: Amends AML §§310(1), 308(5) and RPL §333-c(1) relative to the disclosure notice required for prospective purchasers of property within an agricultural district.

Effective Date: 7/26/06

Summary of **2007 Amendments** to the Agricultural Districts Law

Section Amended: §§303, 303-a & 304-b, repeals §303-a(2)(b) and (c)  
Description: Amends AML §§303, 303-a and 304-b concerning the review of agricultural districts and the reporting of agricultural district data and repeals certain provisions of such law relating thereto.  
Effective Date: 7/3/07

Section Amended: §304-a  
Description: Amends AML §304-a to limit an increase in the base agricultural assessment values for any given year to 10 percent or less of the assessment value of the preceding year.  
Effective Date: 6/4/07

Section Amended: §305(1)(a)  
Description: Amends AML §305(1)(a) in relation to authorizing the filing of an application for an agricultural assessment after the taxable status date in the event of a natural disaster or destruction of farm structures.  
Effective Date: 8/15/07

#### Summary of **2008 Amendments** to the Agricultural Districts Law

Section Amended: §§301(2)(j), 301(4)(k) and 301(16)  
Description: Adds a new paragraph (j) to §301(2) to add “apiary products” to the definition of “crops, livestock and livestock products,” adds a new paragraph (k) to §301(4) to independently qualify apiaries for an agricultural assessment and adds a new subdivision (16) to define “apiary products operation.”  
Effective Date: 7/21/08 and applies to assessment rolls prepared on the basis of a taxable status date occurring on or after 7/21/08 .

Section Amended: §§301(11) and 308(1)(b)  
Description: Amends subdivision (11) of §301 to add the “production, management and harvesting of ‘farm woodland’” to the definition of “farm operation” and amends §308(1)(b) to add the “production, management and harvesting of ‘farm woodland’” to the list of examples of activities which entail practices the Commissioner may consider for sound agricultural practice opinions.  
Effective Date: 9/4/08

Section Amended: §§301(9), 301(11), and 301(16)  
Description: Adds a new paragraph (g) to §301(9) to allow up to \$5,000 from the sale of “compost, mulch or other organic biomass crops” to help meet the eligibility requirements for an agricultural assessment; amends subdivision (11) of §301 to add “compost, mulch or other biomass crops” to the definition of “farm operation” and adds a new subdivision (16) to define “compost, mulch or other organic biomass crops.”  
Effective Date: 9/4/08

## **ARTICLE 25AA - AGRICULTURAL DISTRICTS**

- Sec.
- 300. Declaration of legislative findings and intent.
  - 301. Definitions.
  - 302. County agricultural and farmland protection board.
  - 303. Agricultural districts; creation.
  - 303-a. Agricultural districts; review.
  - 303-b. Agricultural districts; inclusion of viable agricultural land.
  - 304. Unique and irreplaceable agricultural land; creation of districts.
  - 304-a. Agricultural assessment values.
  - 304-b. Agricultural district data collection.
  - 305. Agricultural districts; effects.
  - 305-a. Coordination of local planning and land use decision-making with the agricultural districts program.
  - 305-b. Review of proposed rules and regulations of state agencies affecting the agricultural industry.
  - 306. Agricultural lands outside of districts; agricultural assessments.
  - 307. Promulgation of rules and regulations.
  - 308. Right to farm.
  - 308-a. Fees and expenses in certain private nuisance actions.
  - 309. Advisory council on agriculture.
  - 310. Disclosure.

### **300. Declaration of legislative findings and intent**

It is hereby found and declared that many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the idling or conversion of potentially productive agricultural land.

The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.

The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.

### 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.
  - 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; and
  - 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 forty-seven of the racing, pari-mutuel wagering and breeding law.
  - 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 and "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 the 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.<sup>1</sup>
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.
  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 handling of off-farm generated organic matter that is transported to 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.

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<sup>1</sup> The definition of "farm operation" was separately amended by Chapters 374 and 388 of the Laws of 2001 to add "manure processing and handling facilities" (Chapter 374) and "commercial horse boarding operations" (Chapter 388) and in 2005, "timber processing" (Chapter 573).

### **302. County agricultural and farmland protection board**

1. (a) A county legislative body may establish a county agricultural and farmland protection board which shall consist of eleven members, at least four of whom shall be active farmers. At least one member of such board shall represent agribusiness and one member may represent an organization dedicated to agricultural land preservation. These six members of the board shall reside within the county which the respective board serves. The members of the board shall also include the chairperson of the county soil and water conservation district's board of directors, a member of the county legislative body, a county cooperative extension agent, the county planning director and the county director of real property tax services. The chairperson shall be chosen by majority vote. Such board shall be established in the event no such board exists at the time of receipt by the county legislative body of a petition for the creation or review of an agricultural district pursuant to section three hundred three of this article, or at the time of receipt by the county of a notice of intent filing pursuant to subdivision four of section three hundred five of this article. The members of such board shall be appointed by the chairperson of the county legislative body, who shall solicit nominations from farm membership organizations except for the chairperson of the county soil and water conservation district's board of directors, the county planning director and director of real property tax services, who shall serve ex officio. The members shall serve without salary, but the county legislative body may entitle each such member to reimbursement for actual and necessary expenses incurred in the performance of official duties.
- (b) After the board has been established, the chairperson of the county legislative body shall appoint to it two qualified persons for terms of two years each, two qualified persons for terms of three years each and two qualified persons for a term of four years. Thereafter, the appointment of each member shall be for a term of four years. Appointment of a member of the county legislative body shall be for a term coterminous with the member's term of office. Appointment of the county planning director and county director of real property tax services shall be coterminous with their tenure in such office. The appointment of the chairperson of the county soil and water conservation district's board of directors shall be for a term coterminous with his or her designation as chairperson of the county soil and water conservation district's board of directors. Any member of the board may be reappointed for a succeeding term on such board without limitations as to the number of terms the member may serve.
- (c) The county agricultural and farmland protection board shall advise the county legislative body and work with the county planning board in relation to the proposed establishment, modification, continuation or termination of any agricultural district. The board shall render expert 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 and the relation of farming in such area to the county as a whole. The board may review notice of intent filings pursuant to subdivision four of section three hundred five of this article and make findings and recommendations pursuant to that section as to the effect and reasonableness of proposed actions involving the advance of public funds or acquisitions of farmland in agricultural districts by governmental entities. The board shall also assess and approve county agricultural and farmland protection plans.



- (d) A county agricultural and farmland protection board may request the commissioner of agriculture and markets to review any state agency rules and regulations which the board identifies as affecting the agricultural activities within an existing or proposed agricultural district. Upon receipt of any such request, the commissioner of agriculture and markets shall, if the necessary funds are available, submit in writing to the board (i) notice of changes in such rules and regulations which he or she deems necessary, (ii) a copy of correspondence with another agency if such rules and regulations are outside his or her jurisdiction, including such rules and regulations being reviewed, and his or her recommendations for modification, or (iii) his or her reasons for determining that existing rules and regulations be continued without modification.
  - (e) The county agricultural and farmland protection board shall notify the commissioner and the commissioner of the department of environmental conservation of any attempts to propose the siting of solid waste management facilities upon farmland within an agricultural district.
2. Upon the request of one or more owners of land used in agricultural production the board may review the land classification for such land established by the department of agriculture and markets, consulting with the district soil and water conservation office, and the county cooperative extension service office. After such review, the board may recommend revisions to the classification of specific land areas based on local soil, land and climatic conditions to the department of agriculture and markets.

### **303. Agricultural districts; creation**

1. Any owner or owners of land may submit a proposal to the county legislative body for the creation of an agricultural district within such county, provided that such owner or owners own at least five hundred acres or at least ten per cent of the land proposed to be included in the district, whichever is greater. Such proposal shall be submitted in such manner and form as may be prescribed by the commissioner, shall include a description of the proposed district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries, and the tax map identification numbers for every parcel in the proposed district. The proposal may recommend an appropriate review period of either eight, twelve or twenty years.
2. Upon the receipt of such a proposal, the county legislative body:
- a. shall thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed district and by posting such notice in five conspicuous places within the proposed district. The notice shall contain the following information:
    - (1) a statement that a proposal for an agricultural district has been filed with the county legislative body pursuant to this article;
    - (2) a statement that the proposal will be on file open to public inspection in the county clerk's office;
    - (3) a statement that any municipality whose territory encompasses the proposed district or any landowner who owns at least ten per cent of the land proposed to be included within the proposed modification of the proposed district may propose a modification of the proposed district in such form and manner as may be prescribed by the commissioner of agriculture and markets;
    - (4) a statement that the proposed modification must be filed with the county clerk and the clerk of the county legislature within thirty days after the publication of such notice;

- (5) a statement that at the termination of the thirty day period, the proposal and proposed modifications will be submitted to the county planning board and county agricultural and farmland protection board and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning board and county agricultural and farmland protection board;
  - b. shall receive any proposals for modifications of such proposal which may be submitted by such landowners or municipalities within thirty days after the publication of such notice;
  - c. shall, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county planning board, which shall, within forty-five days, report to the county legislative body the potential effect of such proposal and proposed modifications upon the county's planning policies and objectives;
  - d. shall simultaneously, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county agricultural and farmland protection board, which shall, within forty-five days report to the county legislative body its recommendations concerning the proposal and proposed modifications, and;
  - e. shall hold a public hearing in the following manner:
    - (1) The hearing shall be held at a place within the proposed district or otherwise readily accessible to the proposed district;
    - (2) The notice shall contain the following information:
      - (a) a statement of the time, date and place of the public hearing;
      - (b) a description of the proposed district, any proposed additions and any recommendations of the county planning board or county agricultural and farmland protection board;
      - (c) a statement that the public hearing will be held concerning:
        - (i) the original proposal;
        - (ii) any written amendments proposed during the thirty day review period;
        - (iii) any recommendations proposed by the county agricultural and farmland protection board and/or the county planning board.
    - (3) The notice shall be published in a newspaper having a general circulation within the proposed district and shall be given in writing to those municipalities whose territory encompasses the proposed district and any proposed modifications, owners of real property within such a proposed district or any proposed modifications who are listed on the most recent assessment roll, the commissioner, the commissioner of environmental conservation and the advisory council on agriculture.
3. The following factors shall be considered by the county planning board, the county agricultural and farmland protection board, and at any public hearing:
- (i) the viability of active farming within the proposed district and in areas adjacent thereto;
  - (ii) the presence of any viable farm lands within the proposed district and adjacent thereto that are not now in active farming;
  - (iii) the nature and extent of land uses other than active farming within the proposed district and adjacent thereto;
  - (iv) county developmental patterns and needs; and
  - (v) any other matters which may be relevant.

In judging viability, any relevant agricultural viability maps prepared by the commissioner of agriculture and markets shall be considered, as well as soil, climate, topography,

other natural factors, markets for farm products, the extent and nature of farm improvements, the present status of farming, anticipated trends in agricultural economic conditions and technology, and such other factors as may be relevant.

4. The county legislative body, after receiving the reports of the county planning board and the county agricultural and farmland protection board and after such public hearing, may adopt as a plan the proposal or any modification of the proposal it deems appropriate, and shall adopt as part of the plan an appropriate review period of either eight, twelve or twenty years. The plan as adopted shall, to the extent feasible, include adjacent viable farm lands, and exclude, to the extent feasible, nonviable farm land and non-farm land. The plan shall include only whole tax parcels in the proposed district. The county legislative body shall act to adopt or reject the proposal, or any modification of it, no later than one hundred eighty days from the date the proposal was submitted to this body. Upon the adoption of a plan, the county legislative body shall submit it to the commissioner. The commissioner may, upon application by the county legislative body and for good cause shown, extend the period for adoption and submission once for an additional thirty days. Where he or she does so, the county legislative body may extend the period for the report from the county planning board and/or the period for the report from the county agricultural and farmland protection board.
5.
  - a. The commissioner shall have sixty days after receipt of the plan within which to certify to the county legislative body whether the proposal, or a modification of the proposal, is eligible for districting, whether the area to be districted consists predominantly of viable agricultural land, and whether the plan of the proposed district is feasible, and will serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state. The commissioner shall submit a copy of such plan to the commissioner of environmental conservation, who shall have thirty days within which to report his or her determination to the commissioner. A copy of such plan shall also be provided to the advisory council on agriculture. The commissioner shall not certify the plan as eligible for districting unless the commissioner of environmental conservation has determined that the area to be districted is consistent with state environmental plans, policies and objectives.
  - b. [repealed]
6.
  - a. Within sixty days after the certification by the commissioner that the proposed area is eligible for districting, and that districting would be consistent with state environmental plans, policies and objectives, the county legislative body may hold a public hearing on the plan, except that it shall hold a public hearing if the plan was modified by the commissioner or was modified by the county legislative body after they held the public hearing required by paragraph e of subdivision two of this section and such modification was not considered at the original hearing. Notice of any such hearing shall be in a newspaper having general circulation in the area of the proposed district and individual notice, in writing, to those municipalities whose territories encompass the proposed district modifications, the persons owning land directly affected by the proposed district modifications, the commissioner, the commissioner of environmental conservation and the advisory council on agriculture. The proposed district, if certified without modification by the commissioner, shall become effective thirty days after the termination of such public hearing or, if there is no public hearing, ninety days after such certification unless its creation is disapproved by the county legislative body within such period. Provided, however, that if, on a date within the thirty days after the termination of such public hearing or, if there is no public hearing, within the ninety days after such certification, the county legislative body approves creation of the district, such district shall become effective

on such date. Provided further, that notwithstanding any other provision of this subdivision, if the commissioner modified the proposal, the district shall not become effective unless the county legislative body approves the modified district; such approval must be given on a date within the thirty days after termination of the public hearing; and the district, if approved, shall become effective on such date. Before approving or disapproving any proposal modified by the commissioner, the county legislative body may request reports on such modified proposal, from the county planning board and the county agricultural and farmland protection board.

- b. [repealed]
- 7. Upon the creation of an agricultural district, the description thereof, which shall include tax map identification numbers for all parcels within the district, plus a map delineating the exterior boundaries of the district in relation to tax parcel boundaries, shall be filed by the county legislative body with the county clerk, the county director of real property tax services, and the commissioner. For all existing agricultural districts, the county clerk shall also file with the commissioner upon request the tax map identification numbers for tax parcels within those districts. The commissioner, on petition of the county legislative body, may, for good cause shown, approve the correction of any errors in materials filed pursuant to a district creation at any time subsequent to the creation of any agricultural district.
- 8. [repealed]

**303-a. Agricultural districts; review.**

- 1. The county legislative body shall review any district created under this section eight, twelve or twenty years after the date of its creation, consistent with the review period set forth in the plan creating such district and at the end of every eight, twelve or twenty year period thereafter, whichever may apply. In counties with multiple districts with review dates in any twelve month period, the commissioner, on petition of the county legislative body, may, for good cause shown, approve an extension of up to four years for a district review. Thereafter, the extended review date shall be deemed the creation date for purposes of subsequent reviews by the county legislative body in accordance with this section. The review date of a district may not be extended more than four years. The petition of the county legislative body for an extension shall be submitted to the commissioner at least six months prior to the review date.
- 2. In conducting a district review the county legislative body shall;
  - a. Provide notice of such district review by publishing a notice in a newspaper having general circulation within the district and by posting such notice in at least five conspicuous places within the district. The notice shall identify the municipalities in which the district is found and the district's total area; indicate that a map of the district will be on file and open to public inspection in the office of the county clerk and such other places as the legislative body deems appropriate; and notify municipalities and land owners within the district that they may propose a modification of the district by filing such proposal with the county clerk of the county legislature within thirty days after the publication of such notice;
  - b. Direct the county agricultural and farmland protection board to prepare a report concerning the following:
    - (1) The nature and status of farming and farm resources within such district, including the total number of acres of land and the total number of acres of land in farm operations in the district;
    - (2) The extent to which the district has achieved its original objectives;

- (3) The extent to which county and local comprehensive plans, policies and objectives are consistent with and support the district;
  - (4) The degree of coordination between local laws, ordinances, rules and regulations that apply to farm operations in such district and their influence on farming; and;
  - (5) Recommendations to continue terminate or modify such district.
- c. Hold a public hearing at least one hundred twenty days prior to the district review date and not more than one hundred eighty days prior to such date, in the following manner:
- (1) The hearing shall be held at a place within the district or other-wise readily accessible to the proposed district;
  - (2) A notice of public hearing shall be published in a newspaper having a general circulation within the district and shall be given in writing to those municipalities whose territories encompass the district and any proposed modifications to the district; to persons, as listed on the most recent assessment roll, whose land is the subject of a proposed modification; and to the commissioner;
  - (3) The notice of hearing shall contain the following information:
    - (a) a statement of the time, date and place of the public hearing; and
    - (b) a description of the district, any proposed modifications and any recommendations of the county agricultural and farmland protection board.
3. The county legislative body, after receiving the report and recommendation of the county agricultural and farmland protection board, and after public hearing, shall make a finding whether the district should be continued, terminated or modified. If the county legislative body finds that the district should be terminated, it may do so at the end of such eight, twelve or twenty year period, whichever may be applicable, by filing a notice of termination with the county clerk and the commissioner. If the county legislative body finds that the district should be continued or modified, it shall submit a district review plan to the commissioner. The district review plan shall include a description of the district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries; the tax map identification numbers for every parcel in the district; a copy of the report of the county agricultural and farmland protection board required by paragraph b of subdivision two of this section; and a copy of the testimony given at the public hearing required by subdivision two of this section or a copy of the minutes of such hearing.
4. If the county legislative body does not act, or if a modification of a district is rejected by the county legislative body, the district shall continue as originally constituted, unless the commissioner, after consultation with the advisory council on agriculture, terminates such district, by filing a notice thereof with the county clerk, because:
- a. The area in the district is no longer predominantly viable agricultural land; or
  - b. The commissioner or environmental conservation has determined that the continuation of the district would not be consistent with state environmental plans, policies and objectives; provided, however, that if the commissioner certifies to the county legislative body that he or she will not approve the continuance of the district unless modified, the commissioner shall grant the county an extension as provided in subdivision one of this section to allow the county to prepare a modification of the district in the manner provided in this section.
5. Plan review, certification and filing shall be conducted in the same manner prescribed for district creation in subdivisions five, six and seven of section three hundred three of this article.

### **303-b. Agricultural districts; inclusion of viable agricultural land**

1. The legislative body of any county containing a certified agricultural district shall designate an annual thirty-day period within which a land owner may submit to such body a request for inclusion of land which is predominantly viable agricultural land within a certified agricultural district prior to the county established review period. Such request shall identify the agricultural district into which the land is proposed to be included, describe such land, and include the tax map identification number and relevant portion of the tax map for each parcel of land to be included.
2. Upon the termination of such thirty-day period, if any requests are submitted, the county legislative body shall:
  - a. refer such request or requests to the county agricultural and farmland protection board, which shall, within thirty days report to the county legislative body its recommendations as to whether the land to be included in the agricultural district consists predominantly of “viable agricultural land” as defined in subdivision seven of section three hundred one of this article and the inclusion of such land would serve the public interest by assisting in maintaining a viable agricultural industry within the district; and
  - b. publish a notice of public hearing in accordance with subdivision three of this section.
3. The county legislative body shall hold a public hearing upon giving notice in the following manner:
  - a. The notice of public hearing shall contain a statement that one or more requests for inclusion of predominantly viable agricultural land within a certified agricultural district have been filed with the county legislative body pursuant to this section; identify the land, generally, proposed to be included; indicate the time, date and place of the public hearing, which shall occur after receipt of the report of the county agricultural and farmland protection board; and include a statement that the hearing shall be held to consider the request or requests and recommendations of the county agricultural and farmland protection board.
  - b. The notice shall be published in a newspaper having a general circulation within the county and shall be given in writing directly to those municipalities whose territory encompasses the lands which are proposed to be included in an agricultural district and to the commissioner.
4. After the public hearing, the county legislative body shall adopt or reject the inclusion of the land requested to be included within an existing certified agricultural district. Such action shall be taken no later than one hundred twenty days from the termination of the thirty day period described in subdivision one of this section. Any land to be added shall consist of whole tax parcels only. Upon the adoption of a resolution to include predominantly viable agricultural land, in whole or in part, within an existing certified agricultural district, the county legislative body shall submit the resolution, together with the report of the county agricultural and farmland protection board and the tax map identification numbers and tax maps for each parcel of land to be included in an agricultural district to the commissioner.
5. Within thirty days after receipt of a resolution to include land within a district, the commissioner shall certify to the county legislative body whether the inclusion of predominantly viable agricultural land as proposed is feasible and shall serve the public interest by assisting in maintaining a viable agricultural industry within the district or districts.

6. If the commissioner certifies that the proposed inclusion of predominantly viable agricultural land within a district is feasible and in the public interest, the land shall become part of the district immediately upon such certification.

#### **304. Unique and irreplaceable agricultural lands; creation of districts**

1. The commissioner, after consulting with the advisory council on agriculture, may create agricultural districts covering any land in units of two thousand or more acres not already districted under section three hundred three of this article, if (a) the land encompassed in a proposed district is predominantly unique and irreplaceable agricultural land; (b) the commissioner of environmental conservation has determined that such district would further state environmental plans, policies and objectives; and (c) the director of the division of the budget has given approval of the establishment of such area.
2. Prior to creating an agricultural district under this section, the commissioner of agriculture and markets shall work closely, consult and cooperate with local elected officials, planning bodies, agriculture and agribusiness interests, community leaders, and other interested groups. The commissioner shall give primary consideration to local needs and desires, including local zoning and planning regulations as well as regional and local comprehensive land use plans. The commissioner shall file a map of the proposed district in the office of the clerk of any municipality in which the proposed district is to be located, and shall provide a copy thereof to the chief executive officer of any such municipality and the presiding officer of the local governing body, and, upon request, to any other person. The commissioner shall publish a notice of the filing of such proposed map and the availability of copies thereof in a newspaper of general circulation within the area of the proposed district, which notice shall also state that a public hearing will be held to consider the proposed district at a specified time and at a specified place either within the proposed district or easily accessible to the proposed district on a date not less than thirty days after such publication. In addition, the commissioner shall give notice, in writing, of such public hearing to persons owning land within the proposed district. The commissioner shall conduct a public hearing pursuant to such notice, and, in addition, any person shall have the opportunity to present written comments on the proposed district within thirty days after the public hearing. After due consideration of such local needs and desires, including such testimony and comments, if any, the commissioner may affirm, modify or withdraw the proposed district. Provided, however, that if the commissioner modifies the proposal to include any land not included in the proposal as it read when the public hearing was held, the commissioner shall hold another public hearing, on the same type of published and written notice, and with the same opportunity for presentation of written comments after the hearing. Then the commissioner may affirm, modify or withdraw the proposed district, but may not modify it to include land not included in the proposal upon which the second hearing was held.
3. Upon such affirmation or modification, a map of the district shall be filed by the commissioner of agriculture and markets with the county clerk of each county in which the district or a portion thereof is located, and publication of such filing shall be made in a newspaper of general circulation within the district to be created. The creation of the district shall become effective thirty days after such filing and publication.
4. The commissioner shall review any district created under this section, in consultation with the advisory council on agriculture, the commissioner of environmental conservation and the director of the division of the budget, eight, twelve or twenty years after the date of its creation, consistent with the review period set forth in the plan creating such district or every eight years if the district was adopted prior to August first, nineteen hundred eighty-three, and every eight, twelve or twenty year period thereafter, whichever may be

applicable. Each such review shall include consultations with local elected officials, planning bodies, agricultural and agribusiness interests, community leaders, county agricultural and farmland protection boards, and other interested groups, and shall also include a public hearing at a specified time and at a specified place either within the district or easily accessible to the proposed district, notice of such hearing to be published in a newspaper having general circulation within the district. In addition, the commissioner shall give notice, in writing, of such public hearing to persons owning land in the district. After any such review, the commissioner may modify such district so as to exclude land which is no longer predominantly unique and irreplaceable agricultural land or to include additional such land, provided: (a) such modification would serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state; (b) the commissioner of environmental conservation has determined that such modification would further state environmental plans, policies and objectives; and (c) such modification has been approved by the director of the division of the budget; provided, further that if the commissioner modifies the district to include additional land, he or she shall hold another public hearing, on the same type of published and written notice. Then the commissioner may again modify or dissolve the district, but may not modify it to include land not included in the proposed modifications upon which the second hearing was held. After any such review the commissioner, after consultation with the advisory council on agriculture, shall dissolve any such district if (a) the land within the district is no longer predominantly unique and irreplaceable agricultural land, or (b) the commissioner of environmental conservation has determined that the continuation of the district would not further state environmental plans, policies and objectives. A modification or dissolution of a district shall become effective in the same manner as is provided for in subdivision three of this section, except that in the case of dissolution, a notice of dissolution shall be filed instead of a map.

#### **304-a. Agricultural assessment values**

1. Agricultural assessment values shall be calculated and certified annually in accordance with the provisions of this section.
2.
  - a. The commissioner of agriculture and markets shall establish and maintain an agricultural land classification system based upon soil productivity and capability. The agricultural land classification system shall distinguish between mineral and organic soils. There shall be ten primary groups of mineral soils and such other subgroups as the commissioner determines necessary to represent high-lime and low-lime content. There shall be four groups of organic soils.
  - b. The land classification system shall be promulgated by rule by the commissioner following a review of comments and recommendations of the advisory council on agriculture and after a public hearing. In making any revisions to the land classification system the commissioner may, in his or her discretion, conduct a public hearing. The commissioner shall foster participation by county agricultural and farmland protection boards, district soil and water conservation committees, and the cooperative extension service and consult with other state agencies, appropriate federal agencies, municipalities, the New York state college of agriculture and life sciences at Cornell university and farm organizations.
  - c. The commissioner shall certify to the state board of real property services the soil list developed in accordance with the land classification system and any revisions thereto.



- d. The commissioner shall prepare such materials as may be needed for the utilization of the land classification system and provide assistance to landowners and local officials in its use.
- 3. a. The state board of real property services shall annually calculate a single agricultural assessment value for each of the mineral and organic soil groups which shall be applied uniformly throughout the state. A base agricultural assessment value shall be separately calculated for mineral and organic soil groups in accordance with the procedure set forth in subdivision four of this section and shall be assigned as the agricultural assessment value of the highest grade mineral and organic soil group.
- b. The agricultural assessment values for the remaining mineral soil groups shall be the product of the base agricultural assessment value and a percentage, derived from the productivity measurements determined for each soil and related soil group in conjunction with the land classification system, as follows:

<b>Mineral Soil Group</b>	<b>Percentage of Base Agricultural Assessment Value</b>
1A	
1B	
2A	89
2B	79
3A	79
3B	68
4A	68
4B	58
5A	58
5B	47
6A	47
6B	37
7	37
8	26
9	16
10	5

- c. The agricultural assessment values for the remaining organic soil groups shall be the products of the base agricultural assessment value and a percentage, as follows:

<b>Organic Soil Group</b>	<b>Percentage of Base Agricultural Assessment Value</b>
A	100
B	65
C	55
D	35

- d. The agricultural assessment value for organic soil group A shall be two times the base agricultural assessment value calculated for mineral soil group 1A.
- e. The agricultural assessment value for farm woodland shall be the same as that calculated for mineral soil group seven.

- f. Where trees or vines used for the production of fruit are located on land used in agricultural production, the value of such trees and vines, and the value of all posts, wires and trellises used for the production of fruit, shall be considered to be part of the agricultural assessment value of such land.
- g. The agricultural assessment value for land and waters used in aquacultural enterprises shall be the same as that calculated for mineral soil group 1A.
- 4. a. The base agricultural assessment value shall be the average capitalized value of production per acre for the eight year period ending in the second year preceding the year for which the agricultural assessment values are certified. The capitalized value of production per acre shall be calculated by dividing the product of the value of production per acre and the percentage of net profit by a capitalization rate of ten percent, representing an assumed investment return rate of eight percent and an assumed real property tax rate of two percent.
- b. The value of production per acre shall be the value of production divided by the number of acres harvested in New York state.
- c. The percentage of net profit shall be adjusted net farm income divided by realized gross farm income.
  - (i) Adjusted net farm income shall be the sum of net farm income, taxes on farm real estate and the amount of mortgage interest debt attributable to farmland, less a management charge of one percent of realized gross farm income plus seven percent of adjusted production expenses.
  - (ii) The amount of mortgage interest debt attributable to farmland shall be the product of the interest on mortgage debt and the percentage of farm real estate value attributable to land.
  - (iii) The percentage of farm real estate value attributable to land shall be the difference between farm real estate value and farm structure value divided by farm real estate value.
  - (iv) Adjusted production expenses shall be production expenses, less the sum of the taxes on farm real estate and the interest on mortgage debt.
- d. The following data, required for calculations pursuant to this subdivision, shall be as published by the United States department of agriculture for all farming in New York state:
  - (i) Farm real estate value shall be the total value of farmland and buildings, including improvements.
  - (ii) Farm structure value shall be the total value of farm buildings, including improvements.
  - (iii) Interest on mortgage debt shall be the total interest paid on farm real estate debt.
  - (iv) Net farm income shall be realized gross income less production expenses, as adjusted for change in inventory.
  - (v) Production expenses shall be the total cost of production.
  - (vi) Realized gross income shall be the total of cash receipts from farm marketings, government payments, nonmoney income and other farm income.
  - (vii) Taxes on farm real estate shall be the total real property taxes on farmland and buildings, including improvements.
  - (viii) Number of acres harvested including all reported crops.
  - (ix) Value of production shall be the total estimated value of all reported crops.
- e. In the event that the data required for calculation pursuant to this subdivision is not published by the United States department of agriculture or is incomplete, such

required data shall be obtained from the New York state department of agriculture and markets.

- f. Upon completion of the calculation of agricultural assessment values, the state board of real property services shall publish an annual report, which shall include a schedule of values, citations to data sources and presentation of all calculations. The state board of real property services shall transmit copies of the annual report to the governor and legislature, the advisory council on agriculture and other appropriate state agencies and interested parties. The state board of real property services shall thereupon certify the schedule of agricultural assessment values and the state board of real property services shall transmit a schedule of such certified values to each assessor.
  - g. Notwithstanding any other provision of this section to the contrary, in no event shall the change in the base agricultural assessment value for any given year exceed ten percent of the base agricultural assessment value of the preceding year.
5.
    - a. In carrying out their responsibilities under this section, the state board of real property services and the commissioner shall keep the advisory council on agriculture fully apprised on matters relating to its duties and responsibilities.
    - b. In doing so, the state board of real property services and the commissioner shall provide, in a timely manner, any materials needed by the advisory council on agriculture to carry out its responsibilities under this section.

#### **304-b. Agricultural district data reporting**

1. The commissioner shall file a written report with the governor and the legislature on January first, two thousand eight and biennially thereafter, covering each prior period of two years, concerning the status of the agricultural districts program. Such report shall include, but not be limited to, the total number of agricultural districts, the total number of acres in agricultural districts, a list of the counties that have established county agricultural and farmland protection plans, and a summary of the agricultural protection planning grants program.
2. Between report due dates, the commissioner shall maintain the necessary records and data required to satisfy such report requirements and to satisfy information requests received from the governor and the legislature between such report due dates.

#### **305. Agricultural districts; effects**

1. Agricultural assessments.
  - a. Any owner of land used in agricultural production within an agricultural district shall be eligible for an agricultural assessment pursuant to this section. If an applicant rents land from another for use in conjunction with the applicant's land for the production for sale of crops, livestock or livestock products, the gross sales value of such products produced on such rented land shall be added to the gross sales value of such products produced on the land of the applicant for purposes of determining eligibility for an agricultural assessment on the land of the applicant. Such assessment shall be granted only upon an annual application by the owner of such land on a form prescribed by the state board of real property services. The applicant shall furnish to the assessor such information as the state board of real property services shall require, including classification information prepared for the applicant's land or water bodies used in agricultural production by the soil and water conservation district office within the county, and information demonstrating the eligibility for agricultural assessment of any land used in conjunction with

rented land as specified in paragraph b of subdivision four of section three hundred one of this article. Such application shall be filed with the assessor of the assessing unit on or before the appropriate taxable status date; provided, however, that (i) in the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the tentative assessment roll is required to be filed by law; or (ii) an application for such an assessment may be filed with the assessor of the assessing unit after the appropriate taxable status date but not later than the last date on which a petition with respect to complaints of assessment may be filed, where failure to file a timely application resulted from: (a) a death of the applicant's spouse, child, parent, brother or sister, (b) an illness of the applicant or of the applicant's spouse, child, parent, brother or sister, which actually prevents the applicant from filing on a timely basis, as certified by a licensed physician, or (c) the occurrence of a natural disaster, including, but not limited to, a flood, or the destruction of such applicant's residence, barn or other farm building by wind, fire or flood. If the assessor is satisfied that the applicant is entitled to an agricultural assessment, the assessor shall approve the application and the land shall be assessed pursuant to this section. Not less than ten days prior to the date for hearing complaints in relation to assessments, the assessor shall mail to each applicant, who has included with the application at least one self-addressed, pre-paid envelope, a notice of the approval or denial of the application. Such notice shall be on a form prescribed by the state board of real property services which shall indicate the manner in which the total assessed value is apportioned among the various portions of the property subject to agricultural assessment and those other portions of the property not eligible for agricultural assessment as determined for the tentative assessment roll and the latest final assessment roll. Failure to mail any such notice or failure of the owner to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on such real property.

- b. That portion of the value of land utilized for agricultural production within an agricultural district which represents an excess above the agricultural assessment as determined in accordance with this subdivision shall not be subject to real property taxation. Such excess amount if any shall be entered on the assessment roll in the manner prescribed by the state board of real property services.
- c.
  - (i) The assessor shall utilize the agricultural assessment values per acre certified pursuant to section three hundred four-a of this article in determining the amount of the assessment of lands eligible for agricultural assessments by multiplying those values by the number of acres of land utilized for agricultural production and adjusting such result by application of the latest state equalization rate or a special equalization rate as may be established and certified by the state board of real property services for the purpose of computing the agricultural assessment pursuant to this paragraph. This resulting amount shall be the agricultural assessment for such lands.
  - (ii) Where the latest state equalization rate exceeds one hundred, or where a special equalization rate which would otherwise be established for the purposes of this section would exceed one hundred, a special equalization rate of one hundred shall be established and certified by the state board for the purpose of this section.
  - (iii) Where a special equalization rate has been established and certified by the state board for the purposes of this paragraph, the assessor is directed and authorized to recompute the agricultural assessment on the assessment roll

by applying such special equalization rate instead of the latest state equalization rate, and to make the appropriate corrections on the assessment roll, subject to the provisions of title two of article twelve of the real property tax law.

- d. (i) If land within an agricultural district which received an agricultural assessment is converted parcels, as described on the assessment roll which include land so converted shall be subject to payments equaling five times the taxes saved in the last year in which the land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years. The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the excess amount of assessed valuation of such land over its agricultural assessment as set forth on the last assessment roll which indicates such an excess. If only a portion of a parcel as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll for which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be added by or on behalf of each taxing jurisdiction to the taxes levied on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than five years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.
- (ii) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing unit of up to two times the total payments owed, but not to exceed a maximum total penalty of five hundred dollars in addition to any payments owed.
- (iii) (a) An assessor who determines that there is liability for payments and any penalties assessed pursuant to subparagraph (ii) of this paragraph shall notify the landowner by mail of such liability at least ten days prior to the date for hearing complaints in relation to assessments. Such notice shall indicate the property to which payments apply and describe how the payments shall be determined. Failure to provide such notice shall not affect the levy, collection or enforcement or payment of payments.  
(b) Liability for payments shall be subject to administrative and judicial review as provided by law for review of assessments.
- (iv) If such land or any portion thereof is converted to a use other than for agricultural production by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If the land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall

apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land within an agricultural district and eligible for an agricultural assessment shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.

- (v) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the state board of real property services on a form prescribed by the state board.
  - (vi) The assessing unit, by majority vote of the governing body, may impose a minimum payment amount, not to exceed one hundred dollars.
  - (vii) The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment shall be due under this section.
- e. In connection with any district created under section three hundred four of this article, the state shall provide assistance to each taxing jurisdiction in an amount equal to one-half of the tax loss that results from requests for agricultural assessments in the district. The amount of such tax loss shall be computed annually by applying the applicable tax rate to an amount computed by subtracting the agricultural assessment from the assessed value of the property on the assessment roll completed and filed prior to July first, nineteen hundred seventy-one, taking into consideration any change in the level of assessment. The chief fiscal officer of a taxing jurisdiction entitled to state assistance under this article shall make application for such assistance to the state board of real property services on a form approved by such board and containing such information as the board shall require. Upon approval of the application by such board, such assistance shall be apportioned and paid to such taxing jurisdiction on the audit and warrant of the state comptroller out of moneys appropriated by the legislature for the purpose of this article; provided, however, that any such assistance payment shall be reduced by one-half the amount of any payments levied under subparagraph (i) of paragraph d of this subdivision, for land in any district created under section three hundred four of this article, unless one-half the amount of such payments has already been used to reduce a previous assistance payment under this paragraph.
- f. Notwithstanding any inconsistent general, special or local law to the contrary, if a natural disaster, act of God, or continued adverse weather conditions shall destroy the agricultural production and such fact is certified by the cooperative extension service and, as a result, such production does not produce an average gross sales value of ten thousand dollars or more, the owner may nevertheless qualify for an agricultural assessment provided the owner shall substantiate in such manner as prescribed by the state board of real property services that the agricultural production initiated on such land would have produced an average gross sales value of ten thousand dollars or more but for the natural disaster, act of God or continued adverse weather conditions.
2. [repealed]
  3. Policy of state agencies. It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations

and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans, or other funding.

4. Limitation on the exercise of eminent domain and other public acquisitions, and on the advance of public funds.
  - a. Any agency of the state, any public benefit corporation or any local government which intends to acquire land or any interest therein, provided that the acquisition from any one actively operated farm within the district would be in excess of one acre or that the total acquisition within the district would be in excess of ten acres, or which intends to construct, or advance a grant, loan, interest subsidy or other funds within a district to construct, dwellings, commercial or industrial facilities, water or sewer facilities to serve non-farm structures, shall use all practicable means in undertaking such action to realize the policy and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the district. The adverse agricultural impacts to be minimized or avoided shall include impacts revealed in the notice of intent process described in this subdivision.
  - b. As early as possible in the development of a proposal of an action described in paragraph a of this subdivision, but in no event later than the date of any determination as to whether an environmental impact statement need be prepared pursuant to article eight of the environmental conservation law, the agency, corporation or government proposing an action described in paragraph a of this subdivision shall file a preliminary notice of its intent with the commissioner and the county agricultural and farmland protection board in such manner and form as the commissioner may require. Such preliminary notice shall include the following:
    - (i) a brief description of the proposed action and its agricultural setting;
    - (ii) a summary of any anticipated adverse impacts on farm operations and agricultural resources within the district; and
    - (iii) such other information as the commissioner may require.
  - c. The agency, corporation or government proposing the action shall also, at least sixty-five days prior to such acquisition, construction or advance of public funds, file a final notice of intent with the commissioner and the county agricultural and farmland protection board. Such final notice shall include a detailed agricultural impact statement setting forth the following:
    - (i) a detailed description of the proposed action and its agricultural setting;
    - (ii) the agricultural impact of the proposed action including short-term and long-term effects;
    - (iii) any adverse agricultural effects which cannot be avoided should the proposed action be implemented;
    - (iv) alternatives to the proposed action;
    - (v) any irreversible and irretrievable commitments of agricultural resources which would be involved in the proposed action should it be implemented;
    - (vi) mitigation measures proposed to minimize the adverse impact of the proposed action on the continuing viability of a farm enterprise or enterprises within the district;
    - (vii) any aspects of the proposed action which would encourage non-farm development, where applicable and appropriate; and
    - (viii) such other information as the commissioner may require.

The commissioner shall promptly determine whether the final notice is complete or incomplete. If the commissioner does not issue such determination within thirty days, the final notice shall be deemed complete. If the final notice is determined to be incomplete, the commissioner shall notify the party proposing the action in writing of the reasons for that determination. Any new submission shall commence a new period for department review for purposes of determining completeness.

- d. The provisions of paragraphs b and c of this subdivision shall not apply and shall be deemed waived by the owner of the land to be acquired where such owner signs a document to such effect and provides a copy to the commissioner.
- e. Upon notice from the commissioner that he or she has accepted a final notice as complete, the county agricultural and farmland protection board may, within thirty days, review the proposed action and its effects on farm operations and agricultural resources within the district, and report its findings and recommendations to the commissioner and to the party proposing the action in the case of actions proposed by a state agency or public benefit corporation, and additionally to the county legislature in the case of actions proposed by local government agencies.
- f. Upon receipt and acceptance of a final notice, the commissioner shall thereupon forward a copy of such notice to the commissioner of environmental conservation and the advisory council on agriculture. The commissioner, in consultation with the commissioner of environmental conservation and the advisory council on agriculture, within forty-five days of the acceptance of a final notice, shall review the proposed action and make an initial determination whether such action would have an unreasonably adverse effect on the continuing viability of a farm enterprise or enterprises within the district, or state environmental plans, policies and objectives.

If the commissioner so determines, he or she may (i) issue an order within the forty-five day period directing the state agency, public benefit corporation or local government not to take such action for an additional period of sixty days immediately following such forty-five day period; and (ii) review the proposed action to determine whether any reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact on agriculture in order to sustain a viable farm enterprise or enterprises within the district.

The commissioner may hold a public hearing concerning such proposed action at a place within the district or otherwise easily accessible to the district upon notice in a newspaper having a general circulation within the district, and individual notice, in writing, to the municipalities whose territories encompass the district, the commissioner of environmental conservation, the advisory council on agriculture and the state agency, public benefit corporation or local government proposing to take such action. On or before the conclusion of such additional sixty day period, the commissioner shall report his or her findings to the agency, corporation or government proposing to take such action, to any public agency having the power of review of or approval of such action, and, in a manner conducive to the wide dissemination of such findings, to the public. If the commissioner concludes that a reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact of the proposed action, he or she shall propose that such alternative or alternatives be accepted. If the agency, corporation or government proposing the action accepts the commissioner's proposal, then the requirements of the notice of intent filing shall be deemed fulfilled. If the agency,



corporation or government rejects the commissioner's proposal, then it shall provide the commissioner with reasons for rejecting such proposal and a detailed comparison between its proposed action and the commissioner's alternative or alternatives.

- g. At least ten days before commencing an action which has been the subject of a notice of intent filing, the agency, corporation or government shall certify to the commissioner that it has made an explicit finding that the requirements of this subdivision have been met, and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse agricultural impacts revealed in the notice of intent process will be minimized or avoided. Such certification shall set forth the reasons in support of the finding.
  - h. The commissioner may request the attorney general to bring an action to enjoin any such agency, corporation or government from violating any of the provisions of this subdivision.
  - h-1. Notwithstanding any other provision of law to the contrary, no solid waste management facility shall be sited on land in agricultural production which is located within an agricultural district, or land in agricultural production that qualifies for and is receiving an agricultural assessment pursuant to section three hundred six of this article. Nothing contained herein, however, shall be deemed to prohibit siting when:
    - (i) The owner of such land has entered into a written agreement which shall indicate his consent for site consideration; or
    - (ii) The applicant for a permit has made a commitment in the permit application to fund a farm land protection conservation easement within a reasonable proximity to the proposed project in an amount not less than the dollar value of any such farm land purchased for the project; or
    - (iii) The commissioner in concurrence with the commissioner of environmental conservation has determined that any such agricultural land to be taken, constitutes less than five percent of the project site.
- For purposes of this paragraph, "solid waste management facility" shall have the same meaning as provided in title seven of article twenty-seven of the environmental conservation law, but shall not include solid waste transfer stations or land upon which sewage sludge is applied, and determinations regarding agricultural district boundaries and agricultural assessments will be based on those in effect as of the date an initial determination is made, pursuant to article eight of the environmental conservation law, as to whether an environmental impact statement needs to be prepared for the proposed project.
- i. This subdivision shall not apply to any emergency project which is immediately necessary for the protection of life or property or to any project or proceeding to which the department is or has been a statutory party.
  - j. The commissioner may bring an action to enforce any mitigation measures proposed by a public benefit corporation or a local government, and accepted by the commissioner, pursuant to a notice of intent filing, to minimize or avoid adverse agricultural impacts from the proposed action.
5. Limitation on power to impose benefit assessments, special ad valorem levies or other rates or fees in certain improvement districts or benefit areas. Within improvement districts or areas deemed benefited by municipal improvements including, but not limited to, improvements for sewer, water, lighting, non-farm drainage, solid waste disposal, including those solid waste management facilities established pursuant to section two hundred twenty-six-b of the county law, or other landfill operations, no benefit assessments, special ad valorem levies or other rates of fees charged for such

improvements may be imposed on land used primarily for agricultural production within an agricultural district on any basis, except a lot not exceeding one-half acre surrounding any dwelling or non-farm structure located on said land nor on any farm structure located in an agricultural district unless such structure benefits directly from the service of such improvement district or benefited area; provided, however, that if such benefit assessments, ad valorem levies or other rates of fees were imposed prior to the formation of the agricultural district, then such benefit assessments, ad valorem levies or other rates or fees shall continue to be imposed on such land or farm structure.

6. Use of assessment for certain purposes. The governing body of a fire, fire protection, or ambulance district for which a benefit assessment or a special ad valorem levy is made, may adopt a resolution to provide that the assessment determined pursuant to subdivision one of this section for such property shall be used for the benefit assessment or special ad valorem levy of such fire, fire protection, or ambulance district.
7. Notwithstanding any provision of law to the contrary, that portion of the value of land which is used solely for the purpose of replanting or crop expansion as part of an orchard or vineyard shall be exempt from real property taxation for a period of six successive years following the date of such replanting or crop expansion beginning on the first eligible taxable status date following such replanting or expansion provided the following conditions are met:
  - a. The land used for crop expansion or replanting must be a part of an existing orchard or vineyard which is located on land used in agricultural production within an agricultural district or such land must be part of an existing orchard or vineyard which is eligible for an agricultural assessment pursuant to this section or section three hundred six of this chapter where the owner of such land has filed an annual application for an agricultural assessment;
  - b. The land eligible for such real property tax exemption shall not in any one year exceed twenty percent of the total acreage of such orchard or vineyard which is located on land used in agricultural production within an agricultural district or twenty percent of the total acreage of such orchard or vineyard eligible for an agricultural assessment pursuant to this section and section three hundred six of this chapter where the owner of such land has filed an annual application for an agricultural assessment;
  - c. The land eligible for such real property tax exemption must be maintained as land used in agricultural production as part of such orchard or vineyard for each year such exemption is granted; and
  - d. When the land used for the purpose of replanting or crop expansion as part of an orchard or vineyard is located within an area which has been declared by the governor to be a disaster emergency in a year in which such tax exemption is sought and in a year in which such land meets all other eligibility requirements for such tax exemption set forth in this subdivision, the maximum twenty percent total acreage restriction set forth in paragraph b of this subdivision may be exceeded for such year and for any remaining successive years, provided, however, that the land eligible for such real property tax exemption shall not exceed the total acreage damaged or destroyed by such disaster in such year or the total acreage which remains damaged or destroyed in any remaining successive year. The total acreage for which such exemption is sought pursuant to this paragraph shall be subject to verification by the commissioner or his designee.

**305-a. Coordination of local planning and land use decision-making with the agricultural districts program**

1. Policy of local governments.
  - a. Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.
  - b. The commissioner, upon his or her own initiative or upon the receipt of a complaint from a person within an agricultural district, may bring an action to enforce the provisions of this subdivision.
2. Agricultural data statement; submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by a 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, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The planning board, zoning board of appeals, town board, or village board of trustees shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.
3. Agricultural data statement; notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, town board or village board of trustees, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.
4. Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

**305-b. Review of proposed rules and regulations of state agencies affecting the agricultural industry**

1. Upon request of the state advisory council on agriculture, or upon his or her own initiative, the commissioner may review and comment upon a proposed rule or regulation by another state agency which may have an adverse impact on agriculture and farm operations in this state, and file such comment with the proposing agency and the administrative regulations review commission. Each comment shall be in sufficient detail to advise the proposing agency of the adverse impact on agriculture and farm operations and the recommended modifications. The commissioner shall prepare a status report of any actions taken in accordance with this section and include it in the department's annual report.

### 306. Agricultural lands outside of districts; agricultural assessments

1. Any owner of land used in agricultural production outside of an agricultural district shall be eligible for an agricultural assessment as provided herein. If an applicant rents land from another for use in conjunction with the applicant's land for the production for sale of crops, livestock or livestock products, the gross sales value of such products produced on such rented land shall be added to the gross sales value of such products produced on the land of the applicant for purposes of determining eligibility for an agricultural assessment on the land of the applicant.

Such assessment shall be granted pursuant to paragraphs a, b and f of subdivision one of section three hundred five of this article as if such land were in an agricultural district, provided the landowner annually submits to the assessor an application for an agricultural assessment on or before the taxable status date. In the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the tentative assessment roll is required to be filed by law. Nothing therein shall be construed to limit an applicant's discretion to withhold from such application any land, or portion thereof, contained within a single operation.

1-a [repealed]

2. a. (i) If land which received an agricultural assessment pursuant to this section is converted at any time within eight years from the time an agricultural assessment was last received, such conversion shall subject the land so converted to payments in compensation for the prior benefits of agricultural assessments. The amount of the payments shall be equal to five times the taxes saved in the last year in which land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years.
- (ii) The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the amount of assessed valuation of such land in excess of the agricultural assessment of such land as set forth on the last assessment roll which indicates such an excess. If only a portion of such land as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll on which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be levied in the same manner as other taxes, by or on behalf of each taxing jurisdiction on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than eight years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.
- (iii) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing

- unit of up to two times the total payments owed, but not to exceed a maximum total penalty of five hundred dollars in addition to any payments owed.
- b. (i) An assessor who determines that there is liability for payments and any penalties pursuant to subparagraph (ii) of this paragraph shall notify the landowner of such liability at least ten days prior to the day for hearing of complaints in relation to assessments. Such notice shall specify the area subject to payments and shall describe how such payments shall be determined. Failure to provide such notice shall not affect the levy, collection, or enforcement of payments.
  - (ii) Liability for payments shall be subject to administrative and judicial review as provided by law for the review of assessments.
  - (iii) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the state board of real property services on a form prescribed by the state board.
  - (iv) The assessing unit, by majority vote of the government body, may impose a minimum payment amount, not to exceed one hundred dollars.
- c. If such land or any portion thereof is converted by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land outside an agricultural district and eligible for an agricultural assessment pursuant to this section shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.
  - d. The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment for the prior benefits of agricultural assessments shall be due under this section.
3. Upon the inclusion of such agricultural lands in an agricultural district formed pursuant to section three hundred three, the provisions of section three hundred five shall be controlling.
  4. A payment levied pursuant to subparagraph (i) of paragraph a of subdivision two of this section shall be a lien on the entire parcel containing the converted land, notwithstanding that less than the entire parcel was converted.
  5. Use of assessment for certain purposes. The governing body of a water, lighting, sewer, sanitation, fire, fire protection, or ambulance district for whose benefit a special assessment or a special ad valorem levy is imposed, may adopt a resolution to provide that the assessments determined pursuant to subdivision one of this section for property within the district shall be used for the special assessment or special ad valorem levy of such special district.

### **307. Promulgation of rules and regulations**

The state board of real property services and the commissioner are each empowered to promulgate such rules and regulations and to prescribe such forms as each shall deem

necessary to effectuate the purposes of this article, and the commissioner is further empowered to promulgate such rules and regulations as are necessary to provide for the reasonable consolidation of existing agricultural districts with new agricultural districts or with other existing districts undergoing modification pursuant to section three hundred three of this article. Where a document or any other paper or information is required, by such rules and regulations, or by any provision of this article, to be filed with, or by, a county clerk or any other local official, such clerk or other local official may file such document, paper, or information as he deems proper, but he shall also file or record it in any manner directed by the state board of real property services, by rule or regulation. In promulgating such a rule or regulation, such board shall consider, among any other relevant factors, the need for security of land titles, the requirement that purchasers of land know of all potential tax and penalty liabilities, and the desirability that the searching of titles not be further complicated by the establishment of new sets of record books.

### **308. Right to farm**

1. a. The commissioner shall, in consultation with the state advisory council on agriculture, issue opinions upon request from any person as to whether particular agricultural practices are sound.  
b. Sound agricultural practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Examples of activities which entail practices the commissioner may consider include, but are not limited to, operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; agricultural tourism; production, management and harvesting of "farm woodland," as defined in subdivision three of section three hundred one of this article and construction and use of farm structures. The commissioner shall consult appropriate state agencies and any guidelines recommended by the advisory council on agriculture. The commissioner may consult as appropriate, the New York state college of agriculture and life sciences and the U.S.D.A. natural resources conservation service. The commissioner shall also consider whether the agricultural practices are conducted by a farm owner or operator as part of his or her participation in the AEM program as set forth in article eleven-A of this chapter. Such practices shall be evaluated on a case-by-case basis.
2. Upon the issuance of an opinion pursuant to this section, the commissioner shall publish a notice in a newspaper having a general circulation in the area surrounding the practice and notice shall be given in writing to the owner of the property on which the practice is conducted and any adjoining property owners. The opinion of the commissioner shall be final, unless within thirty days after publication of the notice a person affected thereby institutes a proceeding to review the opinion in the manner provided by article seventy-eight of the civil practice law and rules.
3. Notwithstanding any other provisions of law, on any land in an agricultural district created pursuant to section three hundred three or land used in agricultural production subject to an agricultural assessment pursuant to section three hundred six of this article, an agricultural practice shall not constitute a private nuisance, when an action is brought by a person, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued upon request by the commissioner. Nothing in this section shall be construed to prohibit an aggrieved party from recovering damages for personal injury or wrongful death.

4. The commissioner, in consultation with the state advisory council on agriculture, shall issue an opinion within thirty days upon request from any person as to whether particular land uses are agricultural in nature. Such land use decisions shall be evaluated on a case-by-case basis.
5. The commissioner shall develop and make available to prospective grantors and purchasers of real property located partially or wholly within any agricultural district in this state and to the general public, practical information related to the right to farm as set forth in this article including, but not limited to right to farm disclosure requirements established pursuant to section three hundred ten of this article and section three hundred thirty-three-c of the real property law.

**308-a. Fees and expenses in certain private nuisance actions.**

1. Definitions. For purposes of this section:
  - a. "Action" means any civil action brought by a person in which a private nuisance is alleged to be due to an agricultural practice on any land in an agricultural district or subject to agricultural assessments pursuant to section three hundred three or three hundred six of this article, respectively.
  - b. "Fees and other expenses" means the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, consultation with experts, and like expenses, and reasonable attorney fees, including fees for work performed by law students or paralegals under the supervision of an attorney, incurred in connection with the defense of any cause of action for private nuisance which is alleged as part of a civil action brought by a person.
  - c. "Final judgment" means a judgment that is final and not appealable, and settlement.
  - d. "Prevailing party" means a defendant in a civil action brought by a person, in which a private nuisance is alleged to be due to an agricultural practice, where the defendant prevails in whole or in substantial part on the private nuisance cause of action.
2. Fees and other expenses in certain private nuisance actions.
  - a. When awarded. In addition to costs, disbursements and additional allowances awarded pursuant to sections eight thousand two hundred one through eight thousand two hundred four and eight thousand three hundred one through eight thousand three hundred three-a of the civil practice law and rules, and except as otherwise specifically provided by statute, a court shall award to a prevailing party, other than the plaintiff, fees and other expenses incurred by such party in connection with the defense of any cause of action for private nuisance alleged to be due to an agricultural practice, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued by the commissioner under section three hundred eight of this article, prior to the start of any trial of the action or settlement of such action, unless the court finds that the position of the plaintiff was substantially justified or that special circumstances make an award unjust. Fees shall be determined pursuant to prevailing market rates for the kind and quality of the services furnished, except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings.
  - b. Application for fees. A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application which sets forth
    - (i) the facts supporting the claim that the party is a prevailing party and is eligible to receive an award under this section,
    - (ii) the amount sought, and

- (iii) an itemized statement from every attorney or expert witness for which fees or expenses are sought stating the actual time expended and the rate at which such fees and other expenses are claimed.
- 3. Interest. If the plaintiff appeals an award made pursuant to this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award. Such interest shall run from the date of the award through the day before the date of the affirmance.
- 4. Applicability.
  - a. Nothing contained in this section shall be construed to alter or modify the provisions of the civil practice law and rules where applicable to actions other than actions as defined by this section.
  - b. Nothing contained in this section shall affect or preclude the right of any party to recover fees or other expenses authorized by common law or by any other statute, law or rule.

### **309. Advisory council on agriculture**

- 1. There shall be established within the department the advisory council on agriculture, to advise and make recommendations to the state agencies on state government plans, policies and programs affecting agriculture, as outlined below, and in such areas as its experience and studies may indicate to be appropriate. The department of agriculture and markets shall provide necessary secretariat and support services to the council.
- 2. The advisory council on agriculture shall consist of eleven members appointed by the governor with the advice and consent of the senate, selected for their experience and expertise related to areas of council responsibility. At least five members of the council shall be operators of a commercial farm enterprise and at least two members shall be representatives of local governments. The balance of the council shall be comprised of representatives of business or institutions related to agriculture. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, three shall serve for a term of one year, three shall serve for a term of two years, and three shall serve for a term of three years. Members shall serve without salary but shall be entitled to reimbursement of their ordinary and necessary travel expenses. The members of the council shall elect a chairman.
- 3. The duties and responsibilities of the advisory council on agriculture as they pertain to agricultural districts shall include, but not be limited to, providing timely advice, comments and recommendations to the commissioner in regard to:
  - a. the establishment of agricultural districts;
  - b. the eight year review of agricultural districts; and
  - c. the establishment of and any revision to the land classification system used in connection with the determination of agricultural assessment values.The commissioner may delegate to the council such additional duties and responsibilities as he deems necessary.
- 4. The duties and responsibilities of the advisory council on agriculture shall include, but not be limited to, providing timely advice, comments and recommendations to the state board of real property services in regard to the establishment of agricultural assessment values.
- 5. The advisory council on agriculture shall advise the commissioner and other state agency heads on state government plans, policies and programs affecting farming and the agricultural industry of this state. Concerned state agencies shall be encouraged to



establish a working relationship with the council and shall fully cooperate with the council in any requests it shall make.

6. The advisory council on agriculture may ask other individuals to attend its meetings or work with it on an occasional or regular basis provided, however, that it shall invite participation by the chairman of the state soil and water conservation committee and the dean of the New York state college of agriculture and life sciences at Cornell university. The advisory council on agriculture shall set the time and place of its meetings, and shall hold at least four meetings per year.
7. The advisory council on agriculture shall file a written report to the governor and the legislature by April first each year concerning its activities during the previous year and its program expectations for the succeeding year.
8. The advisory council on agriculture shall advise the commissioner in regards to whether particular land uses are agricultural in nature.

### **310. Disclosure**

1. When any purchase and sale contract is presented for the sale, purchase, or exchange of real property located partially or wholly within an agricultural district established pursuant to the provisions of this article, the prospective grantor shall present to the prospective grantee a disclosure notice which states the following:  
"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 disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and markets Law."
- 1-a. Such disclosure notice shall be signed by the prospective grantor and grantee prior to the sale, purchase or exchange of such real property.
2. Receipt of such disclosure notice shall be recorded on a property transfer report form prescribed by the state board of real property services as provided for in section three hundred thirty-three of the real property law.

# Local Laws and Agricultural Districts: How Do They Relate?

Counties, towns and villages in New York State have broad powers to enact laws to govern their own affairs. However, State laws impose certain restrictions on local government authority. One such restriction is found in Section 305-a of the Agriculture and Markets Law which contains the following mandate:

“Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article [*Article 25-AA of the Agriculture and Markets Law*], and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.”

This brochure has been prepared by the New York State Department of Agriculture and Markets to assist municipalities in drafting and administering local laws and ordinances which may affect farming in an agricultural district. It should not be substituted for legal advice from a municipality’s attorney. The brochure also offers guidance to farmers and municipalities on the application of Section 305-a.

*The Commissioner of Agriculture and Markets may independently initiate a review of a proposed or existing local law or ordinance or proceed upon the request of a farmer or municipality in an agricultural district. The following describes the procedure for requesting review, how the local requirements are analyzed, and remediated, if necessary.*

## PROCEDURE

Questions concerning the impact of local laws and ordinances on farm operations are solved far more easily at the drafting stage than after the provision is in place. Municipalities are, therefore, encouraged to contact the Department, either by phone or in writing, in advance of enacting a law or ordinance which may restrict farming in an agricultural district. The Department will provide

David Paterson  
Governor

Patrick Hooker  
Commissioner

a response to such inquiries. Similarly, a farmer or other affected party in a district may seek the Department’s opinion on a proposed or existing law or ordinance without filing a complaint.

## Farmers

A request for review must be provided in writing and include at least the following information:

- the location of the farm operation and identification of the agricultural district in which it is situated;
- a description of the affected farm operation (e.g. size of farm, type of enterprise, years in operation);
- a description of the specific farm buildings, equipment or practices involved and how they are affected;
- a copy of the complete local law or ordinance and identification of the specific section or sections involved;
- a listing of involved parties who can be contacted for further information (including addresses and phone numbers).

Subsequent to receiving a request for review of a local law or ordinance, the Department will contact the municipality involved and provide them with an opportunity to respond.

## Municipalities

A request for review must be provided in writing and include at least the following information:

- the identification of the agricultural district(s) affected;
- a description of the specific law or proposed law and how farm buildings, equipment or practices are or may be affected
- a copy of the complete local law or ordinance and identification of the specific section or sections involved;
- a listing of involved parties who can be contacted for further information (including addresses and phone numbers).

## ANALYSIS

The Department examines several factors in evaluating whether a local law or ordinance is in compliance with Section 305-a. Tests that must be met in each case are as follows:

- **Is the affected farm located within an agricultural district?**

Section 305-a only applies to farm operations in an agricultural district.

• **Does the regulated activity encompass farm operations?**

Section 301(11) of the Agriculture and Markets Law defines "Farm Operation" as meaning: "...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 and 'timber processing' as defined in subdivision fourteen 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." The definition of "crops, livestock and livestock products" is found in Section 301(2).

Only farm operations are protected by Section 305-a. The Department draws on the expertise of its program and legal staff, and other resources as needed, to make these determinations.

• **Does the local law or ordinance unreasonably restrict or regulate?**

The evaluation of reasonableness consists of two parts: 1) whether the law or ordinance is unreasonably restrictive "on its face," and 2) whether it is unreasonably restrictive as applied to a particular situation.

Some laws or ordinances are so vague that they inhibit farmers from undertaking certain activities or constructing certain buildings out of concern for violating the law or ordinance. In this case, it is possible that the law or ordinance, because of its vague construction, could be construed as unreasonably restricting a farm operation.

An ordinance may also appear reasonable in the abstract, but may unreasonably restrict or regulate a particular farmer. For example, many zoning ordinances impose setback requirements for structures in the interest of public safety or even aesthetics. These setbacks may be entirely reasonable under usual conditions, but may be construed as being unreasonably restrictive if applied to a farmer who, for example, constructs a building on a dead-end street, shielded from view, and near the only available water source.

A reasonable exercise of authority in one locality may translate into an unduly burdensome restriction on farming in another. In sum, reasonableness depends on the totality of circumstances in each case.

• **Is the public health or safety threatened by the regulated activity?**

Even if the Department determines that a particular law or ordinance is unreasonably restrictive, it must also

ask whether the public health or safety is threatened by the regulated activity. If so, it could withstand the limitations of Section 305-a.

**REMEDIES**

If the Department determines that a local law or ordinance unreasonably restricts or regulates farm operations in an agricultural district, it will notify the involved municipality to that effect and attempt to arrive at a mutually satisfactory resolution. In the case where a municipality rejects the Department's attempts at remediation, the Commissioner of Agriculture and Markets is explicitly authorized by law to bring an action to enforce Section 305-a. Alternatively, the Commissioner may issue an Order to comply, pursuant to Section 36 of the Agriculture and Markets Law.

*Requests for general information or assistance, and formal written complaints alleging violations of Section 305-a, should be directed to:*

**Agricultural Districts Program Administrator  
New York State Department of Agriculture  
and Markets  
10B Airline Drive  
Albany, NY 12235**

**Phone: (518) 457-2713**

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**New York State**  
**Department of Agriculture and Markets**  
**10B Airline Drive**  
**Albany, New York 12235**  
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**CIRCULAR 1500**

**ARTICLE 25AAA -- AGRICULTURAL AND FARMLAND PROTECTION PROGRAMS**

**AGRICULTURE AND MARKETS LAW**  
**AS AMENDED by Chapter 527 of the Laws of 2005,**  
**effective on February 12, 2006**

## **ARTICLE 25AAA - AGRICULTURAL AND FARMLAND PROTECTION PROGRAMS**

Sec.

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### **321. Statement of legislative findings and intent**

It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and environmental and landscape preservation values associated with agriculture, the state must explore ways to sustain the state's valuable farm economy and the land base associated with it. External pressures on farm stability such as population growth in non-metropolitan areas and public infrastructure development pose a significant threat to farm operations, yet are the pressures over which farmers have the least control. Local initiatives in agricultural protection policy, facilitated by the agricultural districts program established in article twenty-five-AA of this chapter, have proved effective as a basic step in addressing these pressures. In an effort to encourage further development of agricultural and farmland protection programs, and to recognize both the crucial role that local government plays in developing these strategies, plus the state constitutional directive to the legislature to provide for the protection of agricultural lands, it is therefore declared the policy of the state to promote local initiatives for agricultural and farmland protection.

### **322. Definitions**

When used in this article:

- 1. "Agricultural and farmland protection" means the preservation, conservation, management or improvement of lands which are part of viable farming operations, for the purpose of encouraging such lands to remain in agricultural production.
- 2. "Plan" means the county and municipal agricultural and farmland protection plan as provided for in this article.
- 3. "Program" means the state agricultural and farmland protection program created pursuant to the provisions of this article.

### **323. State agricultural and farmland protection program**

The commissioner shall initiate and maintain a state agricultural and farmland protection program to provide financial and technical assistance, within funds available, to counties and municipalities for their agricultural and farmland protection efforts. Activities to be conducted by the commissioner shall include, but not be limited to:

1. developing guidelines for the creation by counties and municipalities of agricultural and farmland protection plans;
2. providing technical assistance to county agricultural and farmland protection boards, as established in article twenty-five-AA of this chapter, and municipalities;
3. administering state assistance payments to county agricultural and farmland protection boards and municipalities;
4. disseminating information to county and municipal governments, owners of agricultural lands and other agricultural interests about the state agricultural and farmland protection program established pursuant to this article;
5. reporting biennially to the governor and the legislature regarding the activities of the commissioner, the types of technical assistance rendered to county agricultural and farmland protection boards and municipalities, and the need to protect the state's agricultural economy and land resources.

#### **324. County agricultural and farmland protection plans**

1. County agricultural and farmland protection boards may develop plans, in cooperation with the local soil and water conservation district and soil conservation service, which shall include, but not be limited to:
  - a) the location of any land or areas proposed to be protected;
  - b) an analysis of the following factors concerning any areas and lands proposed to be protected:
    - i) value to the agricultural economy of the county;
    - ii) open space value;
    - iii) consequences of possible conversion; and
    - iv) level of conversion pressure on the lands or areas proposed to be protected; and
  - c) a description of the activities, programs and strategies intended to be used by the county to promote continued agricultural use.
2. The county agricultural and farmland protection board shall conduct at least one public hearing for public input regarding such agricultural and farmland protection plan, and shall thereafter submit such plan to the county legislative body for its approval.
3. The county agricultural protection plan must be submitted by the county to the commissioner for approval.

#### **324-a. Municipal agricultural and farmland protection plans**

1. Municipalities may develop agricultural and farmland protection plans, in cooperation with cooperative extension and other organizations, including local farmers. These plans shall include, but not be limited to:
  - a) the location of any land or areas proposed to be protected;

- b) an analysis of the following factors concerning any areas and lands proposed to be protected;
    - i) value to the agricultural economy of the municipality;
    - ii) open space value;
    - iii) consequences of possible conversion; and
    - iv) level of conversion pressure on the lands or areas proposed to be protected; and
  - c) a description of activities, programs and strategies intended to be used by the municipality to promote continued agricultural use, which may include but not be limited to revisions to the municipality's comprehensive plan pursuant to paragraph (a) of subdivision two of section two hundred seventy-two-a of the town law and land use regulations as defined in paragraph (b) of subdivision two of section two hundred seventy-two-a of the town law as appropriate.
2. The municipality shall conduct at least one public hearing for public input regarding such agricultural and farmland protection plan, and shall thereafter submit such plan to the municipal legislative body and the county agricultural farmland protection board for approval.
  3. The municipal agricultural and farmland protection plan must be submitted by the municipality to the commissioner for approval.

### **325. Agricultural protection**

1. Subject to the availability of funds, a program is hereby established to finance through state assistance payments the state share of the costs of county and municipal agricultural and farmland protection activities. State assistance payments for planning activities shall not exceed fifty thousand dollars to each county agricultural and farmland protection board or one hundred thousand dollars to two such boards applying jointly, and shall not exceed fifty percent of the cost of preparing an agricultural and farmland protection plan. State assistance payments for planning activities shall not exceed twenty-five thousand dollars to each municipality other than a county or fifty thousand dollars to two such municipalities applying jointly, and shall not exceed seventy-five percent of the cost of preparing an agricultural and farmland protection plan. State assistance payments for implementation of approved agricultural and farmland protection plans may fund up to seventy-five percent of the cost of implementing the county plan or a portion of the plan for which state assistance payments are requested.
2. a) A county agricultural and farmland protection board, two such boards acting jointly, a municipality or two such municipalities acting jointly shall make application to the commissioner in such manner as the commissioner may prescribe. Application for state assistance payments for planning activities may be made at any time after the county agricultural and farmland protection board has formed and has elected a chairperson. A county agricultural and farmland protection board may make application for state assistance payments for plan implementation at any time after the commissioner has approved a county agricultural and farmland protection plan pursuant to section three hundred twenty-four of this article. Application made jointly by two county agricultural and

farmland protection boards may be made after such agricultural and farmland protection plan is approved by each county pursuant to the provisions of section three hundred twenty-four of this article.

- b) Within a county, a municipality which has in place a local farmland protection plan may apply and shall be eligible for agricultural protection state assistance payments to implement its plan, or a portion of its plan, provided the proposed project is endorsed for funding by the agricultural and farmland protection board for the county in which the municipality is located and that any plan developed on or after January first, two thousand six complies with section three hundred twenty-four-a of this article. State assistance payments to such municipalities shall not exceed seventy-five percent of the cost of implementing the local plan or portion of the plan for which state assistance has been requested. The commissioner may require such information or additional planning as he or she deems necessary to evaluate such a request for state assistance.
  - c) In evaluating applications for funding, the commissioner shall give priority to projects intended to preserve viable agricultural land as defined in section three hundred one of this chapter; that are in areas facing significant development pressure; and that serve as a buffer for a significant natural public resource containing important ecosystem or habitat characteristics.
3. Upon receipt of a request for state assistance, the commissioner shall review the request, consult with the advisory council on agriculture and, within ninety days from the receipt of a complete application, shall make a determination as to whether or not such projects shall receive state assistance.

### **326. Promulgation of rules and regulations**

The commissioner is empowered to promulgate such rules and regulations and to prescribe such forms as he or she deems necessary to effectuate the purposes of this article.



**Agricultural Data Statement**

**Instructions:** This form must be completed for any application for a special use permit, site plan approval, use variance or a subdivision approval requiring municipal review that would occur on property within 500 feet of a farm operation located in a NYS Dept. of Ag & Markets certified Agricultural District.

Applicant	Owner if Different from Applicant
Name: _____ Address: _____ _____	Name: _____ Address: _____ _____

1. Type of Application:  Special Use Permit;  Site Plan Approval ;  Use Variance;  
 (circle one or more)  Subdivision Approval

2. Description of proposed project: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3. Location of project: Address: \_\_\_\_\_  
 Tax Map Number (TMP) \_\_\_\_\_

4. Is this parcel within an Agricultural District?  NO  YES (Check with your local assessor if

5. If YES, Agricultural District Number \_\_\_\_\_ you do not know)

6. Is this parcel actively farmed?  NO  YES

7. List all farm operations within 500 feet of your parcel. Attach additional sheets if necessary.

Name: _____ Address: _____ _____	Name: _____ Address: _____ _____
Is this parcel actively farmed? <input type="checkbox"/> NO <input type="checkbox"/> YES	Is this parcel actively farmed? <input type="checkbox"/> NO <input type="checkbox"/> YES
Name: _____ Address: _____ _____	Name: _____ Address: _____ _____
Is this parcel actively farmed? <input type="checkbox"/> NO <input type="checkbox"/> YES	Is this parcel actively farmed? <input type="checkbox"/> NO <input type="checkbox"/> YES

\_\_\_\_\_  
Signature of Applicant

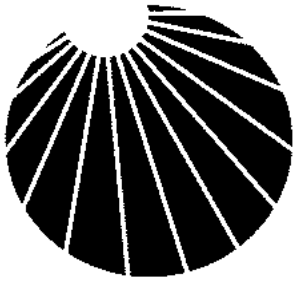
\_\_\_\_\_  
Signature of Owner (if other than applicant)

Reviewed by: \_\_\_\_\_  
Signature of Municipal Official

\_\_\_\_\_  
Date

**NOTE TO REFERRAL AGENCY:** County Planning Board review is required. A copy of the Agricultural Data Statement must be submitted along with the referral to the County Planning Department.

**Appendix F**  
American Farmland Trust Cost of Services Study Fact Sheet



FARMLAND  
INFORMATION  
CENTER

FACT  
SHEET

COST OF  
COMMUNITY  
SERVICES  
STUDIES



FARMLAND INFORMATION CENTER  
(800) 370-4879  
www.farmlandinfo.org



## 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, which is 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 151 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.

COCS studies help address three misperceptions 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

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
Sagauche 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
Brooklyn	1 : 1.09	1 : 0.17	1 : 0.30	Green Valley Institute, 2002
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
Lebanon	1 : 1.12	1 : 0.16	1 : 0.17	Green Valley Institute, 2007
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
Windham	1 : 1.15	1 : 0.24	1 : 0.19	Green Valley Institute, 2002
<b>Florida</b>				
Leon County	1 : 1.39	1 : 0.36	1 : 0.42	Dorfman, 2004
<b>Georgia</b>				
Appling County	1 : 2.27	1 : 0.17	1 : 0.35	Dorfman, 2004
Athens-Clarke County	1 : 1.39	1 : 0.41	1 : 2.04	Dorfman, 2004
Brooks County	1 : 1.56	1 : 0.42	1 : 0.39	Dorfman, 2004
Carroll County	1 : 1.29	1 : 0.37	1 : 0.55	Dorfman and Black, 2002
Cherokee County	1 : 1.59	1 : 0.12	1 : 0.20	Dorfman, 2004
Colquitt County	1 : 1.28	1 : 0.45	1 : 0.80	Dorfman, 2004
Columbia County	1 : 1.16	1 : 0.48	1 : 0.52	Dorfman, 2006
Dooly County	1 : 2.04	1 : 0.50	1 : 0.27	Dorfman, 2004
Grady County	1 : 1.72	1 : 0.10	1 : 0.38	Dorfman, 2003
Hall County	1 : 1.25	1 : 0.66	1 : 0.22	Dorfman, 2004
Jackson County	1 : 1.28	1 : 0.58	1 : 0.15	Dorfman, 2008
Jones County	1 : 1.23	1 : 0.65	1 : 0.35	Dorfman, 2004
Miller County	1 : 1.54	1 : 0.52	1 : 0.53	Dorfman, 2004
Mitchell County	1 : 1.39	1 : 0.46	1 : 0.60	Dorfman, 2004
Morgan County	1 : 1.42	1 : 0.25	1 : 0.38	Dorfman, 2008
Thomas County	1 : 1.64	1 : 0.38	1 : 0.67	Dorfman, 2003
Union County	1 : 1.13	1 : 0.43	1 : 0.72	Dorfman and Lavigno, 2006
<b>Idaho</b>				
Booneville County	1 : 1.06	1 : 0.84	1 : 0.23	Hartmans and Meyer, 1997
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
Kootenai County	1 : 1.09	1 : 0.86	1 : 0.28	Hartmans and Meyer, 1997
<b>Kentucky</b>				
Campbell County	1 : 1.21	1 : 0.30	1 : 0.38	American Farmland Trust, 2005
Kenton County	1 : 1.19	1 : 0.19	1 : 0.51	American Farmland Trust, 2005
Lexington-Fayette County	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
Shelby County	1 : 1.21	1 : 0.24	1 : 0.41	American Farmland Trust, 2005

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>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
Dartmouth	1 : 1.14	1 : 0.51	1 : 0.26	American Farmland Trust, 2009
Deerfield	1 : 1.16	1 : 0.38	1 : 0.29	American Farmland Trust, 1992
Deerfield	1 : 1.14	1 : 0.51	1 : 0.33	American Farmland Trust, 2009
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
Sterling	1 : 1.09	1 : 0.26	1 : 0.34	American Farmland Trust, 2009
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 County	1 : 1.47	1 : 0.20	1 : 0.27	American Farmland Trust, 2001
Newton Twp., Calhoun County	1 : 1.20	1 : 0.25	1 : 0.24	American Farmland Trust, 2001
Scio Twp., Washtenaw County	1 : 1.40	1 : 0.28	1 : 0.62	University of Michigan, 1994
<b>Minnesota</b>				
Farmington	1 : 1.02	1 : 0.79	1 : 0.77	American Farmland Trust, 1994
Independence	1 : 1.03	1 : 0.19	1 : 0.47	American Farmland Trust, 1994
Lake Elmo	1 : 1.07	1 : 0.20	1 : 0.27	American Farmland Trust, 1994
<b>Montana</b>				
Carbon County	1 : 1.60	1 : 0.21	1 : 0.34	Prinzing, 1997
Flathead County	1 : 1.23	1 : 0.26	1 : 0.34	Citizens for a Better Flathead, 1999
Gallatin County	1 : 1.45	1 : 0.16	1 : 0.25	Haggerty, 1996
<b>New Hampshire</b>				
Brentwood	1 : 1.17	1 : 0.24	1 : 0.83	Brentwood Open Space Task Force, 2002
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
Hookset	1 : 1.16	1 : 0.43	1 : 0.55	Innovative Natural Resource Solutions, 2008
Lyme	1 : 1.05	1 : 0.28	1 : 0.23	Pickard, 2000
Milton	1 : 1.30	1 : 0.35	1 : 0.72	Innovative Natural Resource Solutions, 2005

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>New Hampshire (continued)</b>				
Mont Vernon	1 : 1.03	1 : 0.04	1 : 0.08	Innovative Natural Resource Solutions, 2002
Stratham	1 : 1.15	1 : 0.19	1 : 0.40	Auger, 1994
<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
North East	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
Rochester	1 : 1.27	1 : 0.18	1 : 0.18	Bonner and Gray, 2005
<b>North Carolina</b>				
Alamance County	1 : 1.46	1 : 0.23	1 : 0.59	Renkow, 2006
Chatham County	1 : 1.14	1 : 0.33	1 : 0.58	Renkow, 2007
Henderson County	1 : 1.16	1 : 0.40	1 : 0.97	Renkow, 2008
Orange County	1 : 1.31	1 : 0.24	1 : 0.72	Renkow, 2006
Union County	1 : 1.30	1 : 0.41	1 : 0.24	Dorfman, 2004
Wake County	1 : 1.54	1 : 0.18	1 : 0.49	Renkow, 2001
<b>Ohio</b>				
Butler County	1 : 1.12	1 : 0.45	1 : 0.49	American Farmland Trust, 2003
Clark County	1 : 1.11	1 : 0.38	1 : 0.30	American Farmland Trust, 2003
Hocking Township	1 : 1.10	1 : 0.27	1 : 0.17	Prindle, 2002
Knox County	1 : 1.05	1 : 0.38	1 : 0.29	American Farmland Trust, 2003
Liberty Township	1 : 1.15	1 : 0.51	1 : 0.05	Prindle, 2002
Madison Village, Lake County	1 : 1.67	1 : 0.20	1 : 0.38	American Farmland Trust, 1993
Madison Twp., Lake County	1 : 1.40	1 : 0.25	1 : 0.30	American Farmland Trust, 1993
Madison Village, Lake County	1 : 1.16	1 : 0.32	1 : 0.37	American Farmland Trust, 2008
Madison Twp., Lake County	1 : 1.24	1 : 0.33	1 : .030	American Farmland Trust, 2008
Shalersville Township	1 : 1.58	1 : 0.17	1 : 0.31	Portage County Regional Planning Commission, 1997
<b>Pennsylvania</b>				
Allegheny Twp., Westmoreland County	1 : 1.06	1 : 0.14	1 : 0.13	Kelsey, 1997
Bedminster Twp., Bucks County	1 : 1.12	1 : 0.05	1 : 0.04	Kelsey, 1997
Bethel Twp., Lebanon County	1 : 1.08	1 : 0.17	1 : 0.06	Kelsey, 1992
Bingham Twp., Potter County	1 : 1.56	1 : 0.16	1 : 0.15	Kelsey, 1994
Buckingham Twp., Bucks County	1 : 1.04	1 : 0.15	1 : 0.08	Kelsey, 1996

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 (continued)</b>				
Carroll Twp., Perry County	1 : 1.03	1 : 0.06	1 : 0.02	Kelsey, 1992
Hopewell Twp., York County	1 : 1.27	1 : 0.32	1 : 0.59	The South Central Assembly for Effective Governance, 2002
Kelly Twp., Union County	1 : 1.48	1 : 0.07	1 : 0.07	Kelsey, 2006
Lehman Twp., Pike County	1 : 0.94	1 : 0.20	1 : 0.27	Kelsey, 2006
Maiden Creek Twp., Berks County	1 : 1.28	1 : 0.11	1 : 0.06	Kelsey, 1998
Richmond Twp., Berks County	1 : 1.24	1 : 0.09	1 : 0.04	Kelsey, 1998
Shrewsbury Twp., York County	1 : 1.22	1 : 0.15	1 : 0.17	The South Central Assembly for Effective Governance, 2002
Stewardson Twp., Potter County	1 : 2.11	1 : 0.23	1 : 0.31	Kelsey, 1994
Straban Twp., Adams County	1 : 1.10	1 : 0.16	1 : 0.06	Kelsey, 1992
Sweden Twp., Potter County	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
West Greenwich	1 : 1.46	1 : 0.40	1 : 0.46	Southern New England Forest Consortium, 1995
<b>Tennessee</b>				
Blount County	1 : 1.23	1 : 0.25	1 : 0.41	American Farmland Trust, 2006
Robertson County	1 : 1.13	1 : 0.22	1 : 0.26	American Farmland Trust, 2006
Tipton County	1 : 1.07	1 : 0.32	1 : 0.57	American Farmland Trust, 2006
<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
Bedford County	1 : 1.07	1 : 0.40	1 : 0.25	American Farmland Trust, 2005
Clarke County	1 : 1.26	1 : 0.21	1 : 0.15	Piedmont Environmental Council, 1994
Culpepper 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>				
Okanogan County	1 : 1.06	1 : 0.59	1 : 0.56	American Farmland Trust, 2007
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

Note: Some studies break out land uses into more than three distinct categories. For these studies, AFT requested data from the researcher and recalculated the final ratios for the land use categories listed in this table. The Okanogan County, Wash., study is unique in that it analyzed the fiscal contribution of tax-exempt state, federal and tribal lands.

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.

# COST OF COMMUNITY SERVICES STUDIES

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 nearly 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. However as more communities invest in agriculture this tendency may change. For example, if a community establishes a purchase of agricultural conservation easement program, working and open lands may generate a net negative.

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.

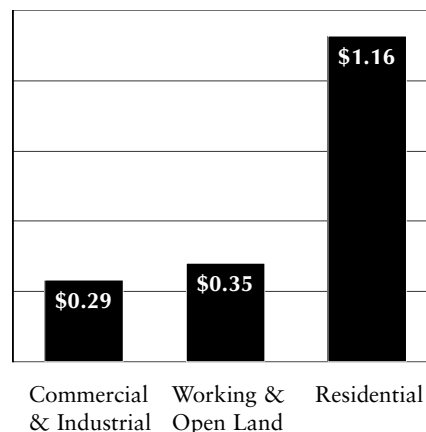
For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service and online library with fact sheets, laws, sample documents and other educational materials.

[www.farmlandinfo.org](http://www.farmlandinfo.org)  
(800) 370-4879



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

Median COCS Results



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





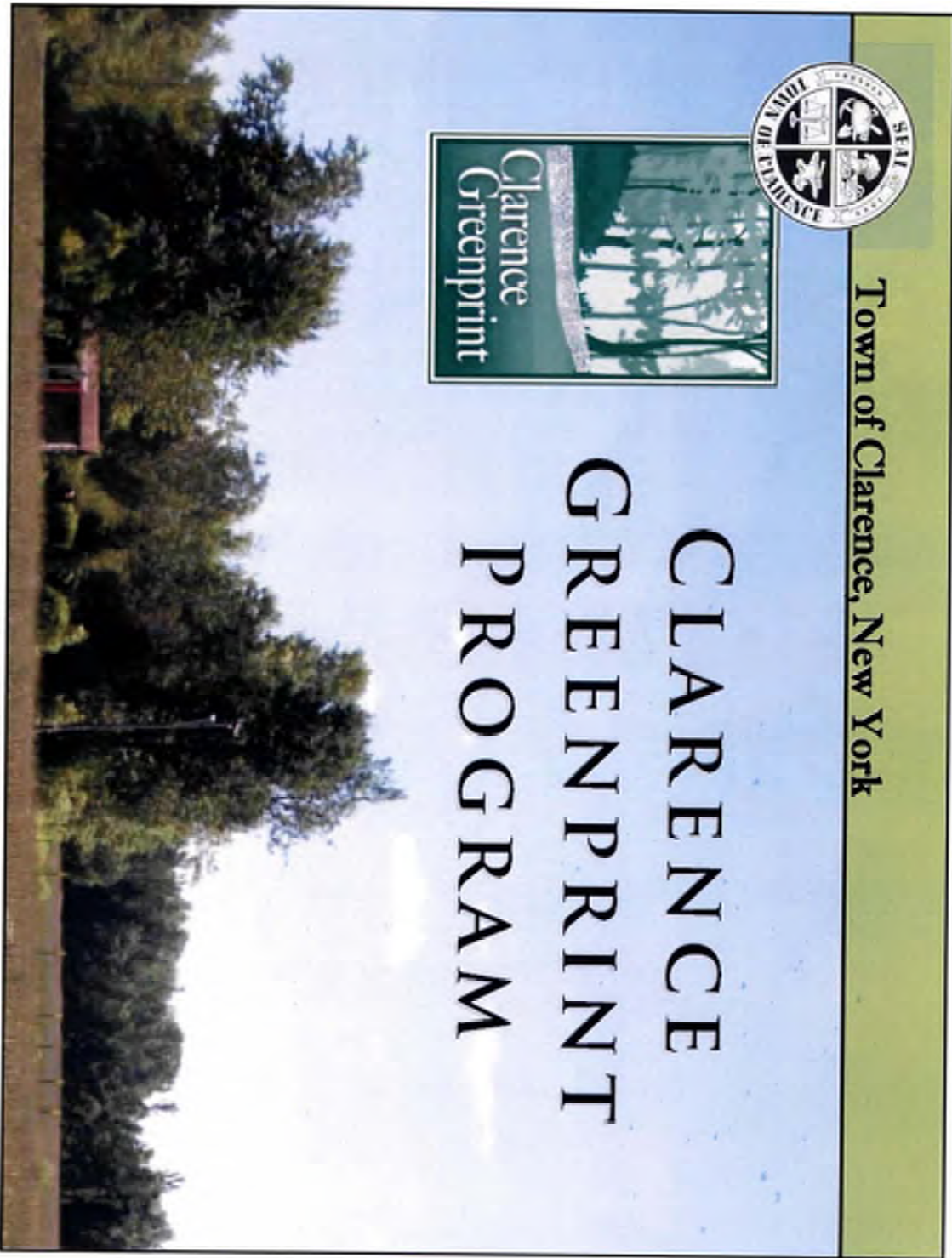
**Appendix I**  
Purchase of Development Rights Information



Town of Clarence, New York



# CLARENCE GREENPRINT PROGRAM





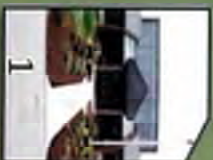
## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

### Presentation Outline

- I. The Greenprint Project:
  - Brief history and background
- II. Estimated Costs and Anticipated Benefits
- III. Greenspace Review
- IV. Properties Purchased/Program Expenses
- V. Actual Program Expenses
- VI. Actual Program Benefits
- VII. Achieving the Goals of Master Plan 2015





## **Town of Clarence, New York**

Clarence Greenprint Program

June 6, 2012

### **I. Project History/Origin**

**1998-** The Clarence Recreation Advisory Committee (“Committee”) began research and analysis of residents’ concerns over sprawl, congestion and quality of life issues. The Committee undertook a review of efforts by other communities across New York State to preserve open space.

**2002-** The Committee formally proposed to the Town Board a plan to preserve open space and the town’s rural character, protect property values and sustain the tax base through smart growth and balanced development.

The Committee recommended a Public Referendum to provide Greenprint Program funding.







## **Town of Clarence, New York**

Clarence Greenprint Program

June 6, 2012

**2002- The Town Board accepts the Committee's recommendation and a Public Hearing was held. The Committee presented the Greenprint Program proposal and received public comment.**

**Late 2002- The Greenprint Program is approved in a public referendum by 2/3 vote of Town residents.**

**Bond funds of \$12.5 million are secured as part of a 10 year Greenprint Preservation program. If after ten years the budget is not expended, the Town Board has the option to extend.**





## Town of Clarence, New York

Clarence Greenprint Program  
June 6, 2012

### II. Estimated Costs and Anticipated Benefits

#### Estimated Costs

- The Committee estimated an increase of \$52 in additional annual taxes for a property assessed at \$100,000, assuming the full \$12.5 million bond were spent at once.

#### Anticipated Benefits

- Increased property values.
- Reduction of municipal expenses through decreased demand on services.
- Balanced economic growth, tax stabilization, green space preservation and enhanced quality of life.







## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

### III. Greenspace Review

#### 1) Preliminary Review

- Willing property owners complete a participation interest survey. The Committee, in conjunction with the Western New York Land Conservancy (“Land Conservancy”) analyzes property data, screens interest of the applicant, assesses development potential, natural land, wetland, agricultural, open space, possible recreational use/bikepaths, size, and scenic considerations of the property.
- The Committee decides whether the property fits within the goals and parameters of the program and is suitable for further consideration.
- The Town Office of Planning and Zoning and Land Conservancy provide parcel data and an environmental review for the consideration of the Committee.





## **Town of Clarence, New York**

Clarence Greenprint Program

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### **2) Matrix Evaluation and Property Ranking**

□ The Land Conservancy evaluates and ranks each property with a point matrix analysis form arranged in 2 categories:

-Natural Land Form- Analyzes natural land features: wetland and riparian corridors, scenic views, unique ecological communities, wildlife habitat, mature forests, open space, and creek corridors.

-Agricultural Land Form- Analyzes agricultural land: value to the local agricultural economy, soil type, size, and proximity to adjacent farms.







## **Town of Clarence, New York**

Clarence Greenprint Program

June 6, 2012

### **3) Fair Market Appraisal and Price Negotiation**

- Based upon all data received and land rankings, the Committee decides whether to request a Fair Market Property Appraisal.
- The Committee reviews the Property Appraisal and discusses with the property owner whether to purchase outright and/or to place a conservation easement on the property or purchase development rights.
- The Committee provides the Town Attorney's Office with a not to exceed value and authorizes negotiations. The negotiated price may not exceed appraised value.





## **Town of Clarence, New York**

Clarence Greenprint Program

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### **4) Town Board Review and Approval:**

- After agreement with the property owner, the Committee recommends acceptance by the Town Board.
- The Board decides whether to conduct a public hearing to receive public comment.
- The Town Board makes the final decision whether to contract with the property owner.
- If the Town Board decides to purchase, the property or development rights are acquired and the land is preserved as forever green.







# Town of Clarence, New York

## Clarence Greenprint Program

### June 6, 2012

#### IV. Properties Purchased

PROPERTY ADDRESS	PDR/LAND PURCHASE (YEAR)	TOTAL LAND AREA	COST INCURRED	CURRENT OWNER
Salt Road/Greiner Road ("Etchorn Farm")	Land Purchase(2004)	184 acres	\$780,000	Town of Clarence
Gunnville Road ("Nappo Preserve")	Land Purchase (2004)	22 acres	\$42,800	Town of Clarence
10591 Rapids Road ("Krueger Preserve")	Land Purchase (2004)	57 acres	\$128,600	Town of Clarence
Goodrich Road ("Frey Preserve")	Land Purchase (2005)	16 acres	\$400,000	Town of Clarence
Roll Road ("Ribbeck Farm")	PDR (2005)	62 acres	\$431,368	Gregory C. Ribbeck
Parker Road ("Laubacher Preserve")	Land Purchase (2005)	30 acres	\$36,000	Town of Clarence
Rapids Road ("Owen Farm")	Land Purchase (2008)	90 acres	\$320,000	Town of Clarence
Salt Road ("Christner Farm")	Land Purchase (2009)	96 acres	\$705,000	Town of Clarence
			(TOC- \$300,000)	
			(MYS- \$150,000)	
			(FED- \$150,000)	
			TOTAL- \$600,000	
Lapp Road ("Spoth Farm")	PDR (2009)	102 acres		Greg Spoth
Keller Road ("Mosher Farm")	Land Purchase (2009)	41 acres	\$331,280	Town of Clarence
Greiner Road ("Ball Farm")	Land Purchase (2010)	120 acres	\$900,000	Town of Clarence
Rapids Road ("Baker Farm")	PDR (2011)	102 acres	\$95,000	Gary Baker
Rapids Road ("Hedges Farm")	PDR (2011)	116 acres	\$500,000	Melwyn C. Hedges
Harris Hill Road ("Deni Preserve")	Land Purchase (2011)	86 acres	\$825,000	Town of Clarence
Shimerville Road/Roll Road ("Ribbeck Farm II")	PDR (2012)	84 acres	\$754,110	Gregory C. Ribbeck
	<b>TOTAL:</b>	<b>1,236 acres</b>	<b>\$6,802,328</b>	



## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

### V. Actual Program Expenses

#### Tax Impact- Property Acquisition and Purchase of Development Rights

- Resultant Tax Increase per \$100,000 of Assessed Value:

Committee's Cost Estimate for full \$12,500,000 expenditure- \$52.00

Actual Cost of \$ 6,802,328 expenditure- \$14.10\*

Actual Cost of \$12,500,000 expenditure- \$30.40

*\*As discussed later, cost reduction can be achieved by reselling purchased property with conservation easements in place ensuring continued protection of greenspace.*







## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

### VI. Actual Program Benefits

#### 1) Protection of Property Values and Stabilization of Tax Rates

- The availability of open space directly affects quality of life which is a significant factor in the purchasing decisions of many consumers. Local sales data reflects an average 15% increase in property sale value of those properties directly adjacent to open space or permanently conserved property compared to similar non-adjacent housing.
- The average appreciation rate of existing property within the Town of Clarence is 5 times that of comparable Towns in the region. Furthermore, the Town has sustained an average 3% positive appreciation rate for the past decade. (source: *County Wide Equalization Change, 2009-2011*)
- When comparing the Town of Clarence to similar communities across the region, residents in other communities are paying an average of 30% more in total property taxes. (source: *2010-2011 Erie County Real Property Tax Comparison*)





## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

### VI. Actual Program Benefits

#### 1) Protection of Property Values and Stabilization of Tax Rates (Cont.)

- In 2011, the Town of Clarence had a 2.32% increase in existing property assessed valuations. This increase resulted in an additional \$78,499,025 in assessed valuation within the community.
- Assuming only 10% of the overall assessed valuation increase of existing properties can be attributed to open space preservation, the program is responsible for \$1,712,700 in additional tax revenue for the community over a 20 year period.





## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

### 2) Optional Resale of Purchased Properties with Conservation Easement Protection

- If the Board exercised the option to resell properties protected by conservation easements, the Town would recoup approximately \$1,250,000, while still ensuring the land is permanently protected as open space.
- Additional tax revenue from resold land over 20 years: \$226,280.
- Therefore, the total potential Greenprint Program cost reduction that could be realized through resale of protected properties and additional tax revenues would total \$3,188,980.
- Applying this cost reduction to the actual current expenditure of \$6,802,328 would yield an actual cost to the taxpayers of only \$6.60 per \$100,000 of assessed valuation annually.





## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

### 3) Reduced Costs of Required Services

- Since 1980, developed area in WNY increased 38 percent, households increased by only 5.5% and population declined by 5.8% (source: *Erie Niagara Framework for Regional Growth*). This suburban sprawl has caused a dramatic increase in demand for expensive municipal services while the tax base required to pay for the increased demand has decreased.
- The Greenprint Program is a significant tool in the battle against suburban sprawl by preserving open space, creating balanced growth patterns, reducing the demand for and costs of services and preserving the tax base by protecting property values.







## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

### 4) Protection of Our Quality of Life

- The Greenprint Program supports a balanced growth pattern that impedes residential sprawl, reduces traffic and human congestion, noise, exhaust emissions, and protects aesthetic and scenic vistas.
- Lands protected thus far include working farms, forests, stream corridors, meadows, State and Federal wetlands, vernal pools, areas containing endangered flora and fauna, and other areas that provide habitat for fish and wildlife and act as filters to cleanse water, decrease flooding, and provide recreation and wildlife viewing opportunities for the general public.





## **Town of Clarence, New York**

**Clarence Greenprint Program**

**June 6, 2012**

### **VII. Master Plan 2015**

Open Space preservation and balanced residential development were identified as primary concerns of local residents during the Master Plan visioning and drafting process. To accommodate the concerns of the public, the following considerations were made through the adoption of Master Plan 2015 in August of 2001:

- Development of an Open Space Preservation Plan, prioritizing parcels based upon their size, natural features, developmental pressure, current and potential utilization, etc.
- Consideration of creating a committee to analyze the cost and viability of a development rights acquisition program.
- Development of updated zoning laws and districts that take into account agricultural district considerations and uses.
- Development of subdivision laws that require Open Space and Recreational components through density regulations.





## Town of Clarence, New York

Clarence Greenprint Program

June 6, 2012

**This Program is considered a creative and successful partnership that serves as a model for other communities considering land preservation**



CLARENCE

The Clarence Recreation Advisory Committee, Town Board members and Town residents have been instrumental in the development of the Greenprint program. Their vision and recognition of the benefits derived from land preservation have helped preserve our quality of life, stabilize our tax base and protect property values



The program is dependent upon willing landowners who are committed to open space preservation and the local agricultural economy. Those landowners who have voluntarily participated in the program have supported long term planning efforts while rejecting potential short term and short lived financial gain.



WESTERN NEW YORK  
LAND CONSERVANCY

The Western New York Land Conservancy is a private, non-profit land trust dedicated to preserving our region's irreplaceable natural environments, farms, forestlands and open space in order to maintain wildlife habitat, economic resources, public recreation areas and the unique scenic character of Western New York. They are a critical resource for evaluating potential greenprint properties, structuring and co-holding conservation easements, and long term monitoring of protected properties.



**TOWN OF CLARENCE**  
 ERIE COUNTY NEW YORK  
 GREENPRINT PROGRAM ACQUISITIONS  
 JULY 2013

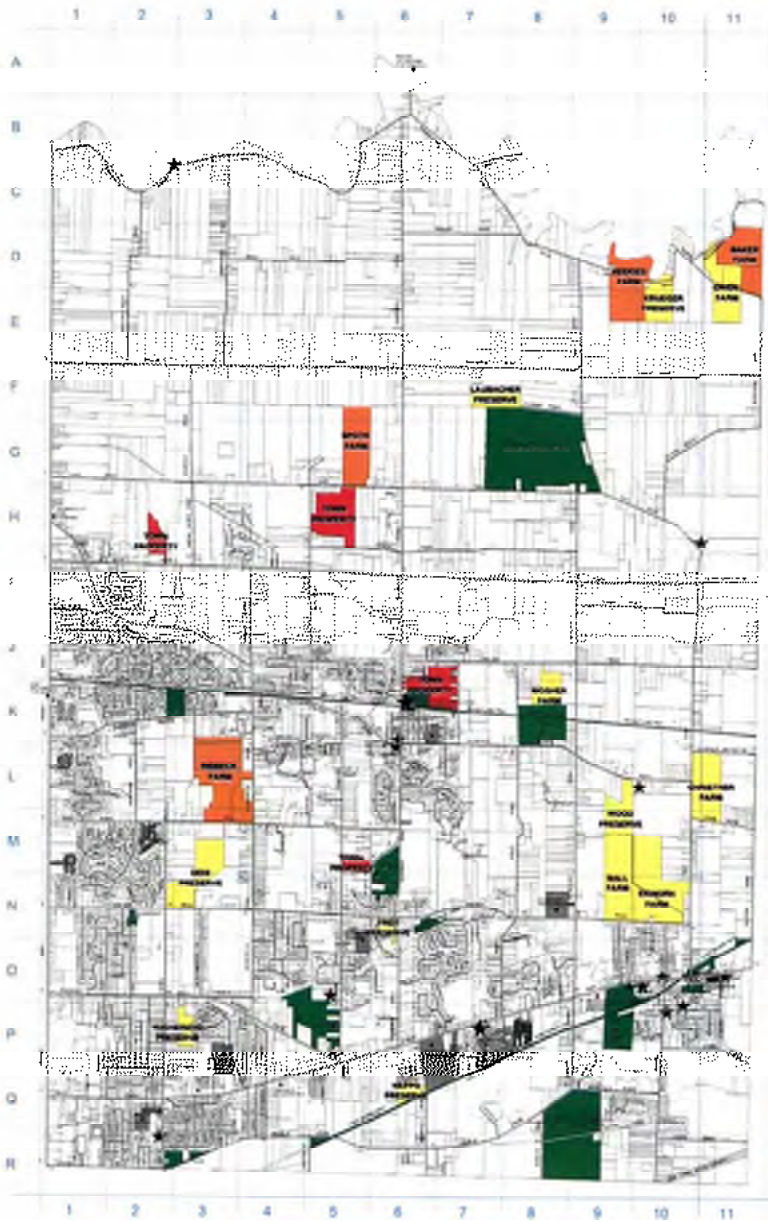
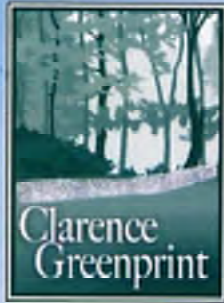


Table with 2 columns: Parcel ID and Description. The table lists numerous parcels with their corresponding acquisition type and details.

Parcel ID	Description
101-1-1	Greenprint Acquisition
101-1-2	Greenprint Acquisition
101-1-3	Greenprint Acquisition
101-1-4	Greenprint Acquisition
101-1-5	Greenprint Acquisition
101-1-6	Greenprint Acquisition
101-1-7	Greenprint Acquisition
101-1-8	Greenprint Acquisition
101-1-9	Greenprint Acquisition
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101-1-100	Greenprint Acquisition





# CLARENCE GREENPRINT PROGRAM





## Town of Clarence, New York

### Greenprint Program

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## Town of Clarence, New York

### Executive Summary/Background

#### **Executive Summary**

The Town of Clarence is devoted to active preservation of open space. In 2002, with the approval of town residents via a public referendum, the Greenprint land conservation program was established by way of bond funds at a value of \$12.5 million. Preserving open space is vital to the betterment of the community's character and smart growth. Open space preservation is a significant component of responsible environmental stewardship, sense of place, sustaining recreational activities, and promoting agricultural opportunities. In conjunction with Town of Clarence Master Plan 2015, the Western New York Land Conservancy group, and willing land owners, the character of the community is protected. Clarence has become a leader for other municipalities interested in retaining rural character and supporting local agricultural economies while managing productive, stable growth.

#### **Clarence Greenprint Background**

Greenprint properties are protected in two ways. The town can purchase the land and become sole owners or the town may purchase the development rights of the property (PDR). With a PDR established, a conservation easement is placed on the land. The conservation easement is a legally bound agreement that limits future development of the land to protect conservation values such as scenic views, wildlife habitat, or farmland.

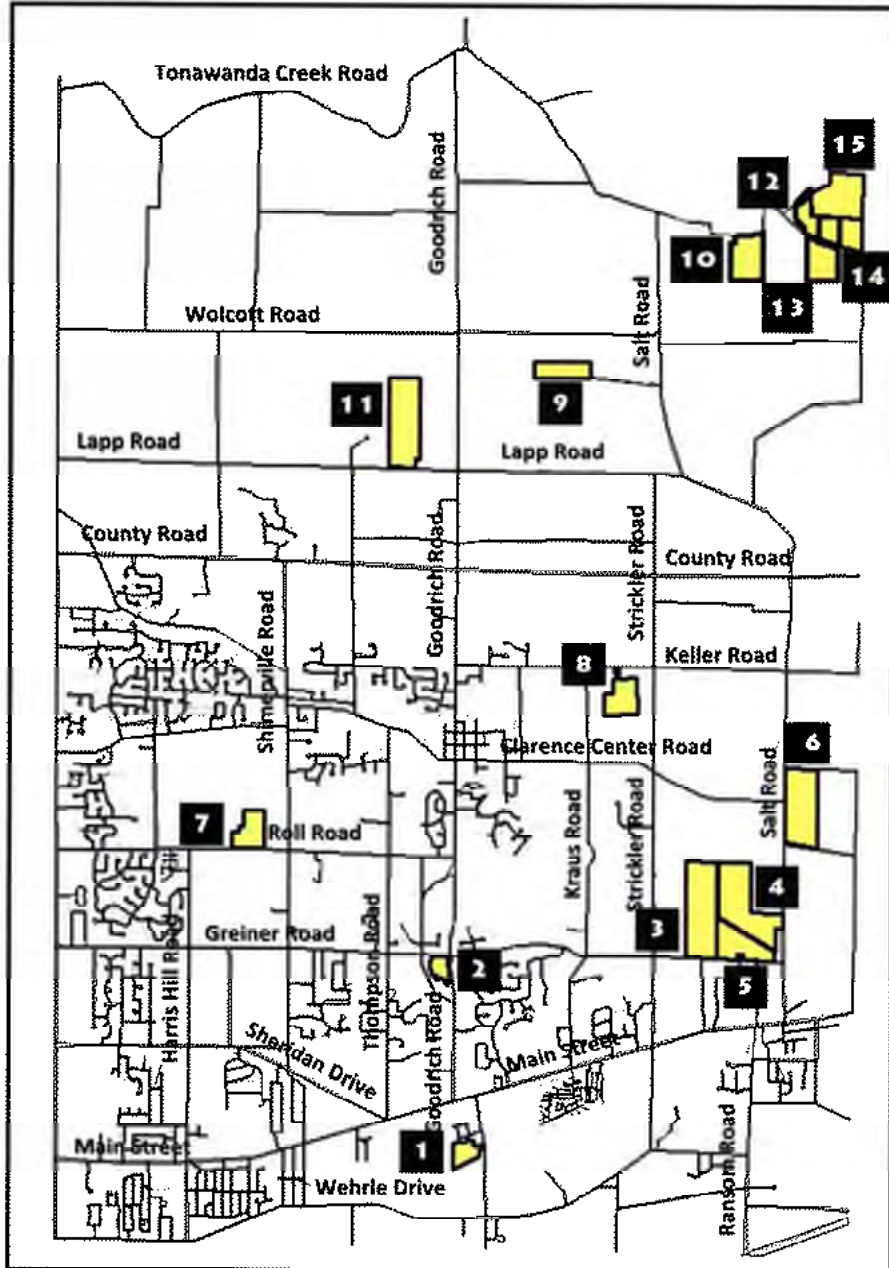
The program is designed for interested and willing landowners. Priorities in selecting parcels for protection with Greenprint funds are based upon parcel size, proximity to other protected lands, natural features of the land, anticipated acquisition costs, and other factors.





# Town of Clarence, New York

## Property Aerials





Nappo Preserve



Frye Preserve



Ball Farm



Eichorn Farm



Eichorn Farm



Christner Farm



Ritbeck Farm



Mosher Farm



Laubacher Preserve



Krueger Preserve/Recreational Acquisition



Speeth Farm





Owen Farm



Owen Farm



Baker Farm



Baker Farm

Source of Images: <http://gis1.erie.gov/support/EricHelp/>  
Created by Town of Clarence  
Planning and Zoning Department



# Town of Clarence, New York

## Property Photos



Elchorn Farm



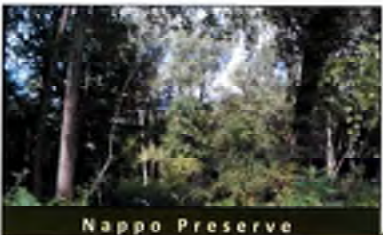
Christner Farm



Owen Farm



Laubacher Preserve



Nappo Preserve

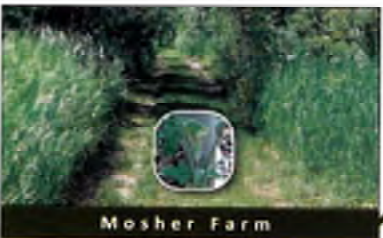


Frey Preserve



# Town of Clarence, New York

## Property Photos







# Town of Clarence, New York

## Greenprint Program Expenditures

PROPERTY ADDRESS	PDR/LAND PURCHASE (YEAR)	COST INCURRED	CURRENT OWNER	AVERAGE TAXES PAID PRIOR TO PURCHASE	AVERAGE TAXES PAID POST PURCHASE	NET LOSS OF TAX REVENUE
Salt and Greiner Road "Eichorn Farm" (184 acres)	Land Purchase (2004)	\$780,000	Town of Clarence	County \$7,746.72 School \$15,116.04 Total \$22,862.76	\$0.00	(\$22,862.76)
Gunnville Road "Nappo Preserve" (22 acres)	Land Purchase (2004)	\$42,800	Town of Clarence	County \$1,084.46 School \$1,809.49 Total \$2,893.95	\$0.00	(\$2,893.95)
10591 Rapids Road "Krueger Preserve" (57 acres)	Land Purchase (2004)	\$128,600	Town of Clarence	County \$1,118.30 School \$1,369.46 Total \$2,487.76	\$0.00	(\$2,487.76)
Goodrich Road "Frey Preserve" (16 acres)	Land Purchase (2005)	\$400,000	Town of Clarence	County \$1,630.79 School \$2,909.46 Total \$4,540.25	\$0.00	(\$4,540.25)
Roll Road "Ribbeck Farm" (62 acres)	PDR (2006)	\$431,368	Gregory C. Ribbeck	County \$1,588.73 School \$2,941.46 Total \$4,530.19	County \$1,365.98 School \$2,453.10 Total \$3,819.08	(\$711.11)
Parker Road "Laubacher Preserve" (30 acres)	Land Purchase (2005)	\$36,000	Town of Clarence	County \$46.72 School \$97.07 Total \$143.80	\$0.00	(\$143.80)
Rapids Road "Owen Farm" (90 acres)	Land Purchase (2008)	\$320,000	Town of Clarence	County \$8,213.27 School \$4,741.13 Total \$12,954.40	\$0.00	(\$12,954.40)
Rapids Road "Baker Farm" (102 acres)	PDR (2010)	\$95,000	Gary Baker	NO ASSESSMENT ADJUSTMENT	NO ASSESSMENT ADJUSTMENT	\$0.00
Salt Road "Christner Farm" (96 acres)	Land Purchase (2009)	\$705,000	Town of Clarence	County \$1,004.79 School \$596.74 Total \$1,601.53	\$0.00	(\$1,601.53)
Lapp Road "Spath Farm" (102 acres)	PDR (2009)	(TOC- \$300,000) (NYS- \$150,000) (FED- \$150,000) TOTAL- \$600,000	Greg Spath	NO ASSESSMENT ADJUSTMENT	NO ASSESSMENT ADJUSTMENT	\$0.00
Keller Road "Mosher Farm" (41 acres)	Land Purchase (2009)	\$331,280	Town of Clarence	County \$461.49 School \$701.80 Total \$1,163.29	\$0.00	(\$1,163.29)
Rapids Road "Hedges Farm" (116 acres)	Pending PDR (2010)	\$500,000	Melvyn C. Hedges	NO ASSESSMENT ADJUSTMENT	NO ASSESSMENT ADJUSTMENT	\$0.00
Greiner Road "Ball Farm" (120 acres)	Land Purchase (2010)	\$900,000	Town of Clarence	County \$1,977.63 School \$165.41 Total \$2,143.04	\$0.00	(\$2,143.04)
<b>1,038 acres total</b>	<b>TOTAL:</b>	<b>\$5,270,048</b>				<b>(\$51,501.89)</b>



# Town of Clarence, New York

## Fiscal Impact Analysis

### Executive Summary

The Greenprint program is committed to preserving open space and conserving agricultural land that is characteristic of Clarence for future generations. This is achieved by either purchasing property or purchasing the development rights to properties. The Town of Clarence has currently acquired a number of properties and purchased development rights to promote the goal of the program and strives to continuously contribute to that conservation effort. A fiscal impact analysis was conducted to analyze the impacts of the program thus far to the Town of Clarence tax levy. Using sales history data collected from the Office of Real Property Services, parcels surrounding Greenprint properties were selected and compared to current housing market prices to determine if there was a relationship between the sale of homes and their proximity to open space. It was concluded that there is a direct correlation between open spaces and increases in the sale prices of properties surrounding them within the Town of Clarence. This being said, the data suggests that upfront costs and long term tax revenue losses may be greatly mitigated by positive assessed valuation increases as a function of the Greenprint program.

### Background

Studies have been conducted within other communities to look at the relationship between open space and housing values. Using a hedonic price model, many researchers arrived at similar results. The hedonic pricing models are statistical models that calculate the benefit of open space near residential land based on several characteristics that are then applied to a formula. When calculated, the model should be able to accurately prove whether housing values benefit from open space or not. Jacqueline Geoghegan, Lori Lynch, and Shawn Bucholtz used the hedonic price model to study a few locations and test their hypothesis asking whether or not open space increases neighboring residential value. Their article, *Capitalization of Open Spaces into Housing Values and the Residential Property Tax Revenue Impacts of Agricultural Easement Programs*, concluded that there is a significant relationship between open space and residential values. Almost all locations studied proved that the residential values of properties surrounding open space were higher or increased over time. It should also be noted that areas that were accustomed to more open space, similar to the Town of Clarence, as a whole experience an increase of total assessed valuation. The value was increased further when the open space was associated with an actively maintained program with results that were marketed and publicized.



## Methodology

GIS (Geographic Information Systems) applications were utilized to locate the Greenprint parcels and select adjacent properties. Parcels were selected based on their proximity to the Greenprint parcels either bordering the properties or within direct view of the open space. All of the data on the properties selected were exported to Excel and all were residential properties. Sale history data was gathered for each of the parcels from the Town of Clarence Assessors Office. The sale data was looked at from 2005 to the present and then compared to current market prices for the town. A table of the most significant sale data was created to study the relationship between sale prices and open space (see appendix).

## Findings

### *Location 1: Goodrich & Greiner*

One of the Greenprint properties purchased by the Town of Clarence is located within a dense residential development pattern at the corner of Goodrich and Greiner Rd. The homes surrounding the newly conserved parcel have a total assessed value averaging \$190,000, with \$370,000 at the highest. Some of the lower priced properties are currently vacant and contribute to a greater amount of open space within the area. Most of the properties within close proximity to the open space are residential land uses averaging about less than 1 acre per parcel.

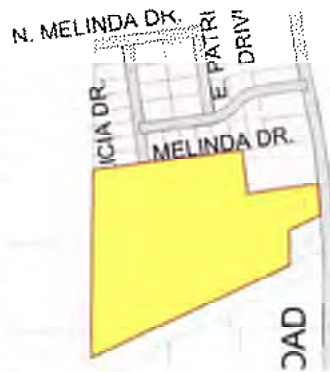


*Location 1: Goodrich & Greiner*

According to sales records, 3 properties were recently sold on October 13, 2009 for \$38,000 an acre. Looking at the sales history of these 3 parcels, prior to the purchase in 2009, they were sold for \$13,700 an acre in 1999. The Greenprint property was purchased in 2007 and consists of approximately 16 acres of land, lying directly adjacent to the 3 properties. This progression of sales from 1999 to 2009 suggests a correlation between the purchase of the Greenprint property in 2007 and the increase in price per acre in 2009 at a factor of three times the 1999 sales price. With the application of a growth rate formula (present price-past price/past price x 100), these pieces of property increased by 177%. Other homes that were sold after the purchase of the Greenprint parcel include 9370 Greiner Road on December 6, 2007 for \$101,500 and 5055 Old Goodrich Road on October 25, 2007 for \$344,350. Compared to the market price within the same year, this is a relatively average to above average price of sale for homes within the Town of Clarence with similar characteristics taking into account inflation within the housing market. Based upon this analysis, it would seem that the Greenprint property has had a positive impact upon the assessed valuation of adjacent properties.

*Location 2: Gunville*

The Greenprint property located on Gunville Road has several residential properties located to the north. The homes typical fall within the \$100,000 - \$200,000 range and take up less than 1 acre. The Greenprint parcel also contains part of a Federal wetland which contributes to a goal of the Greenprint program of protecting the natural environment within the town.



*Location 2: Gunville*

After the acquisition of the Greenprint property in 2005, the sales records show that averagely the homes in this neighborhood sold for about \$178,000 from 2005-2009. A recent sale in 2009 of 9535 Melinda Drive was \$204,500 which seems to fall within the average market price of a comparable home in the town. An analysis of sales between 2005 and 2009 shows a slight increase every year, again supporting the theory that the Greenprint program is increasing land value of those adjacent properties.

*Location 3: Greiner*

The third location of one of the Greenprint program parcels is located off of Greiner Road. It is currently being leased and used as farmland which not only protects the land from development but also makes use of it in a way that will benefit the town economically. Many of the lots surrounding the open space are larger in acreage. While it may be believed that open space will not have as large of an effect on the adjacent large estate lots; the increased amount of undeveloped acreage will further contribute to the sense of seclusion that many residents may be looking for.

The sales data for the properties surrounding this Greenprint property proves to be rather significant. Lots that were once vacant and sold for \$23,000 in 2004 now have homes and are being sold for \$240,000 in 2009. This increase in sale can be attributed not only to the new construction but also to the surrounding landscape. An interesting case can be made for the parcel at 5250 Bank Street which has seen an increase in sale price from 2005-2007. The property was sold for \$137,000 in 2005 but sold for \$155,000 in 2007. This increase in price of about 13% is potentially correlated with its proximity to open space. In 2007, 10535 Greiner Road was sold for \$154,900 which was a higher



*Location 3: Greiner*

price than when it was sold in 2000 and relatively higher than any other comparable properties being sold in the same year. This is about a 30% increase in price. This data suggests that those residences surrounding the recently protected open space are more desirable than prior to the conservation effort.

### **Supporting Evidence**

The effort to permanently protect open space may conflict with interests that seek to create revenue from its development. However, there are factors that contribute to positive fiscal impacts through the preservation of open space. When considering the impacts of developed property, long term costs can be overlooked. For example, as open space is converted to residential development, public service costs begin to rise. The need for new roads, sewer and drainage systems, and police and fire protection will increase the costs that a community must bear. An examination of the taxes collected for a residential development shows "that for every \$1.00 collected in taxes, residential development costs between \$1.04 and \$1.67 in services...generally increasing over time (ANJEC, 2004)." The bonds used to purchase these preserved lands are typically over 20 year timeframes. Although the acquisition value of the land can be high, the long term still favors the undeveloped land. A study done by the Burlington County Office of Land Use Planning reported for every \$1.00 a residential unit generates, the services required was \$1.48. However, farmland in the same County cost \$0.27 for every \$1.00 it generates in taxes (ANJEC, 2004).

Beyond the monetary costs of development, lie the social and environmental costs that a community can save. With the preservation of open space, comes the ability for lands to handle excess water. Federal and state wetlands, along with hydric and potentially hydric soils, are inclusive over the majority of land area in the Town of Clarence. Retaining open areas that can process storm water and runoff naturally will reduce the cost and need for engineered systems. Less development also means decreased cases of air, water, and noise pollution. A study done by the Center for Urban Policy Research in 1992 for New Jersey revealed that a savings of \$1.3 billion could be saved in infrastructure planning, as well as 127,000 acres of preserved land, if development is encouraged closer to previously developed centers (ANJEC, 2004). The effort to fully utilize existing infrastructure prior to expanding new infrastructure is a critical consideration for long term fiscal stability.

### **Conclusion**

When compared to an urban setting, Clarence is a suburban community that is no stranger to open space. It is likely that acquisition of open space would have a larger impact in an urban setting rather than suburban due to the current accessibility to open space. However, the preceding data suggests that the Greenprint program has had positive financial impacts to the town as a whole. Those properties that are acquired come under the ownership of the town and will reduce the upfront tax revenue. However, lost tax can be counteracted by increased assessed valuation of homes surrounding the newly acquired and protected open space. The process of acquiring only development rights for properties also works towards the goal of the Greenprint program. Ultimately, selling

acquired properties after securing a conservation easement will reestablish tax revenue and offset initial acquisition costs. The purchase of development rights maintains the financial revenue through town taxation while working to preserve open space and strengthen the local agricultural economy.

The analysis of sales data for those properties adjacent to acquisitions and purchases of development rights associated with the Greenprint program suggests there is a definite relationship between sales value and proximity to those properties. The study of three properties purchased by the Town of Clarence under the Greenprint program, mainly surrounded by residential development, showed significant results that prove that the program has a beneficial impact to total assessed valuation. The sales history for properties adjacent to the Greenprint program properties confirms an increase in value after 2005 potentially due to the proximity to open space.

Purchasing properties to permanently protect open space is an important consideration when attempting to protect rural character and strengthen local agricultural economies. Whether it is through property acquisition or purchase of development rights, the conservation of land in association with a well planned and effectively coordinated program benefits the community. According to past research on the topic of open space and housing prices, it has been suggested that the long term increased assessed valuation of adjacent properties works to offset the upfront acquisition and purchase of development costs associated with a land preservation program. Given past research and the impact analysis associated with the Greenprint program thus far, the effective management of existing resources and associated increases of assessed valuation should more than offset the initial expenditures required for the long term preservation of open space and support of the local agricultural economy.

## References

Geoghegan, J., Lynch, L., & Bucholtz, S. (2003). Capitalization of Open Spaces into Housing Values and the Residential Property Tax Revenue Impacts of Agricultural Easement Programs. *Agricultural and Resource Economics Review*: 32(1), 33-45.

Association of New Jersey Environmental Commissions (2004). Open Space is a Good Investment. *The Financial Argument for Open Space Preservation*

Office of Real Property Services, *Town of Clarence Assessors Office*

Office of Property Taxes, *Town of Clarence Town Clerk's Office*



# Town of Clarence, New York

## Appendix

Tables of properties adjacent to Greenprint properties

### Location 1: Goodrich & Greiner

Property Address	Owner Name	Owner Address	Owner City State	Acres	Total Assessed Value
1750 Greiner Rd	Price, Joel J	1750 Greiner Rd	Clarence, NY 14031	0	177,500.00
1755 Old Goodrich	Frank M. Greiner I	1715 Old Goodrich Rd	Clarence, NY 14031	0	269,000.00
1755 Old Goodrich	Thomas J Greiner S	1715 Old Goodrich Rd	Clarence, NY 14031	0	251,000.00
1755 Old Goodrich	Diane John H	1705 Old Goodrich Rd	Clarence, NY 14031	0	241,000.00
1770 Greiner Rd	Donnata Albert C	1770 Greiner Rd	Clarence, NY 14031	0	161,000.00
1780 Greiner Rd	Andrew, Robert	1780 Greiner Rd	Clarence, NY 14031	0.45	178,000.00
1795 Old Goodrich	Mafler, Debra M	1795 Old Goodrich Rd	Clarence, NY 14031	1.7	249,000.00
1815 Old Goodrich	Dedinger, James F	1805 Old Goodrich Rd	Clarence, NY 14031	2.6	344,000.00
1815 Goodrich Rd	Brennan, Barry S	1815 Goodrich Rd	Clarence, NY 14031	1.47	270,000.00
1845 Old Goodrich	Travis, F Bruce	1845 Old Goodrich Rd	Clarence, NY 14031	1.5	277,000.00
1875 Old Goodrich	Major, Robert D	1875 Old Goodrich Rd	Clarence, NY 14031	0.88	187,000.00
1875 Greiner Rd	Goodrich, Kenneth J	1875 Greiner Rd	Clarence, NY 14031	0	189,000.00
1875 Greiner Rd	Travis, Ralph E	1875 Greiner Rd	Clarence, NY 14031	0.61	200,000.00
1880 Greiner Rd	Phelan, Ralph E	1880 Greiner Rd	Clarence, NY 14031	0.86	160,000.00
1880 Goodrich Rd	Wood, Brian	1880 Goodrich Rd	Clarence, NY 14031	0	110,000.00
1885 Old Goodrich	Greiner, Joseph	1885 Old Goodrich Rd	Clarence, NY 14031	0.14	21,000.00
1888 Old Goodrich	Greiner, Elizabeth	1888 F Greiner Rd	Clarence, NY 14031	0.78	202,000.00
1905 Old Goodrich	Price, Robert R	1905 Old Goodrich Rd	Clarence, NY 14031	0.78	270,000.00
1915 Old Goodrich	Price, Marlene J	1915 Old Goodrich Rd	Clarence, NY 14031	0.75	247,000.00
1945 Old Goodrich Rd	Kaufman, Michael	1945 Goodrich Rd	Clarence, NY 14031	0.04	18,000.00
1945 Old Goodrich Rd	Kaufman, Michael	1945 Goodrich Rd	Clarence, NY 14031	0	10,000.00
1955 Old Goodrich Rd	Kaufman, Michael	1955 Goodrich Rd	Clarence, NY 14031	1.1	11,000.00

### Location 2: Gunnville

Property Address	Owner Name	Owner Address	Owner City State	Acres	Total Assessed Value
1645 Medina Dr	Shurkey, Daniel J	1645 Medina Dr	Clarence, NY 14031	0	181,000.00
1650 Medina Dr	Giannello, Jose	1650 Medina Dr	Clarence, NY 14031	0.57	177,000.00
1655 Medina Dr	Fisher, Carolyn	1655 Medina Dr	Clarence, NY 14031	0	176,000.00
1660 Medina Dr	Williamson, Keith A Jr	1660 Medina Dr	Clarence, NY 14031	0.46	160,000.00
1665 Medina Dr	Williamson, Keith A Jr	1665 Medina Dr	Clarence, NY 14031	0.46	160,000.00
1675 Medina Dr	Hutchins, James J Jr	1675 Medina Dr	Clarence, NY 14031	0.57	193,000.00
1680 Medina Dr	Williamson, Keith A Jr	1680 Medina Dr	Clarence, NY 14031	0	171,000.00
1685 Medina Dr	Schwartz, James J	1685 Medina Dr	Clarence, NY 14031	0	166,000.00
1690 Medina Dr	McGee, Thomas R	1690 Medina Dr	Clarence, NY 14031	0	167,000.00
1695 Medina Dr	McGee, Thomas R	1695 Medina Dr	Clarence, NY 14031	0	167,000.00
1700 Medina Dr	McGee, Thomas R	1700 Medina Dr	Clarence, NY 14031	0	167,000.00
1705 Medina Dr	McGee, Thomas R	1705 Medina Dr	Clarence, NY 14031	0	167,000.00
1710 Medina Dr	McGee, Thomas R	1710 Medina Dr	Clarence, NY 14031	0	167,000.00
1715 Medina Dr	McGee, Thomas R	1715 Medina Dr	Clarence, NY 14031	0	167,000.00
1720 Medina Dr	McGee, Thomas R	1720 Medina Dr	Clarence, NY 14031	0	167,000.00
1725 Medina Dr	McGee, Thomas R	1725 Medina Dr	Clarence, NY 14031	0	167,000.00
1730 Medina Dr	McGee, Thomas R	1730 Medina Dr	Clarence, NY 14031	0	167,000.00
1735 Medina Dr	McGee, Thomas R	1735 Medina Dr	Clarence, NY 14031	0	167,000.00
1740 Medina Dr	McGee, Thomas R	1740 Medina Dr	Clarence, NY 14031	0	167,000.00
1745 Medina Dr	McGee, Thomas R	1745 Medina Dr	Clarence, NY 14031	0	167,000.00
1750 Medina Dr	McGee, Thomas R	1750 Medina Dr	Clarence, NY 14031	0	167,000.00
1755 Medina Dr	McGee, Thomas R	1755 Medina Dr	Clarence, NY 14031	0	167,000.00
1760 Medina Dr	McGee, Thomas R	1760 Medina Dr	Clarence, NY 14031	0	167,000.00
1765 Medina Dr	McGee, Thomas R	1765 Medina Dr	Clarence, NY 14031	0	167,000.00
1770 Medina Dr	McGee, Thomas R	1770 Medina Dr	Clarence, NY 14031	0	167,000.00
1775 Medina Dr	McGee, Thomas R	1775 Medina Dr	Clarence, NY 14031	0	167,000.00
1780 Medina Dr	McGee, Thomas R	1780 Medina Dr	Clarence, NY 14031	0	167,000.00
1785 Medina Dr	McGee, Thomas R	1785 Medina Dr	Clarence, NY 14031	0	167,000.00
1790 Medina Dr	McGee, Thomas R	1790 Medina Dr	Clarence, NY 14031	0	167,000.00
1795 Medina Dr	McGee, Thomas R	1795 Medina Dr	Clarence, NY 14031	0	167,000.00
1800 Medina Dr	McGee, Thomas R	1800 Medina Dr	Clarence, NY 14031	0	167,000.00
1805 Medina Dr	McGee, Thomas R	1805 Medina Dr	Clarence, NY 14031	0	167,000.00
1810 Medina Dr	McGee, Thomas R	1810 Medina Dr	Clarence, NY 14031	0	167,000.00
1815 Medina Dr	McGee, Thomas R	1815 Medina Dr	Clarence, NY 14031	0	167,000.00
1820 Medina Dr	McGee, Thomas R	1820 Medina Dr	Clarence, NY 14031	0	167,000.00
1825 Medina Dr	McGee, Thomas R	1825 Medina Dr	Clarence, NY 14031	0	167,000.00
1830 Medina Dr	McGee, Thomas R	1830 Medina Dr	Clarence, NY 14031	0	167,000.00
1835 Medina Dr	McGee, Thomas R	1835 Medina Dr	Clarence, NY 14031	0	167,000.00
1840 Medina Dr	McGee, Thomas R	1840 Medina Dr	Clarence, NY 14031	0	167,000.00
1845 Medina Dr	McGee, Thomas R	1845 Medina Dr	Clarence, NY 14031	0	167,000.00
1850 Medina Dr	McGee, Thomas R	1850 Medina Dr	Clarence, NY 14031	0	167,000.00
1855 Medina Dr	McGee, Thomas R	1855 Medina Dr	Clarence, NY 14031	0	167,000.00
1860 Medina Dr	McGee, Thomas R	1860 Medina Dr	Clarence, NY 14031	0	167,000.00
1865 Medina Dr	McGee, Thomas R	1865 Medina Dr	Clarence, NY 14031	0	167,000.00
1870 Medina Dr	McGee, Thomas R	1870 Medina Dr	Clarence, NY 14031	0	167,000.00
1875 Medina Dr	McGee, Thomas R	1875 Medina Dr	Clarence, NY 14031	0	167,000.00
1880 Medina Dr	McGee, Thomas R	1880 Medina Dr	Clarence, NY 14031	0	167,000.00
1885 Medina Dr	McGee, Thomas R	1885 Medina Dr	Clarence, NY 14031	0	167,000.00
1890 Medina Dr	McGee, Thomas R	1890 Medina Dr	Clarence, NY 14031	0	167,000.00
1895 Medina Dr	McGee, Thomas R	1895 Medina Dr	Clarence, NY 14031	0	167,000.00
1900 Medina Dr	McGee, Thomas R	1900 Medina Dr	Clarence, NY 14031	0	167,000.00
1905 Medina Dr	McGee, Thomas R	1905 Medina Dr	Clarence, NY 14031	0	167,000.00
1910 Medina Dr	McGee, Thomas R	1910 Medina Dr	Clarence, NY 14031	0	167,000.00
1915 Medina Dr	McGee, Thomas R	1915 Medina Dr	Clarence, NY 14031	0	167,000.00
1920 Medina Dr	McGee, Thomas R	1920 Medina Dr	Clarence, NY 14031	0	167,000.00
1925 Medina Dr	McGee, Thomas R	1925 Medina Dr	Clarence, NY 14031	0	167,000.00
1930 Medina Dr	McGee, Thomas R	1930 Medina Dr	Clarence, NY 14031	0	167,000.00
1935 Medina Dr	McGee, Thomas R	1935 Medina Dr	Clarence, NY 14031	0	167,000.00
1940 Medina Dr	McGee, Thomas R	1940 Medina Dr	Clarence, NY 14031	0	167,000.00
1945 Medina Dr	McGee, Thomas R	1945 Medina Dr	Clarence, NY 14031	0	167,000.00
1950 Medina Dr	McGee, Thomas R	1950 Medina Dr	Clarence, NY 14031	0	167,000.00
1955 Medina Dr	McGee, Thomas R	1955 Medina Dr	Clarence, NY 14031	0	167,000.00
1960 Medina Dr	McGee, Thomas R	1960 Medina Dr	Clarence, NY 14031	0	167,000.00
1965 Medina Dr	McGee, Thomas R	1965 Medina Dr	Clarence, NY 14031	0	167,000.00
1970 Medina Dr	McGee, Thomas R	1970 Medina Dr	Clarence, NY 14031	0	167,000.00
1975 Medina Dr	McGee, Thomas R	1975 Medina Dr	Clarence, NY 14031	0	167,000.00
1980 Medina Dr	McGee, Thomas R	1980 Medina Dr	Clarence, NY 14031	0	167,000.00
1985 Medina Dr	McGee, Thomas R	1985 Medina Dr	Clarence, NY 14031	0	167,000.00
1990 Medina Dr	McGee, Thomas R	1990 Medina Dr	Clarence, NY 14031	0	167,000.00
1995 Medina Dr	McGee, Thomas R	1995 Medina Dr	Clarence, NY 14031	0	167,000.00





Location 2: Gunnville

Owner Name	Acres	Total Assessed Value	Sale Date	Sale Price
Sharkey, Dennis J	0	183,000.00	1/21/2005	\$164,860
Elbers, Cynthia	0	176,000.00	8/13/2009	\$204,500
Hoot, Joseph	0	220,000.00	5/15/2008	\$220,000
Maxwell, Paula M	0	165,000.00	8/11/2005	
Loretta, Lee S	0	170,000.00	6/27/2006	\$164,000
Cochran Revocable Trust, George W Jr	0	174,000.00	5/24/2005	
			6/4/2004	\$162,000
Wiepert, Robert W	0	152,000.00	9/22/2005	\$157,000

Location 3: Greiner

Owner Name	Acres	Total Assessed Value	Sale Date	Sale Price
Mapes, Carl R	0.8	225,000.00	11/24/2009	\$240,000
			11/12/2004	\$23,000
Johnson, Steve	0	155,000.00	9/17/2007	\$154,900
			8/28/2000	\$120,000
			1/18/2000	\$117,500
Semo, John B	0	235,000.00	9/19/2005	\$211,500
Yi, Beifang	0	155,000.00	8/6/2007	\$155,000
			6/8/2006	\$149,999
			6/15/2005	\$137,000
Rouse, Richard A Jr	1	204,000.00	7/7/2005	\$174,000
Gsell, James	1.6	310,000.00	4/20/2006	\$45,000
Engel, Elizabeth M	0	175,000.00	7/27/2005	\$109,500
			6/2/2004	\$129,071
			5/7/1996	\$114,900
Miller, Jewel A	1.5	139,000.00	6/30/2006	
Marquart, Keith A	1	190,000.00	9/26/2005	\$187,000
Marquart, Keith	2	504,000.00	1/15/2010	\$533,000
			7/6/2005	\$62,000
Orlando, Michael C	1	200,000.00	8/29/2005	\$200,000
Roba, Brian T	1.98	310,000.00	3/10/2006	\$37,500
Gill, David O Jr	2	197,000.00	12/15/2006	\$190,000



March 20, 1997, Thursday

BUSINESS/FINANCIAL DESK

## Towns Are Slowing Invasion of Farms by Bulldozers

By BARNABY J. FEDER (NYT) 1917 words

Mark Greene's family has been farming in Pittsford, N.Y., since 1812, but until recently the prospects that his 400-acre farm would be in business for another generation looked dim. A local ordinance requires developers to set aside 50 percent of any new project for farming or open space, but even that did not knock land prices down enough to slow the relentless sprawl of Rochester, 10 miles to the northwest.

Last year, though, Pittsford issued \$10 million in bonds so it could pay Mr. Greene and six other farmers for promises not to sell their 1,200 acres -- about 60 percent of the tillable land remaining in the town -- to developers.

"If we didn't do this," Mr. Greene said, "it would only be a matter of time."

It has long been an iron law of the real estate market that if farmland stands in the path of urban expansion, no crop is valuable enough to keep it out of developers' hands.

As Pittsford's bond issue highlights, though, that iron law can be bent a bit. By arguing that farms provide more than food and fiber -- the list includes environmental benefits, soul-soothing scenery, diversity for the local economy and especially tax savings -- advocates of farmland preservation are forging the political ties and financial tools to steer developers' backhoes away from farmland.

"You are going to see some very interesting alliances evolve," said Ralph Grossi, president of the American Farmland Trust, a lobbying group based in Washington that for nearly two decades has been charting both farmland losses and the efforts to halt them. He cited a coalition formed last year to channel new growth toward already-developed areas in and around Fresno, Calif., an alliance that includes the local Chamber of Commerce and the regional building industry association in addition to farm groups.

Despite America's unparalleled agricultural abundance, concern about disappearing farmland is clearly on the rise. Numerous states and communities have in recent years experimented with tax and zoning policies to encourage farmers at the urban edge to hang on. And both private and public programs to buy development rights are spreading.

At the Federal level, the Government in 1995 finally began applying a 1981 law that required it to look for alternatives to proposed highways, airports and other public projects that consume prime farmland. And in last year's farm bill, Congress authorized spending \$35 million over six years to bolster state and local programs that pay farmers not to sell to developers, the first such Federal payments ever.

Federal officials say saving prime farmland not only has local benefits but also helps the nation's balance of trade and protects against volatility in food prices. "Land is the bank

supporting 15 percent to 20 percent of our economy," Dan Glickman, the Secretary of Agriculture, said. "Keeping it in agriculture is extremely important."

So far, though, such talk and the measures backing it up have been too restricted and modestly financed to have much effect. In the 20 years since Suffolk County, L.I., began the first program to buy development rights from farmers, such buyouts have preserved 450,000 acres in 18 states.

But that is a drop in the bucket. In a report to be issued today, the American Farmland Trust says that urban sprawl eats up two acres a minute -- a million acres a year, including 400,000 acres uniquely suited to certain crops.

Some of the best farmland being lost is around heartland cities like Indianapolis and Des Moines that tend to be overlooked because there is so much high-quality farmland in the Midwest.

"We lose a little bit every year," said Anthony Hession, who farms 3,000 acres just west of Indianapolis, most of it rented. Mr. Hession said he had won a statewide corn-growing contest in 1995 on a 160-acre field being torn up this month for a subdivision.

Still, Mr. Grossi said, conditions might be better than ever for slowing the loss of farmland, especially in 20 hot spots highlighted by the Farmland Trust report, like California's Central Valley, the northern Piedmont stretching from Virginia to New Jersey, the region bordering the Florida Everglades and the prairie land around the Illinois-Wisconsin border. The report focuses not just on soil quality but on areas where soil and climate together are uniquely suited for certain crops.

"We have a much better understanding of the cost of losing this land than even five years ago, a lot more examples of good local programs, and the Federal action legitimizes this effort," Mr. Grossi said.

Farmland preservation would be a much easier sell, of course, if the nation seemed in even remote danger of ever being hungry. At current development rates, the worst-case scenarios suggest that the nation's surplus food for export would not dry up until the middle of the next century, when 13 percent of the prime land being farmed would be gone. Some products now produced domestically would become imports, food prices could climb substantially, and other food-short regions of the world would be politically and economically less stable.

But blessed as it is with more than 300 million acres of prime agricultural land, the United States has paid about as much attention to such pessimistic visions as a billionaire to fliers suggesting it's time to open a savings account.

After all, decades of paving over farmland has not stopped farmers from producing such huge surpluses that Americans pay less of their income for food than anyone else in the world. And agricultural goods are the nation's largest export. The Federal Government has spent hundreds of billions of dollars on price-support programs intended to prevent the farm economy from drowning in its own abundance.

"We are losing good farmland needlessly, but we don't need it to feed ourselves," said Dennis Avery, an agriculture specialist at the Hudson Institute, a conservative research group. Ending excessive losses of American farmland to development might help feed other nations and slow the destruction of rain forests, Mr. Avery said, but not as much as increased spending on agricultural research or efforts to halt urban sprawl in developing countries.

Others note that each acre lost simply increases farmers' incentives to improve output on the remaining land. And biotechnology is very likely to provide previously unimagined opportunities, such as more drought-resistant strains of key crops like wheat and corn that would make marginal land far from cities more productive.

"Our concept of what is prime land has changed dramatically over time," said Philip Raup, a land economist at the University of Minnesota, who noted that pioneer farmers wanted land with exposed salt deposits for livestock nutrition. "Genetic engineering will change it again in the next 30 or 40 years."

Regardless of their long-range accuracy, such assessments encourage political leaders and voters to vastly underrate how much the nation might gain now from paying more attention to farmland, the Farmland Trust and its allies say. In the Central Valley of California alone, where the population is expected to triple by 2040 and today's sprawling development averages three homes an acre, a million acres of farmland will be lost and 2.6 million more will become harder to farm efficiently, according to a 1995 study.

Given the same population growth, the study projected, new laws forcing "compact growth" at an average of six homes an acre would save more than 500,000 acres of farmland, protect a million acres from encroachment, add nearly \$70 billion to the agricultural economy and save taxpayers \$29 billion that would be spent extending sewers and other services to newly developed areas.

Farmland losses are easy to dramatize. Farmers on the urban edge are often featured in news reports showing how the approach of suburbia can be more disruptive and nerve-racking than the eventual outright loss of the land, which, after all, can make millionaires of them if they are lucky enough to own it.

New homeowners often push local officials to halt normal farm practices, like noisy nighttime harvesting or planting, spreading manure to fertilize fields, importing swarms of bees to pollinate fruit trees and spraying pesticides. Subdivisions can cause crop losses by altering drainage patterns in nearby fields. Dogs chase cattle and other livestock. And vandalism of machinery and crops becomes commonplace.

"There was one kid who drove around in my alfalfa one night, got stuck in a creek and had the gall to come ask me to get my tractor to pull him out," said Jim Lehrer, a dairy farmer in Kaukauna, Wis. "He said he was just having fun."

Mr. Lehrer said he pulled the vehicle out after first demanding the teen-ager's address, then drove his tractor to the offender's home and rode around on the lawn until the teen-ager's father burst out furiously demanding to know what he was doing. Mr. Lehrer said he told him he was "just having fun like your son," and then took a spin through the

backyard before going home.

Most farmers never catch the vandals, though, and in many cases, they say, there are burdens even well-intentioned suburbanites do not perceive. Sayre Miller, co-owner of 300 acres of almond groves outside Clovis, Calif., said that suburban horse riders and the cross-country team from a new school to the west had worn enough of a trail through the groves to disrupt the path of her unmanned harvesting machines.

Such problems give a human dimension to issues of urban sprawl. But cataloguing such conflicts provides no rationale for treating farms differently from any other business. That leaves it to groups like the Farmland Trust and various national agriculture and environmental groups to assemble the larger arguments for zoning and tax changes that could limit the farmland losses.

Often the actual quality of the farmland is not decisive. In Pittsford, the cost of development was what impressed voters most. Pittsford planners calculated that providing services and schools to subdivisions on the 1,200 acres would have a net cost of \$200 a taxpayer indefinitely, compared with \$67 a year for 20 years to pay off the bonds.

**Appendix H**  
Transfer of Development Rights

# ZONING PRACTICE

December 2007

AMERICAN PLANNING ASSOCIATION



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**PRACTICE TDRs**

**12**

# Zoning for Successful Transferable Development Rights Programs

By Tom Daniels

Good development design and the protection of large areas of farmland, open space, and natural areas are two primary goals of smart growth.

Yet achieving these goals in a common process is often elusive. Since the late 1960s, the transfer of development rights has held considerable promise for preserving rural landscapes by moving development potential from the countryside into designated growth areas. To date, thousands of TDR transactions have occurred, but not as many as some proponents might have hoped.

erty values. In areas designated for resource protection, rural landowners may resist suggested downzonings that may be used in conjunction with TDRs because they perceive a loss in property values.

There are several ways local governments can use the zoning ordinance to create effective TDR programs. But first it is important to understand how the TDR process works.

A local government creates a TDR program through four main steps. First, the local government identifies one or more sending areas from which TDR will be moved and gives landowners in the sending areas a certain number of TDRs. For instance, Montgomery County, Maryland, gave landowners in its sending area one TDR for every five acres owned. So a landowner who had 100 acres received 20 TDRs. This allocation formula, together with the size of the sending areas, determines the total potential number of TDRs available.

Next, the local government must identify one or more receiving areas that could accommodate higher density development than currently exists in the receiving area. Then the local government determines how many TDRs a developer must acquire from one or more landowners in the sending areas in order to receive approval for increased density. For instance, Montgomery County allowed one additional dwelling unit on an acre for each TDR a developer purchased and applied to a residential development project in the receiving area. The local government must set a maximum for the total potential number of TDRs that can be applied in the receiving areas, thus establishing the maximum amount of development those receiving areas can accommodate. Finally, the local government must set up a process for:

- confirming the use of TDRs by a developer;
- placing a conservation easement on lands in the sending area from which TDRs have been sold; and
- keeping track of how many TDRs landowners in the sending areas still have.

A developer will need to execute a deed of transferable development rights to show

## HOW THE TRANSFER OF DEVELOPMENT RIGHTS WORKS

SENDING AREA (ZONED AGRICULTURE)	RECEIVING AREA (R-2, MEDIUM DENSITY RESIDENTIAL)
<b>Farm Parcel A</b> sends TDRs Farm is preserved through a conservation easement.	<b>Housing Development Parcel B</b> purchased TDRs allow more housing units.

Developer buys TDRs on Farm Parcel A and transfers them to Parcel B. Developer can then build more housing units than zoning ordinance would normally allow. Parcel A can no longer be developed, except for farming.

Source: Adapted from Daniels and Buhner, 1992, p. 173.

A major obstacle to the creation of effective TDR programs has been local zoning. A local government's by-right zoning may allow ample development opportunities for developers who choose not to acquire TDRs, and local elected officials may choose to grant greater densities through bonus zoning without requiring that developers acquire and apply TDRs. Also, developers may be wary of encountering bureaucratic and procedural delays if they propose a development that uses TDRs, compared to a development that simply follows by-right zoning. Within designated growth areas, local residents may oppose increased densities that come with developments that use TDRs, for fear that the increased density will not be well designed, will result in more congestion, and will reduce prop-

## WHAT IS A TRANSFERABLE DEVELOPMENT RIGHT AND HOW DOES IT WORK?

A transferable development right is the right to create a residential building lot or to construct a dwelling unit or build additional square footage onto a commercial, industrial, or residential structure. A TDR is not one of the rights that come with property ownership. A TDR must be created through state enabling legislation and a local ordinance to allow a landowner to transfer a development right to another parcel owned by someone else. A local government creates a market in development rights between landowners in designated preservation areas (sellers) and developers (buyers) who can then use the TDRs to build at a higher density in the designated growth areas.



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### About the Author

Tom Daniels is a professor in the Department of City and Regional Planning at the University of Pennsylvania, where he teaches courses on land-use planning, growth management, and land preservation. He is the coauthor of *The Environmental Planning Handbook* (APA Planners Press, 2003) and *The Smart Town Planning Handbook* (APA Planners Press, 1995).

that TDRs have been severed and purchased from a property in the sending area. A conservation easement is a legally binding contract between the landowner and the local government, stating the restrictions (for example, agricultural, forestry, or open space land uses) that apply to the property. The property is still privately owned, and there is usually no right of public access.

In sum, a local government creates a market for TDRs by assigning a certain number of TDRs to landowners in sending (or preservation) areas and requiring developers who want to build at higher than by-right densities in receiving (or growth) areas to purchase TDRs from landowners in the sending areas. The price of the TDRs is established through negotiations between a willing buyer and a willing seller, like an ordinary real estate transaction. A key feature of successful TDR programs is continued demand for TDRs from developers who see potential profits from purchasing TDRs and using them to develop projects in the receiving areas. One reason that TDR programs have not worked well in rural areas is that there is often insufficient development activity and little demand from developers for TDRs.

An overall rule of thumb is that at the start of a TDR program there should be twice as many receiving sites for TDRs as there are TDRs to send from the sending areas. This will help ensure that TDRs have a value. Another reason that TDR programs have a poor track record in rural areas is that there are usually many more TDRs in the sending areas than there are places to use them in the receiving area. This oversupply of TDRs drives down prices and discourages landowners in the sending areas from selling TDRs.

### PUTTING THE TDR PROGRAM IN THE ZONING ORDINANCE

The local government can create a separate TDR ordinance, but a better approach is to include it as part of the local zoning code. Because a comprehensive plan sets the legal foundation for the zoning ordinance or TDR program, a local government should first amend its comprehensive plan to reflect the identified sending and receiving areas.

A local government creates a market for TDRs by assigning a certain number of TDRs to landowners in sending areas and requiring developers in receiving areas to purchase TDRs from landowners in the sending areas.

To add a TDR program to the zoning ordinance involves several changes. First, new definitions must be added to reflect the language of the TDR program, such as definitions for transferable development rights, sending area, receiving area, deed of transferable development rights, and deed of easement. Next, the TDR option must be added to the list of permitted uses in the zoning districts that are the designated sending areas, along with the minimum size parcel eligible for TDRs, the TDR allocation method, and the procedures for legally severing TDR and using a conservation easement to permanently preserve the sending area property. Then the TDR option must be added to the list of permitted uses, special exceptions, or conditional uses within the zoning districts that comprise the receiving areas.

Although developers may prefer by-right zoning for the use of TDRs, the conditional use process allows the governing body to impose conditions for approval to address development impacts that may affect the community. The conditional use process also allows the local government greater discretion than simply subjecting a TDR receiving area development to subdivision and land development standards. In short, the zoning ordinance can require a

conditional use process for new developments that use TDRs in the receiving areas, and describe the process for approval of a development that uses TDRs. For instance, once a conditional use permit has been granted, a local government could waive the preliminary land development plan and go straight to the final plan stage. This in effect grants the developer vested rights in the development, and final approval is mainly a formality.

The zoning ordinance should include:

- a. a purpose clause, explaining the reason for establishing the TDR ordinance;
- b. the authorization for the TDR ordinance in the state enabling legislation, and a basic explanation of the TDR program;
- c. the procedure for sale of TDRs from a sending area, including a definition of the send-

## Developers need to recognize that their use of TDRs will result in better financial returns than developments that meet only by-right zoning.

ing area, how TDRs are calculated, procedures for severing TDRs from land in the sending area, and the conservation easement that is applied to land from which TDRs have been severed;

- d. how TDRs can be used in a receiving area, including a definition of the receiving area, how the use of TDRs is calculated, design requirements and changes to base zoning standards (area and bulk standards), and the conditional use process and the land development and subdivision plan process for approval of a development that uses TDRs; and
- e. definition in the ordinance spelling out whether the TDR program is mandatory or voluntary. Most are voluntary, allowing a landowner the choice of selling off a certain number of building lots and selling a certain number of TDRs. (Under a mandatory program, such as at Lake Tahoe, Nevada, a landowner may not be allowed to build on the property, but can still sell TDRs.)

### HOW CAN THE TDR PROGRAM AVOID ZONING OBSTACLES?

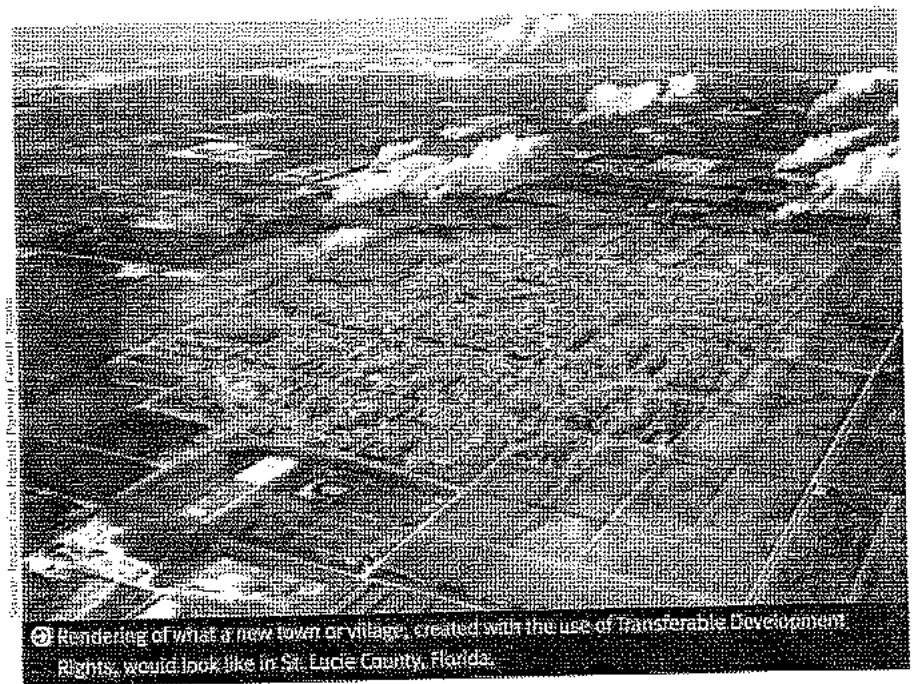
A TDR program blends financial incentives with planning and zoning. For a TDR program to be effective, developers need to recognize that their use of TDRs will result in better financial returns than developments that meet only by-right zoning. Local officials are often eager to encourage development in designated growth areas and may grant developers bonus density in return for certain design features or infrastructure. For TDR programs to work, local officials cannot “give away” density in designated receiving areas. Any increase in density through a rezoning in a receiving area must require the developer to acquire and apply development rights. This requirement can be spelled out in the zoning ordinance.

Local governments may find that there is some trial and error involved in setting by-right zoning in the sending and receiving areas and as bonus densities in the receive-

ing areas. Don't be afraid to make changes. Over time the TDR program may require occasional adjustments to the zoning ordinance to respond to changing conditions in the real estate market, changes in the comprehensive plan, or density or land-use provisions that did not produce the intended outcomes.

Community districts to one house per 20 acres, allowing only one house per four acres with the purchase of TDRs (see McConnell *et al.*, 2007).

A TDR program can incorporate bonus zoning through the use of multipliers. Multipliers are bonus TDRs that reward developers for building desirable developments in the receiving areas. For example, St. Lucie County, Florida, gave one TDR per acre to landowners in its sending area because the underlying zoning is one dwelling unit per acre. A developer who buys a TDR can obtain a TDR bonus of 1.5 additional TDRs for each TDR purchased by building workforce housing (based on 80 to 120 percent of the median area



Rendering of what a new town or village, created with the use of Transferable Development Rights, would look like in St. Lucie County, Florida.

Calvert County, Maryland, began the nation's first county-level TDR program to preserve open space in 1978. Part of the program has featured a single-zone TDR in which the sending area and the receiving area are the same. Calvert County started with an existing zoning density standard that allowed one house per five acres and allowed one house per 2.5 acres in its Rural Community districts with the purchase of TDRs. In 1999 the county attempted to slow development by downzoning its Rural Community districts to one house per 10 acres, but allowed up to one house per two acres with the purchase of TDRs. Then, in 2003, in the face of continued growth pressures, the county again downzoned the Rural

household income), building higher education facilities, building a research and development park, or attracting a “targeted industry,” such as an electronics manufacturer.

Developers want as much certainty as possible in the development process. Thus, expedited rezoning and subdivision and land development reviews are important to encourage developers to use TDRs. West Lampeter Township in Lancaster County, Pennsylvania, requires a developer to apply for a conditional use permit when proposing a development that uses TDRs. The conditional use process means that the elected officials will have to vote on the project. Once the project receives conditional use approval,

the township will waive the preliminary plan review and go straight to final plan review. This waiver in effect grants a developer vested rights in the project.

One way to keep property owners in receiving areas mollified is to use a form-based code. Ultimately, a form-based code is easier to do if the receiving area is a greenfield site. St. Lucie County has incorporated form-based code elements into its land development regulations, which relate to the TDR ordinance. The ordinance won an Award of Excellence from the Florida Chapter of the American Planning Association in 2006 and an award from the Form-Based Codes Institute in 2007.

The county's land development regulations include, for example:

- The development shall incorporate principles of Traditional Neighborhood Design, including a mix of land uses, a mix of building types, a mix of housing for different income levels, a pedestrian-friendly block and street network, and a significant amount of public open space.
- Neighborhood size shall be scaled upon a five-minute walk radius (approximately 0.25 mile) or a total area of 125 acres, as measured from the Neighborhood Center.
- Each neighborhood shall have well-defined edges, and range from 80 to 150 acres in size. The shape or form of the neighborhood is flexible, provided that the 0.25-mile radius benchmark for scale is maintained.
- A neighborhood shall provide a variety of dwelling unit types and prices that support a broad range of family sizes and incomes.
- A neighborhood shall contain at least one civic building, such as a school, social center, fire or police station.
- A neighborhood shall contain at least one local store.
- Blocks shall be scaled to accommodate a variety of building types.
- A neighborhood shall have an interconnected network of public streets designed to balance the needs of all users, including pedestrians, bicyclists, and motor vehicle operators (Treasure Coast Regional Planning Council, 2006b).

Warwick Township in Lancaster County, Pennsylvania, created a dual-zone TDR program to preserve farmland in the sending areas but tied it to the expansion of commercial and industrial space in its receiving area. The increased development in the

receiving area thus expands the local property tax base without adding school-age children. This produces a net revenue gain for the township. The Campus Industrial Zone receiving area is 167 acres. The township zoning allows only 10 percent maximum lot coverage by-right. For each TDR that a landowner/developer acquires, another 4,000 square feet of lot coverage is allowed, up to a maximum of 70 percent coverage. The township has preserved nearly 1,000 acres of farmland through its TDR program, which got a major boost when a regional hospital decided to locate in the Campus Industrial Zone and needed to purchase more than 100 TDRs.

Downzoning in sending areas has been a major obstacle to creating effective TDR programs. One way that local governments have attempted to minimize the effects of downzoning is to create single zones that serve as both the sending and receiving areas. In a single-zone TDR, the transfer of development rights rearranges development, often to cluster the development and maintain some open space. This is primarily a rural residential strategy. The by-right zoning in a single-zone TDR program generally uses a density standard, so that one house lot may be developed for every certain number of acres. For instance, if the density standard is one house per five acres and a landowner has 20 acres, then the landowner could create four building lots by right. The landowner could purchase a TDR from another property and create an additional lot, for a total of five lots on the 20 acres, but some of the open land, such as 50 percent or 10 acres, would be placed under a conservation easement restricting future development. Farmland protection zoning of one house per 20 acres (or more) is rarely used in a single-zone TDR.

The single-zone TDR is not a recommended method for several reasons. First, it encourages more people to move out to the countryside and live in automobile-dependent developments. In other words, this new development adds to sprawl, though perhaps in a more attractive setting. Second, the additional development is likely to lead to increased conflicts with nearby farm operations. And third, it encourages greater use of on-site septic systems, which contribute to groundwater pollution. In Maryland, for example, there are 14 county TDR programs, of

## THE LEGALITY OF TDRs

The concept of transferable development rights came into practice in 1968 when New York City adopted a TDR program in the form of transferable air rights to protect historic landmarks (Preutz 1997). In 1978, the U.S. Supreme Court upheld New York City's transferable air rights program and found that the owners of Grand Central Station could earn a reasonable profit by transferring development potential above the station to another site in the city. That is, the owners of Grand Central could build higher than the zoning height limit would normally allow on another site (see *Penn Central Transp. v. New York City*, 438 U.S. 104 (1978)).

TDRs have drawn the interest of elected local officials because of the potential to avoid the Fifth Amendment takings issue that has plagued proposals to downzone property as a way to manage growth. Thus far, the courts have not given definitive direction on the legality of using TDRs as just compensation. In *Suitum v. Tahoe Regional Planning Agency*, 96 U.S. 243 (1997), the U.S. Supreme Court ruled that the plaintiff, Mrs. Suitum, did not have a "ripe" situation because she had not tried to sell her TDRs and had not determined what they were worth.

In *Williamstown County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the Supreme Court ruled that "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the just Compensation Clause [of the Fifth Amendment] until it has used the procedure and been denied just compensation." In short, the role of TDRs as "just compensation" has not been fully resolved by the courts.

## One way that local governments have attempted to minimize the effects of downzoning is to create single zones that serve as both the sending and receiving areas.

which only Montgomery County uses a dual zone that clearly separates sending and receiving areas. Montgomery County downzoned its rural area from one house per five acres to one per 25 and then gave each landowner in the sending area one TDR per five acres.

St. Lucie County adopted a single-zone TDR program, but requires that a landowner or two or more landowners have a minimum of 500 acres and develop their land in a new urbanist town or village. In return, the county agrees to provide central sewer and water service, even to new towns or villages outside the county's urban service boundary.

Take the case of an owner of a 500-acre parcel outside the USB who proposes to build a new village development:

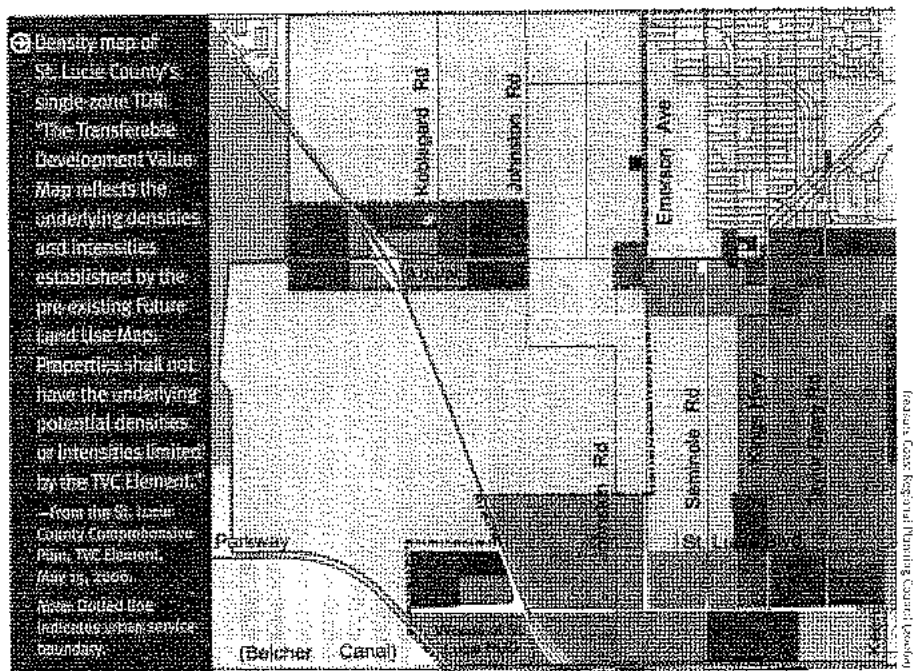
- The landowner must set aside at least 75 percent of the site as open space.
- The minimum density is five dwelling units per acre, so the 125 acres of development land must support at least 625 dwelling units, of which 50 units (eight percent) must be Workforce Housing units.
- Transferable development rights moved from the open space for use as Workforce Housing receive a multiplier of 2.5. The remaining land set aside for open space receives a multiplier of 1.25.
- The landowner can receive additional TDR multipliers (bonuses) by attracting a target industry, institution of higher learning, or a research facility.

### TDRS: THE NEXT GENERATION

The next generation of TDRs will feature the transfer of development rights across political jurisdictions and landscape-scale preservation. TDR programs may provide a way to encourage greater regional cooperation, especially in the Northeast, where townships control planning and zoning.

In 2000, the State of Pennsylvania authorized the use of TDRs across municipal boundaries if the municipalities have a written intergovernmental agreement or have adopted a multimunicipal plan. Even though

dozens of multimunicipal plans have been completed, to date, no TDRs have moved from one municipality to another. An obvious problem: Why would one municipality want to provide space for another's development?



In 2004, the State of New Jersey passed legislation allowing the transfer of development rights not only across municipal boundaries but from a sending area anywhere in the state to a receiving area anywhere in the state. New Jersey is proposing to use transfer of development rights as a key tool in preserving the New Jersey Highlands in the northeast corner of the state.

King County, Washington, has preserved more than 92,000 acres since 1999, mainly through a single transaction that enabled it to put many TDRs in its bank. In 2004, the county paid \$22 million for TDRs from a 90,000-acre tract owned by Hancock Timber Resource Group. Development rights can be transferred to inside Seattle's urban growth boundary to allow taller buildings in down-

town Seattle, or for a 50 percent increase in the number of homes allowed in some unincorporated parts of the county. For instance, in 2006, R.C. Hedreen Co. paid \$930,000 to King County's TDR Bank for 31 rural development rights. In exchange, the company was allowed to add 62,000 square feet of residential space and increase the height of a building it owned above 300 feet.

### CONCLUSION

The transfer of development rights technique is nearly 40 years old. Local governments have used TDRs to protect historic sites, wetlands,

and scenic areas in addition to farmland and forestland. A TDR program can be addressed in the local comprehensive plan and added to the local zoning ordinance. The zoning in both the sending areas and receiving areas should match the outcomes the local government is trying to achieve. And the procedures for operating the TDR program should be spelled out in the zoning ordinance.

A common mistake local governments make is giving away density for free in the rezoning process rather than requiring a developer to acquire TDRs to help preserve land in the community and thus maintain a balance between open space and development. Also, most TDR programs place a heavy emphasis on preserving open space and not enough attention to the appearance, density,

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and function of development that can be built in the receiving areas.

Intergovernmental cooperation, landscape-scale preservation, and form-based zoning codes for major developments will be needed to make transfer of development rights programs effective over the next few decades. Between now and 2050, the United States is projected to add more than 100 million people. TDRs can be a helpful tool to accommodate growth and preserve important natural and cultural resources, but getting the zoning and comprehensive plan right are important first steps.

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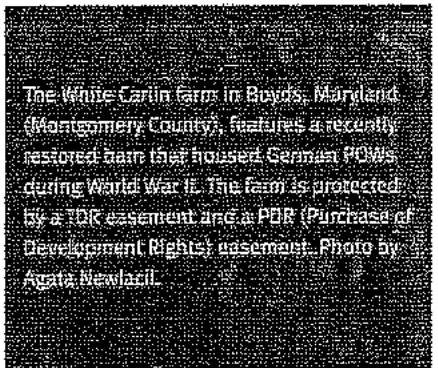
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The White Carlin farm in Boyds, Maryland (Montgomery County), features a recently restored barn (left) housing German POWs during World War II. The farm is protected by a TDR easement and a PDR (Purchase of Development Rights) easement. Photo by Agatz Newhall.







## FARMLAND INFORMATION CENTER

# FACT SHEET

## TRANSFER OF DEVELOPMENT RIGHTS

### DESCRIPTION

Transfer of development rights (TDR) programs enable the transfer of development potential from one parcel of land to another. TDR programs are typically established by local zoning ordinances. In the context of farmland protection, TDR is often used to shift development from agricultural land to designated growth zones located closer to municipal services. TDR is also known as transfer of development credits (TDC) and transferable development units (TDU).

TDR programs are based on the concept that landowners have a bundle of different property rights, including the right to use the land; lease, sell and bequeath it; borrow money using it as security; construct buildings on it; and mine it; subject to reasonable local land use regulations. When a landowner sells property, generally all the rights transfer to the buyer. TDR programs allow landowners to separate from their other property rights, and to sell, the right to develop land.

The parcel of land where the development rights originate is called the “sending” parcel. When the rights are transferred from the sending parcel, the land is typically protected with a permanent conservation easement. A few localities record transfer documents to track the number of rights transferred and to notify buyers and local officials of limited future development potential. This approach, however, offers less protection than a conservation easement because changes in local land use regulations—even if such changes require a comprehensive plan update—could alter the rules for determining the remaining development potential on sites in sending areas.

The parcel of land to which the rights are transferred is called the “receiving” parcel. Transferred rights generally allow the purchaser of the rights to build at a higher density than ordinarily permitted by the base zoning on the receiving parcel.

TDR is most suitable in places where large blocks of land remain in agricultural use. In communities with a fragmented agricultural land base, it may be difficult to find viable sending areas. Communities also must be able to identify receiving areas that can accommodate the development potential to be transferred. Well-planned receiving areas have the

infrastructure needed to absorb additional density. They also respond to residents’ concerns about increased residential density while taking advantage of market conditions.

Local officials in Chesterfield Township, New Jersey, for example, designed a mixed-use community, Old York Village, *outside* of previously developed areas to accommodate transferred development potential. Other communities have authorized, or are considering, alternate applications of development potential such as increases in non-residential floor area, impervious surface area, decreases in parking requirements and even *decreases* in residential density.

The most effective TDR programs help facilitate transactions between private landowners and developers. A few programs allow developers to make payments in lieu of actual transfers. The locality then buys conservation easements on land in the sending area, sometimes in partnership with established purchase of agricultural conservation easement (PACE) programs and/or local land trusts. Other programs maintain public lists of TDR sellers and buyers. Some buy and retire rights to stimulate the market and/or reduce overall building potential. Lastly, at least a dozen communities have established TDR banks that buy development rights with public funds and sell the rights to developers. Some banks finance loans using the rights as collateral.

Some states have enacted legislation explicitly authorizing local governments to create TDR programs. For example in 2004, the New Jersey Legislature enacted the State Transfer of Development Rights Act. The State TDR Act authorizes municipalities to develop and participate in intra-municipal and inter-municipal programs. This law also established a formal planning process to enact a TDR ordinance and authorized the State TDR Bank Board to provide planning grants to communities.

TDR programs are distinct from PACE programs because TDR programs harness private dollars to achieve permanent land protection. TDR programs also differ from PACE programs in that they permit development potential to be transferred to a more appropriate location while PACE programs permanently retire development potential.



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## TRANSFER OF DEVELOPMENT RIGHTS

### HISTORY

TDR is used predominantly by counties, towns and townships. The 1981 National Agricultural Lands Study reported that 12 localities had enacted TDR programs to protect farmland and open space, but very few of these programs had been implemented. In the 1980s and 1990s, many local governments adopted TDR ordinances. An American Farmland Trust (AFT) Farmland Information Center (FIC) survey in 2000 identified 50 jurisdictions with TDR ordinances on the books.

In 2007, the FIC identified 99 TDR programs that protect agricultural land. We collected information from 64 programs. Of these, 38 had protected land or received payments in lieu of transfers. This activity is summarized in the accompanying table. Seventeen programs had not protected any agricultural land to date. Nine programs had been discontinued.

As of January 2008, 12 programs had each protected more than 1,000 acres of agricultural land, compared to eight programs during our previous survey. Since 1980, Montgomery County, Maryland, has protected 51,489 acres using TDR, or 40 percent of the agricultural land protected by the programs that responded to our survey (129,810 acres). The county's share of protected agricultural land via TDR dropped significantly, down from 60 percent of the national total at the time of the 2000 survey. Two programs that permit payments in lieu of transfers have received a combined total of more than \$1.4 million for agricultural land protection.

### FUNCTIONS & PURPOSES

TDR programs can be designed to accomplish multiple goals including farmland protection, conservation of environmentally sensitive areas and preservation of historic landmarks. In the context of farmland protection, TDR programs prevent non-agricultural development of farmland, help keep farmland affordable and provide farmland owners with liquid capital that can be used to enhance farm viability.

TDR programs also offer a potential solution to the political and legal problems that many communities face when they try to restrict development of farmland. Landowners may

oppose agricultural protection zoning (APZ) and other land use regulations because of their concern that such controls will reduce the value of their land. When more restrictive land use regulations are enacted in conjunction with a TDR program, communities can retain equity for landowners. For example, development rights for transfer may be allocated based on the "underlying" or prior zoning. Selling development rights enables landowners to recapture the equity available under the previous zoning.

When downzoning is combined with a TDR program, however, landowners can retain their equity by selling development rights.

### ISSUES TO ADDRESS

In developing a TDR program, planners must address a variety of technical issues. These issues include:

- Which agricultural areas should be protected?
- What type of transfers should be permitted?
- How should development rights be allocated?
- Where should development potential be transferred, how should rights be applied, and at what densities?
- Should the zoning in the sending area be changed to create more of an incentive for landowners to sell development rights?
- Should the zoning in the receiving area be changed to create more of an incentive for developers to buy development rights?
- Should the local government buy and sell development rights through a TDR bank?

One of the most difficult aspects of implementing TDR is developing the right mix of incentives. Farmers must have incentives to sell development rights instead of building lots. Developers must benefit from buying development rights instead of building according to existing standards. Thus, local governments must predict the likely supply of, and demand for, development rights in the real estate market, which determines the price. TDR programs are sometimes created in conjunction with

APZ: New construction is restricted in the agricultural zone, and farmers are compensated with the opportunity to sell development rights.

Because the issues are so complex, TDR programs are usually the result of a comprehensive planning process. Comprehensive planning helps a community envision its future and generally involves extensive public participation. The process of developing a community vision may help build understanding of TDR and support for farmland protection.

### BENEFITS OF TDR

- Most TDR programs protect farmland permanently, while keeping it in private ownership.
- Participation in TDR programs is voluntary—landowners are never required to sell their development rights.
- TDR can promote orderly growth by concentrating development in areas with adequate public services.
- TDR programs allow landowners in agricultural protection zones to retain their equity without developing their land.

- TDR programs are market-driven—private parties pay to protect farmland, and more land is protected when development pressure is high.
- TDR programs can accomplish multiple goals, including farmland protection, protection of environmentally sensitive areas, the development of compact urban areas, the promotion of downtown commercial growth and the preservation of historic landmarks.

### DRAWBACKS

- TDR programs are technically complicated and require a significant investment of time and staff resources to implement.
- TDR is an unfamiliar concept. A lengthy and extensive public education campaign is generally required to explain TDR to citizens.
- The pace of transactions depends on the private market for development rights. If the real estate market is depressed, few rights will be sold, and little land will be protected.

## TRANSFER OF DEVELOPMENT RIGHTS

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

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LOCAL GOVERNMENTS WITH TDR PROGRAMS FOR FARMLAND, 2008

Locality	Year of Inception	Rights Transferred	Agricultural Acres Protected	How Rights Are Used	Notes
<b>California</b>					
City of Livermore	2003	56 payments	\$1,200,000	Increase residential density	Allows payments in lieu of transfers
Marin County	1981	11	660	Increase residential density	Multi-purpose program
<b>Colorado</b>					
Larimer County	1994	721	503	Increase residential density	Multi-purpose program
Mesa County	2003	10	50	Increase residential density	Multi-purpose program
<b>Delaware</b>					
Kent County	2004	157	157	Increase residential density Change permitted land use	Multi-purpose program
New Castle County	1998	93	300	Increase residential density	Multi-purpose program
<b>Georgia</b>					
City of Chattahoochee Hill Country	2003	21	21	Increase residential density Increase commercial square footage	Multi-purpose program Chattahoochee Hill Conservancy operates TDR bank
<b>Idaho</b>					
Payette County	1982	154	4,000	Permit development on substandard lots	Multi-purpose program
<b>Maryland</b>					
Calvert County	1978	UNK	13,260	Increase residential density	Multi-purpose program Purchases and retires rights
Caroline County	2006	136	1,500	Increase residential density	Multi-purpose program Maintains registry of interested buyers/sellers
Charles County	1992	1,110	3,330	Increase residential density	Multi-purpose program
Howard County	1993	NR	2,045	Increase residential density	Multi-purpose program Purchases and retires rights
Montgomery County	1987	9,630	51,489	Increase residential density	Operated bank but discontinued in 1990
Queen Anne's County	1987	UNK	8,032	Increase residential density Increase commercial square footage Increase impervious surface area	Multipurpose program Non-Contiguous Development activity included in county figures
St. Mary's County	1990	155	465	Increase residential density	
<b>Massachusetts</b>					
Town of Groton	1980	25	100	Increase residential density Increase rate of development	Multi-purpose program
Town of Hadley	2000	3 payments	\$206,772	Increase commercial or industrial floor area Reduce parking requirements	Allows payments in lieu of transfers
Town of Plymouth	2004	13	118	Increase residential density	Multi-purpose program
<b>Minnesota</b>					
Blue Earth County	1996	150	6,000	Increase residential density	Multi-purpose program
Chisago County	2001	11	290	Increase residential density	Multi-purpose program
Rice County	2004	102	3,252	Increase residential density	Multi-purpose program
<b>Nevada</b>					
Churchill County	2006	200	688	Increase residential density	Multi-purpose program Operates TDR bank
Douglas County	1997	3,518	3,727	Increase residential density Increase commercial square footage	
<b>New Jersey</b>					
Chesterfield Twp., Burlington Co.	1998	652	2,231	Increase residential density Increase commercial square footage	Burlington County operates bank used by township
New Jersey Pinelands	1981	4,000	25,000	Increase residential density Permit development on substandard lots	Multi-purpose program Operates TDR bank Maintains registry of interested buyers/sellers

LOCAL GOVERNMENTS WITH TDR PROGRAMS FOR FARMLAND, 2008

Locality	Year of Inception	Rights Transferred	Agricultural Acres Protected	How Rights Are Used	Notes
<b>New York</b>					
Central Pine Barrens	1995	48	48	Increase residential density Increase commercial or industrial density/intensity All permitted increases in density or intensity relate to, and are capped by, increases in sewage flow	Multi-purpose program Commission operates bank Maintains registry of interested buyers/sellers
Town of Perinton	1993	68	174	Increase residential density	Multi-purpose program Purchases and retires rights
<b>Pennsylvania</b>					
Honey Brook Twp., Chester Co.	2003	18	50	Increase residential density Increase non residential square footage Increase impervious surface area	
Manheim Twp., Lancaster Co.	1991	422	476	Increase residential density Increase commercial square footage Increase impervious surface area	Operates TDR bank Purchases and retires rights
Shrewsbury Twp., York Co.	1976	30	60	Increase residential density Allowance of certain non-residential uses	Operates TDR bank
South Middleton Twp., Cumberland Co.	1999	8	135	Increase residential density	Multi-purpose program
Warrington Twp., Bucks Co.	1985	187	UNK	Increase residential density Increase commercial square footage Increase impervious surface area	Multi-purpose program
Warwick Twp., Lancaster Co.	1993	447	897	Increase commercial and light industrial square footage	Operates TDR bank Partners with Lancaster Farmland Trust
West Vincent Twp., Chester Co.	1998	162	NR	Increase residential density Increase commercial square footage	Multi-purpose program
<b>Vermont</b>					
South Burlington	1992	414	497	Increase residential density	Operates TDR bank
<b>Washington</b>					
King County	2000	8	80	Increase residential density	Multi-purpose program Operates TDR bank
Snohomish County	2004	49	70	Increase residential density Increase commercial square footage	Operates TDR bank
<b>Wisconsin</b>					
Cottage Grove Twp., Dane Co.	2000	3	105	Increase residential density	
<b>TOTALS</b>		<b>22,733</b>	<b>129,810</b>		

Most of the programs listed in this table protect multiple resources including agricultural land. For the purposes of this table, we only included transfers from agricultural land and acres of agricultural land protected by each program.

Two programs included in this table—Livermore, Calif., and Hadley, Mass.—allow payments in lieu of transfers. For these programs, the figure in "Rights Transferred" column represents the number of payments received to date and the figure in the "Agricultural Acres Protected" column equals the funds received to date. These numbers are not included in the totals at the bottom.

UNK means the program manager did not know. NR indicates that the program manager did not respond.

Surveys were sent to programs identified by staff and profiled in publications and reports about TDR programs, including *Transfer of Development Rights in U.S. Communities: Evaluating Program Design, Implementation, and Outcomes* by Margaret Wells and Virginia McConnell and *Beyond Takings and Givings: Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges* by Rick Pruetz.

Figures for St. Mary's County, Md., are from the Wells/McConnell report. Figures for Queen Anne's County, Md., are from a presentation posted on the county's Department of Land Use, Growth Management and Environment Web site.



(Draft Glenville ordinance, June 2008)

## ARTICLE XXII

### Transfer of Development Rights

#### **§270-161. Purpose.**

The primary purpose of establishing a transfer of development rights (TDR) program is to permanently preserve important farmland, forest land, sensitive natural areas, groundwater quality and rural community character that would be lost in the Town of Glenville if the land were developed. In addition, this Article is intended to protect property rights by allowing landowners whose land is intended for preservation to transfer their right to develop to other areas deemed appropriate for higher density development or other development incentives based on the availability of community facilities and infrastructure. Finally, this Article is intended to permit the establishment and administration of an intermunicipal TDR program between the Town and the Village of Scotia.

#### **§270-162. Authority.**

This ordinance is enacted pursuant to the authority granted by §261-a of New York Town Law for the creation of a transfer of development rights program, under the terms of which development rights are acknowledged to be severable and separately conveyable from a "sending area" to a "receiving area." This ordinance is further enacted pursuant to the authority granted by §284 of New York Town Law on intermunicipal cooperation that permits the development and implementation of intermunicipal planning and regulatory programs. The Town is therefore authorized to enter into an intermunicipal agreement with the Village of Scotia.

#### **§270-163. Basic concept.**

- A. The provisions of this Article allow landowners (here "transferor") in areas of the Town proposed for conservation, called "sending areas," to voluntarily sell or convey the right to develop their land to other entities (here "transferee") for use in areas of the Town or Village proposed for additional development, called "receiving areas." Each transferor shall have the right to sever all or a portion of the rights to develop from a property in a sending area and to sell, trade, donate or barter all or a portion of those rights to a transferee consistent with the purposes of §270-161.
- B. The transferee may retire the development rights, resell them, hold them or apply them to property in a receiving area in order to obtain approval for development at a density of use or for other development incentives greater than would otherwise be allowed on the land, up to the maximum density or incentive indicated in

§270-169.

- C. When transferors sell or convey development rights, they must restrict that portion of land from which the rights are conveyed against any future development with a conservation easement, although the land may still be used for purposes that do not involve residential, commercial, industrial or institutional development, such as agriculture or forestry. Lands within sending areas that are restricted with conservation easements may be sold to others, but the restrictions apply to all future owners of the property. Conservation easements on lands in designated sending areas shall be held by an approved conservation organization defined as a charitable organization under §501(c)(3) of the Internal Revenue Code, or the Town or Village.

**§270-164. Establishment of sending and receiving areas.**

- A. **Sending Areas** – The Town has established a large sending area in the northwest part of Town, two smaller sending areas in the south-central part of Town and a smaller sending area in the northeast part of Town. These areas include important farmland, sensitive natural areas, scenic viewsheds and public wellheads (defined by the wellhead protection zone and primary recharge zone) that the Town has identified as important to protect in the 2008 Open Space Plan. All of these areas are zoned RA Rural Residential and Agricultural, except for part of the public wellhead areas. An overlay district is hereby created to apply to these areas, to be entitled “TDR-S” and to be reflected on the official Zoning Map for the Town.
- B. **Receiving Areas.** The Town has established three receiving areas in the eastern part of Town, two of which have been identified in the Town Center Plan and Freemans Bridge Road Plan as having good potential for redevelopment and mixed-use development, respectively. These areas are zoned Community Business/General Business and Mixed-Use Development, respectively. A third receiving area is a former brownfields site that is ready for redevelopment. An overlay district is hereby created to apply to these areas, to be entitled “TDR-R” and to be reflected on the official Zoning Map for the Town.

**§270-165. Calculation of transferable development rights.**

- A. **Sending area tract qualifications.** A tract of land proposed for placement under easement for the purpose of acquiring transferable development rights shall:
  - (1) Be located within a Town or Village TDR-S Overlay.
  - (2) Comprise at least 80 percent of the ownership, which shall include all contiguous, commonly-held land within the sending area.



- (3) Consist of a minimum of 20 acres of contiguous land, except along a stream or potential trail corridor, or where adjacent to already-preserved land.
- B. Transferable development rights computation.
- (1) The total number of development rights available on a sending area tract shall be determined by multiplying the net tract area by .5.
  - (2) The net tract area shall be determined by subtracting from the gross tract area all lands shown on the Town's GIS Constraints Map, which shall include a) FEMA floodplains, b) State-designated wetlands and steep slopes over 15%.
  - (3) Fractions of acres shall be rounded to the nearest whole number in computing assigned development rights.
  - (4) Land previously restricted against development by covenant, easement or deed restriction shall not be eligible for calculation of development rights.

**§270-166. Issuance of TDR Certificate.**

- A. Any landowner in a Town or Village sending area may request a TDR Certificate from the Town that specifies the number of development rights that may be separated and transferred from a qualified sending area tract based on the provisions of §270-165 above. The Town planner shall be responsible for making this determination and issuing the certificate, for which no fee shall be charged.
- B. An application for a TDR Certificate shall include:
- (1) A new title search and legal description, including any existing boundary survey, of the sending area tract, and legal opinion of title affirming that the development rights being transferred have not been previously severed from or prohibited upon the sending area tract.
  - (2) An identification of lands previously restricted by development as described in §270-165.B.(4) above.
  - (3) Such additional information required by the Town planner as necessary to determine the number of development rights that qualify for transfer, but not including a plat map or new boundary survey.
- C. A TDR Certificate shall:
- (1) Identify the transferor.

- (2) Include a legal description of the original sending area tract.
  - (3) Include a GIS map showing the original sending area tract, the portion of the tract on which the calculation of development rights is based and constrained or otherwise restricted areas as identified in §270.165.B.(2) and (4).
  - (4) Show a calculation for and statement of the number of development rights eligible for transfer.
  - (5) If only a portion of the total development rights are being transferred from the sending area tract, a statement both of the remaining transferable development rights or the remaining on-site development potential in number of dwelling units on the sending area tract.
  - (6) The date of issuance.
  - (7) The signature of the Town planner.
  - (8) A tracking number assigned by the Town planner
- D. No transfer of development rights under this ordinance shall be recognized by the Town as valid unless the instrument of original transfer contains the Town planner's certification.

#### **§270-167. Deed of Transferable Development Rights.**

Transferable development rights that have been severed shall be conveyed by a Deed of Transferable Development Rights duly recorded with the Schenectady County Clerk. Such deeds shall include both the original instrument of transfer - "Original TDR Deed" and subsequent instruments of transfer - "Intermediate TDR Deed." All such deeds on land within the Town shall conform to the requirements of this Section.

- A. An Original TDR Deed is required when development rights are initially separated from a sending area tract. The Original TDR Deed shall include or be accompanied by the following information:
- (1) The names and signatures of the transferor and transferee.
  - (2) Either:
    - a. the identity of the tract of land to which the development rights will be attached, or
    - b. a statement that the rights are either being transferred to the Town, an approved conservation organization or other person, or
    - c. a statement that the rights are being retained by the owner of the

sending area tract.

- (3) The date of transfer.
  - (4) A copy of the TDR Certificate described in §270-166 above.
  - (5) The number of development rights being transferred up to the number permitted on the TDR Certificate.
  - (6) The number of development rights remaining on the sending area tract (both for on-site and off-site use).
  - (7) A current title search of the sending area tract (or portion of the tract to be placed under easement) prepared within 30 days prior to submission of the deed, or a signed affidavit that title has not changed since issuance of the TDR Certificate under §270-166.
  - (8) A legal description and plat of the sending area tract or that portion of the tract to be placed under easement, prepared by a licensed surveyor.
  - (9) A conservation easement, which shall permanently restrict development of the sending area tract as provided in §270-168. below and which shall be recorded with the Schenectady County Clerk at the same time as the Original TDR Deed.
- B. An Intermediate TDR Deed is required for any subsequent conveyance of development rights after the recording of the Original TDR Deed. An Intermediate TDR Deed shall include or be accompanied by the following Information:
- (1) Items 1-7 above.
  - (2) Copies and a listing of all previous TDR deeds identified by the books and pages where they are recorded with the Schenectady County Clerk.
- C. The Town planner shall, prior to their recording and within 30 days of receipt, review and endorse the Original TDR Deed and conservation easement after comparing them with the TDR Certificate to determine the accuracy of the representation of the number of development rights being transferred as well as the number of any remaining development rights that may later be used either on- or off-site. The Town planner shall also, within 30 days of receipt, review and endorse any Intermediate TDR Deeds at the time of submittal of any application for development under §270-169.B. of this Ordinance.
- D. The Town legal counsel shall, prior to their recording and within 30 days of

receipt, review and endorse as to form and legal sufficiency the Original TDR Deed and conservation easement. The Town legal counsel shall also, within 30 days of receipt, review and endorse as to form and legal sufficiency any Intermediate TDR Deeds at the time of submittal of any application for development under §270-169.B. of this Ordinance.

- E. No transfer of development rights under this Ordinance shall be recognized by the Town as valid until or unless a TDR Deed Endorsement Certificate signed by both the Town planner and Town legal counsel has been issued.

**§270-168. Recording of conservation easement.**

Any sending area tract from which development rights have been severed must be permanently restricted from future development by a conservation easement as defined in title three of Article 49 of the Environmental Conservation Law. Such easement must meet the following requirements:

- A. Except where any development rights are retained, such as within an “acceptable development area,” the conservation easement shall permanently restrict the land from future development for any purpose other than principal or accessory agricultural uses, forest uses, public parkland, conservation areas and similar uses, but excluding golf courses. Structural development for such permitted uses shall be allowed subject to compliance with the standards set forth in the Town’s Zoning Ordinance.
- B. The conservation easement shall designate the Town and/or a bona fide conservation organization acceptable to the Town at its sole discretion, as the beneficiary/grantee.
- C. If the Town is to hold or be a party to the conservation easement, it shall be approved by the Town legal counsel with respect to form and legal sufficiency, within 30 days of its receipt and prior to its recording.
- D. The conservation easement shall apply to the tract of land or portion thereof from which development rights are conveyed (sending area tract), and shall specify the number of development rights to be severed as well as any to be retained. No portion of the tract area used to calculate the number of development rights to be severed shall be used to satisfy minimum yard setbacks or lot area requirements for any development rights that are to be retained or for any other development except as permitted under §270-168.A above.
- E. On any portion of a tract from which development rights are severed, retained development rights may not exceed one (1) dwelling unit per twenty (20) acres. Notwithstanding the foregoing, any tract within a designated sending area that is less than twenty (20) acres in area may retain no more than one development right.

- F. On any tract from which development rights are severed, retained development rights may be developed with traditional farm/estate building groupings including one (1) residence and customary accessory structures. In order to be utilized, this option must be specified in the conservation easement as occurring within the "acceptable development area."
- G. All owners of all legal and beneficial interest in the tract from which development rights are severed shall execute the conservation easement(s). All lienholders of the tract from which development rights are severed shall execute a subordination agreement or a release of lien.
- H. The conservation easement must make permanent provision for the annual monitoring of the eased land to assure its continuing compliance with the terms of the easement.
- I. Final approval for any subdivision or land development plan utilizing transferred development rights shall not be granted prior to the recording of the conservation easement with the Schenectady County Clerk and the New York Department of Environmental Conservation.

**§270-169. Application of development rights to a receiving parcel.**

- A. Owners of tracts within a designated receiving area may use development rights that are purchased or conveyed from sending area landowners, the Town, an eligible conservation organization or intermediate transferor as described below and in Table 1's shaded spaces. Transferred development rights shall entitle the owner of those rights to a variety of development incentives that may be used either to increase development density or secure other development advantages within a receiving area.
  - (1) Development incentive A: For each TDR acquired, 3,000 square feet of additional lot coverage shall be allowed up to a maximum combined lot coverage of 70% in the CB/GB district and 60% in the MU district.
  - (2) Development incentive B: In the CB/GB and MU districts, for each TDR acquired, 10 required parking spaces shall be waived up to a maximum waiver of 20% of required parking.
  - (3) Development incentive C: In the MU district, for each TDR acquired, one additional single-family dwelling or duplex shall be allowed, up to a doubling of underlying permitted density, or 7,500 square feet for a single-family dwelling and 10,000 square feet for a duplex. In such case, the lot frontage requirement for a single-family dwelling shall be reduced to 60 feet and the side yard requirement reduced to five feet on each side.



- (4) Development incentive D: In the MU district, for each TDR acquired, four additional dwelling units may be added to a senior complex or condo building, up to a doubling of the underlying permitted maximum per building, or 16 for a condo and 64 for a senior complex.

Table 1  
Maximum Density and Development Incentives Allowed  
Through Transfer of Development Rights

<b>Existing/Incentivized (shaded) Development Standards</b>	<b>Community Business District</b>	<b>General Business District</b>	<b>Mixed-Use District</b>	<b>Ratio of DRs to Incentives</b>
Max. lot coverage (1)	30%	30%	20%	
<i>A. Max. combined lot coverage w/TDR (2)</i>	70%	70%	60%	<i>3,000sf per DR</i>
Required parking spaces (3)	1 per 350FA	1 per 350FA	1 per 350 FA	
<i>B. Parking space waiver w/TDR (4)</i>	20%	20%	20%	<i>10 parking spaces per DR</i>
Max. density in SF dus & duplexes			15,000sf/ 20,000sf	
<i>C. Max. density w/TDR (5)</i>			7,500sf/ 10,000sf	<i>1 DU per DR</i>
Max. # units in structure			8 per condo 32 per senior	
<i>D. Max. # units in structure w/TDR</i>			<i>16 per condo 64 per senior</i>	<i>4 DUs per DR</i>

- 1) building lot coverage only  
 2) combined lot coverage for buildings, parking and loading areas, access drive and sidewalks  
 3) approximate average; actual number is variable depending on use  
 4) the 20% waiver is to actual parking standards in Schedule A of the Zoning Ordinance  
 5) for 7,500 sf lots, the lot frontage requirement shall be 60' and the side yard requirements five feet each

B. A landowner who wants to use development rights on a property in a receiving area up to the maximums specified in Table 1 above shall submit an application for the use of such rights on a receiving area tract as part of an application for a development permit. In addition to any other information required for the development permit, the application shall be accompanied by:

- (1) An affidavit of intent to transfer development rights to the property.
- (2) Either of the following:

- (a) a certified copy of a recorded Original TDR Deed of the developments rights proposed to be used and any Intermediate TDR Deeds through which the applicant became a transferee of those rights; or
  - (b) a signed written agreement between the applicant and a proposed original transferor, which contains information required by §270-167.A above and in which the proposed transferor agrees to execute an Original TDR Deed for the proposed receiving parcel when the use of the development rights, as determined by the issuance of a development permit, is finally approved.
- C. The Town may grant preliminary subdivision approval of a proposed development incorporating additional development rights upon proof of ownership of development rights and covenants on the sending parcel being presented to the Town as a condition of final subdivision approval.
- D. The Town planner shall be responsible for maintaining permanent records of all certificates issued, instruments of transfer and conservation easements recorded and development rights transferred to specific properties or otherwise retired.

**§270-170. Public acquisition.**

The Town may purchase development rights, may accept ownership of development rights through transfer by gift, and may accept land in fee simple for the purpose of severing development rights, within designated sending areas in either the Town or Village. All such development rights may be held or resold by the Town for use within designated receiving areas in either the Town or Village. Any purchase or gift of development rights shall be accompanied by evidence of the recording of a conservation easement as specified in §270-168 above. Any gift of land in fee simple may be followed at any time by a conservation easement as specified in §270-168 above, should the Town decide to use said land for the purpose of generating transferable development rights; this provision shall be retroactive from January 1, 2007.

**§270-171. Transfers of development rights to conservation organizations.**

Development rights may be transferred by the owner of a sending area tract to an approved conservation organization that has as its primary purpose the preservation of land for historic, scenic, agricultural or open space purposes. If such organization purchases or acquires development rights by gift or otherwise, the organization shall be entitled to resell such rights only if the proceeds from the sale of the rights are used to contribute to an endowment fund to monitor existing easements or purchase development rights from other lands in Town- or Village-designated sending areas. A minimum of 20% of the revenues generated from the sale of TDRs from any preserved sending area tract shall be dedicated to the endowment fund; as each easement is unique and



monitoring requirements differ, the amount dedicated to the fund must be negotiated with the conservation organization to its satisfaction. Prior to dispersal of the funds, this amount must be ratified by the Town Board. The remaining revenues remaining from the sale of TDRs for a sending area tract shall be used for additional easement acquisition.

#### **§270-172. TDR Bank.**

The Town hereby authorizes the creation of a transfer of development rights (TDR) Bank to encourage the exchange of development rights in the private market, thereby promoting the preservation of open space land. The Bank is authorized to acquire and sell development rights through the creation of a revolving dedicated open space preservation fund that will be the repository both for development rights and dedicated revenues.

##### **A. Acquisition of development rights.**

- (1) Any development rights acquired under §270.170 above, any revenues from the sale of development rights under §270-172.B(1) below, and any local revenues, grant monies or donations of money received in support of the TDR program shall be held in a revolving dedicated open space preservation fund.
- (2) The Town may accept development rights transferred to it by any approved conservation organization. A minimum of 20% of the revenues generated from the sale of these TDRs shall be dedicated to the organization's endowment fund; as each easement is unique and monitoring requirements differ, the amount dedicated to the fund must be negotiated with the conservation organization to its satisfaction. Prior to dispersal of the funds, this amount must be ratified by the Town Board. The remaining revenues remaining from the sale of TDRs for a sending area tract shall be used by the Town for additional easement acquisition.

##### **B. Sale of development rights.**

- (1) The Town may periodically sell development rights using a competitive bid process or any other method deemed fair and equitable by the Town Board.
- (2) All offers to purchase development rights from the TDR bank shall be in writing and shall include a minimum 10% down payment with purchase option. Payment of the remaining 90% shall be at the time the development rights are transferred.

##### **C. Program administration.**

- (1) The TDR Bank will be administered by the Town Planner, under the supervision of the Town Board. The Planner will set up a TDR webpage on the Town's website to: 1) provide information on the program, 2) provide applicable forms and contacts, and 3) create a registry for TDR buyers and sellers. The Planner will keep records of the dates, amounts and locations of development rights acquisitions and sales and provide periodic reports to the Town Board.
- (2) The Town may use up to 10% of revenues generated from the sale of development rights to cover the administrative costs of the TDR program.

### **§270.173. Amendment**

The Town reserves the right to amend this Article in the future, including the right to change the sending and receiving area boundaries, the right to change the manner in which the number of development rights are calculated and the manner in which the development rights can be conveyed and utilized. No owner of land or owner of development rights shall have any claim against the Town for damages resulting from a change in this Article. The Town further reserves the right to terminate its transferable development rights program at any time. If the program is abolished, holders of outstanding development rights shall have 12 months from the effective date of the termination of the program to apply to use their remaining development rights within formerly-designated receiving areas.

### **§270-174. Definitions**

As used in this ordinance, the following words and terms shall have the meanings specified herein:

ACCEPTABLE DEVELOPMENT AREA -

COMBINED LOT COVERAGE –The proportion of a parcel that is covered by buildings as well as parking and loading areas, access driveways and sidewalks.

DEVELOPMENT RIGHTS – The rights permitted to a lot, parcel or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

INSTRUMENT OF TRANSFER – A Deed of Transferable Development Rights that permits a specified number of development rights to be legally transferred from one party to another. A Deed of Original Transfer is the original instrument

that is used to separate these development rights from a sending area tract.

**LOT COVERAGE\*** – The proportion of a parcel that is covered by buildings, including covered porches and accessory buildings.

**OVERLAY DISTRICT** – A district superimposed over one or more underlying zoning districts or parts of districts that imposes additional or alternative requirements to those applicable for the underlying district.

**RECEIVING AREA** – One or more designated areas of land to which development rights generated from one or more sending areas may be transferred and in which increased development is permitted to occur by reason of such transfer.

**RECEIVING AREA TRACT** – A parcel or parcels of land in the receiving area that is the object of a transfer of development rights, where the owner of the parcel(s) is receiving development rights, directly or by intermediate transfers, from a sending area tract, and on which increased density or development incentives is allowed.

**SENDING AREA** – One or more designated areas of land in which development rights are designated for use in one or more receiving areas.

**SENDING AREA TRACT** – A parcel or parcels of land in the sending area that are the subject of a transfer of development rights, where the owner of the parcel(s) is conveying development rights of the parcel(s), and on which those rights so conveyed may no longer be used on the sending area tract.

**TDR** – A single transferable development right.

**TDR CERTIFICATE** – A Town-issued certificate for which prospective transferors may apply to determine the number of transferable development rights to which a potential sending area tract would be entitled.

**TRANSFeree** – The person or legal entity, including one who may own property in a receiving area, who purchases or otherwise acquires development rights.

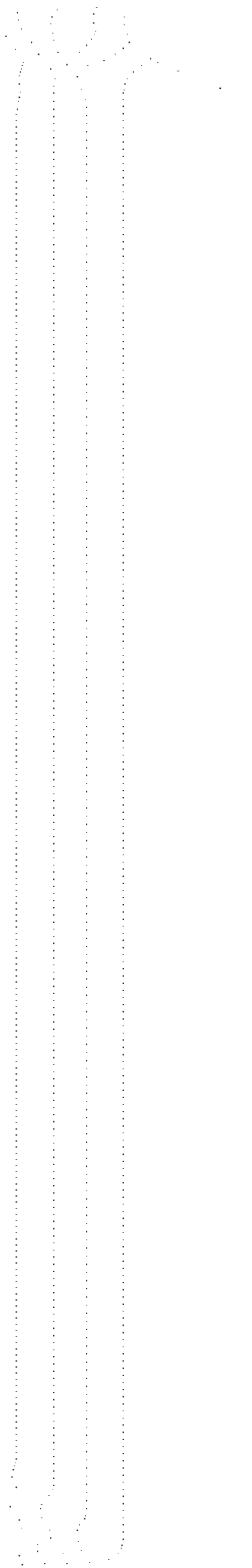
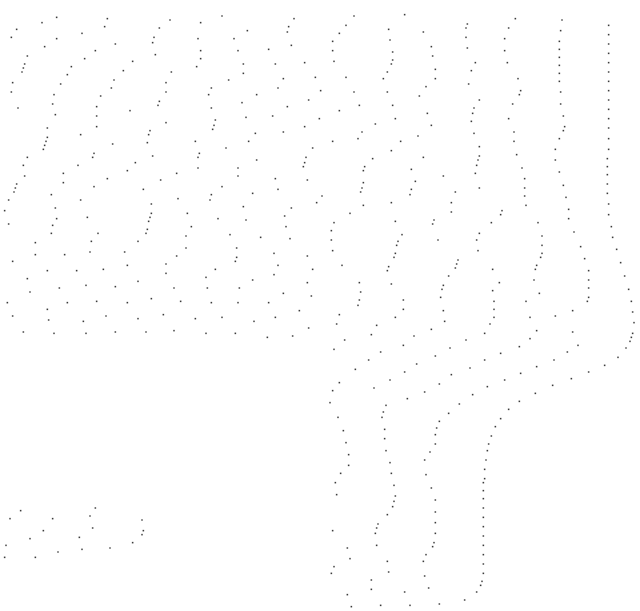
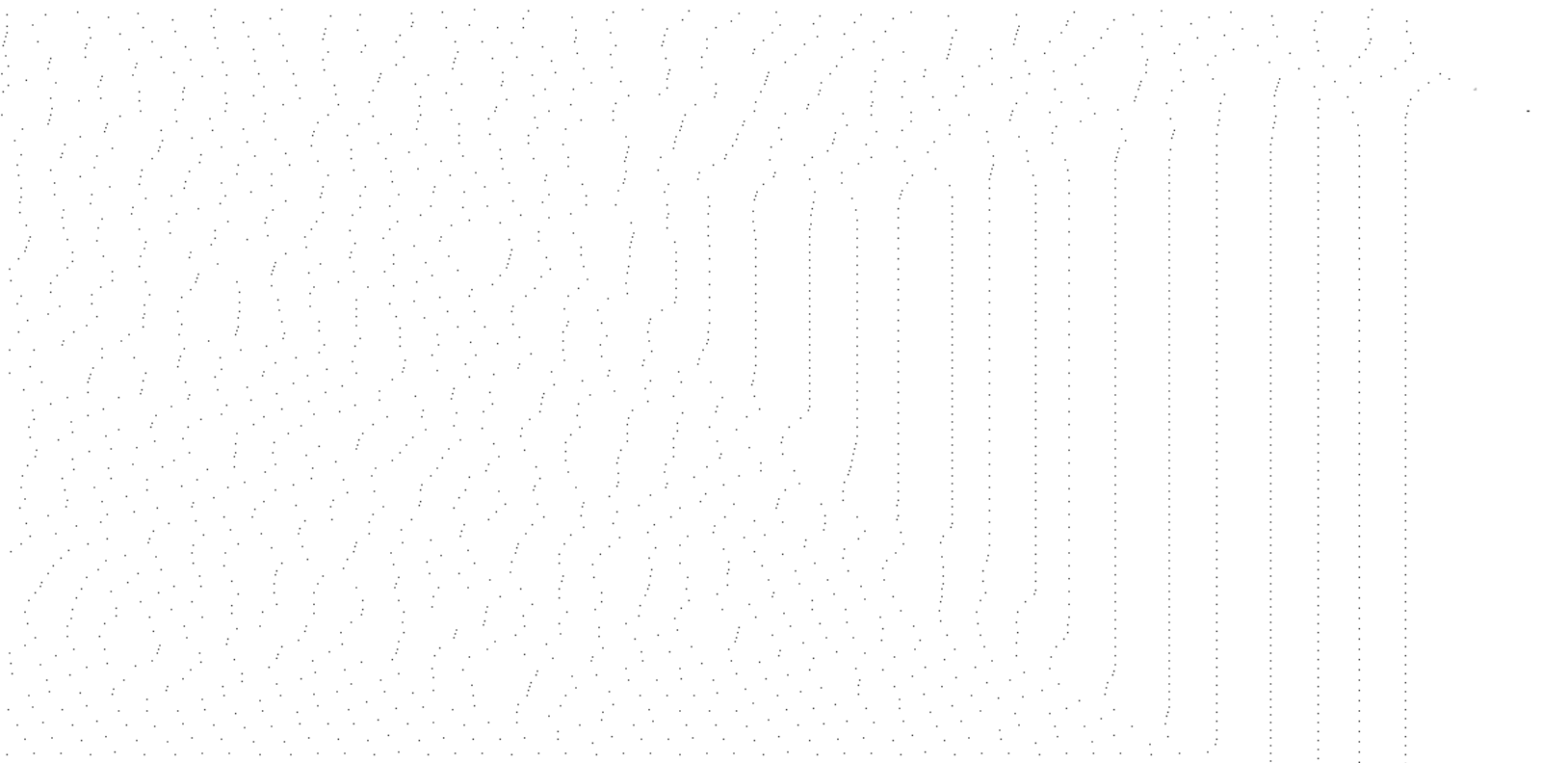
**TRANSFEROR** – The owner of either a sending area tract or development rights that originated from a sending area tract.

**TRANSFER OF DEVELOPMENT RIGHTS** – The process by which development rights are transferred from one lot, parcel or area of land in any sending area to another lot, parcel or area of land in one or more receiving areas.

\* already defined in 2005 Zoning Ordinance

**§270-175. Enforcement**

For the purposes of enforcement of this Article, the provisions of Article XXI of the Zoning Ordinance – Violations and Enforcement – apply.



**Appendix I**  
Farmers' Property Tax Credit Information

# The Farmers' School Property Tax Credit: *How can it work for YOU?*



New York Farm Bureau • 159 Wolf Rd, PO Box 5330, Albany, NY 12203 • 800-342-4143 • <http://www.nyfb.org>

## What is the Farmer's School Property Tax Credit?

The Property Tax Credit enables farmers to receive a tax credit from the state personal income tax or the corporation franchise tax to reimburse some or all of the school district property taxes paid by the farmer.

### Am I eligible?

- An individual farmer or corporation must be defined as an "eligible farmer."
- The individual or corporation must own qualified agricultural property.
- The individual or corporation must pay eligible school taxes during the year.
- The individual's or corporation's income must be below the income limitation amount.

### Who is an "eligible farmer"?

An individual or corporation that receives at least **2/3 of his or her excess federal gross income from farming**. *Excess* federal gross income is federal gross income, reduced by up to \$30,000. ***In other words, take gross income and subtract \$30,000. If 2/3 of the remaining amount is from the farm, you generally will qualify.***

**As an example:** your federal gross income is \$75,000. Included in that gross income is \$25,000 from your spouse's job, \$10,000 from your part-time job and \$40,000 **gross income** from the farm. Your excess federal gross income would be \$45,000 (\$75,000-\$30,000). 2/3 of \$45,000 is \$30,000 so your \$40,000 **gross income** from farming would more than meet the 2/3 requirement and you would be considered an "eligible farmer".

Farming is defined as an individual or corporation that cultivates, operates or manages a farm for gain or profit, even though the operation may not produce a profit each year. Also included in the definition of farming are members of a limited liability company, a shareholder of an S or C corporation, and the beneficiary of an estate or trust that is engaged in the business of farming. Many commodities are included in the definition of farming as well, so check the IT-217-I form to be sure.

There may be years when, due to unforeseen circumstances such as crop failures, an eligible farmer does not meet the 2/3 requirement. When this occurs the eligible farmer is now allowed to use an **average** gross income from farming in calculating their excess federal gross income. The average gross income from

## CHANGES IMPROVE BENEFITS TO FARMERS:

New York Farm Bureau has successfully advocated for recent changes to the Farmer's School Property Tax Program that will address agriculture's changing needs.

- Land owned by immediate family members now qualifies for the program.
- Commercial Horse Boarding Operations are eligible for the program.
- Christmas Tree Operations and farms organized as C-corporations are now eligible for the program.
- Acre eligibility has increased from 250 acres to 350 acres.
- The modified adjusted gross income limit has increased from \$150,000 to \$250,000.

Over A small, black, curved arrow icon pointing to the right.



farming is calculated using the gross income from farming of the respective taxable year and the gross incomes from farming of the two previous consecutive taxable years.

### **How is the amount of my deduction determined?**

The credit equals 100% of the school taxes paid on qualified agricultural property where the acreage does not exceed the base acreage amount, and 50% of the school taxes paid on acres exceeding the base acreage amount. The base acreage amount for 2006 and thereafter is 350 acres.

### **What is defined as qualified agricultural property?**

Qualified agricultural property includes land and land improvements in New York State that are used in agricultural production. Also included are structures and buildings that are located on the land and are used or occupied in order to perform agricultural production. In addition, land set aside in federal supply management programs or soil conservation programs are included.

### **Is my residential property considered qualified agricultural property?**

No, residential property is not qualified agricultural property. This includes your personal house, mobile home, etc. and any buildings associated with the owner's residence (garage, shed). Housing that is provided for essential farm employees (not including the owner's) does meet the definition of qualified agricultural property and can receive the credit.

### **What about woodland?**

Woodland property that is used for agricultural production or for the production of woodland products used in the farm operation is included as qualified agricultural property. So, woodland used for pasture does qualify, as does woodland adjacent to agricultural property because it provides erosion control or wind protection.

### **Does rented land qualify for the credit?**

Land that you rent for agricultural purposes does not qualify; only land that you own qualifies for the credit. If you own land that you rent to someone else, and that person uses the land for agricultural purposes, then you may consider those acres as part of your qualified agricultural property.

In the case of a land contract, the buyer will be treated as the owner of the property as long as they are obligated under the land contract to pay the school district property tax and deduct those taxes as a tax expense for federal income tax purposes.

### **What is the income limitation amount?**

The income limitation reduces or eliminates the credit for higher income taxpayers. The limitation is based on modified adjusted gross income (individuals) or modified entire net income (corporations). If your taxable income is between \$200,000 and \$250,000 your credit will be reduced by a percentage.

### **How do I apply & claim the credit?**

You claim the credit on your personal income tax return or the corporation franchise tax return when you file each year. Individuals and estates/trusts complete the Form IT-217-I, *Claim for Farmers' School Tax Credit*, and corporations complete the Form CT-47, titled the same.

### **Where can I go for more information?**

For tax information you can call 1-800-462-8100 or for forms and publications call 1-800-462-8100. Many of the resources needed for the program can be linked on the NYFB website: [www.nyfb.org](http://www.nyfb.org) under the "Farm Management Resources: Tax Link" site.



# Claim for Farmers' School Tax Credit

Submit this form with Form IT-201, IT-203, or IT-205.

Name(s) as shown on return	Identifying number as shown on return
----------------------------	---------------------------------------

Note: Before completing this form, complete Form IT-201 through line 33, Form IT-203 through line 32, or Form IT-205 through line B.

## Part 1 – Eligibility (see instructions)

If you mark an **X** in a *No* box for item A, B, C, or D, **stop**; you do not qualify for this credit.

**A** Did you have qualified agricultural property for tax year 2013? (see instr., Form IT-217-I) ..... Yes  No

**B** Were eligible school district property taxes paid on that property during tax year 2013? (see instructions) ..... Yes  No

**C** Complete Worksheet A on page 3 of the instructions. Is the amount shown on line 6 of Worksheet A less than \$300,000? ..... Yes  No

**D** Form IT-201 and Form IT-203 filers, complete Worksheet C on page 6 of the instructions. Form IT-205 filers, complete Worksheet D on page 9 of the instructions. Is the percentage shown on line 28 of Worksheet C or line 28 of Worksheet D at least 0.6667 (66.67%)? (see instructions) ..... Yes  No

**E** If you and one or more related persons (see instructions) each owned qualified agricultural property on March 1, 2013, mark an **X** here and see the instructions for Part 2, line 5 .....

**F** If all or part of your qualified agricultural property was converted to nonqualified use during tax year 2013, mark an **X** here (see instructions) .....

## Part 2 – Computation of credit (see instructions)

<b>1 Individuals:</b> Enter the total acres of qualified agricultural property owned by you during tax year 2013 (see instructions) .....		<b>1</b>	
<b>2 Partners, S corporation shareholders, and beneficiaries of estates and trusts:</b> Enter the amount from Part 4, line 7, column A .....		<b>2</b>	
<b>3 Fiduciaries:</b> Enter fiduciary's share of qualified agricultural property from Part 5, column C .....		<b>3</b>	
<b>4</b> Add lines 1, 2, and 3 .....		<b>4</b>	
<b>5</b> Enter total base acreage amount (see instructions) .....		<b>5</b>	
<b>6</b> Subtract line 5 from line 4 (if zero or less, skip lines 7 and 8, enter 1.0000 (100%) on line 9, and continue on line 10) ...		<b>6</b>	
<b>7</b> Multiply line 6 by 50% (.5) .....		<b>7</b>	
<b>8</b> Add lines 5 and 7 .....		<b>8</b>	
<b>9</b> Divide line 8 by line 4 and round the result to the fourth decimal place .....		<b>9</b>	
<b>10 Individuals:</b> Enter the eligible school taxes you paid during 2013 (see instr.)		<b>10</b>	.00
<b>11 Partners, S corporation shareholders, and beneficiaries of estates and trusts:</b> Enter the amount from Part 4, line 7, column B .....		<b>11</b>	.00
<b>12 Fiduciaries:</b> Enter fiduciary's share of eligible taxes from Part 5, column D		<b>12</b>	.00
<b>13</b> Add lines 10, 11, and 12 .....		<b>13</b>	.00
<b>14</b> Multiply line 13 by line 9 .....		<b>14</b>	.00
<b>15</b> Enter amount from Worksheet A, line 6, on page 3 of the instructions (if line 15 amount is \$200,000 or less, skip lines 16, 17, and 18, and enter the line 14 amount on line 19; see instr.)		<b>15</b>	.00
<b>16</b> Enter the excess of line 15 over \$200,000 (cannot exceed \$100,000) .....		<b>16</b>	.00
<b>17</b> Divide line 16 by \$100,000, and round the result to the fourth decimal place (cannot exceed 1.0000 (100%))		<b>17</b>	
<b>18</b> Multiply line 14 by line 17 .....		<b>18</b>	.00
<b>19</b> Farmers' school tax credit (subtract line 18 from line 14; see instructions) .....		<b>19</b>	.00



**Part 3 – Partnership, S corporation, and estate or trust information** (see instructions)

If you were a partner in a partnership, a shareholder of a New York S corporation, or the beneficiary of an estate or trust that **owned** qualified agricultural property during 2013, complete the following information for each partnership, S corporation, or estate or trust. For *Type* column, enter **P** for partnership, **S** for S corporation, or **ET** for estate or trust.

Name of entity	Type	Employer ID number	Location of property

Part 4 – Partner’s, shareholder’s, or beneficiary’s share of qualified agricultural property and eligible taxes (see instr.)		A – Acres of qualified agricultural property	B – Eligible taxes
<b>Partner</b>	1	Enter your share of acres of qualified agricultural property from your partnership .....	
	2	Enter your share of eligible taxes from your partnership .....	.00
<b>S corporation shareholder</b>	3	Enter your share of acres of qualified agricultural property from your S corporation .....	
	4	Enter your share of eligible taxes from your S corporation .....	.00
<b>Beneficiary</b>	5	Enter your share of acres of qualified agricultural property from the estate or trust .....	
	6	Enter your share of eligible taxes from the estate or trust .....	.00
	7	<b>Totals</b> .....	.00

**Fiduciaries:** Include the line 7, column A amount, on Part 5, column C, and include the line 7, column B amount, on Part 5, column D.  
**All others:** Enter the line 7, column A amount, on Part 2, line 2, and enter the line 7, column B amount, line 11.

**Part 5 – Beneficiary’s and fiduciary’s share of acres of qualified agricultural property and eligible taxes** (see instr.)

A – Beneficiary’s name	B – Identifying number	C – Acres of qualified agricultural property (see instructions)	D – Eligible taxes (see instructions)	E – Acres of qualified agricultural property converted to nonqualified use (see instructions)
<b>Totals</b>			.00	
			.00	
			.00	
<b>Fiduciary</b>			.00	

**Part 6 – Credit recapture on qualified agricultural property converted to nonqualified use**

(Complete this part only if you first claimed a credit for 2011 or 2012. See instructions.)

A – Total acres of qualified agricultural property converted to nonqualified use (see instructions)	B – Total acres of qualified agricultural property before conversion (see instructions)	C – Column A ÷ column B	D – Total credit claimed for 2011 and 2012 (see instructions)	E – Total amount of 2011 and 2012 credit to be recaptured (column C x column D; see instr.)
			.00	E .00





Publication 51 (11/97)

**Questions and Answers on  
New York State's**

**Farmers' School  
Tax Credit**

**Update to Publication 51**  
**Questions and Answers on New York State's**  
**Farmers' School Tax Credit**

**Note: This update supersedes Publication 51.1 dated April 2006. The current version of Publication 51 is dated 11/97.**

Legislation passed by the legislature and signed into law by Governor Pataki during 1998, 1999, 2003, 2005, and 2006 provides new enhancements to the *Farmers' School Tax Credit*. In addition, information is added concerning several issues addressed in the original publication. The law changes and the additional information about the credit are explained below. Except as explained in this update, all other issues addressed in Publication 51 remain valid.

### **Legislative Changes**

#### **Part II - Eligible Farmer**

For tax years **beginning on or after January 1, 2003**, the statutory definition of *eligible farmer* has been expanded. Taxpayers will meet the definition of *eligible farmer* if their:

- federal gross income from farming for the tax year is at least two-thirds of their excess federal gross income; or
- average of federal gross income from farming for the tax year and the two consecutive tax years immediately preceding that tax year is at least two-thirds of their excess federal gross income for the tax year.

Prior to the amendment, taxpayers met the definition of *eligible farmer* only if their federal gross income from farming for the tax year was at least two-thirds of their excess federal gross income.

The following revisions have been made to question 2 on page 5 and questions 3 and 4 on page 6.

For purposes of question 2, *What is considered farming for purposes of this credit?*, for tax years **beginning in 2006 and after**, a person is also engaged in the business of farming if the person is a shareholder of a New York C corporation that has made a special gross income from farming election on Form CT-47.1, *Election or Termination of Election to Deem Income for Purposes of the Farmers' School Tax Credit*.

In addition, *farming* will include commercial horse boarding operations as defined in section 301(13) of the Agriculture and Markets Law and the growing of Christmas trees, for purposes of transplanting or cutting from the stump, under a managed Christmas tree operation.

For purposes of question 3, *What is considered gross income from farming for an individual?*, and for question 4, *What is gross income from farming for a corporation?*, for tax years **beginning in 2006 and after**, gross income from farming will also include gross income from commercial horse boarding operations as defined in section 301(13) of the Agriculture and Markets Law, to the extent not included in farm income reported on the individual's or corporation's federal income tax return and gross income from the growing of Christmas trees, for purposes of transplanting or cutting from the stump, under a managed Christmas tree operation.

Also for purposes of question 3, for tax years **beginning in 2006 and after**, gross income from farming includes:

- your pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1;
- your pro rata share of your partnership's gross income from farming that represents the partnership's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1; and
- your pro rata share of your New York S corporation gross income from farming that represents the S corporation's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1.

### **Part III - Qualified Agricultural Property**

For tax years **beginning in 2001 and thereafter**, the statutory definition of *qualified agricultural property* has been expanded to include land set aside or retired under a federal supply management or soil conservation program. (Note: This amendment merely confirms existing Tax Department policy that such property qualifies for the credit: See Part III, question 10, on page 11.)

Also, for tax years **beginning in 2006 and after**, the definition of *qualified agricultural property* includes land that at the time it becomes subject to a conservation easement would have been *qualified agricultural property*. (Note: Prior to this amendment, land that was subject to a conservation easement would have been *qualified agricultural property* **only** if such land was used in agricultural production.)

## Part IV: Eligible Taxes

The answer to question 1 on page 13 states that only real property taxes levied by a school district on qualified agricultural property **owned** by the taxpayer qualify for the credit. For tax years **beginning in 1999 and thereafter**, in the case of the sale of qualified agricultural property under a land sales contract,\* the buyer will be treated as the owner of the property if the following conditions are met:

- the buyer must be obligated under the land sales contract to pay the school district property taxes on the purchased property; and
- the buyer must be entitled to deduct those taxes as a tax expense for federal income tax purposes.

A buyer who meets these conditions will be considered the owner even though legal title to the property (i.e., the deed) has not been transferred to the buyer. Accordingly, the buyer, if an eligible farmer, will be entitled to claim the credit (subject to the credit limitation based on income).

**Note:** If the buyer is treated as the owner under these provisions, the seller may not claim the credit for the same property.

For tax years **beginning in 2005 and after**, eligible school district property taxes levied by a school district on qualified property owned by the taxpayer's father, mother, grandfather, grandmother, brother, or sister qualify for the credit if (1) the taxpayer has a written agreement with the owner(s) that the taxpayer intends to eventually purchase that qualified agricultural property, even if the taxpayer did not actually pay the school district property taxes on the qualified agricultural property, and (2) the owner(s) has given the taxpayer a document stating that the owner(s) is waiving his/her right to claim the credit, if any, on the qualified agricultural property that is subject to the written agreement.

The written agreement does not have to be in any particular legal form but it must be signed by all parties to the agreement and must have been in effect for at least part of the tax year to which the credit relates. The waiver document does not have to be in any particular form, but it can be for only one tax year and must include (1) the name of the owner(s), (2) the name of the relative with whom the owner(s) has entered into a written agreement to sell his/her qualified agricultural property, (3) a statement that the owner(s) is waiving his or her right to claim the farmers' school tax credit, (4) the tax year to which the waiver applies, (5) the date the agreement to sell was entered into, and (6) the signature of the owner(s). The waiver document must be given to the taxpayer even if the owner(s) does not qualify to claim the farmers' school tax credit on the property. Once the waiver is made for a tax year, it cannot be revoked for that tax year, but the owner(s) may decide whether or not to issue a waiver for any subsequent tax year.

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\* A land sales contract, commonly referred to as an *installment land contract*, is an agreement to transfer land ownership in exchange for a series of principal and interest payments. The seller does not transfer formal title to the property to the buyer until all or a certain number of payments are made. A land sales contract may also be referred to as *contract for deed*, *bond for deed*, *conditional sale of real estate*, *contract for sale of land*, and *land contract*. A *lease with an option to purchase* type arrangement is not a land sales contract.



## **Part V: Base Acreage and Related Party Rules**

Under question 2, on page 15, the base acreage amount of 250 acres will now apply to tax years **beginning after 1997 and before 2006**. Previously, this increase was scheduled to take effect for tax years beginning in 1999 and thereafter. For tax years **beginning in 2006 and after**, the base acreage amount is increased to 350 acres.

Also, for tax years **beginning in 2001 and thereafter**, the base acreage amount is increased by acreage enrolled or participating in a federal environmental conservation acreage reserve program pursuant to Title Three of the Federal Agricultural Improvement and Reform Act of 1996. This provision will allow farmers who participate in this program and whose acres of qualified agricultural property exceed the base acreage amount to receive a larger Farmers' School Tax Credit.

**Example:** For tax year 2001, a farmer owns 300 acres of qualified agricultural property. Thirty acres of that property are enrolled or participating in a federal environmental conservation acreage reserve program pursuant to Title Three of the Federal Agricultural Improvement and Reform Act of 1996. Assuming the farmer otherwise qualifies for the Farmers' School Tax Credit, the farmer's base acreage amount for 2001 will be 280 acres (250 + 30). Accordingly, for 2001, the farmer will receive a credit of 100% of the school taxes paid on 280 acres of property and a credit for 50% of the taxes paid on 20 acres of property. Under prior law, the farmer would have only received a 100% credit for the taxes paid on 250 acres of property and a 50% credit for the taxes paid on the remaining 50 acres of property.

## **Part VI: Credit Limitation Based on Income**

For tax years **beginning in 2006 and after**, the income limitation for purposes of determining credit eligibility is increased. The phaseout of the credit now occurs if the farmer's modified New York adjusted gross income or modified entire net income is between \$200,000 and \$300,000, with no credit allowable if the taxpayer's modified adjusted gross income or entire net income is over \$300,000. Previously, this phaseout occurred when the farmer's modified New York adjusted gross income or modified entire net income was between \$100,000 and \$150,000, with no credit allowable if the taxpayer's modified adjusted gross income or modified entire net income was over \$150,000.

## **Appendix A: Federal Gross Income for Individuals**

Appendix A is revised to provide that for tax years **beginning in 2006 and after**, federal gross income from all sources includes:

- your pro rata share of gross income from a New York C corporation that has made a special gross income from farming election on Form CT-47.1, *Election or Termination of Election to Deem Income for Purposes of the Farmers' School Tax Credit*, and
- your pro rata share of your partnership's gross income and your pro rata share of your New York S corporation gross income that represents the partnership's and S corporation's pro rata share of gross income from a New York C corporation that has made a special gross income from farming election on Form CT-47.1.

Note: This information should be obtained from the New York C corporation, the partnership, and the New York S corporation.

## **Appendix B: Federal Gross Income *From Farming* for Individuals**

Appendix B is revised to provide that for tax years **beginning in 2006 and after**, gross income from farming also includes:

- gross income from commercial horse boarding operations as defined in section 301(13) of the Agriculture and Markets Law, to the extent not included in farm income reported on the individual's federal income tax return and gross income from the growing of Christmas trees, for purposes of transplanting or cutting from the stump, under a managed Christmas tree operation,

- your pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1, *Election or Termination of Election to Deem Income for Purposes of the Farmers' School Tax Credit*, and

- your pro rata share of your partnership's gross income from farming and your pro rata share of your New York S corporation gross income from farming that represents the partnership's and S corporation's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1.

Note: This information should be obtained from the New York C corporation, the partnership, and the New York S corporation.

## **Appendix D: Federal Gross Income *From Farming* for Corporations**

Appendix D is revised to provide that for tax years **beginning in 2006 and after**, gross income from farming also includes gross income from commercial horse boarding operations as defined in section 301(13) of the Agriculture and Markets Law, to the extent not included in farm income reported on the corporation's federal income tax return and gross income from the growing of Christmas trees, for purposes of transplanting or cutting from the stump, under a managed Christmas tree operation.

## **Additional Information**

### **Part III: Qualified Agricultural Property**

The answer to question 1 on page 10 states that a structure or building is not qualified agricultural property if it is used for the **processing** of agricultural commodities. However, in the case of the production of maple syrup and cider, and the sale of wine from a farm winery, buildings and structures used to process the sap into syrup, the apples into cider, or the grapes into wine **are** considered qualified agricultural property even though the property is used in processing.

## **Part VI: Credit Limitation Based on Income**

Under question 5 on page 17, for purposes of computing modified New York adjusted gross income, *farm indebtedness* does not include debt, or that portion of the debt, that is secured by the farmer's principal residence, even if the proceeds of the loan are used for farm expenditures.

## **Part VII: Credit Recapture**

The answer to question 1 on page 19 contains examples showing how the recapture rules apply when qualified agricultural property is converted to nonqualified use. The following additional example illustrates the recapture rules that apply when a farmer acquires additional qualified agricultural property in a year after the year in which the farmer first claimed the credit.

**Example:** A farmer first claims the credit for tax year 1997. The credit is claimed on 100 acres of qualified agricultural property. In 1998, the farmer purchases an additional 100 acres of qualified agricultural property and claims the credit for 1998 on the total 200 acres of qualified agricultural property. On June 1, 2000, the entire property is converted to nonqualified use. In this instance, no credit is allowed for the year 2000. However, since the conversion took place after the end of the second year following the year in which the farmer **first** claimed the credit (1997), the farmer is not required to add back the credit claimed in 1997, 1998, or 1999. This is so even though 100 acres of the converted property were not purchased until 1998, and the credit on that portion of the converted property was first claimed in 1998.

## **Part VIII: Disallowance of Deduction for School Taxes**

The answer to question 1 on page 21 states that you must include the amount of your credit in your New York adjusted gross income or entire net income in the tax year following the year for which the credit is allowed. However, you **do not** have to make this adjustment if you were required to report the amount of the credit as income on your federal income tax return in the tax year following the year for which the credit is allowed.

## **Appendix A: Federal Gross Income for Individuals**

Item 8 states that capital gains from federal Schedule D are to be included in federal gross income from all sources. However, if you had capital gain distributions from a mutual fund but were not required to file federal Schedule D for the year, include in federal gross income any capital gain distributions you entered on line 13 of federal Form 1040.

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## Introduction

For tax years beginning after 1996, an eligible farmer may be entitled to an income tax or corporation franchise tax credit for the school district property taxes the farmer pays. The credit is allowed only for school taxes paid on land, structures, and buildings owned by the farmer that are located in New York State and used or occupied for agricultural production. An eligible farmer may be a corporation subject to tax under Article 9-A of the Tax Law (the corporate franchise tax), or an individual or married couple subject to tax under Article 22 of the Tax Law (the personal income tax). In addition, an eligible farmer may be entitled to the credit if the farmer is a partner in a partnership or a shareholder of a New York S corporation that owns property used in agricultural production. Furthermore, an estate or trust or the beneficiaries of an estate or trust may also be eligible for the credit.

The farmers' school tax credit was enacted as part of the Farmer's Protection and Farm Preservation Act of 1996. The credit provides school property tax relief to farmers to help protect and enhance the agricultural industry in New York State and to preserve our valuable open spaces, an important resource for

the tourism industry. The credit is allowed against the farmer's income tax or corporation franchise tax, and is fully funded by the state. It is not a real property tax exemption nor is it part of the agricultural assessment program. In addition, since the credit is fully funded by the state, it will not affect the revenue received by local school districts, nor will it shift the school tax burden to the farmer's neighbors.

The credit provisions were further amended in the 1997-1998 New York State budget. The new amendments, which apply to tax years 1998 and thereafter, will enable more farmers to qualify for the credit.

We have prepared the following questions and answers to provide general information to farmers and tax practitioners concerning the new credit. For purposes of clarity, the questions are generally written in the context of individual farmers. However, the rules apply equally to corporate farmers unless otherwise stated, or unless the context of the question indicates otherwise. Due to the diversity of the agricultural industry, it was not possible to address every situation. Taxpayers who have questions not addressed in this publication should contact the Tax Department. Telephone numbers and addresses are listed on the back cover of this publication.

## Part I: General Information

### 1. What is the farmers' school tax credit?

The farmers' school tax credit is a tax credit allowed against the personal income tax (Article 22 of the Tax Law) or the corporation franchise tax (Article 9-A of the Tax Law), to reimburse some or all of the school district property taxes paid by farmers.

### 2. How do I claim the credit?

You claim the credit on your personal income tax return or corporation franchise tax return when you file it each year. Individuals and estates and trusts will compute the credit on Form IT-217, *Claim for Farmers' School Tax Credit*. Corporations will compute the credit on Form CT-47, *Claim for Farmers' School Tax Credit*. These forms will be available in early December of each year. To obtain these forms, see *Need Help* on the back cover of this publication.

### 3. For what tax years does the credit apply?

The credit applies to income or corporation tax years beginning in 1997 and thereafter.

### 4. Who qualifies for the credit?

An individual or corporation meeting all the following conditions will qualify for the credit:

- The individual or corporation is an eligible farmer (see Part II)
- The individual or corporation owns qualified agricultural property during the year (see Part III)
- The individual or corporation pays eligible school taxes during the year (see Part IV), and

-- The individual's or corporation's income is below the income limitation amount (see Part VI).

### 5. Does my farm have to be located in an agricultural district or must I apply for a special agricultural assessment in order to qualify for this credit?

No. The credit is not part of the agricultural district or agricultural assessment programs. Accordingly, the availability of this credit does not depend on the land's status for agricultural district or agricultural assessment purposes.

### 6. Do I have to own a minimum amount of land or have agricultural sales exceeding a certain dollar amount in order to qualify for the credit?

No. There are no minimum land or sales requirements to qualify for this credit. However, you must be an eligible farmer as described in Part II, which means that a significant part of your income must be from farming.

### 7. Do I have to submit any advance application or certification in order to qualify for this credit?

No. If you qualify for the credit, you simply claim the credit when you file your personal income tax return or corporate franchise tax return for the tax year.

### 8. Will the amount of credit allowed depend upon the type of soil on my property, as in the case of the special agricultural assessments?

No. The amount of credit does not depend on soil types.

### 9. Does my local school board have to take any action in order for me to claim the credit?

No. The credit is a state funded credit allowed under the personal income tax or corporate franchise tax. No action by your local school board is necessary. In addition, because the credit is state funded, the allowance of the credit will not affect the revenue the school district receives, nor will it result in a shift of the school tax burden to your neighbors.

**10. How is the credit computed?**

The credit equals 100% of the school taxes paid on qualified agricultural property where the acreage does not exceed the base acreage amount (see Part V) and 50% of the school taxes paid on acres in excess of the base acreage amount.

**11. What if the amount of the credit exceeds my personal income tax or corporate franchise tax liability for the year?**

If the credit exceeds your personal income tax for the year, reduced by any other credits, the excess amount will be refunded to you, without interest. If the credit exceeds your corporation franchise tax for the year, reduced by any other credits, the excess may be refunded to the corporation, without interest, or the corporation may elect to carry the excess over to future tax years.

**12. Our farm is a corporation that is not a New York S corporation. Can the credit be applied against the corporation's fixed dollar minimum tax or alternative minimum tax?**

No. The credit cannot be applied against those two taxes, but it can be applied against the entire net income tax and the capital based tax.

**Note:** Although by statute the credit is not allowed against the fixed dollar minimum tax and the alternative minimum tax, before any refund is issued, the Department will

apply the credit against those taxes and issue a refund for the net amount. However, if the corporation elects to carryover the credit to succeeding years, the corporation would have to pay the fixed dollar minimum or the alternative minimum tax and would receive a carryover for the credit.

**13. Our farm is a New York S corporation. Does the corporation claim the credit on its franchise tax return or do the shareholders claim their share of the credit on their individual income tax returns?**

The corporation may not claim the credit. In the case of a New York S corporation that owns qualified agricultural property, the shareholders of the corporation may claim the credit on their personal income tax returns, based upon their shares of the corporation's acres of qualified agricultural property and eligible taxes. However, the individual shareholders must be eligible farmers to claim the credit.

**14. Can partners of a partnership (including members of a limited liability company that is treated as a partnership for federal tax purposes) that owns qualified agricultural property claim their share of the credit?**

Yes. The partners or members will claim the credit on their personal income tax returns, based upon their share of acres of qualified agricultural property and eligible taxes from the partnership. However, the partner (or member) may claim the credit only if the partner or member is an eligible farmer.

**15. Can an estate or trust, or the beneficiary of an estate or trust, claim their share of the credit?**

Yes. An estate or trust may claim the credit, based upon its share of the acres of qualified agricultural property and eligible taxes, if



the estate or trust is an eligible farmer. A beneficiary of an estate or trust can claim the credit based on his or her share of the acres and taxes, if the beneficiary is an eligible farmer. In general, the rules relating to individual farmers as discussed in this publication also apply to estates or trusts. However, certain special rules apply to estates or trusts. These rules are discussed in Part IX.

16. **Can a nonresident individual claim the credit if the individual owns qualified agricultural property located in New York State?**

Yes. The allowance of the credit does not depend upon the resident status of the taxpayer.

## Part II: Eligible Farmer

### 1. Who is an eligible farmer?

**For tax years beginning in 1997 only**, an eligible farmer is an individual or corporation that receives for the taxable year at least 2/3 of his or her **federal gross income** (see Question 9) from farming. An individual who qualifies for the farmer estimated tax treatment under the federal and state income taxes qualifies as an eligible farmer for 1997.

**For tax years beginning in 1998 and thereafter**, an eligible farmer is an individual or corporation that receives for the taxable year at least 2/3 of his or her **excess federal gross income** from farming (see Question 11).

### 2. What is considered farming for purposes of this credit?

An individual or corporation (collectively, a person) is engaged in the business of farming if the person cultivates, operates or manages a farm for gain or profit, even though the operation may not produce a profit every year. A person is also engaged in the business of farming if the person is a member of a partnership (including a limited liability company that is treated as a partnership), a shareholder of an S corporation or the beneficiary of an estate or trust that is engaged in the business of farming.

Farming includes the operation or management of livestock, dairy, poultry, fish, fruit, fur-bearing-animal and vegetable (commonly referred to as truck) farms. Farming also includes the operation and management of plantations, ranches, ranges and orchards. Furthermore, farming includes, but is not limited to, the raising or production of the following commodities:

- field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans;
- fruits, including apples, peaches, grapes, cherries and berries;
- vegetables, whether raised conventionally or hydroponically, including tomatoes, snap beans, cabbage, carrots, beets and onions;
- horticultural specialties, including nursery stock, ornamental shrubs and ornamental trees and flowers;
- livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, ostrich, emus, fur-bearing animals, milk and eggs;
- aquaculture products, including fish, fish products, water plants and shellfish (provided the aquaculture products are grown and raised as opposed to merely harvested or caught);
- honey and beeswax produced from your own bees; and
- maple syrup and cider, provided the income from these operations is properly includable on federal Schedule F, *Profit or Loss From Farming*.

A person who rents farm property to others may also be engaged in the business of farming (see Question 5).

Forestry and logging, including the growing of Christmas trees, is **not** farming unless the forestry or logging products are used in the operation of a farm or are connected with an otherwise qualifying farm operation as described above (i.e., the income from these operations is properly reportable on federal Schedule F.)

You are **not** engaged in farming if your principal source of income is from providing agricultural services, such as soil preparation, veterinary services or farm labor. In addition, you are **not** engaged in farming if you manage or operate a farm for

a salary or fee. Furthermore, a person cultivating or operating a farm for recreation or leisure (e.g., a hobby farm) is **not** engaged in the business of farming.

**For tax years beginning in 1998 and after,** the following activities are also considered farming:

- the production of maple syrup or cider, regardless of whether the income is reportable on federal Schedule F; and
- the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

3. **What is considered gross income from farming for an individual?**

Gross income from farming is the total farm income reported on the individual's federal income tax return for the year. This includes:

- gross farm income from federal Schedule F, *Profit or Loss From Farming*;
- gross farm rents from federal Form 4835, *Farm Rental Income and Expenses*;
- your share of partnership or S corporation gross income from farming (this amount will be shown on your federal Schedule K-1);
- your share of distributable net income of an estate or trust from farming (this amount will be shown on your federal Schedule K-1); and
- gains from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797, *Sales of Business Property*. (Note: Gains from the sale of farm equipment or farm real estate are not includable in gross income from farming even though those gains may be reportable on Form 4797.)

**For tax years beginning in 1998 and after,** gross income from farming also includes:

- gross income from the production of maple syrup and cider, to the extent that income is not included in the items listed above; and
- gross income from the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

Gross income from farming for individuals is also listed in Appendix B.

4. **What is gross income from farming for a corporation?**

Gross income from farming is the total farm income reported on the corporation's federal income tax return for the year. This includes:

- gross receipts, less cost of goods sold, attributable to farming activities;
- gross rents from the rental of qualified agricultural property (including land and buildings), provided the terms of the rental satisfy the conditions described in Question 5 below;
- the corporation's share of partnership gross income from farming (this amount will be shown on the federal Schedule K-1 received by the corporation); and
- gains from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797, *Sales of Business Property*. (Note: Gains from the sale of farm equipment or farm real estate are not includable in gross income from farming, even though those gains may be reportable on Form 4797.)

**For tax years beginning in 1998 and after,** gross income from farming also includes:

- gross income from the production of maple syrup and cider, to the extent that income is not included in the items listed above; and

- gross income from the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

**Note:** A corporation that has both farm and non-farm income may find it helpful to complete a pro-forma federal Schedule F to determine its gross receipts, less cost of goods sold, from farming.

Gross income from farming for a corporation is also listed in Appendix D.

5. **Does the income which an individual or corporation receives from renting farm property to another person qualify as gross income from farming?**

The answer to this question depends upon how the rental of the property is set up.

**Material Participation**

If the rental is for a fixed amount per month or per year, or a fixed amount per acre (i.e., a cash rental agreement), or if the carrying costs of the property, such as property taxes, interest and insurance, constitute the rent, then the rental income does not constitute gross income from farming **unless** the person participates to a material extent in the operation or management of the farm. This kind of material participation rental income constitutes gross income from farming and is reported for federal purposes on Schedule F. (See Question 6 for information on material participation.) Also, see **Note** below.

**Crop Share**

If the amount of rental is a crop share (shared rental agreement; that is, the amount of rent is based upon the actual production of the land), then rental payments, whether made in cash or in kind, would constitute gross income from farming, regardless of whether you materially participate. For example, you rent your farmland to another person who is growing corn. The rental

payment is 20% of the corn produced on the property, or, at your election, a cash payment equal to the market value of 20% of the corn produced. In this instance, the rental income would constitute gross income from farming and is generally reported for federal income tax purposes on Form 4835. Also, see **Note** below.

**Note:** If you receive rental income from the rental of agricultural property (regardless of the type of rental) **and** you materially participate in the operation, the gross rental income you receive is reported on federal Schedule F and you may be subject to federal self-employment taxes.

6. **What does *participates to a material extent* mean for purposes of question 5?**

You *participate to a material extent* if you have an arrangement with your tenant for your participation and you meet one of the following four tests:

**Test No. 1.** You do **any** three of the following: (1) pay or stand good for at least half the direct costs of producing the crop; (2) furnish at least half the tools, equipment and livestock used in producing the crop; (3) consult with your tenant ; and (4) inspect the production activities periodically.

**Test No. 2.** You regularly and frequently make, or take an important part in making, management decisions substantially contributing to or affecting the success of the enterprise.

**Test No. 3.** You work 100 hours or more spread over a period of 5 weeks or more in activities connected with crop production.

**Test No. 4.** You do things which, considered in their total effect, show that you are materially and significantly involved in the production of farm commodities.

7. **I work on my neighbor's farm. Are the wages I receive considered gross income from farming?**

No. Wages you receive as a farm employee are not gross income from farming.

8. **My farm is set up as a corporation, and I receive wages from that corporation. Are those wages gross income from farming?**

No. Wages you receive from a farm corporation, even if you are the owner of the corporation, are not gross income from farming.

9. **What is federal gross income for purposes of determining whether I am an eligible farmer for tax year 1997?**

Gross income is income before the deduction of expenses. However, gross income from sales is after the deduction for cost of goods sold.

For an individual, gross income from all sources is all income you (and your spouse, if you are filing a joint federal return) receive during the tax year in the form of money, goods, property and services that is not exempt from **federal** income tax. For a list of items includable in the gross income of an individual, see Appendix A.

For a corporation, gross income is all income received by the corporation during the tax year that is not exempt from **federal** tax. For a list of items includable in the gross income of a corporation, see Appendix C.

10. **Do social security retirement benefits constitute gross income?**

This depends. Only the portion of the social security you receive **that is subject to federal income tax** is considered gross income. The amount of social security subject to federal tax varies with the level of your income from other sources.

11. **What is excess federal gross income for purposes of determining whether I am an eligible farmer for tax years 1998 and after?**

For an individual, excess federal gross income is federal gross income, computed as discussed in Question 9, reduced by the sum, not to exceed \$30,000, of the following items included in federal gross income:

- wages, salaries, tips and other employee compensation;
- interest and dividends;
- pension payments, including social security payments;
- those items of gross income that are includable in the computation of net earnings from self-employment for federal income tax purposes.

**Example:** Your federal gross income for the year is \$50,000. Included in gross income is \$15,000 of wages, \$10,000 of interest and dividends and \$25,000 of gross income from farming. (The \$25,000 of gross income from farming is included in determining your net earnings from self-employment.) Your excess federal gross income for the year is \$20,000 (\$50,000-\$30,000).

For a corporation, excess federal gross income is federal gross income, computed as discussed in Question 9, reduced by \$30,000.

12. **In addition to growing and harvesting my commodities, I also process those commodities to make them more valuable. Is all the income I receive from the sale of those commodities considered gross income from farming?**

No. Only the value of the commodities before they are processed constitutes gross income from farming. The value added by the processing is not considered gross income from farming. Processing means doing something to an agricultural commodity beyond what is needed to make it **initially** marketable.

For example, a person operates a dairy farm and also processes and bottles the milk for retail sale. If the person sold the raw milk to a processing plant, it would be worth \$14 per hundred weight. However, after pasteurizing and bottling, the person sells the milk for \$35 per hundred weight. Only the value of the raw milk (\$14) would be considered gross income from farming. The value added by the processing (\$21) would not be gross income from farming. However, it would be considered gross income from all sources for purposes of the gross income test.

**Note:** For tax years 1998 and after, gross income from farming includes income from the production of maple syrup and cider, and income from the sale of wine from a licensed farm winery, even though that income is from processed products.

13. **Under federal income tax rules, for purposes of individual estimated taxes, I am considered a farmer for 1997 if two-thirds of my gross income for 1996 or 1997 is from farming. Two-thirds of my gross income for 1996 was from farming, but I did not meet the test for 1997. Does the federal rule apply for purposes of the New York credit?**

No. New York law specifically provides that two-thirds of your gross income must be from farming for the year for which you are claiming the credit.

**Note:** For tax years 1998 and after, you may still qualify for this credit even though you are not considered a farmer for estimated tax purposes.

14. **If a married couple files a joint federal income tax return, do they use their separate or joint income in determining the gross income from farming and federal gross income?**

If you are married and file a joint return, your joint incomes must be used to determine if you are an eligible farmer.

15. **What if a married couple files separate returns?**

If you file separate returns, only your separate income is used to determine if you are an eligible farmer.

**Caution:** Although filing separate New York returns may enable you to meet the eligible farmer requirements, a married couple may generally file separate New York returns only if they file separate federal returns. Since many federal and New York tax benefits are eliminated or reduced when separate returns are filed, you may want to figure your federal and state taxes both ways to determine the best way to file. In addition, if you file separate returns and your farm property is owned jointly, your credit may be limited. See Part V.

## Part III – Qualified Agricultural Property

### 1. What is qualified agricultural property?

Qualified agricultural property includes land and land improvements located in New York State that are used in agricultural production. It also includes structures and buildings (except for buildings used by the taxpayer for residential purposes) that are located on the land and used or occupied to carry out agricultural production.

Agricultural production means those activities discussed in Part II, Question 2.

Land used in agricultural production includes land under buildings which are qualified agricultural property, and land in support of a farm operation, such as farm ponds, drainage swamps, wetlands and access roads.

### 2. What structures are considered qualified agricultural property?

A structure or building qualifies if it is used either (1) in the raising and production for sale of agricultural commodities, or (2) for the storage of agricultural commodities for sale at a future time, or (3) for the storage of supplies or for the storage or servicing of equipment necessary for agricultural production.

A structure or building is not qualified agricultural property if it is used for (1) the processing of agricultural commodities, or (2) the retail merchandising of agricultural commodities, or (3) the storage of commodities for the personal consumption of the farmer or the farmer's family, or (4) the residence of the farmer or the farmer's immediate family.

For this purpose, *agricultural commodities* includes those items discussed in Part II, Question 2.

**Note:** If only a portion of a building or structure is used for qualified purposes, see Question 4.

### 3. What is considered processing for purposes of question 2?

Processing means doing something to a farm commodity beyond what is needed to make it initially marketable. For example, milk is initially marketable in raw form.

Accordingly, buildings used to produce and store the raw milk qualify for the credit. However, if a farmer also pasteurizes the milk and bottles it for sale, that operation is considered processing and the buildings or portions of buildings used for that operation do not qualify. The mere sorting, washing and packaging of fruits and vegetables is not considered processing.

When the processing carried on in an otherwise qualified building is only incidental to the main use of the building, or the building is used for processing only on a limited basis, the building is treated as qualified property.

### 4. What if only a portion of a building or structure is used for qualified agricultural production?

If only a portion of a building or structure is used for qualified agricultural production, then only that portion of the structure is qualified agricultural property. Only the school taxes paid on that portion qualify for the credit (see Part IV).

### 5. When would a building or structure not qualify because it is being used for retail sales of farm commodities?

Any building or structure or portion thereof that is used for the retail sale of an agricultural or horticultural product cannot qualify. For example, a roadside stand or store in which agricultural products are sold to the public would not qualify.



6. **We operate a plant nursery. We raise all our own flowers and plants in greenhouses. Each spring and summer, we open the greenhouses to the public so they can pick out their purchases themselves. Is this considered using the greenhouses for retail sale?**

No. This activity would be considered incidental to the main function of raising horticultural products in the greenhouses. Accordingly, the greenhouses would be qualified agricultural property.

7. **Residential property is not qualified agricultural property. What is residential property in the case of an individual farmer?**

Residential property includes a house, mobile home, etc., and any other buildings associated with it, such as a garage or shed, that are used by the farmer or his or her individual family for residential purposes.

8. **What is residential property in the case of a corporate farmer?**

Property described in Question 7 that is held by a corporation is considered used for residential purposes if it is used as a residence by any of the executive officers of the corporation.

9. **Does housing provided to regular or essential farm employees meet the definition of qualified agricultural property?**

Yes. Regular employees are those who are usually and customarily hired for raising and producing a farm product. Essential employees are those without whose help a necessary aspect of farm production could not take place (such as workers hired to plant or harvest a crop). Employees are regular or essential as long as their duties are primarily connected with farming operations rather than processing, retail sale or other non-farm operations. Housing for the farm owner and the immediate family of

the farm owner does not qualify. However, separate housing for children or other relatives of the farmer will qualify if these persons are regular or essential employees of the farm operation **and** if they don't have an ownership interest in the farming operation.

10. **Part of my farmland has been set aside or retired under a federal supply management or soil conservation program. Is that property qualified agricultural property?**

Yes.

11. **I own several pieces of agricultural property that are not connected or adjacent to each other. Are all these parcels qualified agricultural property?**

All parcels that are located in New York State and used in agricultural production are considered as one farm even if they are not connected or adjacent to each other. However, only the parcels that are actually used in producing agricultural products qualify. Parcels that are held for investment or other non-farm purposes do not qualify.

12. **A group of eligible farmers form a partnership to construct and operate a storage facility for the partners' produce. The structure is located on property owned by the partnership. However, the partnership itself does not raise any produce. Is this property qualified agricultural property?**

No. The law provides that qualified agricultural property means land used in agricultural production and structures located **on that land** that are used to carry out that production. In this case, the land on which the building is located is not being used for agricultural production by the partnership. Accordingly, the school taxes paid on the land and storage facility structure would not qualify for the credit.

13. **Part of my farm property consists of woodland. Does all or a part of that woodland constitute qualified agricultural property?**

If the woodland property is actually used in agricultural production or for the production of woodland products that are used in the farm operation, the property would qualify. For example, woodland used for pasturing cattle would qualify. Furthermore, the woodland property would qualify if it is an adjunct to agricultural property, such as in providing erosion control or wind protection to the agricultural property.

14. **I own farm property that I rent to another person. The other person actually uses the property for agricultural production. Is this property qualified agricultural property for me?**

Yes. Accordingly, if you are an eligible farmer, you may claim a credit for the taxes paid on the property. However, the person that rents the property from you may not claim the credit because he or she does not own the property.

## Part IV: Eligible Taxes

1. **What type of property taxes qualify for this credit?**

Only real property taxes levied by a school district on qualified agricultural property (see Part III) **owned** by the taxpayer qualify for the credit. Property taxes levied by towns, villages, cities or other municipal governments do not qualify for the credit.

2. **What are real property taxes levied by a school district?**

Real property taxes levied by a school district include all property taxes, special ad valorem levies and special assessments levied by a school district. Included are taxes levied by a school district for the support of local libraries. Penalties and interest are not included.

3. **I am an eligible farmer but I rent qualified agricultural property from another person. My rental agreement provides that I must pay the school district property taxes on that property. Can I claim the credit for those taxes?**

No. Only school district property taxes paid on qualified agricultural property **owned** by an eligible farmer qualify for the credit. This is true even if the rental payment is based upon the amount of taxes paid on the land, or the rental agreement requires the lessee to actually pay the taxes. However, the person from whom you rent the land may claim the credit for these taxes if that person is an eligible farmer. (See Part III, Question 14).

4. **In 1996, I did not pay my school taxes on my qualified agricultural property. However, in 1997 I paid both the back taxes for 1996 and the current taxes for 1997 on that property. Are both the 1996 and 1997 taxes eligible for the credit?**

Yes. The law only requires that the taxes be paid in tax years 1997 or thereafter to qualify for the credit.

5. **I own agricultural property jointly with my spouse. What amount of taxes paid on the property may I include in computing my credit?**

If you file a joint return with your spouse, you may include the total taxes paid on the jointly held qualified agricultural property in computing the credit. However, the joint incomes of you and your spouse will be used to determine if you are an eligible farmer (see Part II) or whether you are subject to the credit limitation based on income (See Part VI).

If you and your spouse jointly own qualified agricultural property but file separate New York returns, you may include only one-half of the taxes paid on qualified agricultural property in computing your credit, unless you **both** agree to an unequal division. If you both agree, you may divide the taxes any way you wish. You must also divide the acres of qualified agricultural property in the same manner as you divide the eligible taxes. In addition, the related party rules (see Part V) may limit the credit if separate returns are filed.

6. **What if I purchase a farm during the year or purchase additional farmland during the year. How do I determine the amount of taxes paid during the year?**

The documents that were prepared when you closed on the property usually indicate the amount of school taxes paid by the seller that are prorated to the purchaser. This will occur when you purchase property after the date when the school tax bills are issued. You may include your prorated amount of school taxes in determining your credit for the year of purchase. You may also include any school taxes which you paid directly to the school district during the year.

7. **I started my farm operation during the year. May I claim all the school taxes paid during that year for purposes of the credit, or is some proration required?**

You may claim all the taxes you actually paid during the year in computing the credit. No proration is required even if you operated your farm for only part of the year.

8. **My school tax bill only shows the total taxes paid on all my real property, including my personal residence and other nonqualified property. How can I determine the amount of the total taxes applicable to my personal residence or other nonqualified property?**

Your local assessor should be able to tell you the value of your residence and other nonqualified property because this information is often required for agricultural assessment purposes. If this information is not currently available, your local assessor may be willing to make the determination for you. In general, an assessor's determination of the value of the residence and other nonqualified property will be accepted by the Tax Department.

9. **What if my local assessor cannot supply this information, or what if I do not agree with the value assigned by the assessor. Do I have any other options?**

Yes. You may hire a private appraiser to determine the values to be assigned to your residence or other non-qualified property. In addition, you may use any other reasonable method, such as basing the value on the recent sale price of similar property in your residence area, to determine the value. However, in these cases, you must be able to substantiate how you determined the value.

10. **What is considered the residence for purposes of determining its value?**

Your residence includes the house, mobile home, etc., and any other buildings associated with it, such as garages and storage sheds, that are used for residential purposes. Your residence also includes any land abutting it that is used for residential purposes, such as lawns and gardens.

11. **Only a portion of one of my buildings is qualified agricultural property. Using the methods described in Questions 8 and 9 above, I can only determine the value of the entire building. How do I determine the value of the portion of the building that is qualified agricultural property?**

You may allocate the total value of the building between the qualified and nonqualified portions using any reasonable method. Reasonable methods would include, but are not limited to, methods based upon the percentage of square footage or time used for each purpose.

12. **Our farm is located in two different school districts. Can we claim the credit for the taxes paid to both districts on our qualified agricultural property?**

Yes. The credit does not depend on which school district you pay your taxes to.

13. **If I am a partner in a partnership, a shareholder of a New York S corporation, or the beneficiary of an estate or trust that owns qualified agricultural property, may I claim a credit for my share of the eligible taxes paid by the entity?**

Yes. However, you may claim the credit only if you are an eligible farmer (see Part II).

## Part V: Base Acreage and Related Party Rules

### 1. What is the base acreage?

The base acreage is used to determine the amount of the credit. The credit equals the total eligible taxes paid on qualified agricultural property where the acreage does not exceed the base acreage amount, and 50% of the eligible taxes paid on acres in excess of the base acreage amount. However, this credit amount is subject to the credit limitation based on income (see Part VI).

### 2. What are the base acreage amounts?

The base acreage amounts are 100 acres for tax years beginning in 1997, 175 acres for tax years beginning in 1998, and 250 acres for tax years beginning in 1999 and thereafter.

### 3. Can the base acreage amount be applied to any property I choose, such as the property that contains the farm buildings?

No. The base acreage must be applied proportionately to all acres of qualified agricultural property owned by the farmer. For example, if a farmer owns 500 acres of qualified agricultural property in 1997, when the base acreage is 100 acres, the farmer would get a full credit for one-fifth of the school taxes paid on the property (including the school taxes paid on farm buildings located on the land). Note: The farmer would also get a credit for 1997 for 50% of the remaining four-fifths of the taxes paid on the property.

### 4. What are the related party rules?

The base acreage of an eligible farmer may be limited if the farmer and a related person each own qualified agricultural property on March 1 of the taxable year. In this case, a single base acreage limitation applies to all

Of the related persons, and can be divided among them in whatever manner they elect.

A different division can be elected each year. If the farmer and the related person(s) fail to elect a division of the base acreage, it will be divided equally among them.

**Example:** For 1997, when the base acreage is 100, the farmer and a related person elect to allocate the base acreage 60% to the farmer and 40% to the related person. The farmer is allotted 60 acres of the base acreage, and the related person is allotted 40. If they do not elect, 50 acres is allotted to each. For 1998, when the base acreage is 175, they elect to allocate the base acreage 80% to the farmer and 20% to the related person, in which case the farmer is allotted 140 acres and related person is allotted 35 acres. If they do not elect, 87½ acres is allotted to each.

### 5. Who is a related person to an individual farmer?

If you are an individual farmer, your related persons include:

- your spouse (if you and your spouse are filing a joint return, it is not necessary to allocate the single base acreage limitation amount (e.g., 100 acres in 1997) between yourselves);
- any "C" corporation (a corporation that is not a New York S corporation) that is subject to the Article 9-A franchise tax and of which you and your spouse, if you are married, collectively own more than 50% of the stock; and
- any estate or trust in which you, and your spouse, if you are married, collectively own more than 50% of the beneficial interest.

To determine whether you own more than 50% of the stock of a corporation, stock owned by a corporation, partnership or estate or trust in which you have an ownership interest is deemed to be owned by you in proportion to your interest.

**Example 1:** You and your spouse are filing separate New York State returns for the year. You and your spouse, either individually or jointly, each owned qualified agricultural property on March 1 of the tax year. You and your spouse are related persons and must allocate the base acreage amount between yourselves.

**Example 2:** You owned qualified agricultural property on March 1, 1997. Your spouse also owns 75% of the stock in a "C" corporation that also owned qualified agricultural property on March 1, 1997. You and the corporation are related persons.

6. **Who is a related person if the farmer is a corporation?**

If the farmer is a corporation, a related person to the corporation includes:

- another corporation subject to the corporation franchise tax (Article 9-A) where both corporations are members of the same controlled group as defined in section 267(f) of the Internal Revenue Code;
- an individual, estate or trust that owns more than 50% of the corporation's stock;
- another corporation subject to tax under the Article 9-A franchise tax if the same person owns more than 50% of the value of the outstanding stock of each corporation; and
- an estate or trust of which the corporation owns, directly or indirectly, more than 50% of the capital, profits or beneficial interest.

**Example:** Corporation A and Corporation B each own qualified agricultural property on March 1, 1997. The same individual owns 100% of the stock of both corporations. Corporations A and B are related persons.

7. **I am an eligible farmer and own qualified agricultural property individually. I also belong to a farming partnership that owns qualified agricultural property. Do I get 200 base acres in 1997, 100 for my own property and 100 for the partnership property?**

No. Each eligible farmer is entitled to only one base acreage amount of 100 acres. Your own acreage and your share of the partnerships acreage are added together to determine the acreage in excess of the 100 acres.

8. **Do partners in a partnership, shareholders of New York S corporations or estates and trusts and their beneficiaries have to divide the allowable base acreage amount (e.g., 100 acres for 1997) among themselves?**

No. Each individual taxpayer is entitled to his own base acreage amount. For example, if a partnership has three partners, each partner is entitled to a base acreage amount of 100 acres for 1997.

However, the base acreage amount of 100 acres may be limited if any of the partners, shareholders or beneficiaries are subject to the related party rules (see Question 4). For example, a husband and wife are shareholders of a New York S corporation that owns qualified agricultural property. Since a husband and wife are related parties, they are entitled to a single base acreage amount of 100 acres in 1997.

## Part VI: Credit Limitation Based on Income

### 1. What is the credit limitation based upon income?

The income limitation reduces or eliminates the credit for higher income taxpayers. The limitation is based on New York adjusted gross income (individuals) or entire net income (corporations) for tax years beginning in 1997. The limitation is based on modified adjusted gross income (individuals) and modified entire net income (corporations) for tax years beginning in 1998 and after.

### 2. How does the credit limitation apply for tax year 1997?

For individuals, the amount of credit allowable, after applying the base acreage limitation, is further limited if the farmer's New York adjusted gross income is between \$100,000 and \$150,000. If the farmer's New York adjusted gross income is \$150,000 or more, no credit is allowable. Married taxpayers filing a joint return use their joint New York adjusted gross income to determine the limitation. Married taxpayers filing separate returns use their separate New York adjusted gross incomes.

For a corporation, the limitation is the same as for individuals, except that the limitation is based upon the corporation's entire net income (before any allocation to out-of-state operations).

### 3. How does the credit limitation work for tax year 1997 when my adjusted gross income or entire net income is between \$100,000 and \$150,000?

If your New York adjusted gross income (individuals) or entire net income (for corporations) is between \$100,000 and \$150,000, your credit must be reduced by a percentage. The percentage is determined by a fraction, whose numerator is the

amount (limited to \$50,000) by which the adjusted gross income or entire net income exceeds \$100,000, and whose denominator is \$50,000.

**Example:** An eligible farmer, after application of the base acreage limitation, is entitled to a potential credit of \$10,000. The farmer has New York adjusted gross income of \$130,000. The numerator of the fraction is \$30,000 and the denominator is \$50,000, resulting in a percentage of 60%. Accordingly, the potential credit of \$10,000 must be reduced by \$6,000 ( $\$10,000 \times 60\%$ ), resulting in an allowable credit of \$4,000.

### 4. How does the credit limitation apply for tax years 1998 and after?

The credit limitation works the same way as described in Questions 2 and 3, except that modified New York adjusted gross income or modified entire net income is used in place of New York adjusted gross income or entire net income, respectively.

### 5. What is modified New York adjusted gross income and modified entire net income?

For individuals, *modified New York adjusted gross income* means New York adjusted gross income for the tax year reduced by the amount of principal paid on farm indebtedness during the year.

For corporations, *modified entire net income* means entire net income for the tax year (before any allocation to out-of-state operations), reduced by the amount of principal paid on farm indebtedness during the tax year.

*Farm indebtedness* means debt incurred or refinanced which is secured by farm property, where the proceeds of the debt are used for expenditures incurred in the business of farming.



**Example:** The farmer in the Question 3 example made principal payments on farm indebtedness of \$10,000 during 1998. Accordingly, the farmer's modified New York adjusted gross income is \$120,000. For 1998, the numerator of the fraction is therefore \$20,000, resulting in a percentage of 40% ( $\$20,000/\$50,000$ ). The potential credit of \$10,000 must be reduced by 40% ( $\$4,000$ ), resulting in credit of \$6,000.

6. **I am married filing a joint New York income tax return. Must I include my spouse's income in determining the income limitation?**

Yes. If you file a joint return, both spouses' incomes must be included in determining the limitation.

7. **What if my spouse and I elect to file separate returns?**

If you file separate New York returns, only the farmer's separate income will be used to determine the income limitation. In general, filing separate returns will only be beneficial for purposes of the credit limitation if your joint New York adjusted gross income (1997) or joint modified adjusted gross income (1998 and after) exceeds \$100,000.

**Caution:** In most instances, a married couple may file separate New York returns only if they file separate federal returns. Since many federal and state tax benefits are eliminated or reduced when separate returns are filed, you may want to figure your federal and state taxes both ways to determine the best way to file.

8. **I am a nonresident who owns qualified agricultural property in New York. How do I determine my New York adjusted gross income or modified New York adjusted gross income for purposes of the limitation?**

Your New York adjusted gross income or modified New York adjusted gross income

is determined as if you (and your spouse, if filing a joint return) were a New York State resident for the entire tax year. That is, your income from **all** sources will be used to determine if you are subject to the limitation.

9. **If the farming business is a partnership or S corporation, is the income limitation determined using the income of the partnership or corporation?**

No. Each partner or shareholder will determine their limitation based upon the income reported on their own returns. Of course, the partner's or shareholder's share of income from the partnership or corporation will be included in the computation.

## Part VII: Credit Recapture

### 1. Do I have to recapture all or part of the credit if my qualified agricultural property is converted to nonqualified use?

If qualified agricultural property is converted to nonqualified use, the following rules apply:

- No credit is allowed for the year in which the property is converted. This is true even though the property may have been qualified property for part of the year. No proration of the credit is permitted.
- If the conversion takes place before the end of the second tax year following the year in which you **first** claimed a credit, the entire credit claimed on the converted property in the two previous years must be added back in the year of the conversion.

If the property is converted after the end of the second tax year following the year in which the credit is first claimed, there is no recapture and no addback is made.

**Example 1:** A farmer first claims the credit for tax year 1997. On August 1, 1999, all the farmer's qualified property is converted to nonqualified use. In this instance, no credit will be allowed for 1999, and the entire amount of the credits claimed for 1997 and 1998 must be added back in 1999.

**Example 2:** A farmer first claims the credit for tax year 1997. On June 1, 2000, the entire property is converted to nonqualified use. In this instance, no credit is allowed for the year 2000. However, since the conversion takes place after the end of the second year (1999) following the year in which the credit was first claimed (1997), the farmer is not required to add back the credit claimed in previous years.

### 2. What constitutes a conversion to nonqualified use?

Conversion means an outward or affirmative act changing the use of agricultural land. The idling, nonuse or sale of the land is not by itself a conversion.

**Example 1:** A farmer sells 100 acres of land to a developer. The developer actually builds a housing development on the land, and as a result the land is no longer used for agricultural production. This would be considered a conversion to nonqualified use.

**Example 2:** A farmer discontinues farming, but continues to hold the land for investment purposes. Neither the farmer nor anyone else uses the land for agricultural production. This would not constitute a conversion to nonqualified use. Note: Even though this is not a conversion, the farmer cannot claim a credit in years after the year farming operations discontinue because the land is no longer used for agricultural production. However, if the individual qualifies as an eligible farmer in the last year of operation, the individual may claim the credit for that last year.

**Example 3:** You sell your qualified agricultural property to another person. That person continues to use the property for agricultural production. No recapture is required as long as the property continues to be used for agricultural production, and you may also claim the credit for your share of the taxes paid in the year of sale, if you continue to qualify as an eligible farmer for that year. However, if the property is converted before the end of the second year after **you** first claimed the credit, recapture would be required. In addition, the person who purchased the property will also have to recapture the credit he claimed on the property if the conversion takes place before the end of the second year after he claimed the credit.

3. **What if I convert only a part of my qualified agricultural property?**

If you convert only a part of your qualified agricultural property, the following rules apply:

- In the year of conversion, no credit will be allowed for the portion of the property converted.
- If the conversion takes place before the end of the second year following the year in which you first claimed the credit, the credit allowed on the converted property for the previous tax years must be added back in the year of conversion.

4. **How do I determine the amount of credit allowed in prior years on the part of the property that is converted?**

The amount of credit that must be recaptured is that portion of the credit that bears the same ratio to the total credit as the amount of land converted bears to the total amount of qualified land before the conversion.

**Example:** You own 500 acres of qualified agricultural property and convert 100 acres of that property during the recapture period. You must recapture (add back) one-fifth (100/500) of the credit claimed for the previous years.

5. **How do I determine the taxes paid on my remaining qualified property when only a portion of the land is converted?**

If you continue to own the property after the conversion to nonqualified use, and the taxes on the converted property are included as part of your total tax bill (i.e., the converted property is not on a separate deed), you may allocate the total taxes to the converted land on the basis of the amount of acreage converted to total acreage covered by the tax bill.

If the converted land is sold, the closing documents will show the amount of school taxes reimbursed to you by the buyer. You

must reduce your current year's tax paid by the amount of these reimbursed taxes in determining the credit.

6. **Are there any exceptions to the recapture rule even though a conversion may have taken place?**

Yes. Recapture is **not** required if the property is converted to nonqualified use by reason of an "involuntary conversion." An involuntary conversion is a conversion because of casualty or natural disaster, theft, or by condemnation (or by agreement under a threat of condemnation), such as when a governmental agency takes your land under the eminent domain rules.

**Example:** The state takes by eminent domain 20 acres of your farmland to be used for a new highway. The condemnation is an involuntary conversion and no recapture is required. However, you may not claim the credit for that land in the year of the conversion.

7. **I qualified for the credit in 1997. In 1998, I still farm the same land, but I do not qualify for the credit because I do not meet the gross income test or because my income exceeds the credit limitation amount. Am I required to recapture any part of the credit claimed in 1997?**

No. This is not considered a conversion, and no credit recapture is required.

8. **I am a partner in a partnership (or a shareholder of a New York S corporation) that owns qualified agricultural property. In the previous year, I claimed my share of the credit attributable to the partnership (or corporation). In the current year, I sell my interest in the partnership or my stock in the corporation. Is this sale considered a conversion requiring recapture?**

No. The sale by itself is not a conversion provided the partnership or corporation continues to use the land for agricultural production.

## **Part VIII: Disallowance of Deduction for School Taxes**

- 1. I deduct my school taxes on agricultural property as an expense of doing business for federal income tax purposes. Do I have to make an adjustment for state income tax purposes since I am receiving a credit for all or part of those taxes?**

Yes. You must include the amount of the credit in your New York adjusted gross income or entire net income in the tax year following the year for which the credit is allowed. For example, for tax year 1997 you claim a farmers' school tax credit of \$5,000. You must include the \$5,000 in your New York adjusted gross income or entire net income for tax year 1998.

## **Part IX: Estates and Trusts and Their Beneficiaries**

- 1. Can an estate or trust that is engaged in the business of farming claim the credit on its fiduciary income tax return?**

Yes, provided the estate or trust is an eligible farmer. However, if an estate or trust distributes all or part of its income currently, its acres of qualified agricultural property and eligible taxes must be allocated entirely or in part to its beneficiaries.

- 2. How does the estate or trust allocate its acres of qualified agricultural property and eligible taxes among itself and the beneficiaries?**

If the estate or trust does not distribute any of its income currently (i.e., the trust is an accumulating trust), then the entire amount of acres of qualified agricultural property and eligible taxes is allocated to the estate or trust and is used to compute the estate's or trust's credit.

If the estate or trust distributes all or part of its income currently, the acres of qualified agricultural property and eligible taxes must

be allocated between the estate or trust and its beneficiaries. These amounts are allocated on the same basis as the income of the estate or trust is allocated.

**Example:** A trust distributes 75% of its income to the beneficiaries and retains the other 25%. The trust would allocate 75% of its acres of qualified agricultural property and eligible taxes to the beneficiaries and 25% to itself. If the trust qualifies as an eligible farmer, it computes its credit based on its 25% share of acres and taxes. In addition, if the beneficiaries individually qualify as eligible farmers, they will compute their credit based on their 75% share of the acres and taxes. (For the base acreage amounts applicable to estates and trusts and their beneficiaries, see Part V, Question 8).

**Note:** Any beneficiary who qualifies as an eligible farmer may claim the credit based upon his or her share of acres and taxes, even if the estate or trust or some of the other beneficiaries do not qualify to claim the credit on their share. Likewise, the estate or trust, if it qualifies as an eligible farmer, may claim the credit on its share of acres and taxes even if the beneficiaries do not qualify to claim the credit on their shares.

- 3. How does an estate or trust determine if it is an eligible farmer?**

An estate or trust uses the same rules applicable to individual farmers. (See Part II.)

- 4. How does an estate or trust compute its New York adjusted gross income for purposes of the credit limitation based on income?**

The New York adjusted gross income of an estate or trust is its federal adjusted gross income increased or decreased by its net share of New York addition and subtraction modifications. For more information, see the Form IT-205-I, *Instructions for Form IT-205, Fiduciary Income Tax Return*.

## **Appendix A Federal Gross Income for Individuals**

Federal gross income from all sources for individuals is the sum of the following:

- 1) Wages, salaries, tips, etc.
- 2) Taxable interest.
- 3) Dividends.
- 4) Taxable refunds of state and local taxes.
- 5) Alimony received.
- 6) Gross business income from federal Schedule C.
- 7) Gross receipts from federal Schedule C-EZ.
- 8) Capital gains from federal Schedule D. Include only short and long-term gains. You cannot net losses against the gains. However, reduce your total gains reported on Schedule D by the amount of any gains from partnerships, S corporations, estates and trusts, and gain from Form 4797 that are reported on Schedule D.
- 9) Gains on sales of business property from federal Form 4797. You cannot offset losses against the gains.
- 10) Taxable IRA distributions, pensions, annuities and social security benefits.
- 11) Gross rental income from federal Schedule E. This is the total rents received before any deduction for expenses.
- 12) Gross royalty income from federal Schedule E.
- 13) Your taxable net income from an estate or trust from federal Schedule E.
- 14) Income from a REMIC reported on federal Schedule E.
- 15) Gross farm rental income from federal Form 4835.
- 16) Gross farm income from federal Schedule F.
- 17) Your distributive share of gross income from a partnership or limited liability company treated as a partnership for federal tax purposes.

- 18) Your pro-rata share of gross income from an S corporation
- 19) Unemployment compensation
- 20) "Other income" reported on federal Form 1040, not reported with any of the items listed above.

## **Appendix B Federal Gross Income From Farming for Individuals**

- 1) Gross farm income from federal Schedule F.
- 2) Gross farm rents from federal Form 4835.
- 3) Your distributive share of a partnership's gross income from farming. A partnership includes a limited liability company that is treated as a partnership for federal income tax purposes.
- 4) Your share of distributable net income from farming of an estate or trust.
- 5) Your pro-rata share of an S corporation's gross income from farming.
- 6) Gains (not losses) from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797. (Note: Gains from the sale of farm equipment or farm real estate are not includable in gross income from farming even though those gains may be reportable on Form 4797.)

For tax years beginning in 1998 and after, gross income from farming also includes:

- 7) Gross income from the production of maple syrup and cider, to the extent that income is not included in items 1-6 above.
- 8) Gross income from the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

## **Appendix C**

### **Federal Gross Income for Corporations**

Federal gross income from all sources for a corporation is the sum of the following:

- 1) Gross profit from federal Form 1120 or 1120-A.
  - 2) Dividends, interest, gross rents and gross royalties from federal Form 1120 or 1120-A.
  - 3) Long and short term capital gains from Schedule D (Form 1120). Include only gains from Schedule D. Losses cannot be netted against gains. Do not include any gain included in Schedule D that was carried forward from federal Form 4797.
  - 4) Other income (not loss) includable on federal Form 1120 or 1120-A (do not include the corporation's share of income from a partnership).
  - 5) The corporation's share of the gross income from a partnership or limited liability company treated as a partnership.
  - 6) Gains from federal Form 4797. You cannot offset losses against gains.
- 2) Gross rents from the rental of qualified agricultural property (including land and buildings), provided the terms of the rental satisfy the conditions described in Part II, Question 5.
  - 3) The corporation's share of partnership gross income from farming. A partnership includes a limited liability company treated as a partnership for federal tax purposes.
  - 4) Gains (not losses) from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797. (Note: Gains from the sale of farm equipment or farm real estate is not gross income from farming, even though gains may be reportable on Form 4797.)

For tax years beginning in 1998 and after, gross income from farming also includes:

- 5) Gross income from the production of maple syrup and cider, to the extent that income is not included in Items 1-4.
- 6) Gross income from the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

## **Appendix D**

### **Federal Gross Income *From Farming* for Corporations**

- 1) Gross receipts, less cost of goods sold, attributable to farming activities.

**Note:** A corporation that has both farm and non-farm income may find it helpful to complete a pro-forma federal Schedule F to determine its gross receipts, less cost of goods sold, from farming.

## Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



### Telephone assistance

<b>Personal Income Tax</b> Information Center:	(518) 457-5181
<b>Corporation Tax</b> Information Center:	(518) 485-6027
<b>Sales Tax</b> Information Center:	(518) 485-2889
<b>Withholding Tax</b> Information Center:	(518) 485-6654
<b>Miscellaneous Tax</b> Information Center:	(518) 457-5735
To order forms and publications:	(518) 457-5431



**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

**Appendix J**  
Federal Tax Credits for Historic Barn Restoration



# Introduction to Federal Tax Credits for Rehabilitating Historic Buildings

## Barns



National Park Service  
U.S. Department of the Interior  
Technical Preservation Services



- *Do you own a historic barn?*
- *Does it need to be fixed up?*
- *Will it be used for either agricultural purposes or some other business?*

If you answered **YES** to all three questions, then you should be aware of a program that offers significant federal tax incentives for rehabilitating historic buildings.

### The Program

Administered by the National Park Service in conjunction with State Historic Preservation Offices (SHPO), the **Federal Historic Preservation Tax Incentives program** offers a 20% federal tax credit for qualified rehabilitation expenses. Property owners across the country have already used these tax incentives to rehabilitate a wide range of historic barns.

#### *Why does the program exist?*

Recognizing the importance of preserving our built heritage and the need to encourage the rehabilitation of deteriorated properties, in 1976 Congress created federal tax incentives to promote historic preservation and community revitalization. These tax incentives have successfully spurred the rehabilitation of historic structures of every period, size, style, and type.



### Tax Credit Basics

- The amount of credit under this program equals 20% of the qualifying costs of your rehabilitation.
- A project must be “substantial” meaning your qualifying rehabilitation expenses must exceed the greater of \$5,000 or the adjusted basis of the building.
- Your building needs to be certified as a historic structure by the National Park Service.
- Rehabilitation work has to meet the Secretary of the Interior’s *Standards for Rehabilitation* as determined by the National Park Service.

The process is straightforward, and the tax savings can be significant. For example, a property owner planning a project estimated to cost \$60,000 could realize a tax credit of \$12,000 on their federal income taxes. Even a simple project such as a new roof that would cost as little as \$5,000 is potentially eligible for the tax credits.

You are encouraged to consult an accountant or tax advisor to make sure that this federal tax credit is financially beneficial in your case.

For additional information visit the Historic Preservation Tax Incentives website at [www.nps.gov/history/hps/tps/tax/](http://www.nps.gov/history/hps/tps/tax/) and click on “IRS Connection.”

A common building type, bank barn construction allows ground entry from two levels. *Photo: Brenda Spencer, Kansas Historical Society.*

# Three Steps

## to Determine if a Project is Eligible for Tax Credits

### First: Is your barn listed in the National Register?

The National Register of Historic Places is the official list of historic places worthy of preservation. Properties may be listed as part of a historic district or individually in the National Register. Many communities have created rural historic districts to list historic farms and ranches that have old barns. Historic buildings in this type of district may be found in farmstead clusters, as opposed to a historic district in a city that has contiguous boundaries. Historic barns can also be found in more populated areas, such as small barns on residential properties in a town setting. The easiest way to determine if your property is listed is to contact your local planning office or State Historic Preservation Office (SHPO).

If your property is located in a National Register district, it still must be designated by the National Park Service as a property that contributes to the historic character of the district, thus qualifying it as a “certified historic structure.” Not every barn in a district is contributing. For example, when historic districts are designated, they are usually associated with a particular time period, such as “1880 to 1935.” In this case, a 1950 barn would not contribute and would not be eligible for a 20% rehabilitation tax credit. On the other hand, a barn dating to 1932 could be eligible for the tax credit.



The sliding door is an important feature of this simple farm building. Photo: Thomas Vitanza, NPS.

You can request the National Park Service to designate your property a “certified historic structure” by completing and submitting Part 1 of the Historic Preservation Certification Application described on the next page.

For farms and ranches, a single Part 1 application is used to describe all buildings on the property, including non-income producing buildings such as a private residence, even if the only work planned is to the historic barn. This is necessary, in all cases except when the barn is individually listed in the National Register. The National Park Service will then identify which buildings, including the barn, contribute to the historic property.

### Second: Will your rehabilitation be “substantial”?

The cost of the project must exceed the greater of \$5,000 or the barn’s adjusted basis used for tax purposes. The following formula may help you determine if your project will be substantial:

$$A - B - C - D + E = \text{adjusted basis}$$

*A = purchase price of the property (building and land)*

*B = the cost of the land at the time of purchase*

*C = the cost attributed to buildings other than the barn*

*D = depreciation taken on barn for tax purposes*

*E = cost of capital improvements made to the barn since its purchase*

For example, a number of years ago, Mr. MacDonald purchased a small farm with a main house, dairy barn, ice house, and implement shed. He paid \$150,000. Of that purchase price, \$70,000 was attributed to the cost of the land and \$60,000 was attributed to the cost of buildings other than the barn. Over the years, Mr. MacDonald has depreciated the barn for tax purposes by a total of \$10,000. Recently, he replaced the wiring in the barn at a cost of \$2,500. Therefore, Mr. MacDonald’s adjusted basis is \$12,500 ( $150,000 - 70,000 - 60,000 - 10,000 + 2,500$ ). Since he intends to spend \$20,000 to replace the roof on the barn, fix the foundation, and repaint, the rehabilitation will qualify as a substantial project. If he completes the application process and receives approval, Mr. MacDonald will be eligible for a 20% credit on the cost of his rehabilitation, or a \$4,000 credit. In some cases, such as long-standing ownership, alternate means of establishing the basis for tax purposes of the barn may be necessary.

If you have owned the barn for a long time, its adjusted basis could be so low that only \$5,000 has to be spent to qualify for the tax credit. A project as simple as a new roof for a barn might meet this requirement. While a new coat of paint may not qualify for the tax credit by itself, since it is considered maintenance rather than a capital improvement, painting may qualify as an eligible expense for purposes of the tax credits if included as part of other rehabilitation work. It usually is not necessary to undertake a large and expensive project to take advantage of the savings available through the tax credit when the basis is low.

Keep in mind that if you are rehabilitating two contributing buildings on your property, you must calculate the costs separately for each building regarding qualified rehabilitation expenses and their individual tax basis. Also, some expenses associated with a project may not qualify for the tax credit, such as an exterior addition to a barn. For additional information concerning eligible expenses, go to [www.nps.gov/history/hps/tps/tax/IRS.htm](http://www.nps.gov/history/hps/tps/tax/IRS.htm) and click on “Frequently Asked Questions.”

# The Application

The Historic Preservation Certification Application (NPS Form 10-168) consists of 3 parts. This form can be downloaded from the web at [www.nps.gov/history/hps/tps/tax/](http://www.nps.gov/history/hps/tps/tax/) or a copy can be obtained from your SHPO.

**Part 1** of the application is a request to obtain a determination by the National Park Service that your barn is a certified historic structure. You will need to describe the physical appearance of the exterior and interior of the barn, and provide a brief narrative on its history and significance to the historic district in which it is located. Some of this information is likely contained in the National Register Nomination of the district, which should be available from your local historic district commission, municipal planning office, or SHPO. If there are other buildings on your historic property, describe their appearance and significance to the district as well. Even if you are not planning on doing work on all the buildings, they must be briefly described in the Part 1. If your barn is listed individually in the National Register and is the only structure on your property, then you may omit Part 1.



This sample application was developed for the barn on the right pictured above. The image below, left, shows a deteriorated section of the limestone foundation.

HISTORIC PRESERVATION CERTIFICATION APPLICATION – PART 1		NPS Office Use Only
<b>SAMPLE</b>		
Property Name		Project Number:
206 Old Farm Road, City, State		
Property Address		
<b>Description of physical appearance:</b> This farm occupies 244 acres and includes a house, cattle barn, implement shed, grain silo, spring house, and a garage. The house is a two story, side hall frame house with a gable roof. The barn is two stories with a gambrel roof, and board and batten siding. It is rectangular in shape and has an attached calf shed. The roof has modern asphalt shingles. The board and batten siding has been replaced on the south side of the building with corrugated metal, which is weathered and rusted. The foundation is limestone and there is a concrete floor at the lowest level. Many of the window openings in the foundation have been filled in with glass block. There are door openings on the north, south, and east sides. There is an attached concrete stave silo with a metal roof on the west side of the barn.		
Date of Construction: <u>1909</u> Source of Date: <u>National Register Historic District nomination</u>		
Date(s) of Alteration(s): <u>1920, 1972, 1981</u>		
Has building been moved? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no If so, when? _____		
<b>Statement of significance:</b> The farmstead is part of the North County Agricultural Historic District. The district is comprised of agricultural sites, buildings, and structures built between 1880 and 1946. This barn is a relatively intact example of an early 20 <sup>th</sup> century cattle barn in this region.		



Complete these boxes making sure that all aspects of your project are fully described. Include planned methods of repair and details on proposed new construction. Even items that do not qualify for the credit such as new additions and landscaping must be included.

HISTORIC PRESERVATION CERTIFICATION APPLICATION – PART 2		NPS Office Use Only
<b>SAMPLE</b>		
Property Name		Project Number:
206 Old Farm Road, City, State		
Property Address		
<b>5. DETAILED DESCRIPTION OF REHABILITATION / PRESERVATION WORK</b> – Includes site work, new construction, alterations, etc. Complete blocks below.		
<b>Number 1</b>	Architectural feature <u>Barn siding</u> Approximate Date of feature <u>ca. 1920, 1972</u>	Describe work and impact on existing feature: The rusted and weathered corrugated metal siding on the south side will be replaced with board and batten wood siding to match the other facades. Any deteriorated portions of wood siding will be replaced to match the existing.
Describe existing feature and its condition: The north, east, and west facades have painted board and batten siding. Most of the siding is in good condition. The south side has modern corrugated metal siding which is deteriorated.		
Photo no. <u>1-7, 10</u> Drawing no _____		
<b>Number 2</b>	Architectural feature <u>Roof</u> Approximate Date of feature <u>1981</u>	Describe work and impact on existing feature: All shingles will be removed. New asphalt shingles will be installed that recall the appearance of wood shingles.
Describe existing feature and its condition: The roof has two layers of asphalt shingles over deteriorated wood shingles. There are several portions which are damaged and need replacement.		
Photo no. <u>1-7, 12</u> Drawing no _____		
<b>Number 3</b>	Architectural feature <u>Limestone foundation</u> Approximate Date of feature <u>1909</u>	Describe work and impact on existing feature: The foundation will be repointed where damaged. Mortar will match the existing in color and composition. The joint profile will match the existing as well. Where the limestone is damaged, matching pieces will be used to replace deteriorated sections. New stone will match the existing in color and shape. All work will be done in accordance with NPS Preservation Brief 2.
Describe existing feature and its condition: The limestone foundation is in relatively good condition. Several places have deteriorated mortar joints and damaged stone. There is a large crack at the SE corner.		
Photo no. <u>1, 8-9, 11</u> Drawing no _____		
<b>Number 4</b>	Architectural feature <u>Main house, cattle barn, implement shed, grain silo, spring house, and a garage</u> Approximate Date of feature <u>varies</u>	Describe work and impact on existing feature: No work is planned for these features.



**Part 2** of the application is where you describe the condition of the barn prior to rehabilitation and the proposed work. Two forms of information are needed: a **description** for each major building feature (see sample, left, below) and ample **photographs** showing the condition and views of the property prior to beginning work (exterior and interior as well as the surrounding site). If no work is planned for a major feature or building (such as main house, roof, siding, etc.), include a statement to that effect in the application and also provide photographs.

**Parts 1 and 2** should be submitted during the early planning stages of the project. This provides the opportunity to make changes with minimal inconvenience or additional expense if some aspect of the work is determined not to meet the *Standards for Rehabilitation*.

**Part 3** is your Request for Certification of Completed Work. This is a presentation of the finished rehabilitation and once approved by the National Park Service, serves as documentation to the Internal Revenue Service that your project is a “certified rehabilitation.” Approval of the Part 3 application is a condition for obtaining tax credits.

### Third: How does your project become “certified”?

To qualify for the tax credits you need to complete a 3-part application. In Part 1 of the application, you present information to help the National Park Service determine if your property is a “certified historic structure” and which buildings on your property are contributing. In Part 2, you describe the condition of the barn and the planned rehabilitation work. The proposed work will be evaluated based upon the Secretary of the Interior’s *Standards for Rehabilitation*—a set of 10 rules of practice for historic preservation. Part 3 of the application is submitted after completion of the project and is used by the National Park Service to certify that the project as completed meets the *Standards* and is a “certified rehabilitation.”

The application needs to be completed in sequential order. Send two copies of each part to your SHPO. The SHPO will forward one copy with a recommendation to the National Park Service, which will issue the final decision for each part of the application. It is especially important to submit Part 2 before beginning work, because if your project proposal does not meet the *Standards*, you are provided an opportunity to modify the plans.

### Photo Documentation

Good quality photos (4 x 6 or larger) are needed. If using digital images, print in high-resolution on photo quality paper.

Label and number each photo and reference it in the application. If plans are provided, key the picture to a floor plan with an arrow indicating the direction in which it was taken.



**Photo 15, Pre-Rehab**  
206 Old Farm Road  
City, State

View of window on north elevation. Note deteriorated mortar in stone wall.

Example: Photo and label on reverse side.

### Describing Your Project

Material and information to provide in your application include:

- *historic district map and site plan*
- *photographs of all buildings on the property*
- *floor plans* (if major interior changes are planned)
- *elevation drawings* (if exterior changes are planned)

On a copy of the historic district map, mark where your property is located. It is also important to include a *site plan* that conveys the relationship between all buildings on your property such as the farm house, hay barn, cattle barn, and machine shed. Also indicate where historic access roads are located and other important site features such as a windmill or pond.

*Photographs* of the property and building prior to rehabilitation are essential. Think of the pictures as providing a “virtual tour” of your property. Include views of each side of the barn, interior spaces, and close-ups of features such as historic siding, windows, and doors. Show deteriorated conditions such as rotten floorboards or sagging roof beams. Number each photograph, and write the property’s address and a brief description of the image on the back. If possible, key the pictures to a *floor plan* (or a *site plan* for exterior photographs) with an arrow pointing in the direction it was taken. Indicate if the images are pre- or post-rehabilitation. Barns are traditionally simple buildings in design and interior plan, and *elevation drawings* and *floor plans* are required only if major changes are proposed.

Remember that the SHPO and National Park Service reviewers evaluating the application will probably be seeing your building for the first time through the material you provide. Your application should communicate: (a) the appearance of your property prior to beginning work; (b) the barn’s condition on both the interior and the exterior prior to work; and (c) your proposed rehabilitation work.

# Rehabilitating Historic Barns

Farms and ranches are characterized by their collection of buildings and structures serving an agricultural purpose. Besides a house and barn, they typically consist of other supporting structures such as a grain storage building or implement shed.

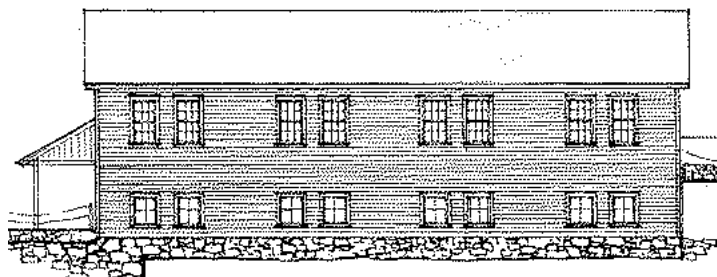
It is not uncommon for the function of a barn to evolve or change over time just as with ranches and farming activities in general. Continued farm or ranch use usually requires the least amount of change to the historic character of the property. However, it is possible to find new uses for agricultural buildings and properties. Rental housing, bed and breakfast inn, artist space, community center, repair shop, and exhibit space have all been adaptive reuses of historic farm and ranch properties. Sensitive alterations can be undertaken that provide for a new use while preserving the features that make up the barn's historic character.

The barn may be the largest building on your farm. Changes in technology and in farming and ranching practices often affect the use of a barn. When a barn is no longer needed for its original agricultural function, there are ways it can be rehabilitated and given a new use that preserves its historic character. It may be as simple as rehabilitating an existing barn for a new farming use, such as changing a tobacco barn into a stable for horses. Rehabilitating a dairy barn into machine storage space is another example. Sensitive modifications can prepare a historic barn for its new use.

Whether you are rehabilitating your barn for continued farming or ranching purposes or for a new non-agricultural use, the character-defining elements of the barn, including those that follow below, should be treated with care.

## Roof

The roof is integral to the survival of the barn and typically a very prominent feature. A poorly maintained roof can allow



**Inappropriate treatment:** The addition of a large number of regularly spaced windows (shown above) to this primarily blank barn facade (left) does not meet the Secretary of the Interior's Standards for Rehabilitation.



The siding on this barn was repaired with matching siding, a treatment that meets the Secretary of the Interior's Standards for Rehabilitation. *Photo: Vermont Division for Historic Preservation.*

water and wind to damage the structural support system and interior details. If it is necessary to replace the current roof, replace it with historically matching material or a material that is in keeping with the historic character of the building.

## Foundation

Foundation repairs are a typical work item in barn rehabilitation. For example, a wood sill may have rotted in sections or termites may have caused damage. In cases where the foundation is not readily visible, either traditional or modern repair techniques can be used. For exposed foundations such as a masonry wall, repairs should be made in a manner that does not alter the historic appearance. Where masonry repointing or repair is needed, appropriate mortar should be used and joints tooled to match adjacent historic masonry.

## Doors

Historic doors are another prominent feature and should be preserved or replaced to match when needed. If you need to enlarge a door opening to accommodate modern machinery, avoid using modern roll up or garage style doors as replacements. Use a design and material that is compatible with the historic appearance of the building. If you no longer need a historic door opening, simply fix the doors closed rather than remove them.

## Windows

Except for dairy and horse barns, most barns have very few windows. Existing windows should be repaired if possible and replaced with matching ones where needed; avoid enlarging them or otherwise altering their size or appearance. If you must add windows, include only the minimum number required, and ensure that the style, number, and location of new windows are in keeping with the historic character of the barn.

### Siding

While masonry construction is common in some regions, most historic barns were clad in either horizontal or vertical wooden boards. If portions of the wood siding are beyond repair, or missing altogether, they should be replaced in kind with boards that match the historic size and detailing. Vinyl or metal siding is not an appropriate replacement for wood siding on historic barns.

### Interior Structural System

The barn's structural system usually helps determine the interior appearance. One traditional use of barns has been to store farming machinery. Yet modern machinery often is much larger and may not fit. It may be possible to modify part of the internal structure to accommodate it. It is still important to retain the sense of open space and the nature of the existing structural system. Total replacement of the internal structure is not appropriate. In adapting a barn, the exposed structural members should be kept visible as much as possible.

### Additions

Most barns have a distinctive shape and new additions can alter that appearance. Certain barns such as round barns simply cannot accommodate an exterior addition. When an addition to a barn can be undertaken without altering the building's historic character, the addition should be simple in form and detailing and should not be overwhelming in size nor alter the principle form of the barn.

### Using Barns for Residential Housing

In more populated areas, historic barns are sometimes rehabilitated for housing. Changes necessary for a residential conversion can significantly diminish the building's historic qualities, unless undertaken sensitively.

Small barns that already have some windows can often be reused as a single-family residence, provided the rehabilitation preserves the distinctive historic qualities. Some additional openings may be possible but not when they create a dramatic new appearance. Inserting multiple residential units in large barns is usually much more problematic.

The most successful barn rehabilitation projects will follow these guidelines: preserve the historic setting of the barn; repair and reuse as much historic material as possible; avoid changing historic door or window openings; preserve the distinctive qualities of the interior spaces; and retain as much of the interior structural system as possible. Where an exterior addition is necessary, it must be compatible with the historic building and not overwhelm or redefine its historic character.

For more information on the subject of historic barns, see *Preservation Briefs 20: The Preservation of Historic Barns*, available online at [www.nps.gov/history/hps/tps/publications/](http://www.nps.gov/history/hps/tps/publications/) or by emailing [nps\\_hps-info@nps.gov](mailto:nps_hps-info@nps.gov) for a copy.

## Frequently Asked Questions

### Is a tax credit different from a deduction?

Yes. A tax credit usually saves you more in income tax. Unlike a deduction, which reduces taxable income, a credit is a dollar-for-dollar reduction in the amount of taxes you owe.

### If I have already begun my project, is it too late to qualify?

As long as your barn is on the National Register, either individually or as part of a district, and you submit Part 1 of the application prior to completing the project, then you may apply for the tax credits. However, you are strongly encouraged to submit rehabilitation plans (Part 2 of the application) prior to construction to ensure that any problematic treatments are identified early.

### Can I receive tax credits for fixing up my farm residence?

In general, federal tax credits are not available for rehabilitating your personal home. However, some states offer a similar state tax credit that may cover farm residences. Contact your State Historic Preservation Office to determine availability of these incentives.

### Can I receive tax credits for other farming buildings?

Other buildings such as garages or machine sheds can be eligible if they are rehabilitated and used for an income-producing purpose. Certain structures, such as grain silos and corn cribs, do not qualify for the tax credits, because they are not considered "buildings" by the IRS.

To locate your State Historic Preservation Office visit [www.ncshpo.org](http://www.ncshpo.org)

*This booklet was prepared by Elizabeth A. Creveling, Technical Preservation Services Branch, Heritage Preservation Services, National Park Service, with the assistance of Charles Fisher, National Park Service. Thanks are extended to Michael Auer, Jennifer C. Parker, Angela Shearer, Jennifer Murdock, and Anne Grimmer of the National Park Service for their review. All photographs are from NPS files unless otherwise indicated.*

*First-time user guides for owners of small buildings interested in the federal rehabilitation tax credits are prepared pursuant to the National Historic Preservation Act, as amended, which directs the Secretary of the Interior to develop and make available information concerning the preservation of historic properties. This and other guidance on rehabilitating small buildings can be found on our web site at [www.nps.gov/history/hps/tps/](http://www.nps.gov/history/hps/tps/) or by writing Technical Preservation Services-2255, National Park Service, 1849 C Street NW, Washington, D.C. 20240.*



# Claim for Historic Barn Rehabilitation Credit And Employment Incentive Credit

# IT-212-ATT

Name(s) as shown on return

Identifying number as shown on return

Use this form to claim an investment credit for qualified expenditures in the rehabilitation of a historic barn, or to claim the employment incentive credit. **Attach this form to Form IT-212.**

## Schedule A – Historic barn rehabilitation credit

### Part 1 – Eligibility criteria for claiming this credit (see instructions, Form IT-212-ATT-I, for assistance)

Complete questions 1 through 10 to determine if you are eligible to claim this credit. If you mark an **X** in the Yes box on line 1 or 6, or the No box on line 5, 9, or 10, **stop**; you cannot claim this credit.

- 1 Has the barn been converted to residential use? (If you mark Yes, **stop**; you cannot claim this credit.) ..... Yes  No
- 2 Is the barn listed in the National Register of Historic Places? (see instructions) ..... Yes  No   
If Yes, the barn's rehabilitation must be certified by the federal Secretary of Interior or the New York State Office of Parks, Recreation and Historic Preservation. Attach a copy of the certification (see TSB-M-97(1)I).
- 3 If you answered No to question 2, is the barn located in a registered historic district? ..... Yes  No
- 4 If you answered Yes to question 3, is the barn of historic significance to the district? ..... Yes  No   
If Yes, the barn must be a certified historic structure, and the barn's rehabilitation must be certified by the federal Secretary of Interior or the New York State Office of Parks, Recreation and Historic Preservation. Attach a copy of the certification. If No, attach documentation from the Office of Parks, Recreation and Historic Preservation stating the barn is of no historic significance to the district (see TSB-M-97(1)I).
- 5 If you answered No to questions 2 and 3, was the barn originally designed and used for storing farm equipment or agricultural products or for housing livestock, and was the barn first placed into service before 1936? ..... Yes  No   
(If you mark No, **stop**; you cannot claim this credit.)
- 6 Has the historic appearance of the barn been materially altered? (If you mark Yes, **stop**; you cannot claim this credit.) ..... Yes  No   
If No, attach a copy of the letter from the New York State Office of Parks, Recreation and Historic Preservation stating that the historic appearance of the barn has not been materially altered (see TSB-M-97(1)I).
- 7 Describe the measurement period used to determine whether the barn has been substantially rehabilitated.  
(see instructions) \_\_\_\_\_
- 8 What is the adjusted basis of the barn as of the first day of the measurement period? ..... **8.**  .
- 9 Do the expenditures incurred during the measurement period to rehabilitate the barn exceed the higher of the amount shown in question 8 or \$5,000? (If you mark No, **stop**; you cannot claim this credit.) ..... Yes  No
- 10 Did you use the straight-line method of depreciation over a recovery period specified in either section 168(c) or section 168(g) of the Internal Revenue Code (IRC), whichever is applicable to you? ..... Yes  No   
(If you mark No, **stop**; you cannot claim this credit.)

### Part 2 – Investments in qualified rehabilitation expenditures

Date rehabilitation work was begun (mm-dd-yyyy)

Date rehabilitation work was completed (mm-dd-yyyy)

A Description of rehabilitation expenditures (attach additional sheets if necessary)	B Date of expenditure(s)	C Property's useful life (years)	D Amount of expenditures	E Rehabilitation credit (column D x 25%)

11 Add column E amounts (enter here and on Form IT-212, line 23) ..... **11.**  .

(continued on back)





**Part 3 – Early dispositions of qualified property and addback of credit on early dispositions**

<b>A</b> Description of rehabilitation expenditures <i>(attach additional sheets if necessary)</i>	<b>B</b> Date acquired	<b>C</b> Date property ceased to qualify	<b>D</b> Property's useful life <i>(months)</i>	<b>E</b> Unused life <i>(months)</i>	<b>F</b> Percentage <i>(E ÷ D)</i>	<b>G</b> Total investment credit allowed for rehabilitation of a historic barn	<b>H</b> Addback of credit on early dispositions <i>(F × G)</i>	
<b>12</b> Add column <b>H</b> amounts <i>(enter here and on Form IT-212, line 27)</i> .....							<b>12.</b>	

**Schedule B – Employment incentive credit**

**Part 1 – Eligibility for employment incentive credit**

<b>A</b> Year	<b>B</b> Mar. 31	<b>C</b> June 30	<b>D</b> Sept. 30	<b>E</b> Dec. 31	<b>F</b> Total <i>(B + C + D + E)</i>	<b>G</b> Average <i>(see instr.)</i>	<b>H*</b> Percent %
<b>A. Use with Part 2, line 17; first succeeding tax year</b>							
<b>13</b> Number of New York State employees in employment base year _____							
<b>14</b> Number of New York State employees in credit year _____							
<b>B. Use with Part 2, line 18; second succeeding tax year</b>							
<b>15</b> Number of New York State employees in employment base year _____							
<b>16</b> Number of New York State employees in credit year _____							

\* Divide the average number of employees covered by this claim by the average number of employees in base year (column G). Round the result to two decimal places. If the percentage in column H is less than 101% (1.01), **stop**; you do not qualify for the employment incentive credit.

**Part 2 – Computation of employment incentive credit**

	<b>A</b> Tax year in which investment tax credit was allowed	<b>B</b> Amount of investment credit base upon which original investment tax credit was allowed <i>(exclude research and development (R&amp;D) property at optional rate)</i>	<b>C</b> Employment incentive credit <i>(multiply column B by the appropriate rate from Tax rate schedule below)</i>
<b>17</b> Information for first succeeding tax year; use line 14, column H, to determine rate			
<b>18</b> Information for second succeeding tax year; use line 16, column H, to determine rate			
<b>19</b> Add column C amounts from lines 17 and 18 <i>(enter here and on Form IT-212, line 24)</i> .....			<b>19.</b>

**Tax rate schedule – Employment incentive credit rates to be used in Part 2 above**

**If the percentage in Part 1, column H is at least:**

**The employment incentive credit rate is:**

- 101% but less than 102% ..... 1½% (.015) of investment credit base
- 102% but less than 103% ..... 2% (.02) of investment credit base
- 103% ..... 2½% (.025) of investment credit base







# Instructions for Form IT-212-ATT

## Claim for Historic Barn Rehabilitation Credit and Employment Incentive Credit

**IT-212-ATT-I**

### General information

Form IT-212-ATT is used to determine if you are eligible to claim the historic barn rehabilitation credit (Schedule A) or the employment incentive credit (Schedule B). If you qualify for either credit, complete the applicable schedule and attach Form IT-212-ATT to Form IT-212, *Investment Credit*.

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

### Schedule A — Historic barn rehabilitation credit

**General information** — Beginning in 1997, section 606(a)(12) allows a credit for qualified rehabilitation expenditures, as defined in Internal Revenue Code (IRC) section 47(c)(2), paid or incurred for any barn located in New York State that is a qualified rehabilitated building, as defined in IRC section 47(c)(1). A barn must be a building originally designed and used for storing farm equipment or agricultural products, or for housing livestock. No rehabilitation credit is allowed for a barn converted to a residence or for a barn whose historic appearance has been altered. A barn must either have been placed in service prior to 1936, or, if placed in service after that time, it must be a certified historic structure listed in the National Register of Historic Places, or located in a registered historic district and certified by the Secretary of the Interior. Expenditures for the enlargement of a barn do not qualify for the credit. However, a barn will not be disqualified from the credit because an enlargement has been made. In such cases, you must exclude expenditures attributable to the enlargement from the total expenditures paid or incurred for rehabilitation. See the instructions for Part 2 for the formula to use for the apportionment of expenditures. For detailed information concerning qualified rehabilitation expenditures, qualified rehabilitated buildings, alteration of the historic appearance of a barn, certified historic structures, registered historic districts, and enlargement of a barn, refer to TSB-M-97(1)I. To get a copy, see *Need help?* in your tax return instructions.

#### Part 1 — Eligibility criteria for claiming this credit

Answer questions 1 through 10 to determine if you are eligible to claim this credit. If you mark an **X** in the Yes box on line 1 or 6, or the **No** box on line 5, 9, or 10, you are not eligible to claim this credit. If all of your answers qualify you to take this credit, complete Part 2 and Part 3, if necessary.

**Question 2:** If a barn is listed in the National Register of Historic Places or is located in a registered historic district **and** is of historic significance to the district, the barn meets the definition of a certified historic structure. A certified historic structure must have a rehabilitation certified by the federal Secretary of Interior or New York State Office of Parks, Recreation and Historic Preservation. If the barn for which a credit is claimed is a certified historic structure, attach the appropriate certification. For more information, see TSB-M-97(1)I.

**Question 7:** To qualify for the credit, a barn must have been substantially rehabilitated. To determine whether a barn has been substantially rehabilitated, the expenditures incurred to rehabilitate the barn during a measurement period selected by the taxpayer must exceed the greater of the adjusted basis of the barn or \$5,000. The measurement period is a 24-month period selected by the taxpayer and ending with or within the tax year. If the rehabilitation could reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, the measurement period may be 60 months long. You may be required to submit documentation of the architectural plans and specifications at a later date.

The adjusted basis is generally determined as of the beginning of the first day of the measurement period.

#### Part 2 — Investments in qualified rehabilitation expenditures

Fill in columns A through E for qualified rehabilitation expenditures that were paid or incurred during 2009. Attach a separate page if you need more space. Enter in column C the property's useful life under IRC section 167 even if the property is subject to the provisions of IRC section 168. Enter in column D of this schedule the amount of qualified rehabilitation expenditures paid or incurred with respect to a qualified rehabilitated barn. If the expenditures include an enlargement of a barn and the expenditures for the enlargement can be separately accounted for, exclude the expenditures attributable to the enlargement from this schedule. Otherwise, on a separate page, show the total expenditures (including the enlargement) and apportion them by dividing the volume of the barn excluding the enlargement by the total volume of the barn. Multiply the total amount of the expenditures by the resulting percentage to arrive at the amount of rehabilitation expenditures to be entered in column D. Attach to the claim for this credit documentation that the historic appearance of the barn has not been materially altered, and, where appropriate, documentation that the barn is of no historic significance to a registered historic district. Documentation that a federal rehabilitation credit of 10% or 20% has been allowed for a barn is acceptable documentation for the allowance of this credit as an alternative to the documentation previously mentioned in this section.

If qualifying property was disposed of or is not in qualified use at the end of the tax year it was placed in service, compute the amount of credit to claim as follows:

- For depreciable property under IRC section 167, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is the number of months of useful life of the property.
- For property subject to the provisions of IRC section 168, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is the number of months you chose for buildings or structural components of buildings.

**Line 11** — When adding the amounts in column E, include amounts from attached sheets, if any.

#### Part 3 — Early dispositions of qualified property and addback of credit on early dispositions

Fill in columns A through H if you have claimed the credit on property that was disposed of or was removed from qualified use (a) in a tax year after the year in which the credit was allowed and (b) prior to the end of its useful life or specified holding period. Do not include property that has been in qualified use for more than 12 consecutive years. For a description of what constitutes an early disposition of property, see page 3 of Form IT-212-I, *Instructions for Form IT-212*.

Enter in column D:

- For depreciable property under IRC section 167, the number of months of useful life of the property.
- For recovery property under IRC section 168, the number of months you chose for buildings or structural components of buildings.

Enter in column E the number of months that the property was not in qualified use.

**Line 12** — When adding the amounts in column H, include amounts from attached sheets, if any.

## Schedule B — Employment incentive credit

**General information** — If you place property in service on or after January 1, 1997, and that property qualifies for the investment tax credit (other than at the optional rate applicable to research and development property), you may be entitled to the employment incentive credit. If you qualify, the credit is allowed for each of the two years immediately following the tax year in which the investment credit was allowed.

**Example 1:** *A partnership files its partnership return using a fiscal year of February 1, 2007, through January 31, 2008. The partnership placed property that qualified for the investment tax credit in service on January 15, 2008. The partnership should complete Schedule B for tax years February 1, 2008, through January 31, 2009, and February 1, 2009, through January 31, 2010, to determine if the partners of the partnership are eligible to claim the employment incentive credit.*

**Example 2:** *You are a farmer who files your personal income tax return on a calendar-year basis. You placed property that qualified for the investment tax credit in service on March 15, 2008. You should complete Schedule B for the 2009 and 2010 calendar tax years to determine if you are eligible to claim the employment incentive credit.*

The amount of the credit is a percentage of the original investment credit base on which the investment credit was allowed. The percentage used to compute the credit is based upon the level of employment in each of the two years during which the credit may be claimed compared to the level of employment in the base year. However, the credit will not be allowed for a year if the taxpayer's average number of employees in New York State during that year is not at least 101% of the taxpayer's average number of employees in New York State during the base year.

Generally, the base year is the tax year immediately preceding the tax year in which the original investment credit was claimed. However, if the business was not in operation in New York State during that year, the base year is the tax year in which the original investment credit was claimed.

If you cannot claim all of your employment incentive credit because it is more than your New York State tax less other credits, you can carry over the unused amount to the following ten tax years, or, if you are the owner of a new business, you may qualify for a refund (see *Refundable unused investment credit* in Form IT-212-I).

### Part 1 — Eligibility for employment incentive credit

Complete Part 1 to determine if you are eligible for the credit. If you are eligible, complete Part 2.

**Column A** — Enter in column A the credit year and the base year. The *credit year* is the tax year you are claiming the employment

incentive credit. If you qualify, the credit is allowed for each of the two tax years immediately following the tax year in which the original investment tax credit was allowed. The *base year* is the year preceding the year you claimed the original investment credit. However, if your business was not in operation in New York State during that year, the *base year* is the year in which you claimed the investment credit.

**Columns B, C, D, and E** — Enter the total number of employees employed within New York State on each of the dates listed that occur during your credit and base tax years.

**Example:** *A taxpayer filing for a fiscal year beginning September 1, 2008, and ending August 31, 2009, would enter on line 14 for the first succeeding year, or on line 16 if claiming the credit for the second succeeding year, the number of employees employed in New York State on the following dates: September 30, 2008, December 31, 2008, March 31, 2009, and June 30, 2009.*

**Column G** — Unless you have a short tax year, divide the amount in Column F by four. If you have a short tax year (a tax year of less than 12 months), divide the amount in Column F by the number of dates shown in Columns B through E that occur during the short tax year.

**Column H** — If you are claiming the credit for the first succeeding tax year, divide the amount on line 14, column G, by the amount on line 13, column G, and round the result two decimal places. If the percentage in line 14, column H, is at least 101% (1.01), complete Part 2, line 17. If the percentage in line 14, column H, is less than 101%, **stop**; you do not qualify for the employment incentive credit for this year.

If you are claiming the credit for the second succeeding year, divide the amount on line 16, column G, by the amount on line 15, column G, and round the result two decimal places. If the percentage in line 16, column H is at least 101% (1.01), complete Part 2, line 18. If the percentage in line 16, column H is less than 101%, **stop**; you do not qualify for the employment incentive credit for this year.

### Part 2 — Computation of employment incentive credit

**Column A** — Enter in column A the tax year in which the original investment credit was allowed.

**Column B** — Enter in column B the amount of the investment credit base (not the amount of the investment credit) that was used to compute the original investment credit. Do not include in column B the investment credit base for any property on which you computed the investment credit at the optional rate applicable to research and development property. In addition, do not include in column B the investment credit base for any property for which you are claiming the empire zone employment incentive credit.

**Column C** — Multiply the column B amount by the appropriate rate from the *Tax rate schedule* below Part 2.

**Appendix K**  
Farm-Friendly Audit

# Does your community support agriculture?

## Audit of Land Use Regulations (Zoning, Site Plan, Subdivision Regulations)

### TOWN OF ALABAMA

Ask this question...	Yes	No	
1. Are farm stands limited to selling just products from that farm? Do they need a site plan review or special permit?	X	X	Goods sold at farm markets must be "primarily home grown." No special use permit or site plan approval needed.
2. Does zoning allow for accessory uses such as greenhouses, barns, garages, equipment storage etc. permitted as of right?	X		Greenhouses allowed as accessory use by right, or as primary use with special use permit.
3. Do application requirements include asking for submittal of information or maps about farming that might be taking place on or near the project parcel? Whether it is in an agricultural district? What farming activities take place on or near the site? Whether prime farmland soils are present?		X	
4. Do standards exist that require the PB or ZBA to evaluate impacts of a project on agriculture?		X	
5. Do any design standards exist to direct building envelopes to areas on a parcel that would still allow farming to occur on remaining open spaces?		X	
6. Does the regulation define agriculture, ag. structures, farm worker housing, Agri-tourism, or agri-business?	X	X	Ag and Ag structures are defined. No definition of farm-worker housing, etc.
7. Are farm-related definitions broad and flexible and not confined to a certain number of acres or income earned?		X	Farm is a minimum of 5 acres. No income requirement.
8. Are non-traditional or retail based farm businesses allowed in a district or agriculture zoned district? For example, can a farmer set up a brewery on site and sell products on site?	X		"Neighborhood Businesses" allowed in the A-R district with a Special Use Permit.
9. Does the community have a farmer sitting on their planning board?	X		
10. Is an Ag. Data Statement as per AML 25-aa required as part of an application for site plan, subdivision, special use or other zoning?	X		
11. Does the community require placement of an agricultural disclosure statement on plans or plats when development takes place in a NY certified agricultural district?	X		
12. Are any ag.-related uses required to get a special use permit or go through site plan review?	X		Commercial greenhouses require special use permit.
13. Does the regulation define and allow for farm worker housing? Are mobile homes allowed as farm worker housing?		X	Regulations are silent on farmworker housing. Mobile homes must be in mobile home parks.
14. Are silos and other farm structures exempt from height requirements?		X	
15. Are personal windmills and solar panels allowed for farms? With permits or permitted as of right?	X	X	Non-commercial wind is allowed by right; no provisions for solar.

# Does your community support agriculture?

## Audit of Comprehensive Plan in Town of Alabama

Ask this question...	Yes	No	Notes
1. Does the plan have a section on agriculture?	X		
2. Does the plan include maps of agricultural lands, important farmland soils, agricultural districts, etc.?	X		
3. Was the plan based on public input that included questions or exploration about the role of agriculture in the community? I.e. did a survey include questions about agriculture? Was there anything in workshops about it?	X		
4. Does the mission statement or goals address agriculture in any way? Is there any visible demonstration of the value of agriculture to the community in the plan?	X		First goal in the Plan addresses importance of agriculture
5. Does the plan consider agriculture as an important resource in town?	X		
6. Does the plan recognize or reference a local or County agriculture and farmland protection plan?	X		
7. Does the plan include any data on farms and farmland? Income or occupations from farming or other demographic data?	X		Data on farms but not demographic data on farmers
8. Does the plan establish policies towards farmland and farming?	X		
9. Does it identify the value of farmland and farms to the community?	X		
10. Does it offer any recommended actions related to farming or farmland or ways to preserve or enhance farming?	X		
11. Does the plan establish a policy and/ or future actions for the agricultural use of open space that may be created in a conservation subdivision or clustering?	X		
12. Does the plan discuss NYS Agricultural Districts and how the town can be supportive of that?	X		
13. Does it consider farmland a natural resource and encourage easements or other protections of that land? Is there a policy discussed for PDR, LDR or TDR?	X		
14. Does the plan recommend growth in areas that are currently farmed? Does it recommend extension of infrastructure into core farm areas? Is agriculture a consideration of where growth does or not does not take place?	X		

**Appendix L**  
SEQR Documentation