

Agriculture and Forestry Regulations

Forest Resources

Many local governments have significant rural and/or urban forest resources to protect and manage. The DEC provides technical assistance for the establishment and management of county forests, watershed forestry development, parks, and street tree programs. As many rural volunteer fire companies must protect forest resources in their jurisdictions, DEC also provides technical assistance and training in the control of forest, brush and grass fires and helps these rural companies obtain small federal grants for rural fire protection. The forest tax program, administered under section 480-a of the Real Property Tax Law, authorizes DEC to approve forestry management programs undertaken by private landowners who thereby become eligible for lower property tax assessments.

Protection of Agricultural Land

One of the critical issues involved in land use planning decisions for agricultural uses is to ensure that agriculture protection deals primarily with the preservation of agriculture as an economic activity and not just as a use of open space. Traditionally, agricultural uses are part of large lot, low density, residential zoning districts. With increased residential development, however, conflicts between agricultural and residential uses have increased. Complaints about noise, odors, dust, chemicals, and slow-moving farm machinery may occupy enough of the resources of a farmer so as to have a negative impact on the viability of his or her farming activities.

Article 25-AA of the Agriculture and Markets Law is intended to conserve and protect agricultural land for agricultural production and as a valued natural and ecological resource. Under this statute, territory can be designated as an agricultural district. To be eligible for designation, an agricultural district must be certified by the county for participation in the state program. Once a district is designated, participating farmers within it may receive reduced property assessments and relief from local nuisance claims and certain forms of local regulation. Agricultural district designation under Article 25-AA does not generally prescribe land uses. However, under section 305-a of Article 25-AA, municipalities are restricted from adopting regulations, applicable to farm operations in agricultural districts, that unreasonably restrict or regulate farm structures or practices, unless such regulations are directly related to the public health or safety (Agriculture and Markets Law, section 305-a(1); Town Law section 283-a; and Village Law section 7-739). The law also requires municipalities to evaluate and consider the possible impacts of certain projects on the functioning of nearby farms. Projects that require "agricultural data statements" include certain land subdivisions, site plans, special use permits, and use variances. Farm operations within agricultural districts also enjoy a measure of protection from proposals by municipalities to construct infrastructure such as water and sewer systems, which are intended to serve nonfarm structures.

Under Agriculture and Markets Law, section 305, the municipality must file a notice of intent with both the state and the county in advance of such construction. The notice must detail the plans and the potential impact of the plans on agricultural operations. If, on review at either the county or state levels, the Commissioner of Agriculture and Markets determines that there would be an unreasonable adverse impact, he or she may issue an order delaying construction, and may hold a public hearing on the issue. If construction eventually goes forward, the municipality must make adequate documented findings that all adverse impacts on agriculture will be mitigated to the maximum extent practicable.

"Right-to-farm" is a term that has gained widespread recognition in the state's rural areas within the past several decades. Section 308 of the Agriculture and Markets Law grants protection from nuisance lawsuits to farm operators within agricultural districts or on land outside a district that is subject to an agricultural assessment under section 306 of the Law. The protection is granted to the operator for any farm activity that the Commissioner has determined to be a "sound agricultural practice." Locally, many rural municipalities have used their home rule power to adopt local "right-to-farm" laws. These local laws commonly grant particular land-use rights to farm owners and restrict activities on neighboring non-farm land that might interfere with agricultural practices.

A purchase of development-rights (PDR) system involves the purchase by a municipal or county government of development rights from private landowners whose land it seeks to preserve in its current state without further

development. The PDR system, which has been used extensively in Suffolk County to preserve farmland, can also protect ecologically important lands or scenic parcels essential to rural character of the community. Under PDR, the land remains in private ownership and the government acquires non-agricultural development rights. These development rights, once purchased by the government, are held and remain unsold. The farmer receives payment equal to the development value of the farmland. In return, the farmer agrees to keep the land forever in agriculture. The owner typically files property covenants similar to a conservation easement limiting the use of the property to agricultural production. The nation's first purchase of development rights program to preserve farmland was in Suffolk County in 1974.

The Commissioner of the Department of Agriculture and Markets is authorized to administer two matching grant programs focused on farmland protection. One assists county governments in developing agricultural and farmland protection plans to maintain the economic viability of the state's agricultural industry and its supporting land base; the other assists local governments in implementing their farmland protection plans and has focused on preserving the land base by purchasing the development rights on farms (Article 25-AAA of the Agriculture and Markets Law).

The PDR system may have advantages over the TDR system, in that there is a ready market for the purchase and sale of development rights at all times. In addition, the prices of various categories of development rights may be more easily maintained at or near market value, and kept uniform under the PDR system.

Agricultural Districts: Definition from 25-AA

Article 25-AA [PDF](#) of the Agriculture and Markets Law authorizes the creation of local agricultural districts pursuant to landowner initiative, preliminary county review, state certification, and county adoption. As of April 2002, 341 agricultural districts existed statewide, containing approximately 21,500 farms and 8.6 million acres (about 30 percent of the State's total land area).

The purpose of agricultural districting is to encourage the continued use of farmland for agricultural production. The Program is based on a combination of landowner incentives and protections, all of which are designed to forestall the conversion of farmland to non-agricultural uses. Included in these benefits are preferential real property tax treatment (agricultural assessment and special benefit assessment), and protections against overly restrictive local laws, government funded acquisition or construction projects, and private nuisance suits involving agricultural practices.

District Creation & Review

The Division manages the certification of new districts and the review and recertification of existing districts. State certification confirms that a district meets the purposes and intent of the Agricultural Districts Law and all eligibility criteria described therein.

Article 25AA: 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.

"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.

"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.¹

"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.

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.

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.

More information can be found at <http://www.agmkt.state.ny.us/AP/agsservices/2008C115.pdf>

Concentrated Animal Feeding Operations

According to the NYSDEC's General Permit for Concentrated Animal Feeding Operations, an Animal Feeding Operation is "a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and where the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season."

A Concentrated Animal Feeding Operation (CAFO) means an Animal Feeding Operation (AFO) that is a point source as defined pursuant to ECL Section 17-0105(16) and is a CAFO. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals of an operation.

There are 3 dairy farms in the Town of Marshall currently regulated under the CAFO Permit. In general, a farm that is a CAFO is required to have a Comprehensive Nutrient Management Plan prepared by a Certified Planner. For further information about the CAFO permit requirements, please visit the DEC's website at http://www.dec.ny.gov/docs/permits_ej_operations_pdf/ecfcafopermit.pdf.

Agricultural Agencies

Federal:

USDA:

Provides leadership on food, agriculture, natural resources, and related issues based on sound public policy, the best available science, and efficient management.

Natural Resources Conservation Service: NRCS is an agency of the USDA. NRCS provides leadership in a partnership effort to help people conserve, maintain and improve our natural resources and environment.

Farm Service Agency: The Farm Service Agency implements agricultural policy, administers credit and loan programs, and manages conservation, commodity, disaster and farm marketing programs through a national network of offices. Local Contact: Donna Purdy, 9025 River Road Marcy, NY 13413, 736-3316

Rural Development: RD helps rural areas to develop and grow by offering Federal assistance that improves quality of life. RD targets communities in need and then empowers them with financial and technical resources.

Land Grant University Extension System: Cornell Cooperative Extension is a key outreach system of Cornell University with a strong public mission and an extensive local presence that is responsive to needs in New York communities. The Cornell Cooperative Extension educational system enables people to improve their lives and communities through partnerships that put experience and research knowledge to work.

State:

NYS Department of Agriculture and Markets: Our mission is to foster a competitive food and agriculture industry that benefits producers and consumers alike. Agriculture makes up one-quarter of the State's land area and contributes immensely to the quality of life in New York State by generating economic activity and producing wholesome products to nourish our families. We work diligently to promote a viable agricultural industry, foster agricultural environmental stewardship, and safeguard our food supply.

Oneida County Soil and Water Conservation District: To provide leadership in the development, wise use and management of soil, water and related resources in a way that will restore, enhance, protect and maintain their quality and quantity for the benefit of Oneida County and its residents.