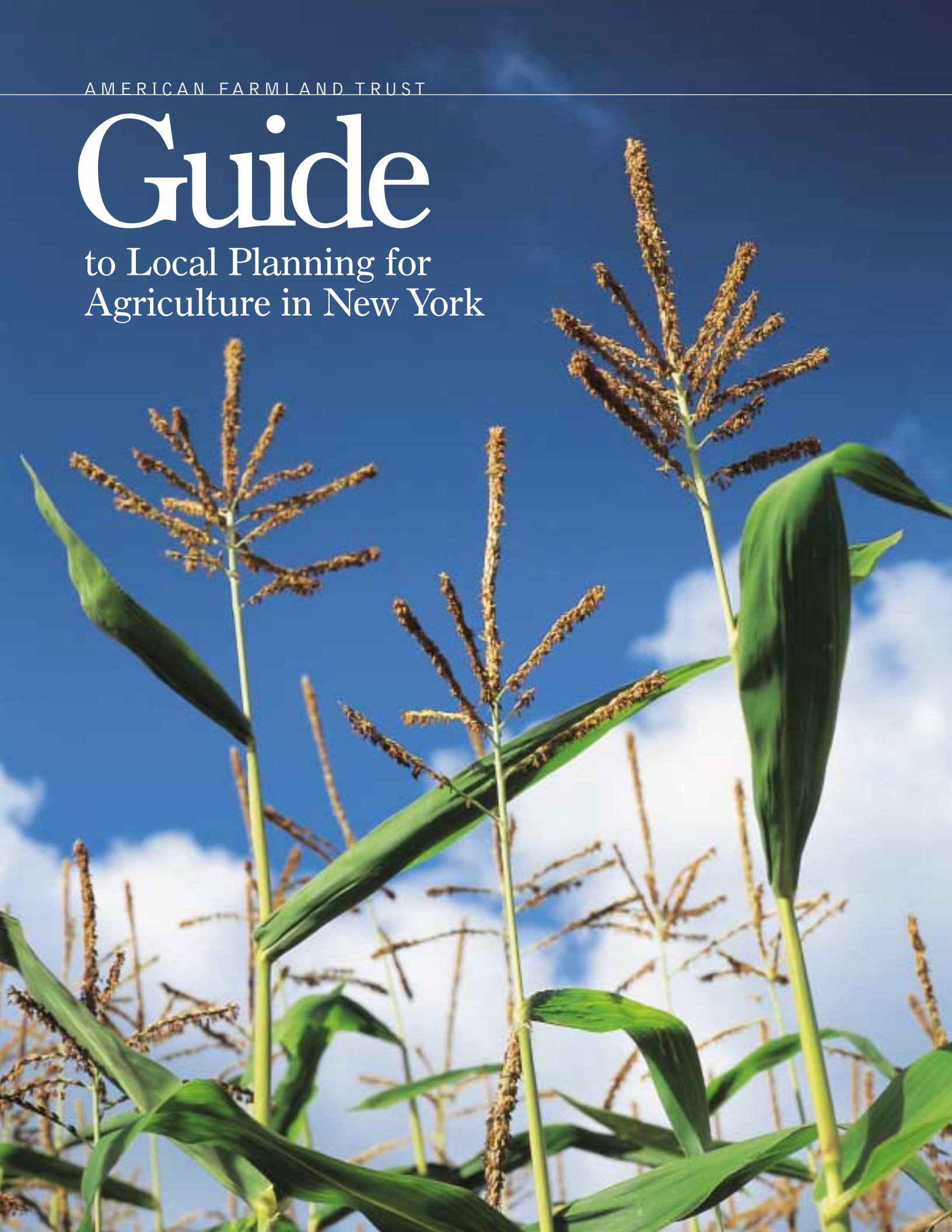


AMERICAN FARMLAND TRUST

Guide

to Local Planning for
Agriculture in New York



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Written by:

David Haight, Jerry Cosgrove and Kirsten Ferguson

Designed by:

Innovative Resources Group
Saratoga Springs, NY
www.InnovativeResourcesGroup.com

American Farmland Trust is a private, nonprofit farmland conservation organization founded in 1980 to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.



Northeast Office
6 Franklin Square, Suite E
Saratoga Springs, NY 12866
(518) 581-0078
www.farmland.org

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SECTION FOUR: RESOURCES

APPENDIX MATERIALS

(Located on the CD that accompanies this guide)

Background Information

- American Farmland Trust Factsheets
 - *Farmland Protection Policy Act Factsheet*
 - *Farmland Protection Toolbox Factsheet*
- Related State Programs and Documents
 - NYS *Agricultural Environmental Management Program 2004 Annual Report*
 - NYS Department of Environmental Conservation *Open Space Planning Guide*
 - NYS Department of State *Guide to Municipal Land Use Controls*
- County Guides to Agricultural Planning
 - *Onondaga County Guide to Agricultural Planning*
 - *Yates County Agricultural Planning Guide*
- Making the Case for Planning for Agriculture
 - American Farmland Trust's *Erie County: Farming on the Urban Edge*
 - American Farmland Trust's *Why Save Farmland?*
 - Broome County Agricultural and Farmland Protection Plan *Top 10 Reasons Agriculture Works for Broome County*
 - American Farmland Trust's *Cost of Community Services Factsheet*

Agricultural Districts and Right-to-Farm Laws

- Agricultural Districts
 - Section 305a – Agricultural Data Statements
 - Saratoga County Agricultural Data Statement
 - Sample Agricultural Data Statement
 - Section 305a – Local Ordinance Provision
 - NYS Department of Agriculture and Markets 305a Two Page Document: *Local Laws and Agricultural Districts—Guidance for Local Governments and Farmers*
 - NYS Department of Agriculture and Markets 305a Review Farm
 - NYS Department of Agriculture and Markets 305a Questionnaire for Start Up Farms
 - NYS Department of Agriculture and Markets Agricultural Districts 305a Guidance Documents
 - Farm Worker Housing
 - Nutrient Management
 - Open Burning
 - Animal Control
 - Wetlands
 - Farm Markets
 - Composting
 - Greenhouses

- Zoning
- Horse Boarding
- Junkyard
- NYS Agriculture and Markets Law 25-AA
- NYS Department of Agriculture and Markets Pipeline Construction Guidelines
- NYS Department of Agriculture and Markets Wind Power Guidelines
- American Farmland Trust's *Agricultural Districts Factsheet*
- Local Right to Farm Laws
 - Town of Charlton Right-to-Farm Law
 - Town of Eden Right-to-Farm Law
 - Yates County Model Right-to-Farm Law
 - American Farmland Trust's *Right-to-Farm Law Factsheet*
- Farm—Neighbor Relations
 - New York Agricultural Mediation Program Brochure
 - Saratoga County *Are You Thinking About Moving to the Country?* Brochure
 - Tompkins County *Living in the Country* Brochure

Comprehensive Plans

- LESA
 - AFT LESA Factsheet
 - United States Department of Agriculture *NRCS LESA Guidebook*
 - *Putnam County Agricultural and Farmland Protection Plan LESA System* (P. 85-92)
- Town Comprehensive Plans
 - Excerpt from Town of Warwick's Comprehensive Plan (P. 7-9, 43-57)
 - Excerpt from Town of Seneca's Comprehensive Plan (P. 5-8, 11-18, 39, 48-49, 59-67, 89-95)
- Town Agricultural Advisory Committees
 - Excerpt from Town of Eden Agricultural Advisory Committee
 - Town of Ithaca Agriculture Committee
- AEM Tier II *Agriculture and the Community Worksheet*

Zoning Ordinances

- State Laws and Documents
 - NYS Department of State *Guide to Planning and Zoning*
 - NYS Town Law Section 261-b – “Incentive Zoning”
 - NYS Town Law Section 278 – Cluster Development
- Town Zoning Laws and Ordinances
 - Excerpt from Town of Kinderhook's Zoning Code
 - Excerpt from Town of Seneca's Zoning Code (P. 27-32)
 - Excerpt from Town of Plainfield's Zoning Code

- Excerpt from East Donegal Township's Zoning Code
- Excerpt from Town of Ithaca's Zoning Code (P. 34-43)
- Excerpt from Peach Bottom Township's Zoning Code
- Excerpt from Alpine Charter Township's Zoning Code
- Excerpt from Town of Washington's Zoning Code
- Excerpt from Skagit County's Zoning Code (P. 34-37)
- Excerpt from Town of Stuyvesant's Zoning Law
- Excerpt from Town of Milton's Zoning code
- Excerpt from Town of Beekman's Zoning Code
- Excerpt from Town of Ulysses' Proposed Zoning Code
- Excerpt from Town of Warwick Zoning Code (P. 16575-16578)
- New York Direct Market Association's *Model Zoning for Roadside Stands and Farm Markets*
- American Farmland Trust's *What About My Equity?*

Subdivision Ordinances

- Southern Tier Central Regional Planning & Development Board *Rural Design Workbook*
 - Book Chapters and Appendix
- Hudson Valley Greenway *Saving Farmland With Development*
- Town Subdivision Laws
 - Excerpt from Town of Easton's Subdivision Law
 - Excerpt from Town of Caton Subdivision Regulations

Property Tax Reduction Programs

- NYS Agricultural Assessment Program
 - Agricultural Assessment for Rental Landowners
 - Agricultural Assessment Forms
- NYS Farm Building Exemptions
 - Farm Worker Housing Exemption Forms
 - Farm Building Exemption
 - NYS Real Property Tax Law Sections 483, 483a and 483c
- Historic Barns Tax Credit
- Farmers School Tax Credit
- American Farmland Trust's *New York Agricultural Landowner Guide to Tax, Conservation and Management Programs*

Purchase of Development Rights

- American Farmland Trust PDR Factsheets
 - *NYS Farmland Protection Program*
 - *Agricultural Conservation Easements*
 - *Estate Planning*
 - *Installment Purchase Agreement*
 - *Local PACE Programs*
 - *State PACE Programs*
 - *PACE*
 - *PACE Funding Sources*
- State and Federal PDR Program and Laws
 - United States Department of Agriculture NRCS Farm and Ranchland Protection Program
 - New York State Agriculture and Markets Law Article 25-AAA
 - NYS Department of Agriculture and Markets Model Agricultural Conservation Easement
 - NYS Environmental Conservation Law Article 49 Section 3
- Town PDR Programs
 - Excerpt from Town of Warwick Code
 - Town of Riverhead Community Preservation Act Law
 - Town of Pittsford Greenprint

Lease of Development Rights

- Town Lease of Development Rights Programs
 - Town of Perinton Conservation Easement Law
 - Town of Perinton Conservation Easement for Farming Purposes
 - Town of Clifton Park Conservation Easement Law
 - Town of Southampton Agricultural Overlay District and Agricultural Planned Development District

Transfer of Development Rights

- NYS Town Law Section 261
- American Farmland Trust *Transfer of Development Rights Factsheet*
- Town TDR Laws
 - Proposed Town of Riverhead TDR Law
 - Excerpt from Town of Warwick Zoning Code (P. 16578-16582)

Infrastructure Planning

- Local Infrastructure Planning
 - Excerpt from Genesee County's Smart Growth Plan (P. 1-6)
 - 2005 Genesee County Smart Growth Plan Update
 - 2005 Genesee County Smart Growth Hook Ups Map

Foreword

BY JERRY COSGROVE

At American Farmland Trust, we often say that communities need to “plan for agriculture.” The phrase has a nice ring to it, but what does it really mean? Very broadly, that depends on how you define agriculture and whether your community includes farming and farmland in its future plans. In a fast-changing world, a community that values farming and farmland needs to actively plan for its future.

Agriculture requires land and people. Ideally, planning for agriculture is an approach that acknowledges and embraces the ever-changing nature of agriculture while recognizing that farmers, farmland and farming are intertwined. Planning for agriculture requires a locally-driven process that not only includes agriculture but also recognizes it as a land use and a business. Communities must recognize that without farmers to work the land, the land won't stay as farmland.

When planning for agriculture, communities need to stop playing defense only. From an agricultural standpoint, we should move beyond articulating what we don't want in planning in order to start laying out our vision for the future. Planning for agriculture should be proactive and not just reactive.

Of course, all of this assumes that retaining agriculture is important for New York communities. The economic and environmental benefits of agriculture are not as well documented as they should be. It is often difficult to quantify the multiple benefits of a working landscape that provides food, jobs, habitat and recreational opportunities. Farms also attract tourists and help to sustain us all mentally and physically.

Unfortunately, the downsides of agriculture are very well documented in a society where negative news often trumps good. However, communities that view agriculture as an asset should plan for farming's future. And those communities that choose not to include agriculture in future planning are creating a self-fulfilling prophecy that will inevitably come true.

Why bother to plan in the first place? Planning is a very basic component to successful future activities across a broad spectrum. Successful businesses have plans. We are constantly reminded that we should plan for retirement and should put together estate plans. We should plan for development. We should also plan for conservation. Community planning for agriculture is no different.

Failure to plan for the future is in fact a choice, although one by default. Poor decision-making at the community level can create years of headaches for future citizens, including those involved in agriculture. Issues such as the extension or creation of community water or sewer systems, lot sizes, and density for new development and other regulations will impact the future of agriculture in a community, whether we actually make decisions about them or not.

If it so important to plan for the future of agriculture, why don't we do a better job?

Planning for agriculture involves certain basic themes and some tough issues. These issues can create obstacles for communities and farmers. Some of the challenges include:

Multiple interests of landowners. Farmers, as owners of agricultural land and operators of agricultural businesses, have several different and potentially conflicting interests in their property. Simultaneously, they are landowners, business owners, taxpayers and community members. On any given issue, their interests may be different. The key is to recognize which interest is on the table at a given point in the process, so we can discuss how to balance and/or reconcile those differences.

Fairness. Finding the appropriate balance is really a matter of fairness. Since planning for agriculture benefits the entire community, communities need to find solutions that equitably allocate the burden and benefits, whether financial or regulatory. Each community will strike the particular balance differently; however, the process should be fair to all concerned.

Cost and cost effectiveness. In addition to the fairness issues, each community must determine the appropriate balance of planning regulations and incentives, based on the overall cost of the various tools in relation to the available resources. In the short term, regulations are usually much less expensive for a community to implement than incentives. However, incentives may prove to be a wise investment of community resources because of the friction that regulations can cause. The cost effectiveness of various approaches should be analyzed over the long term to determine which strategies make sense for a given community.

Integration. Local land use laws are not enacted in a vacuum. Federal and state laws and other deci-

sions can directly affect agriculture in a community. For example, the New York Agricultural Districts Law has a profound impact on local land use decision-making because it creates a number of “right to farm” protections that actually supersede local law. And, of course, expenditures by federal and state programs for roads, water, sewer and other kinds of development can have significant impacts on agriculture in a community despite the best intentions at the local level. The challenge is for communities to address the issues that can be dealt with at the local level, while recognizing that other decisions beyond their control have an impact as well. Integration of local, state and federal decisions, to the extent possible, are critical.

Planning for agriculture is not all that complicated, but it is challenging due to issues that may affect landowner equity, tax bills and “what will happen in my neighborhood” sentiments among others. Notwithstanding the challenges, we hope that more communities will grapple with these issues and develop their own mixes of strategies that proactively plan for agriculture and not around it!



Introduction

Local control, or home rule, is the cornerstone of land use planning in New York. Decisions made each week by thousands of local officials and landowners, combined with the impact of state and federal policies, help define the state's communities, economy and landscape.

Local officials often focus on planning for new residential, commercial or industrial development in order to spur growth, build the tax base and achieve other community objectives. While agriculture may be mentioned in local plans, communities often fail to devote significant resources to sustaining farmers and farmland. There are many reasons why agriculture often fails to be a higher priority in local policies. Some are due to public perceptions and misconceptions about agriculture, while others stem from the resistance of farmers and rural landowners to local planning efforts.

However, a growing number of New York communities recognize that farms and farmers should not be taken for granted. New Yorkers interested in maintaining lower property taxes, supporting local businesses and maintaining rural character, wildlife habitat and other environmental benefits are speaking up about the need to support local farms. They may want new development, just not at the expense of farmers, farmland and other valuable community assets.

At the same time, more farmers recognize the existing or potential impacts of poorly planned development on their businesses. Rural communities in western and central New York and the North Country are increasingly becoming home to commuters from upstate cities or locations for second homes. The Hudson Valley and Long Island continue to experience some of the highest development pressure in the nation. In some places, these changes have led to the loss of highly productive farmland

and the diminishing affordability of land for farmers. Increasing development also has contributed to conflicts on roadways between drivers of farm machinery and faster moving vehicles, as well as disputes about farm practices between farmers and their new neighbors.

This resource guide is intended for local officials, planners, extension agents, farmers and other New York residents interested in grappling with these tough issues by planning for agriculture at the municipal level. Planning for agriculture means placing a high priority on farms, farmers and farmland in community plans and policies. It entails recognizing farms for their unique qualities as local businesses and for their contributions to the community landscape. Planning for agriculture also calls for communities to pro-actively create local policies that balance community interests with individual rights.

Chapters of this resource guide seek to help New York communities with the planning for agriculture process. Topics addressed include:

- How to make support for agriculture a community priority;
- How to engage farmers and rural landowners in community planning efforts;
- How to evaluate current municipal policies to determine their impact on farms;
- How to develop an appropriate mix of policies that support the business and land use needs of farms.

The guide closes with a listing of agencies and organizations that can serve as resources during this on-going process. In addition, the enclosed CD contains materials from case study communities and additional resources.

Section One

Why Plan For Agriculture?

Why plan for agriculture? This underlying question is of critical importance. Communities without compelling answers to this question will be challenged to motivate local officials and residents to take action to support local farms.

There are two fundamental parts to this question. First, local officials and non-farm residents may wonder why they should focus on farms in local policies. Given all of the issues facing local communities, why should they emphasize agriculture? Second, farmers and rural landowners may question whether municipal planning and policy-making can or should be used to address issues facing agriculture.

It is not surprising that many farmers are skeptical of local planning efforts. Some communities have treated farming as a temporary land use in comprehensive plans, zoning codes and other policies. In other cases, agriculture has not been recognized as a business or as a valuable long-term community objective. Farmer skepticism toward planning efforts also may stem from concerns about the fairness of new land use policies and how such policies may impact their personal and business interests.

By developing compelling answers to the questions and concerns that residents and farmers may have about planning for agriculture, communities can increase the likelihood that their local planning efforts will be a success.



Making Support For Agriculture a Community Priority

One of the biggest challenges in engaging the public in planning for agriculture is conveying the message that farms should not be taken for granted. Too often, residents assume that farms will be in their communities forever. Motivating people to take action before a crisis has occurred is challenging but very important.

The rationale for supporting farms and protecting farmland may differ in every community. However, the following arguments about the benefits of agriculture have frequently been used to generate local support for farming.

ECONOMIC: Farms provide jobs and support the local economy.

Farms are local businesses. They create jobs and support many other businesses by purchasing local goods and services. In 2004, New York farms sold more than \$3.6 billion in farm products and spent nearly \$2.8 billion on production expenses, much of which stayed within New York. Agriculture has been a dependable component of New York's economy for many years and will continue to be, if we invest in its future.

FISCAL: Farmland and forestland require fewer community services and help maintain lower property taxes.

Development imposes costs on communities in the form of increased demand for schools, roads, water, sewer and other community services. Numerous "cost of community services" studies and other research have shown that farm- and forestland generate more local tax revenue than they cost in services. By comparison, residential development typically fails to make up for local costs with property tax revenue. The expression "cows don't go to school" is often used to relay the message that communities should consider the net impacts of new development on property taxes.

SCENIC: Farms provide rural character and scenic landscapes.

Working farms help define the rural landscape that is attractive to many New Yorkers. By protecting cropland, pastures and woods, communities can retain their traditional sense of place and rural identity.

TOURISM: Scenic working farms attract tourists and dollars to New York.

In addition to making New York a desirable place to live, farms help make the state a desirable place for people to visit. Wineries, u-pick farms and other agritourism establishments are direct draws for tourists. Working farms provide the scenery that is enjoyed by people on country drives in communities around the state.

ENVIRONMENTAL: Well-managed farms help protect water quality and natural resources.

Farmers have been the stewards of the state's natural resources for generations. Farms maintain wildlife habitat, provide buffers for wetlands and waterways and protect recharge areas for aquifers and other environmental resources. The environmental benefits of farms have been well recognized by cities such as New York City and Syracuse, which have invested millions of dollars to conserve well-managed farms that protect drinking water quality and other natural resources in their watersheds.

CULTURAL: Farms connect us to our community heritage and historic places.

Farm buildings, rock walls, historic farm machinery, open fields and other elements of agriculture are important links to our farming heritage. By protecting farms, we ensure that future generations have the opportunity to visit local farms and learn more about agriculture. Many people also admire the values and work ethic represented by farmers and farm families.

HEALTH/NUTRITION: Farms produce fresh local foods.

Locally-grown food tastes better and is often healthier. Communities with local farms have access to farmers' markets, farmstands and other retail outlets that sell fresh local farm products, including fruits, vegetables, meats, dairy products and other items. In the future, the security of having a local food supply may become even more important to communities.

The Threat: Working farmland lost to poorly planned development

New York's landscape has been changing for generations. Studies from 20 to 30 years ago documented the rise of new non-farm development and the potential impacts on agriculture. So why is it more important than ever that we take action now?

Non-farm development has been on the rise in New York for decades, but the scale, speed and distribution of recent development is significantly different. A national study by American Farmland Trust, *Farming on the Edge*, identified three areas of New York—the Hudson Valley, the Finger Lakes/Lake Ontario Plain and eastern Long Island—as among the 20 most threatened farming regions in the country.

The most recent statistics from the United States Department of Agriculture indicate that roughly 89,000 acres of prime farmland were developed in New York between 1992 and 1997, a 141 percent increase over the previous five years. New York was ranked 13th in the nation for this period by its rate of loss.

A recent study titled "Sprawl Without Growth: The Upstate Paradox," by Cornell University's Dr. Rolf Pendall and the Brookings Institution, determined that recent conversions of farmland and forests in New York have generally not been due to population growth. The study found that 425,000 acres of farm and forestland were developed between 1982 and 1997, resulting in a 30 percent increase in developed land during the period. At the same time, the population grew only by 2.6 percent.

Statistics about farmland loss don't capture the full impact of non-farm development on agriculture. New non-farm development may raise land values, which can prevent farm operations from expanding or limit opportunities for young farmers to purchase farms and land. Poorly planned development may also fragment blocks of land into pieces that are too small for commercial farm equipment, may discourage farm investment or may set the stage for costly conflicts about farming practices.

"The loss of New York farmland is largely being driven by the migration of residents from cities into the suburbs and rural communities surrounding them, not population growth."

RECREATION: Some farms provide access for hunting, fishing and other outdoor recreational activities.

Not all farms allow public access, but many farmers, when asked, allow certain recreational pursuits such as hunting, fishing, snowmobiling, horseback riding or other activities on their land. Biking, running or walking along rural roads near farms also can be an enjoyable recreational experience for members of the community.

Those involved in planning for agriculture need to develop compelling arguments that can be used to motivate local officials and residents. For more ideas about making the case for local farms, see the CD appendix for *Agriculture's Top 10 Contributions to Broome County, Erie County: Farming on the Urban Edge and Why Save Farmland?*

Engaging Farmers in Planning for Agriculture

Municipal planning efforts can elicit varying reactions from farmers and rural landowners. For some farmers, local planning is an opportunity to directly influence the future of the community. For other landowners, local planning brings uncertainty, anger and mistrust.

Some farmers operate in communities that fail to make agriculture a priority, don't fully understand farms and modern farm practices or make decisions that undermine the future for farming. In those cases, it is easy to understand why farmers would not be supportive of local planning. In other settings, however, local community members appreciate farmers and consider the retention of farm businesses to be a priority. Farmer support for local planning is more likely in those situations.

Individual farmers and rural landowners may respond very differently to local planning efforts, depending on their own personal priorities. Farmers who perceive a strong future for agriculture may be more likely to support new policies that limit non-farm development. Farmers who plan to exit farming in the near future—whether due to age or business concerns—may be more likely to emphasize their interests as landowners and want to maximize their property values.

Since farmers have multiple interests in their property, their views on planning and land use issues

will be influenced by various personal and business circumstances:

- **As landowners**, they are concerned about potential impacts on property values and equity
- **As businesses**, they are striving to keep their farm enterprises viable and profitable
- **As taxpayers**, they are interested in keeping property taxes low
- **As residents and community members**, they hope to keep their communities desirable for future generations

The priorities of different kinds of farms, whether wineries, organic farms, dairies, hog operations, orchards, etc, may differ as well. A community could be headed for trouble if it assumes that the interests of “agriculture” can be accounted for without considering the extent of local diversity in agriculture itself.

The following are suggestions for communities interested in engaging local farmers and rural landowners in local planning efforts.

Engage farmers early in the process

In order to build support for your project, it is crucial that you engage local farmers and landowners early on in the planning process. Getting farmer involvement may be a challenge, due to farmers' schedules, interests and concerns. Any meetings targeting farmers should be held at times, dates and locations that are compatible with farmers' work schedules. These schedules will likely differ depending on the type and scale of farm operation. Getting feedback from a few farmers prior to scheduling a meeting can help insure that the event is better attended.

Some strategies for increasing farmer participation:

- Establish an agricultural advisory committee
- Hold farmer focus groups at times and locations convenient for farmers
- Invite local farm organizations to participate in the process
- Conduct interviews with or survey individual farmers
- Determine who the farm leaders are in your community; personally invite them to get involved

Treat farms as both businesses and land uses

Farms play multiple roles in a community. They are businesses that support the local economy and provide jobs. At the same time, farms help to define a community's landscape and sense of place. Local planning efforts must focus on creating a supportive business environment for farmers as well as protecting farmland. Emphasizing one without the other will reduce the likelihood of a community's success in planning for agriculture.

Identify and cultivate leadership

Well-respected local farmers and public officials can help add legitimacy to the planning process and product. Spend time identifying the appropriate local leaders and cultivate their participation.

Balance community interests with private property rights

Planning requires a delicate balance of community priorities with the private property rights of individual landowners. Most landowners understand this need for balance but want to make sure that their private interests are treated fairly. The definition of "fairness" will differ by individual and com-

munity, but the planning process should seek solutions that strike this balance.

Even if all of the above suggestions are utilized, there will always be individuals who do not support efforts to plan for agriculture. In some cases, they may believe that there is no future for agriculture, or they may place little value on local planning efforts. However, a community with broad-based support for farm-friendly local planning will be better able to address such skepticism.

Make agriculture a priority in the community's vision for the future

Create a community vision that highlights the role for farms and farmers. Farmland is not just open space or vacant land. Agriculture requires people to manage the land and natural resources. This unique combination of people working with the land needs to be recognized and addressed in local plans and policies. Communities should include support for farms as part of their broader effort to protect rural character and open space. However, the unique needs of farmers and farm businesses can't be lost in the process.

Top Myths in Planning for Agriculture

Barns are falling down in my town. That must mean agriculture is dead.

Farming is a business, and barns are built to fill specific business needs. Barns house livestock, crops and equipment. Maintaining their structures can be expensive. When farms go out of business or barns no longer bring a reasonable return on farmer investment, barns can begin to deteriorate. However, this does not mean that farming is dead. Agriculture, like other businesses, is constantly changing. While some barns may be falling down, others are being built to fill new farm business needs. Farms must constantly adapt to changing conditions in order to have a strong future.

Purchase of development rights is the only tool needed to support agriculture.

The purchase of development rights (PDR) is one tool that can be used to permanently protect land for agriculture. However, PDR will not solve all of the issues facing farming. Many strategies are required to ensure that farms and farmers continue to be a part of New York's landscape. Without supplementary planning measures, PDR-protected farms can become surrounded by housing developments making it more difficult for farmers to operate.

When we talk about farms, we are really only talking about dairy farming.

Dairy farming represents the largest portion of New York's agricultural economy. However, New York farming consists of much more than just dairy. Farms in New York also produce fruits and vegetables, maple syrup, beef and other meats, Christmas trees, wool and other farm products. Greenhouses and horse farms are also an important part of the New York agricultural industry.

Increasing the minimum lot size for new houses to five acres will help protect farmland.

Increasing the minimum lot size for new houses to three, five or seven acres will not help protect land for farming. The resulting lots are often too small for larger, commercial farm vehicles and too large for many homeowners to actively manage. This zoning technique does reduce the density of new houses, but that should not be confused with protecting land for active farm use. The fixed ratio approach to zoning (described in further detail in Section Three) is an alternative that towns can use. Fixed ratio zoning allows towns to make modest reductions in housing density while still keeping new houses on smaller building lots.

The Agricultural Districts Law prevents towns from regulating farms.

New York's Agricultural Districts Law permits the

Department of Agriculture and Markets to intervene when local governments enact laws that unreasonably restrict farm operations in agricultural districts. This does not mean that local governments are powerless when dealing with farms. This important state law requires that local governments be reasonable in their approach. As a first step, a local government should work with the farm community to address issues of concern. If this is not satisfactory, the local government should approach the Department of Agriculture and Markets to ensure that the proposed local law does not violate the Agricultural Districts Law. This process may take time and energy but will hopefully ensure that farmers' needs and community interests are addressed.

By keeping farms in our town, we are limiting our tax base.

"Cows and corn don't go to school." This saying reflects the fact that while farmland pays less in property taxes than residences do, it requires significantly less in public services. "Cost of Community Services" studies from around the country have demonstrated that farm and forestland generate a net property tax "profit" while houses generally cause a property tax "loss" (due to their demand for expensive public services). Thus, having farmland in a community can help maintain a lower demand for public services and keep property taxes lower. By focusing growth in areas with access to underutilized infrastructure, communities can promote fiscal efficiency, preserve farmland and open space and avoid other costs of sprawl.

Farms may be pretty to look at, but they don't impact New York's economy.

Agriculture has played a major role in New York's economy for centuries. While other businesses may move to the state for a period of time and then relocate, agriculture is a stable base for the state's economy. New York farms annually generate over \$3.6 billion each year in farm sales and are directly linked to agricultural service-providers and food manufacturers that generate an additional \$27.8 billion each year in sales. With the right support, farms will continue to play an important role in New York's economy for years to come.

Cluster developments are the perfect farmland protection tools.

The clustering of new houses is an important technique for conserving natural resources and reducing the footprint of new housing. However, it has limitations when applied to farmland protection. A cluster development can concentrate new neighbors near an actively managed farm field or farm operation. It doesn't take many residential clusters, even on relatively small parcels, to start to interfere with farm viability. Pro-active steps must be taken to ensure that the clustered development does not generate future conflicts between nearby farmers and their new neighbors.

Section Two

Principles of Planning for Agriculture at the Town Level in New York

From Suffolk County to St. Lawrence County, New York state has a tremendously diverse population, landscape and agricultural industry. Some towns have thriving real estate markets and large tax bases, while other towns have experienced less development pressure and have smaller tax bases. Some towns have complex land use laws managed by planning professionals, while other communities have no comprehensive plans, zoning laws or planning staff.

This diversity makes it impossible for any single town program or policy to be appropriate for every New York community. However, there are general principles of “planning for agriculture” that should fit nearly every community. The tools used to achieve these objectives may differ, but the broad objectives are similar, as are the underlying issues facing farms throughout the state.

The following five elements of planning for agriculture should be addressed by New York towns interested in supporting local farms.

1) Understand agriculture in your town

A common understanding of agricultural issues should be at the core of town policies. This understanding of and appreciation for the role of farms in the community does not happen automatically. It must be actively sought and reaffirmed on a regular basis. Communities should educate themselves about the economic, property tax, environmental, historical and quality of life benefits provided by local farms.

2) Create a supportive business environment for farming

Towns have a limited ability to create new markets for farm products or influence the prices received by farmers. But, towns can impact farm profitability by creating a supportive business envi-

ronment for local farms. Such actions may include developing local policies and regulations appropriate for farm businesses; supporting business opportunities compatible with farming; and ensuring that public infrastructure investments support agricultural viability.

3) Support appropriate property tax policies for farmland and buildings

Another strategy for encouraging farm profitability is supporting appropriate property tax policies for farmland and buildings. Numerous “Cost of Community Services” studies (COCS) and other research have demonstrated that farmland provides net property tax profit to a community. Farmland, unlike new houses, provides more in taxes than it receives in services. Towns should acknowledge this benefit and develop local tax policies that support farmland retention.

4) Develop strategies to protect your town’s best farmland

Towns should have a clear idea of where they want to support agriculture over the long-term. They should then take action to keep such lands in agricultural use. It is important that towns seek to retain blocks of farmland that will support a range of farm businesses, and avoid siting non-farm infrastructure in priority farming areas.

5) Limit the impacts of new development on agriculture

Planning for agriculture policies will not necessarily prevent new non-farm development. However, such policies can minimize the conversion of productive farmland, while helping to make new development more compatible with nearby farm operations. Towns will need to manage the scale and siting of new development. They also may need to undertake additional measures to mitigate conflicts between farmers and non-farm neighbors.

Is Your Town Planning a Future for Agriculture?

A Checklist for Supporting Agriculture at the Town Level in New York

Understanding Agriculture in Your Town:

Does Your Town...

Yes No

...have a detailed section on agriculture in the town's comprehensive plan? The comprehensive or master plan is the big picture view for the future of the town. Does your town's comprehensive plan refer to "maintaining rural character," but overlooks agriculture as the primary component? Consider having a town-appointed committee profile local farms to demonstrate the economic, cultural and environmental benefits of agriculture. Agriculture shouldn't be an afterthought!

Yes No

...have a consistent approach for local procedures that deal with agriculture? Town boards, planning boards and zoning boards have different responsibilities, but a common regulatory outlook is possible. Update your comprehensive plan to reflect the value that agriculture contributes to your town's quality of life through open space, wildlife habitation, watershed purification and natural resource preservation. Establish, as a policy, that agriculture is beneficial to your town and fairness will follow.

Yes No

...have any visible demonstration of the value of local farms? Does your town support a fair, an apple festival or other farm events? When agriculture is visible to the public, residents will better understand the benefit of having farms in town.

Yes No

...have farmers serving on local planning boards, zoning boards or local economic development committees? Having farmers serve on town committees is one of the most effective ways for towns to incorporate agricultural concerns into local land use or economic development plans. Town Law Sect. 271(11) permits towns with state agricultural districts to allocate planning board seats to farmers.

Agricultural advisory committees can also be established to provide guidance to a town.

Yes No

...publicize where to go to get advice and assistance on farm questions? Towns should help make the connection between farmers and local, state and federal agricultural and conservation organizations that can serve as resources.

Creating a Supportive Business Environment for Farming:

Does Your Town...

Yes No

...allow agricultural uses in more than one zoning district? Agricultural businesses are not the same as other commercial development. Some towns confine agricultural businesses to the commercial zone only, while other towns prohibit such uses in the commercial zone. Farm enterprises often are hybrids of several different uses. Ordinances and regulations should allow farm business flexibility.

Yes No

...allow flexibility in regulations to accommodate the unusual needs of agricultural businesses? Does your town have appropriate regulations for farm retailers such as expanded hours of business, temporary and off-site signs, parking near pick-your-own fields, or on street parking? The land use impact and off-site impact of a seasonal farm business can be much less than that of a full-time retail business. Pick-your-own operations or Christmas tree farms may have a hard time staying viable in a town that treats farms like all other retailers.

Yes No

...allow farm stands to sell produce purchased elsewhere? Many towns have rules that require a certain percentage of farm stand produce to be grown on the farm. The basis for allowing a farm stand shouldn't be how much is grown on the farm, but

what benefit the farm provides to the town in terms of open space, wildlife habitation, watershed purification and natural resource protection.

Yes No

...allow rural businesses compatible with agriculture in farming areas? Home-based occupations such as farm machinery repair shops, sawmills and other rural businesses can help farm families make ends meet. They can also provide an economically viable alternative to selling farmland for development.

Yes No

...work to pro-actively address trespassing on farmland? When people trespass on farmland, crops, fields and infrastructure can be damaged. Communities can help protect public safety and prevent needless farm losses by pro-actively addressing trespassing problems.

Yes No

...have business infrastructure that supports modern farms? Modern farming operations require services, as do other businesses. To support farm businesses, towns should ensure that telephone, electric and other wires are high enough to prevent accidents with farm equipment. They also should make snowplowing on roads leading to dairy farms a priority so that milk trucks can collect milk easily, and should maintain good culverts and drainage systems to help move water away from farm fields. Towns should also check their roads and bridges to determine whether they can handle tractor-trailers, which are commonly used to provide goods and services to farms.

Supporting Appropriate Tax Policies for Farmland and Buildings

Does Your Town...

Yes No

...properly assess specialized agricultural structures? Has your town assessor received training on assessing farmland and farm buildings? Specialized structures such as silos, milking parlors and permanent greenhouses depreciate in value over time. If your town frequently overvalues agricultural structures, this can have a chilling effect on all types of farm investment.

Yes No

...recognize the property tax benefits of farmland and support tax policies that are fair to farmland owners? While farmland may provide less tax revenue per acre than other land uses, it also requires significantly less in local services. “Cost of Community Services” studies in over 15 New York towns have demonstrated that farmland generally pays more in taxes than it receives in local services. By comparison, residences generally require more in local services than they pay in taxes. Has your town considered adopting agricultural assessment values for fire, library or other service districts as a means of demonstrating that farmland requires fewer public services?

Yes No

...act as a resource for information about property tax reduction programs aimed at farmers and other farmland owners? Local governments and New York state have developed a number of programs aimed at reducing property taxes for farmers and other owners of farmland. Does your town encourage the use of New York’s Agricultural Assessment and Farm Building Exemption programs and the Farmers’ School Tax Credit?

Developing Strategies to Protect Your Town’s Best Farmland

Does Your Town...

Yes No

...identify areas where it wants to support agriculture over the long-term? Do you know where the best agricultural soils are located in your town? The USDA Natural Resources Conservation Service (NRCS) and Soil and Water Conservation Districts can be important partners in identifying productive agricultural soils. This soil data combined with other information can help towns identify priority farming areas where they want to support agriculture over the long-term.

Yes No

...have policies aimed at retaining large blocks of farmland that are able to support a variety of farm businesses? Farmers don’t want to be an “island in a sea of development.” Has your town developed policies to keep large blocks of land in agricultural

use over the long-term? Larger areas of farmland provide greater opportunities for farms to adapt to changing market conditions. Retaining such blocks helps to ensure a future for farming.

Yes No

...limit expansion of infrastructure in areas where it wants to support agriculture over the long-term?

Extending water and sewer lines through farmland should be done with caution. Providing these services without accompanying planning measures can accelerate the loss of farmland. Focusing water, sewer and other services in already developed areas can help limit the development of a town's best farmland.

Yes No

...have a strategy for protecting its best farmland?

Once your town identifies its priority farming areas, complementary land use policies should be developed to encourage the retention of that land in continued agricultural use. Flowery language about agriculture in a comprehensive plan isn't good enough. Work with farmers to turn the ideas expressed in your comprehensive plan into specific policies to retain your town's best farmland.

Yes No

...encourage the use of conservation easements on farmland?

Does your town support applications to the state or federal government to purchase agricultural conservation easements on local farms? Have you considered providing funding for acquiring conservation easements on farmland? Agricultural conservation easements can be used to protect the natural resource base for agriculture. Once a conservation easement is recorded on farmland, the land will permanently be kept available as a resource for future generations of farmers.

Limiting the Impacts of New Development on Agriculture

Does Your Town...

Yes No

...have policies aimed at limiting the impact of new development on productive farmland?

Does your town have strategies for limiting the footprint of new development? New development can take place in

many ways. Creative site planning can accommodate new development while limiting the loss of your town's best farmland.

Yes No

...require buffer zones between farmland and residential uses?

The old saying "good fences make good neighbors" has a modern corollary that says, "good buffer zones make new neighbors into good neighbors." New development should not place the burden on existing farms to give up boundary land as a buffer zone between agricultural and residential areas. New residential development should provide for its own buffer zone and/or landscape plantings for screening when necessary.

Yes No

...have an "agricultural zone" that limits the impacts of new developments on farms?

Does your town have a strategy for managing new development in agricultural zones in a way that supports agriculture over the long-term? Many towns in New York have zoning ordinances with "agricultural zones" that permit scattered development next to farms—a recipe for future conflict.

Yes No

...have planning tools that are supportive of New York State Agricultural Districts?

The Agricultural Districts Law, which was enacted in 1971, is one of New York's oldest farmland protection tools. Agricultural districts provide important "right-to-farm" protections to farmers. Does your town incorporate the boundaries of agricultural districts into your zoning maps and other local land use policies?

Yes No

...have policies to mitigate conflicts between farmers and non-farm neighbors?

A local Right-to-Farm Law expresses a community's support for agriculture. It can also prevent unnecessary lawsuits between farmers and non-farm neighbors by referring conflicts to mediation before the courts are involved. Cornell Cooperative Extension, Soil and Water Conservation Districts, the New York State Agricultural Mediation Program and other groups can serve as partners in addressing conflicts before they grow into painful disputes or expensive lawsuits.

Total the Score!

Your Results...

Yes on 20-25

Your town is very active in supporting a future for farming.

Yes on 15-19

Your town knows that farmers are good neighbors who provide lots of benefits to your quality of life, but you may need help in pro-actively supporting them.

Yes on 10-14

Careful! Your town may be less supportive of farms than you think—even unfriendly, perhaps inadvertently.

Yes on 5-9

Time to get to work on understanding farmers in your town and how you can help support their business and land use needs.

Yes on 0-4

Yours is not a farm friendly town, but there might still be hope. Seek help immediately from farmers, farm groups and related organizations

This questionnaire was developed based upon a section of *Preserving Rural Character through Agriculture*, written by Gary Matteson for the New Hampshire Coalition for Sustaining Agriculture.

Section Three

Section 3 summarizes a menu of tools that towns can use to support local farms. The tools include:

- Agricultural districts15
- Town right-to-farm laws.....18
- Comprehensive plans20
- Zoning ordinances and laws.....27
- Subdivision ordinances43
- Local property tax reduction programs47
- Purchase of development rights49
- Transfer of development rights53
- Lease of development rights.....56
- Infrastructure planning58

Each section begins with an overview of the tool, followed by a brief assessment of its benefits and drawbacks. The tool sections conclude with case study communities and/or other sample materials. Brief case study descriptions in this section are accompanied by supporting documents on the accompanying CD.

The case studies were selected from New York and other states to best represent the tool concepts. However, the case study materials should be considered examples and not models necessarily. Not every tool will be applicable to every community. Communities considering using one of the tools should carefully review the sample materials and make appropriate changes to ensure a sound fit with their specific needs.

Question	Tools to Consider
How can we demonstrate an understanding of the importance of local farms?	Comprehensive Plan; Town Right-to-Farm Law
How can we create a supportive business environment for agriculture?	Agricultural Districts and Right-to-Farm Protections; Zoning Law; Infrastructure Planning
How can we develop appropriate tax policies for farmland and buildings?	Tax Reduction Programs; Lease of Development Rights
How can we develop strategies to protect our best farmland?	Zoning Law; Subdivision Ordinance; Purchase, Lease or Transfer of Development Rights; Infrastructure Planning
How can we reduce the footprint of new development and its impact on agriculture?	Zoning Law; Subdivision Ordinance; Agricultural Districts and Right-to-Farm Protections

Agricultural Districts

For more information about agricultural districts, see the following documents on the CD that accompanies this guide:

- New York State Agriculture and Markets Law Article 25AA
- New York State Department of Agriculture and Markets 305a two-page document: Local Laws and Agricultural Districts—Guidance for Local Governments and Farmers
- New York State Department of Agriculture and Markets 305a Review Form
- New York State Department of Agriculture and Markets 305a Questionnaire for Start-Up Farms
- New York State Department of Agriculture and Markets Agricultural Districts 305a Guidance Documents:
 - Farm Worker Housing
 - Nutrient Management
 - Open Burning
 - Animal Control
 - Wetlands
 - Farm Markets
 - Composting
 - Greenhouses
 - Zoning
 - Horse Boarding
 - Junkyard
- New York State Department of Agriculture and Markets Pipeline Construction Guidelines
- New York State Department of Agriculture and Markets Wind Power Guidelines
- Saratoga County Agricultural Data Statement
- American Farmland Trust’s Agricultural Districts Fact Sheet

New York’s Agricultural Districts Law (Article 25-AA of NYS Agriculture and Markets Law) was enacted in 1971 to help keep farmland in active agricultural production. An agricultural district can be developed when a group of interested landowners—who collectively own at least 500 acres—submit a proposal to their county requesting the formation of a district. By February 2005, 312 county-level agricultural districts had been formed, encompassing nearly 21,300 farms and more than 8.5 million acres of land.

Farmers and rural landowners enrolled in state-certified agricultural districts receive important “right-to-farm” protections. These protections include:

Definition of Agriculture: Provides authority to the Commissioner of the New York State Department of Agriculture and Markets (NYS-DAM) to determine whether land uses are agricultural in nature.

Local Ordinance Provision: Provides protection against local laws that unreasonably restrict farm operations. Under this authority, NYSDAM has pro-actively worked with local governments to prevent the enactment of unreasonably restrictive local laws. Farmers are guarded from unreasonably restrictive zoning codes and ordinances regarding farm worker housing, manure management and other farm practices.

Agricultural Data Statements: Requires the filing of an agricultural data statement for certain land use determinations within 500 feet of a farm operation located in an agricultural district. The statement must include information about the proposed project and be included with the application for municipal approval. The clerk of the local board must mail a notice of the application to the owners of land associated with neighboring farm operations identified in the statement. The local board is required to evaluate and consider the statement in its review of possible impacts of a project on nearby farm operations. No further review by the county agricultural and farmland protection board or NYSDAM is required.

Notice of Intent (NOI): Requires analysis of proposed public projects that may impact farms in agricultural districts. A preliminary NOI and a final

NOI, including a detailed agricultural impact statement, must be filed before public funds are spent on certain non-farm projects in an agricultural district. These statements describe short and long-term impacts of the project on agriculture, alternatives to the proposed project and possible mitigation measures. Once completed, preliminary notice and final NOIs must be reviewed by NYSDAM and the county AFPB.

Sound Agricultural Practices: Offers limited protection from private nuisance claims. Provides authority for the commissioner of NYSDAM to review specific cases and issue an opinion as to whether a farmer is conducting an agricultural practice that is “sound.” Four basic questions guide the determination of whether a practice is sound:

- Is the practice legal?
- Does the practice cause bodily harm or property damage off the farm?
- Does the practice achieve intended results in a reasonable and supportable way?
- Is the practice necessary?

A farmer can use a NYSDAM opinion to defend against private nuisance actions. Sound agricultural practice opinions offer a defense to private nuisance actions when the land involved is in an agricultural district or, if the land is outside of an agricultural district, when the land involved is used in agricultural production subject to an agricultural assessment.

Disclosure Notices: Requires a landowner in an agricultural district to provide a prospective buyer with a disclosure notice prior to signing a purchase contract. The notice aims to advise property buyers about the sights, sounds, smells and other aspects of modern agricultural practices before they purchase property in a farming area.

In addition to right-to-farm protections, the Agricultural Districts Law also provides Ad Valorem limitations for land used primarily for agricultural production within an agricultural district. This provision limits the taxation of farmland for certain municipal improvements such as sewer, water, lighting, non-farm drainage, solid waste disposal or other landfill operations. Land used primarily for agricultural production within an agricultural district can only be taxed if the fees were imposed prior to the

Agriculture and Markets Law (AML) Section 305-a: Review of Unreasonably Restrictive Local Ordinances

Town governments considering the adoption of local laws that impact farm operations in agricultural districts should understand the important connection between state agricultural districts and local policy-making. AML Section 305-a allows the commissioner of the New York State Department of Agriculture and Markets to review local laws and determine if they are unreasonably restrictive of farms operating in agricultural districts.

When reviewing such measures, the commissioner may consider:

- If the requirements adversely affect the farm operator’s ability to manage the farm operation effectively and efficiently;
- Whether the requirement could impact production options and affect farm viability;
- If the requirement will cause a lengthy delay in the construction of new farm building or implementation of a practice;
- Compliance costs for a farm operation;
- The availability of less onerous means to achieve the locality’s objective;
- If the local law addresses a threat to public health or safety.

In situations where a local law is deemed unreasonably restrictive, the Department of Agriculture and Markets will notify the local government and try to negotiate a resolution. If rejected by the municipality, the commissioner of the Department of Agriculture and Markets can bring action or issue an order to enforce this provision of the AML.

Fortunately, most issues are resolved before the Department of Agriculture and Markets has to take action under the AML. Local governments often recognize that the types of issues considered by the New York State Department of Agriculture and Markets when reviewing local ordinances should also be considered by local governments interested in creating a supportive business environment for farmers.

For communities interested in taking pro-active steps to address the business and land use needs of farms, agricultural districts and the state’s AML are important complements—not antagonists—to local decision-making.

formation of the district or if farm structures benefit directly from the service of an improvement district. A one-half acre lot around any dwelling or non-farm structure is subject to applicable fees as well.

Benefits of Agricultural Districts

- Voluntary program popular with farmers
- Supports a favorable operating environment for farms
- Helps stabilize large blocks of land to keep farming viable

Drawbacks of Agricultural Districts

- Does not prevent conversion of enrolled land
- Several provisions are reactive rather than proactive
- Non-farm support for agricultural districts may erode as right-to-farm protections are exercised

The state's Agricultural Districts Program is a partnership effort between the New York State Department of Agriculture and Markets, county

governments and agricultural and farmland protection boards (AFPBs). While the state is responsible for providing the right-to-farm protections, counties are responsible for designating land to be included in agricultural districts; reviewing districts every eight, twelve or twenty years; evaluating notice of intent filings; and overseeing other aspects of agricultural district implementation within their jurisdiction.

Towns can also be involved in supporting agricultural districts. Some options for towns include:

- Complementing the principles of the Agricultural Districts Law as well as the location of parcels enrolled in agricultural districts in local plans and policies;
- Requiring copies of Agricultural Data Statements for proposed land use determinations within 500 feet of farm operations in state certified agricultural districts;
- Providing information to farmers and rural landowners about agricultural districts and supporting the enrollment or re-enrollment of land into districts.

Town Right-to-Farm Laws

For more information about right-to-farm laws and addressing farm/neighbor conflicts, see the following documents on the CD that accompanies this guide:

- American Farmland Trust's Right-to-Farm Law Fact Sheet
- Town of Charlton Right-to-Farm Law
- Town of Eden Right-to-Farm Law
- Yates County Model Right-to-Farm Law
- New York Agricultural Mediation Program Brochure
- Saratoga County's "Are You Thinking About Moving to the Country?" Brochure
- Tompkins County's "Living in the Country" Brochure

Town right-to-farm laws are aimed at maintaining a supportive operating environment for farmers by limiting farmer/non-farm neighbor conflicts. These local laws can supplement the New York State Agricultural Districts Law and the right-to-farm protections that it provides to farmers operating in agricultural districts.

Typically, local right-to-farm laws document the importance of farming to a town and put non-farm rural residents on notice that generally accepted agricultural practices are to be expected in farming areas. In doing so, such laws can provide farm families with a sense of security in knowing that farming is a valued and accepted activity in their communities.

Additionally, local right-to-farm laws can establish dispute resolution processes to mediate conflicts and avoid expensive legal battles. Town agricultural advisory committees or ad hoc dispute resolution committees can help mediate such disputes and help the parties involved find a mutually acceptable resolution to the problem.

The New York State Agricultural Mediation Program (NYSAMP) can also be a resource for communities interested in mediating conflicts between farmers and non-farm neighbors. NYSAMP works through the statewide network of Community Dispute Resolution Centers and can provide media-

tors trained in resolving disputes involving agricultural issues.

Benefits of Town Right-to-Farm Laws

- Help maintain a supportive operating environment for farms
- Publicly support agriculture
- Can be used to guide future town policies and decisions
- Supplement the New York State Agricultural Districts Law
- Relatively inexpensive

Drawbacks of Town Right-to-Farm Laws

- May have limited impact unless the law and dispute resolution process are widely promoted
- Do not prevent farmland conversion

■ CASE STUDY

Town of Charlton, New York

2000 Population: 3,954

2000 Median Household Income: \$63,396

2000 Median Single-Family Home Value: \$122,700

The town of Charlton in Saratoga County established a right-to-farm law in 1996. The purpose of the law is "to maintain and preserve the rural traditions and character of the town; to permit the continuation of agricultural practices; to protect the existence and operation of farms; to encourage the initiation and expansion of farms and agribusinesses; and to promote new ways to resolve disputes concerning agricultural practices and farm operations."

The law is well integrated with the state Agricultural Districts Law. It adopts many of the state law's definitions and incorporates references to appropriate sections of the state law.

The law establishes a farmer's right to conduct agricultural practices if the practices are:

- Reasonable and necessary to the particular farm or farm operation;
- Conducted in a manner that is not negligent or reckless;
- Conducted in conformity with generally accepted and sound agricultural practices;
- Conducted in conformity with all local, state and federal laws and regulations;

- Conducted in a manner that does not constitute a threat to public health and safety or cause injury to health or safety of any person, and;
- Conducted in a manner that does not unreasonably obstruct the free passage or use of navigable waters or public roadways.

The right-to-farm law also stipulates that the real estate disclosure notice required under the Agricultural Districts Law be attached to a purchase and sale contract at the time an offer to purchase is made. The real estate disclosure notice also must be included in building permits and on plats of subdivisions submitted for approval. Lastly, the legislation specifies a local process for resolving agricultural disputes. The process entails the formation of a dispute resolution committee that works with both parties as well as experts from New York State Department of Agriculture and Markets, Cornell University, Cornell Cooperative Extension, USDA's Natural Resources Conservation Service and Soil and Water Conservation Districts. In such cases, the committee investigates relevant facts, listens to the involved parties and provides a written decision to help broker a mutually acceptable settlement.

■ CASE STUDY

Town of Eden, New York

2000 Population: 8,076

2000 Median Household Income: \$54,940

2000 Median Single-Family Home Value: \$106,500

The town of Eden in Erie County passed a right-to-farm law in 2001 to “reduce the loss... of agricultural resources by limiting the circumstances under which farming may be deemed a nuisance and to allow agricultural practices inherent to and necessary for the business of farming to... be undertaken free of unreasonable and unwarranted interference or restriction.”

Similar to the law passed by the town of Charlton, the legislation cites the state Agricultural District Law's definitions and establishes a farmer's right to conduct agricultural practices if those practices meet certain standards. The legislation also establishes an informal, local process for resolving disputes between farmers and non-farmers.

The legislation further requires that the intent and purposes of the law be taken into consideration by the town in processing applications for rezoning, site plan approval or special use permit within one mile of a farm. Appropriate and reasonable conditions consistent with the purposes of the right-to-farm law may be prescribed as part of this review including requiring the filing of real estate disclosure notices.

Comprehensive Plans

For more information about comprehensive plans, see the following documents on the CD that accompanies this guide:

- AEM Tier II Agriculture and the Community Worksheet
- AFT LESA Fact Sheet
- American Farmland Trust's Cost of Community Services Fact Sheet
- United States Department of Agriculture NRCS LESA Guidebook
- Putnam County's Agricultural and Farmland Protection Plan LESA System (P. 85-92)
- Excerpt from Town of Warwick's Comprehensive Plan (P. 7-9, 43-57)
- Excerpt from Town of Seneca's Comprehensive Plan (P. 5-8, 11-18, 39, 48-49, 59-67, 89-95)
- Town of Eden Agricultural Advisory Committee
- Town of Ithaca Agriculture Committee

Comprehensive or master plans can form the basis of a local land protection strategy by identifying areas to be protected for farming and forestry as well as areas where development will be encouraged.

Comprehensive plans are the foundation of town planning and zoning efforts. Any land use regulations that are enacted must be in accordance with a comprehensive plan. A comprehensive plan represents a community's vision for the future and a road map for how to get there. The drafting of a comprehensive plan can present a challenging but beneficial opportunity for a town to discuss its future and to coordinate with county planning efforts.

Comprehensive plans often include:

- A vision statement describing the community's long-term goals;
- Maps identifying different natural and community resources, infrastructure and land uses;
- Research regarding town demographics, land uses, businesses and natural resources;
- Feedback from citizens via surveys, public meetings, focus groups and other public participation vehicles;
- Recommendations that address the community's objectives.

Agriculture is often treated favorably in comprehensive plans. Sections on open space, natural resources or the environment may describe the role that farms play in defining the community landscape. Other sections may connect the value of farm buildings and pastoral landscapes to a town's history and heritage. Some comprehensive plans even outline the importance of farms to the town's economy, jobs and businesses.

However, few comprehensive plans manage to capture the full range of benefits that farms contribute or the unique nature of farms as both businesses and land uses. Few comprehensive plans actually identify specific recommendations for addressing agriculture's unique business and land use needs. As a result, many comprehensive plans fail to adequately prepare towns to strongly support a future for local farms.

Benefits of Comprehensive Plans

- Provide an opportunity to engage farmers and non-farmers in discussions of a community's future;
- Set the stage for future town efforts to support local farms;
- Articulate the reasons why a town should support agriculture;
- May be less expensive than other farmland protection tools.

Drawbacks of Comprehensive Plans

- Drafting process can drain personal, financial and political resources and reduce enthusiasm for plan implementation;
- Will not have a meaningful impact without subsequent town actions.

The Drafting of a Comprehensive Plan

The development of a comprehensive plan is an important opportunity for towns to engage community residents in thinking about the future. Farmers and rural landowners should be engaged early in the process, so that the final plan represents the interests and concerns of farmers.

Agricultural Advisory Committees

One way to engage farmers and agricultural landowners is by establishing a town agricultural advisory committee. Such a committee can be an important forum for making sure that the unique needs of agriculture are integrated into the comprehensive plan.

The group can help:

- Analyze issues facing farms and farmland in the town;
- Articulate the benefits provided by local farms and the challenges they face;
- Identify strategies for supporting the business and land use needs of local farms.

■ CASE STUDY

Town of Ithaca, New York

2000 Population: 18,198

2000 Median Household Income: \$45,281

2000 Median Single-Family Home Value: \$140,300

The town of Ithaca in Tompkins County formally created an Agriculture Committee in 1992 to provide a mechanism for farmers to inform the town of their concerns. The committee also acts a resource to various town of Ithaca boards in their local decision-making and provides information on state and national legislation that affects agriculture.

The committee includes up to eight members appointed by the town board. Committee officers are appointed by the board after committee recommendation. In 2004, the size of the committee was expanded to nine members due to growing interest among local farmers. In 1999, Ithaca created an Agricultural Land Preservation Advisory Committee to advise the town on the establishment and administration of its Purchase of Development Rights program. The Agricultural Land Preservation Advisory Committee includes five members includ-

ing two members from the town's Agriculture Committee.

■ CASE STUDY

Town of Eden, New York

2000 Population: 8,076

2000 Median Household Income: \$54,940

2000 Median Single-Family Home Value: \$106,500

In 1994, the town of Eden created an Agricultural Advisory Committee in recognition of the importance of farming to the community. The committee helps ensure the continued viability of agriculture within the town and provides a conduit for feedback from the farm community to the town board, planning board and other town bodies. The committee is comprised of five members of the local agricultural community including representatives of the greenhouse, crop production and dairy sectors. Ex officio members of the committee include a member of the planning board, the chair of the board of assessors, a representative from the Erie County Farm Bureau and a member of the town board.

The committee advises the town on agricultural districts within its jurisdiction, proposed zoning changes or development in agricultural districts and county, state and federal legislation and its potential impact on the town. It also acts as a forum for communication between the farm community, the town of Eden and the Erie County Agricultural and Farmland Protection Board.

■ CASE STUDY

Town of Hatfield, Massachusetts

2000 Population: 3,249

2000 Median Household Income: \$50,238

2000 Median Single-Family Home Value: \$168,800

A number of Massachusetts towns have developed agricultural advisory commissions in recent years. In 2001, the town of Hatfield established a five-member agricultural advisory commission to:

- Advise the town's land preservation advisory committee on transactions and acquisitions involving agricultural lands in town;
- Advise the town's board, planning board and other boards and committees on projects and activities involving agricultural lands in town;

- Engage in projects and activities to promote the business of farming, farming activities and traditions, and farmland protection in town including educational programs and community events.

Agricultural advisory commissions have played an important role in integrating the needs of agriculture with local policies. The establishment of such a commission can help demonstrate a town's commitment to supporting local farms.

Surveys

Surveys of farmers and agricultural landowners are another way to get input from the farm community. While surveys don't offer a forum for discussion, they can be used to obtain important background information and provide a more representative sampling of opinion. Topics that you may want to cover in surveys targeted at farmers and rural landowners include:

- Acreage owned and/or rented by farmers
- Nature of the farm business (wholesale vs. retail, types of market outlets, types of commodities produced)
- Short and long-term plans for the business
- Challenges facing local farmers and rural landowners
- Participation in existing town, county, state or federal agricultural, conservation, land use or property tax reduction programs
- Interest in possible town policies or programs
- Opinions on current town policies or programs

Focus Groups and Other Strategies

A third option is to coordinate focus groups or meetings targeted at getting input from specific audiences, such as residents or farmers and rural landowners. Any meetings targeting farmers should be held at times, dates and locations that are compatible with farmers' work schedules. These schedules will likely differ depending on the type and scale of farm operation. Getting feedback from a few farmers prior to scheduling a meeting can help increase attendance at an event.

Other strategies for engaging farmers in the development of a comprehensive plan include:

- Get a well-known, well-respected farmer to sign

an invitation to join an agricultural advisory committee or attend a meeting. Having local leaders involved can make farmers more comfortable and more likely to attend.

- Go to existing farm and conservation groups to get feedback. If you are having trouble getting people to attend meetings, consider offering to do a presentation at a monthly meeting of your county Farm Bureau.
- Invite local experts to join in your discussions. Staff from Cornell Cooperative Extension, Soil and Water Conservation Districts, USDA Natural Resources Conservation Service, county planning departments, New York Farm Bureau, land trusts and other groups can help provide important information about local agricultural and conservation issues.
- Make sure that meetings are efficient and productive. Busy farmers won't want to be involved in a committee or meetings that don't produce meaningful results.
- Be careful not to make farmers and rural landowners feel they are being targeted by a top-down process. Genuine, open communication from the beginning of a planning process can help prevent this situation. Some people will arrive late to a process; however, demonstrating that a town took significant steps to engage farmers and rural landowners may help appease such people.

■ CASE STUDY

New York's Agricultural Environmental Management Program

The New York Agricultural Environmental Management (AEM) program is a voluntary, incentive-based program that helps farmers operate environmentally sound and economically viable businesses. Using AEM's five-tier approach, farmers work with local AEM resource professionals to develop and implement comprehensive nutrient management plans (CNMPs). All agricultural counties in New York are conducting AEM programs, and participation has grown to include nearly 8,000 farms.

The AEM program has developed an "Agriculture and the Community" worksheet for use by Soil and Water Conservation Districts and others to help articulate the importance of agriculture. Contact your

county Soil and Water Conservation District for assistance in using this worksheet to better understand the value that farms bring to your community.

The Content of a Plan

Community Vision and Goals

Towns interested in providing meaningful support for local farms should specifically incorporate such support into the vision, objectives and goals of their comprehensive plans. This can also be achieved by having a separate section that profiles the importance of local farms and captures their unique status as businesses and land uses.

In addition, the support of farms and farmland protection should be integrated into other community objectives as appropriate. For example, sections about community goals in regards to conserving open space, maintaining lower property taxes, protecting historical or natural resources or supporting local businesses should consider the role farms play in achieving these broader community objectives.

Identifying Priority Agricultural Resources

One of the first steps in planning for agriculture is identifying where a community wants to support agriculture over the long-term. There is no magic recipe for this process. An analysis of local agricultural resources can be fairly simple or complex depending on a community's interests and available resources.

The process of identifying priority farming areas typically focuses on an analysis of soil types and other natural resource, land use and community criteria. Some of the characteristics may include:

- Location of state certified agricultural districts within the town;
- Concentrations of farm parcels and/or farm operations;
- Proximity to water or sewer lines or existing hamlets, villages, cities or other growth inducing factors;
- Proximity to natural features such as streams and wetlands or other community amenities such as parks.

In addition to providing useful maps and other community information, identifying priority farming areas can also be an enlightening process, since it

requires communities to look at land use issues from an agricultural perspective. Many non-farm residents, including town board and planning board members, are often unaware of the location of the best agricultural soils in their community. In particular, the USDA Natural Resources Conservation Service, Soil and Water Conservation Districts and county planning departments can be helpful resources for soils and other geographic information.

■ CASE STUDY

Land Evaluation and Site Assessment System

NRCS has established the Land Evaluation and Site Assessment (LESA) system to help local officials make sound land use decisions. LESA is a numeric rating system designed to take into account both soil quality and other factors affecting a site's importance for agriculture. Questions that the LESA system can help answer include:

- What land should a city, town, or county designate in its comprehensive plan or zoning ordinance for long-term continuation in agricultural use?
- What farm sites should be given highest priority for purchase of development rights?
- What are the impacts of a highway project on farmland?
- Which site among development project alternatives would least impact agricultural land?

The Land Evaluation (LE) component of the LESA system uses a 1 to 100 scale to rank soils for agricultural productivity. The Site Assessment (SA) criteria identifies numerous social, geographic, and economic factors that affect land-use decision making, such as proximity to urban centers, level of agricultural investments and agricultural infrastructure.

Local communities play an important role in identifying SA factors and weighing their importance. When scoring systems from each component are completed, a combined score for each parcel is determined to provide a systematic and objective procedure to rate and rank sites for agricultural importance.

Some communities have used a formal LESA system for identifying priority farming areas. Other towns use the principles outlined in a LESA system to develop their own techniques. "Greenprints" or open space ranking systems are examples of local

prioritization systems that have used concepts consistent with LESA systems.

Understanding Local Farms

Information gathering about farms should not stop at mapping. Related data regarding the economic, social, fiscal and environmental impacts of farms can provide a better overall understanding about how communities benefit from agriculture.

Results from “Cost of Community Services” studies, meetings of agricultural advisory committees, farmer focus groups and local surveys can help demonstrate the full range of benefits provided by farms. Information about the needs of local farms and the types of programs or policies that interest rural landowners can also be very helpful.

Recommendations

If a community has a specific goal of supporting agriculture, it makes sense to have a recommendations or strategy section in the plan to help achieve this goal. The recommendations should address the unique business and land use needs of agriculture and how the town can help local farms address their needs.

Recommendations involving farms should not be anchored only in an agricultural section. Some of the biggest impacts on farms can occur when the interactions of farm and non-farm land uses are not carefully considered. A community that does not plan to accommodate growth in its existing developed areas, for example, is more likely to experience growth that conflicts with farming. As appropriate, the needs of local farms should also be integrated into related sections on business, open space and the environment, community infrastructure planning, property taxes, housing, town history and heritage and other areas.

Greenprint for the Future

“The Greenprint provides a rational guide for directing preservation efforts to the most significant resources,” said project planner John Behan.

In 1990, the town of Pittsford faced a land use crisis. The steady loss of farmland threatened to end this central New York town’s once thriving agriculture. Only 12 farms remained in town.

When planners projected that Pittsford would be “built out” within a decade, town officials and citizens decided to tackle their land use issues head-on. They drafted Greenprint for the Future, which mapped out the town’s most valuable open land and outlined strategies for its protection. Having determined that their current zoning was ineffective at preserving farmland, Greenprint recommended purchasing agricultural conservation easements on more than 1,000 acres. This was supported by a fiscal impact study that showed it would be cheaper to buy easements instead of paying for municipal services on all that development.

After adopting an updated comprehensive town plan in 1995, Pittsford’s town board appointed a committee to develop a rating formula to evaluate the town’s remaining land resources. Consultants inventoried and evaluated more than 3,600 acres, paying close attention to which agricultural, ecological, historic and scenic land resources should be a priority for protection. The highest-rated land parcels were identified in Greenprint, which recommended preserving 60 percent of the town’s remaining open land. In 1996, the board unanimously approved \$9.9 million in bonds to purchase agricultural conservation easements on seven farms, totaling 1,100 acres.

By engaging the community in the Greenprint planning process, town leaders were able to create a sense of cooperation in the face of potentially heated issues. “There has been no real controversy – only community debate,” said town supervisor Bill Carpenter. “We have been able to bring all residents along on this issue. It’s critical to have a process that allows the community to come to consensus.”

For more information, see the town of Pittsford’s Greenprint in the PDR section of the accompanying CD.

■ CASE STUDY

Town of Warwick, New York

2000 Population: 30,764

2000 Median Household Income: \$61,094

2000 Median Single-Family Home Value: \$155,700

The town of Warwick in Orange County has actively worked to support local farms and protect farmland. The town's commitment to agriculture is reflected in its comprehensive plan. The plan's summary states, "Warwick is and should remain primarily a residential and agricultural community.... It is the intent of the Comprehensive Plan to accommodate new growth with the least impact on the environment. The Comprehensive Plan is a reflection of the goal for preservation of the natural beauty of Warwick and its rural quality of life."

The plan has a specific section regarding agriculture that outlines community objectives for supporting farms. The objectives are to:

- Support the economic viability of farming;
- Create incentives for landowners to maintain land in agricultural use, keeping it affordable so new farmers can begin farming;
- Preserve as many of the operating farms as possible;
- Preserve the agricultural heritage of the town;
- Discourage incompatible nearby land uses that have the potential to place burdensome pressures on farming activities.

The agricultural section also describes the town's agricultural resources and states why the town makes support for agriculture a priority. The plan's recommendations for achieving the town's agricultural objectives include such tools as:

- Purchase of Development Rights
- Transferring Residential Density
- Supporting Accessory Farm Businesses
- Encouraging Agri-Tourism
- Requiring Buffer Zones Between New Subdivisions and Farms
- Right-to-Farm Stipulations
- Citizen Education
- Farmer Surveys

Warwick's comprehensive plan also takes the important step of integrating agricultural interests into sections regarding residential growth and business development.

■ CASE STUDY

Town of Seneca, New York

2000 Population: 2,731

2000 Median Household Income: \$48,007

2000 Median Single-Family Home Value: \$84,800

The town of Seneca is located in southeastern Ontario County in one of the most fertile farming regions of the state. Eighty-six percent of the town is located in a state certified agricultural district. The town contains a high concentration of productive agricultural soils.

The town's 2002 update to its comprehensive plan reflects the important role that agriculture plays in the community. According to the plan, "The loss of agricultural land and open space can have a negative impact on the economy of the town as well as destroying the rural character that makes the town of Seneca a desirable place to live. By updating the 1962 Master Plan, the town is taking a proactive approach to controlling development and ensuring that the rural character of the town is preserved."

The plan's first goal is to "maintain and enhance productive agricultural and associated businesses." Sections regarding agricultural districts/lands describe the town's agricultural resources and the importance of farming to the community. Strategies are then identified to achieve the town's stated objectives of supporting farms and farm businesses. These include:

- Foster the development of new food and agricultural industry businesses;
- Develop plans, policies and objectives in the town of Seneca that will attract and retain agribusiness enterprises such as fertilizer, seed and machinery dealers, grain, hay and other brokers and dealers, etc.;
- Consider future farmland protection for prime agricultural lands;
- Work with two neighboring towns to review recommendations from a regional Agricultural and Land Use Planning Project;

- Discourage the subdivision of large parcels of agricultural land and encourage the grouping of smaller parcels owned by a single landowner into more manageable and productive tracts;
- Discourage the placement of new utility infrastructure upon agricultural lands;
- Support the Right-to-Farm Law adopted in 2002;

- Support the Agricultural Districts Law and local District #6.

Seneca takes the further step of integrating agricultural interests into sections regarding community character, land use, economic development and transportation.

Zoning Ordinances and Laws

For more information about zoning, see the following documents on the CD that accompanies this guide:

- New York State Department of State Guide to Planning and Zoning
- New York State Town Law Section 261-b—“Incentive Zoning”
- Excerpt from Town of Kinderhook’s Zoning Code
- New York Farmers Direct Market Association’s Model Zoning for Roadside Stands and Farm Markets
- Excerpt from Town of Seneca’s Zoning Code (P. 27-32)
- Excerpt from Town of Plainfield’s Zoning Code
- Excerpt from East Donegal Township’s Zoning Code
- Excerpt from Town of Ithaca’s Zoning Code (P. 34-43)
- Excerpt from Peach Bottom Township’s Zoning Code
- Excerpt from Alpine Charter Township’s Zoning Code
- Excerpt from Town of Washington’s Zoning Code
- Excerpt from Skagit County’s Zoning Code (P. 34-37)
- Excerpt from Town of Stuyvesant’s Zoning Law
- Excerpt from Town of Milton’s Zoning code
- Excerpt from Town of Beekman’s Zoning Code

Zoning ordinances and laws touch upon agriculture in a variety of contexts. Zoning laws can specify where in a community farmers may operate and how farms and related agricultural businesses can operate. Zoning laws may also help to define whether and how farmland may be developed into other uses.

Many New York towns have zoning ordinances that define “agricultural” or “rural” zones where agriculture is a permitted use along with many other residential, commercial and/or industrial uses. However, many of these ordinances are descriptive of current (or past) conditions and are not necessarily prescriptive of desired future circumstances. Unless other significant planning measures are undertaken, the standards of such agricultural zones will permit the fragmentation of farm landscapes, increasing the likelihood of conflicts between farm operations and new, nearby non-farm neighbors.

(A good zoning ordinance is not necessarily the end of the story. Because property owners may be granted variances from the zoning ordinance under certain conditions by a zoning board of appeals, it is also important to ensure that the ZBA understands the ramifications for agriculture of its decisions.)

Zoning laws or agricultural zoning districts intended to support farms and protect farmland often have some of the following objectives:

- Support a farm-friendly business environment;
- Stabilize larger blocks of agricultural land;
- Reduce the likelihood of future conflicts between farmers and non-farm neighbors by managing new development patterns and providing for growth in appropriate areas;
- Prevent the conversion of the town’s most productive farmland or the division of the land into tracts that are too small to farm profitably;
- Keep land more affordable for farmers to purchase.

Zoning Techniques: Creating a Supportive Business Environment

In order to be successful, farm businesses need a supportive operating environment just as other businesses do. They need market and business development assistance, financing, infrastructure and other support services. However, these needs are complicated by the unique roles of farms and farmers in the town’s economy, landscape and community. In addition, agriculture’s direct connection with the landscape, the seasonality of farm businesses and other aspects of farming add complexity to these issues.

For example, a small farm stand that sells farm

How Zoning and Planning Measures Relate to New York State Agricultural Districts

Town governments considering new zoning or other planning measures should understand the important connection between New York agricultural districts and local policy-making. Agricultural districts were first developed by the state in the 1970s to help provide a supportive business environment for farming. Farmers operating in locally created agricultural districts receive important state protections from private nuisance lawsuits, new public projects that may impact farms and unreasonably restrictive local ordinances.

This latter provision, New York State Agriculture and Markets Law (AML) Section 305-a, allows the commissioner of the New York State Department of Agriculture and Markets to review local laws and determine if they are unreasonably restrictive of farm operations in agricultural districts.

When reviewing such measures, the commissioner considers:

- If the requirements adversely affect the farm operator's ability to manage the farm operation effectively and efficiently;
- Whether the requirement could impact production options and affect farm viability;
- If the requirement will cause a lengthy delay in the construction of new farm building or implementation of a practice;
- Compliance costs for a farm operation;
- The availability of less onerous means to achieve the locality's objective;
- If the local law addresses a threat to public health or safety.⁴

In situations where a local law is determined to be unreasonably restrictive, the Department of Agriculture and Markets will notify the local government and try to negotiate a resolution. If rejected by the municipality, the commissioner of the Department of Agriculture and Markets can bring an action or issue an order to enforce this provision of the AML. (This has happened more than once in recent years.)

The key issue in this determination process: what is reasonable? Towns clearly have the authority to institute reasonable requirements on farm operations in agricultural districts if they are acting to protect public health or safety. Fortunately, most differences of opinion between town governments and the Department of Agriculture and Markets are resolved before the Department of Agriculture and Markets is forced to enforce the Agriculture and Markets Law.

products and other items shares common characteristics with a retail outlet or convenience store. However, the farm stand may only be open seasonally and may be directly associated with a land-based farm operation. By comparison, the convenience store is likely to be open year-round for extended hours with high traffic flow.

Or, a dairy farm with barns and livestock facilities concentrated in a small area surrounded by acres of crop, pasture and woodland may share similarities with a manufacturing facility, since both businesses create products intensively on concentrated acreage. However, the production taking place in the dairy barns is directly linked with the surrounding scenic working landscape of hundreds or thousands of acres. Without a business environment that supports the intensive production in the dairy facilities, a town could lose the associated open space.

Towns should understand the needs that farms share with other businesses as well as the needs that are unique to existing agricultural businesses and those that are likely to evolve or locate in town over time. Both farms and farm support businesses, such as veterinary, repair shops or farm machinery dealers, should be considered. The following are a series of strategies that towns can adopt to help create a supportive business environment for farming.

Benefits of Using Zoning to Create a Supportive Business Environment

- Popular with farmers and rural landowners;
- Supports important business needs of farm operations.

Drawbacks of Using Zoning to Create a Supportive Business Environment

- May draw criticism from non-farm residents if new farm businesses or compatible non-farm businesses don't conform to their perception of agriculture;
- Limited direct impact on farmland conversion in areas experiencing high development pressure;
- In some rural communities, many residents simply don't trust zoning enough to believe it will serve their interests.

Using a Broad Definition of Farming

New York has a tremendously diverse agricultural industry. The state is a national leader in the pro-

duction of milk, apples, grapes, vegetables, horticultural products and other farm commodities. In addition, the agricultural industry is frequently changing as farmers adapt to new market and operating conditions. As globalization continues to accelerate, it is likely that the rate and extent of change within the agricultural industry will increase as well. These changes may include the production of different agricultural products or adoption of new production practices.

One example of this change is the increasing use of greenhouses or other temporary structures for the production of vegetables, fruits, horticultural products or livestock housing. While these structures may not conform to some traditional views of a farm, they are valuable to producers as they are a cost-effective means for increasing control of growing conditions, which is of great importance in New York given the state's varied and often challenging weather conditions.

Definitions of farming in zoning and other town ordinances must be broad to encompass this diversity and rapid evolution of farming. Section 301 of the New York State Agriculture and Markets Law provides a well-understood and broadly supported definition of a farm operation:

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'... 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 statute defines "crops, livestock and livestock products" as:

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, 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.

The section also recognizes that the equine industry is an important and growing part of New York agriculture. It defines commercial horse boarding operations as:

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."

These definitions may need to be slightly modified for a town zoning code. However, including such broad and well-understood definitions of farms can give existing farmers or new farmers the flexibility to adapt to new conditions.

Purposes of an Agricultural Zoning District and Permitted Uses

The "purpose" of a specific zoning district describes the rationale behind the district's designation. It is the foundation upon which the district's terms and conditions should be based. A zoning district intended to support farms should clearly state this emphasis within its purposes (previous sections have sampled various "purposes").

Other uses considered within an agricultural zone should be evaluated for their compatibility with the primary purposes. In agricultural zoning districts, each permitted use should be carefully considered to make sure that it will not impair the business environment for agriculture or accelerate the conversion of farmland.

For example, towns would be well-advised to make accommodations for mobile homes used on the farm for worker housing. Many farms need to have their workforce located in close proximity, given the long and varied hours of farm work. In addition, many fruit, vegetable and dairy farms employ migrant laborers who require on-site housing. Zoning codes that accommodate the need for farm-worker housing can help farmers address challenging labor issues.

Towns may wish to allow additional uses in an agricultural zoning district while having slightly greater control over where and how such uses are sited. This could be achieved by requiring special use permits. Special use permits can allow a town to evaluate the specific merits of a proposal to determine if it is compatible with farming, agriculture and the other purposes of an agricultural zoning district.

■ CASE STUDY

Town of Kinderhook, New York

2000 Population: 8,296

2000 Median Household Income: \$52,604

2000 Median Single-Family Home Value: \$125,600

Kinderhook permits farm markets in almost all of its zoning districts as a means of supporting farm operations and tourism. The town defines farm mar-

In its zoning code, the town of Kinderhook in Columbia County clearly states its support for agriculture and its intent to create a supportive operating environment for farms. The code's section on agriculture incorporates:

- “Right-to-farm” protections for operating farms;
- A notice to existing and prospective residents about the town's support for agriculture and its right-to-farm protections;
- A subdivision policy encouraging the siting of new dwellings away from prime agricultural soils;
- A commitment to comply with the Agricultural Districts Law.

kets as “a permanent structure that is owned and/or operated by a farmer which primarily sells agricultural products and related goods to the general public.” It applies the following standards for farm markets.

(1) Farm Markets. The purpose of this section is to protect and regulate the establishment and operation of farm markets, as defined in ~ 81-2, so they may continue to be a resource for farmers and tourism for the town of Kinderhook.

(a) The size of the retail portion of the farm markets must not exceed 1,600 square feet.

(b) At least 75 percent of the retail floor area must be utilized for the sale of agricultural, dairy or horticultural products.

(c) No more than 25 percent of the retail floor area can be utilized for the sale of complementary goods.

(d) Farm markets can offer either preharvested or customer-picked products.

(e) Minimum parking requirements are one space for 100 square feet of retail floor space.

In addition, the town permits seasonal farm stands in four of its seven zoning districts with fewer site requirements. It defines a farm stand as “a non-permanent structure, in excess of 30 square feet in size, such as a table, vehicle, wagon or tent, used for the sale of agricultural products grown, raised or produced on the same premises.”

(This set of standards is fairly typical of land use laws that establish particular numeric boundary conditions. Because of the pace of change in agriculture and other arenas, these parameters should be revisited periodically to see if they still make sense given community goals.)

Supporting Direct Market Farm Businesses

Direct marketing is an important business strategy for some farmers. While farm stands, u-pick operations and other farm retail facilities are similar in concept to other retail establishments, there are important differences. Direct farm retail is often seasonal and limited in scale. Farm retail marketing facilities typically support broader farm businesses that provide scenic farmland and other amenities to the community.

At the same time, some farm retail operations reach an operation level on par with other commercial retailers. These farm markets can have traffic

flow, parking requirements, and breadth of products akin to small groceries or convenience stores. Additionally, some farmers are embracing agritourism and developing new on-farm experiences that stretch the boundaries for what are commonly considered farm uses.

This diversity in the scale of farm markets and farm retail/agritourism practices creates a challenge for towns looking to support farm business opportunities while protecting the health, safety and welfare of town residents. Rather than treating all operations alike, towns should consider the size, nature, seasonality and impact of farm businesses when establishing minimum or maximum requirements. For example, parking requirements for a smaller, seasonal farm market should not be the same as those required for a year-round gas station and convenience store or a large year-round farm market and garden center.

Some questions that a town might ask when trying to determine the appropriate standards to apply to a farm market or agritourism facility include:

- Are the sales and other activities proposed at the site related to a broader agricultural operation?
- Are at least 25 percent of the products sold at the facility produced by the owner/operator?
- Is the facility open year-round?
- Does the facility offer extended hours of operation?
- Will the facility sell fuel and related products, tobacco, alcohol not produced in New York, lottery tickets or other products usually associated with more traditional retail establishments?

Because many farms are not in prime commercial locations, advertising is critical for farm stands and markets that sell directly to consumers. Towns should review their local laws regarding on-and off-site signs to make appropriate accommodations for seasonal off-site and on-site signs for farm retailers. By demonstrating flexibility in this area, towns can support farm viability by helping farmers reach new customers.

A sample zoning provision (located on the CD) can be used by towns in crafting ordinances appropriate for direct market farm businesses: New York Farmers Direct Market Association "Model Zoning for Roadside Stands and Farm Markets."

Supporting Business Opportunities Compatible With Agriculture

Modern farm families often have at least one member working outside of the farm. They may rely on non-farm jobs for health insurance or a steady, dependable salary. While many of these jobs occur away from the farm, some non-farm business opportunities may also take place in the home or in other buildings located on the farm. For example, non-farm business opportunities might include:

- Bed & Breakfast
- Professional office in home
- Commercial bakery in home
- Gift shop in home
- Hairdressing studio
- Photography studio
- Interior design studio
- Commercial harvesting and trucking
- Farm equipment repair
- Commercial composting
- Sales of crafts and production of crafts
- Portable saw mill
- Milk processing facility for off-farm milk
- Welding assembly
- Antique shop
- Automotive repair shop

Non-farm business opportunities can provide important income to farm families. When farmers and rural landowners have flexibility in establishing compatible businesses, they may feel less pressure to sell land for development.

Some issues that towns may consider when evaluating whether a new business use or commercial building is compatible with agriculture include whether:

- The use will be of a nature, intensity, scope, size, appearance, type and quantity conforming to the existing personal or agricultural structures;
- New commercial buildings will be located in a way that minimizes negative impact on future operations and expansion of agricultural uses and does not interfere with current agricultural operations or displace farm or forestry storage, use, or functions;
- The use is related to agriculture, forestry or open spaces;
- The business will be conducted primarily by persons who reside on the farm or members of the

farm family or farm employees;

- The use is subordinate to the farm operation. Subordination is based on the proportion of land and structures employed by the rural enterprise to those employed directly in the agricultural or forestry enterprise as well as the amount of time and resources the farmer diverts from the agricultural or forestry operation to the rural enterprise;
- The proposed use is not excessively more valuable than existing structures that would make the subsequent sale of the farm to a bona fide farmer unlikely.

■ CASE STUDY

Town of Ulysses, New York

2000 Population: 4,775

2000 Median Household Income: \$45,066

2000 Median Single-Family Home Value: \$103,000

The purpose of the town of Ulysses' A1 agricultural district is to "protect the agricultural land resources of the town of Ulysses and to promote, as much as possible, the continued economic and operational viability of agricultural enterprises in the town of Ulysses."

The proposed zoning code includes "agricultural commerce" as a permitted use in its A1 agricultural zoning district. Agricultural commerce is defined as:

"A retail or wholesale enterprise providing services or products principally utilized in agricultural production, including structures, agricultural equipment and agricultural equipment parts, batteries and tires, livestock, feed, seed, fertilizer and equipment repairs, or providing for wholesale or retail sale of grain, fruit, produce, trees, shrubs, flowers or other products of agricultural operations."

Businesses engaged in agricultural commerce are permitted in this district subject to site plan approval but do not require a special use permit.

Zoning Techniques: Stabilizing the Agricultural Land Base

Zoning laws can be used not only to provide a supportive business environment for farming, but also to help stabilize the agricultural land base. Zoning can help towns manage new development and minimize the effects of development on local farms.

Zoning laws with farm-friendly objectives are often called "agricultural zoning" or "agricultural protection zoning" and involve a variety of zoning approaches or techniques. This variety of zoning is generally applied to farming areas and is designed to restrict uses or densities of non-farm uses that are seen as incompatible with farming.

A nationwide survey conducted by American Farmland Trust and Coughlin/Keene Associates in 1995 found that 700 jurisdictions in 24 states had some form of agricultural protection zoning. Sixty-two percent of the communities were located in Wisconsin and 13 percent were in Pennsylvania.

Agricultural protection zoning laws take various forms, depending on the scale and structure of the local government; the nature and viability of the local agricultural industry; and the degree of development pressure in the community. Zoning laws have been the most effective and able to withstand legal challenges when directly tied to objectives outlined in a community's comprehensive plan.⁷

The most protective form of agricultural zoning, often called exclusive agricultural zoning, restricts permitted uses to production agriculture and to residential, commercial or industrial uses deemed to be directly compatible with farming. Other strong agricultural zoning laws set very low permitted residential densities: as low as one residence per 640 acres in the western United States, for instance.

Highly restrictive agricultural zoning laws have been important components of farmland protection efforts in other parts of the country. However, restrictive zoning laws have had limited impact to date in New York due to several factors, including the region's topography, agricultural industry, degree of development pressure and town-level decision-making process. (This section focuses on agricultural zoning laws that are most likely to be appropriate for New York.)

Benefits of Using Zoning to Stabilize the Agricultural Land Base⁸

- Concept is relatively easy to understand and administer;
- Comparatively inexpensive for the public to implement;
- Can be implemented quickly when compared with other farmland protection tools;
- Flexible tool can change as local conditions evolve;

- Well-suited to more rural communities with lower development pressure.

Drawbacks of Using Zoning to Stabilize the Agricultural Land Base

- May reduce land values and decrease landowners' equity in land;
- Can be politically difficult to set lot sizes and use restrictions that provide meaningful support for sustained agricultural use;
- Setting minimum lot sizes, such as one residential unit per five acres, may result in parcels of land that are "too big to mow but too small to farm";
- In areas with high levels of development pressure, a lower density lot size (such as one residential unit per 20 acres) without other restrictions may create a market for larger acreage "farmettes." While the resulting parcels could potentially be farmed, the agricultural use of such large rural lots could be threatened when non-farmers are willing to pay higher values than farmers can afford.

Minimum Lot Size

The minimum lot size approach to agricultural zoning sets a minimum acreage requirement for subdivisions and new development. Ideally, the minimum acreage requirement should approximate the size of a farm field that is economically viable for continued agricultural use. In the western United States, the acreage required for a viable ranch might be hundreds of acres. On the East Coast and in parts of the Midwest, however, the minimum lot size required for profitable, field-based agricultural use tends to range from 20 to 40 acres.

The minimum lot size approach is one of the simplest zoning techniques. However, this technique can be difficult to use to effectively stabilize the agricultural land base. It requires setting the minimum lot size high enough to generate parcels that can be used for most field-based farm operations. The minimum lot size approach has also been criticized for being exclusive and limiting the availability of affordable housing.⁹

Many New York towns use this approach in "agricultural zones," setting the minimum lot size at roughly two to five acres. Unless combined with other restrictions, however, this type of minimum lot

size zoning reduces the density of new development while doing little to protect land for farming. In fact, the resulting "larger" lots may consume available land resources more quickly, thus accelerating the conversion of farmland. For this reason, the minimum lot size approach has had little success in limiting the development of farmland in New York.

(As noted previously, this set of standards is typical of land use laws with numeric thresholds. In this case, what works well for a while may prove problematic when market forces shift. If this tool is used, the parameters should be revisited periodically to see if they still make sense given community goals and changes in agriculture.)

■ CASE STUDY

Town of Plainfield, Illinois

2000 Population: 13,038

2000 Median Household Income: \$80,799

2000 Median Single-Family Home Value: \$198,300

The town of Plainfield, Illinois sets a minimum lot size of 40 acres per residential unit in its "agricultural district." The law is fairly simple to understand and administer. Such a law is most likely to be applicable in areas with large blocks of agricultural land and lower development pressure.

Density Averaging (Fixed Ratio or Area-Based Allowance)

The density averaging, or fixed ratio approach, to zoning sets a fixed density for permitted residences within an agricultural zone. This contrasts with the minimum lot size approach, where the desired density is achieved by setting a corresponding minimum lot size. For example, if the desired residential density were one residence per 20 acres, the minimum lot size approach would set a minimum lot size at 20 acres. Thus, a 100-acre parcel could yield five 20-acre parcels.

By comparison, the density averaging approach identifies the desired density but does not use the minimum lot size as the principal strategy for achieving this result. Instead, the density averaging approach determines the number of residences permitted per parcel. For example, if the desired density is determined to be one residence per 20 acres, a 100-acre parcel could have five residences. A community might further specify a required minimum lot size of one acre (to comply with health depart-

ment requirements) and a maximum lot size of two acres. Instead of creating five 20-acre parcels as established by the minimum lot size approach, the density averaging approach could yield five 2-acre lots and one 90-acre lot.

When combined with a maximum lot size requirement for new residential development, the density averaging approach can be a powerful tool for retaining larger blocks of farmland while allowing limited residential development. This approach is similar to cluster zoning or conservation subdivisions in that it concentrates new development on smaller pieces of land. However, cluster zoning or conservation subdivisions may be better suited to larger subdivisions given the more complex planning requirements.

By comparison, density averaging is simpler and easier to apply to smaller subdivisions. It does not require complex site design but still keeps new residential development on smaller lots. Ideally, density averaging should be complemented by other subdivision or design standards so that new subdivided lots have minimal impact on nearby farm operations.

One of the challenges in administering a density averaging zoning law is recording how many residences or subdivisions have been permitted for each parcel. Without the proper tracking of this information, parcels of land that had already “used up” their allowed residential subdivisions could be further developed. Communities may want to augment the information submitted in subdivision plats with a master map or other creative measures to ensure that this important information is retained when town boards, planning boards and zoning boards of appeal change membership. The town of Milton, New York requires the following notation on final plats when the subdivision approval required that a portion of the property remain undeveloped: “This plat was created under the open space incentive option of the Town of Milton Zoning Code, and any further subdivision of these lots is hereby prohibited.”

■ CASE STUDY

Town of Seneca, New York

2000 Population: 2,731

2000 Median Household Income: \$48,007

2000 Median Single-Family Home Value: \$84,800

The town of Seneca adopted an update to its zoning code in 2004. The code includes an “agricultural zoning district” meant to:

“...preserve existing agricultural lands in the town and protect the rural character of the area that reinforces the special quality of life enjoyed by residents in Seneca.... The creation of the Agricultural Zoning District illustrates the Town’s commitment to farming as a preferred use in these districts and shall protect existing agricultural areas from suburban and urban development, encourage the continuation of agriculture, reduce land use conflicts and preserve open space and natural resources.”

The agricultural zoning district permits one subdivided lot with one single-family dwelling for each parcel greater than five acres. The density standards permit a maximum density of one unit if under 50 acres and one unit per 50 acres if over 50 acres. For example, a 25-acre parcel would be allowed one subdivision. This would create two lots with opportunities for a single-family home on each. A 60-acre parcel would be allowed two subdivisions that could create three lots. In either case, subdivided lots must be at least 45,000 square feet and have 150 feet of road frontage.

The town and Ontario County use a computerized real property system that allows them to document permitted subdivisions. This tracking is important to prevent the further development of parcels that have already used their permitted rights.

■ CASE STUDY

East Donegal Township, Pennsylvania

2000 Population: 5,405

2000 Median Household Income: \$55,414

2000 Median Single-Family Home Value: \$111,700

The zoning code for the township of East Donegal establishes an “agricultural district” for the following purposes:

- To preserve agricultural areas for agricultural use;
- To protect productive farmlands as a means of prolonging agricultural viability and the vital flavor of the Township, without financially overburdening local farmers;
- To provide effective agricultural zoning that severely limits speculative development in favor of continued farm use;
- To allow for the use of agriculturally related businesses as a means of accommodating limited industry while aiding farmers, but subject to strict regulations that assure their compatibility within

a rural context;

- To provide safeguards from intensive livestock operations to minimize adverse impacts and to ensure compliance with applicable management measures;
- To protect, conserve and preserve the natural resources of the Township;
- To protect sensitive and important natural features from indiscriminate development;
- To preserve and enhance the community character that makes it a unique, distinctive and identifiable place;
- To promote the preservation of the historic architecture within the Township;
- To discourage sizable developments in areas not served by public utilities.

One residence is allowed per 25 acres in the agricultural district. However, new subdivisions for residential purposes are capped at a maximum of two acres. Two new lots are also allowed per parcel as long as the new development occurs completely on nontillable land.

This combination of zoning tools—reduced density and maximum lot sizes for residences—can be an effective way of maintaining farm parcels that are large enough for sustained agricultural use, while ensuring that people looking to buy land for new residences don't compete directly with farmers for agricultural land. In an area experiencing high development pressure, a new zoning law that simply changes the minimum lot size from two acres to 25 acres could simply shift interest among residential buyers from small parcels to larger, rural estates or "farmettes." Instituting a maximum lot size for new residential development helps prevent this direct competition between farmers and residential buyers, keeping land affordable for young farmers looking to get started or for established farms that need to expand.

■ CASE STUDY

Town of Ithaca, New York

2000 Population: 18,198

2000 Median Household Income: \$45,281

2000 Median Single-Family Home Value: \$140,300

The town of Ithaca's zoning law has density averaging elements similar to East Donegal Township but permits more concentrated residential develop-

ment. The zoning law sets a minimum lot size of one acre and a maximum lot size of two acres for non-farm lots in its agricultural zone (with special exceptions when required by the Tompkins County Health Department). In addition, the desired residential density is set at one residential unit per seven acres. The town planning board has the authority to require clustering of the non-farm lots as a condition of subdivision approval. Some of the criteria that may be applied when siting the clustered units:

- Clustered lots should avoid prime agricultural soils, defined as Class I and Class II by the USDA Natural Resources Conservation Services or similar or successor agency;
- Clustered lots should not interfere with natural drainage patterns;
- To the extent reasonably possible, subdivisions shall be approved in a manner that maintains the largest amount of contiguous acreage for open space or agricultural use.

While the town of Ithaca permits fairly concentrated residential development in comparison to East Donegal Township, its zoning law has received criticism from farmers and farm groups. Their arguments include concerns about reductions in landowner equity as well as the process used to develop the new law.

Such concerns represent broader challenges for towns interested in using zoning and subdivision laws to protect farmland in an environment where farm profit margins are tight. In these settings, it is ever more critical that farmers are actively engaged early in the planning process. Regulatory tools should also be balanced with incentive-based options. Communities facing this situation will have to make tough choices about how best to balance the community's interests with individual landowner priorities.

Sliding Scale

Sliding scale zoning can be used to set the desired level of residential densities and subdivisions. However, this flexible approach uses a "sliding scale," depending upon the original parcel size, rather than a fixed ratio for all size parcels. The sliding scale is used to promote the retention of larger farm parcels while allowing for limited residential development. Thus, fewer acres are required per residential unit or subdivision for smaller parcels in

comparison to larger parcels.

The sliding scale approach has been used by several Pennsylvania townships in an effort to retain blocks of farmland that support a range of agricultural businesses. While sliding scale zoning can help achieve this goal, it is more complex to administer than minimum lot size zoning, which can lead to confusion among landowners.

■ CASE STUDY

Peach Bottom Township, Pennsylvania

2000 Population: 4,412

2000 Median Household Income: \$42,778

2000 Median Single-Family Home Value: \$109,400

Peach Bottom Township established an agricultural zone in its zoning ordinances for the following purposes:

“A primary purpose of the Agricultural Zone is to permit, protect, and encourage the continued use of the land for agricultural purposes. This Zone is composed of those areas in the Township whose predominant land use is agricultural. The regulations for this Zone are designed to protect and stabilize the essential characteristics of these areas, to minimize conflicting land uses detrimental to agricultural enterprises, to limit development which requires highways and other public facilities in excess of those required by agricultural uses and to maintain agricultural parcels or farms in sizes which permit efficient agricultural operations.”

The following density table from Peach Bottom Township exemplifies the sliding scale approach to agricultural zoning.

Parcel Size	# of Permitted Dwellings	Ratio of Acres/Dwelling for Smallest Parcel in Category
1-7 acres	1	1/1 (For 1 acre parcel)
7-30 acres	2	3.5/1 (For 7 acre parcel)
30-80 acres	3	10/1 (For 30 acre parcel)
80-130 acres	4	20/1 (For 80 acre parcel)
130-180 acres	5	26/1 (For 130 acre parcel)
180-230 acres	6	30/1 (For 180 acre parcel)
230-280 acres	7	32.9/1 (For 230 acre parcel)
280-330 acres	8	35/1 (For 280 acre parcel)
330-380 acres	9	36.7/1 (For 330 acre parcel)
380-430 acres	10	38/1 (For 380 acre parcel)
430-480 acres	11	39.1/1 (For 430 acre parcel)
480-530 acres	12	40/1 (For 480 acre parcel)
530-580 acres	13	40.8/1 (For 530 acre parcel)
580-630 acres	14	41.4/1 (For 580 acre parcel)
630-680 acres	15	42/1 (For 630 acre parcel)
680-730 acres	16	42.5/1 (For 680 acre parcel)
730-780 acres	17	42.9/1 (For 730 acre parcel)
780-830 acres	18	43.3/1 (For 780 acre parcel)
830 acres or more	19	43.7/1 (For 830 acre parcel)

Peach Bottom Township has also established a maximum lot size for new residential subdivisions. The standard maximum lot size in Peach Bottom Township is one acre for a new residence unless the land cannot feasibly be farmed. To determine whether a parcel can feasibly be farmed, the standards are:

- Soil quality;
- The existence of “features of the site such as rock too close to the surface to permit plowing, swamps, the fact that the area is heavily wooded, or the fact that the slope of the area exceeds 15 percent”;
- “Due to the fact that the size or shape of the area suitable for farming is insufficient to permit efficient use of farm machinery.”

Parcels that contain land of low quality for agricultural use may have more than one acre subdivided for residential use.

■ CASE STUDY

Alpine Charter Township, Michigan

2000 Population: 13,976

2000 Median Household Income: \$42,484

2000 Median Single-Family Home Value: \$120,500

Alpine Charter Township has also developed a sliding scale approach to agricultural zoning. This local law was “intended to ensure that land areas within Alpine Charter Township, which are well suited for production of food and fiber, are retained for such production, unimpeded by the establishment of incompatible uses which would hinder farm operations and irretrievably deplete agricultural lands.”

The principal difference between their approach and the Peach Bottom Township approach lies in the complexity of the sliding scale formula and what it manages. The Alpine Charter Township law controls the number of permitted parcel divisions for non-farm dwellings and sets a formula as follows:

Size of Parcel	# of Permitted Lot Splits for Non-Farm Dwellings	Ratio of Acres/Lot Split for Smallest Parcel in Category
10 acres or less	0	0
Greater than 10 acres to 20 acres	1	10/1 (For 10.1 acres)
Greater than 20 acres to 40 acres	2	10/1 (For 20 Acres)
Greater than 40 acres to 80 acres	3	13.3/1 (For 40 Acres)
Greater than 80 acres	4	20/1 (For 80 Acres)

Because it does not control maximum lot sizes for non-farm dwellings, Alpine Charter Township’s approach to sliding scale zoning could create competition among farmers and non-farmers for larger lots, if the zoning is used in a town experiencing high development pressure. This issue could be remedied by instituting a maximum lot size for non-farm dwellings or by other site planning requirements.

Overlay Zones or Districts

Overlay zones are used to augment a town’s zoning by instituting additional development standards or by establishing incentives for parcels that have certain characteristics. Agricultural overlay zones are often applied to parcels that meet some or all of the following criteria:

- Minimum parcel size
- High quality agricultural soils
- Capacity for continued agricultural use
- Located in a NYS certified agricultural district
- Located in specific zoning districts

Parcels in overlay zones may be permitted additional agriculture-related or compatible rural business uses. These parcels may also be subject to additional development guidelines that conserve key agricultural resources and limit the impacts of new development on nearby agricultural uses.

■ CASE STUDY

Town of Washington, New York

2000 Population: 4,742

2000 Median Household Income: \$52,104

2000 Median Single-Family Home Value: \$175,800

The town of Washington in Dutchess County has established an “agricultural protection overlay district” with the following objectives:

- Preserve agricultural land for food and fiber production;
- Protect agriculturally productive farms;
- Maintain a viable agricultural base to support agricultural processing and service industries;
- Prevent conflicts between incompatible land uses;
- Reduce costs of providing public services to scattered non-farm uses;
- Pace and shape the growth of the town;
- Protect agricultural land from encroachment by non-agricultural uses, structures or activities;
- Maintain the rural, natural and scenic qualities of the town.

The agricultural protection overlay district applies to parcels in specific zoning districts that:

- Are greater than 10 acres;
- Have at least 50 percent of the soils deemed prime farmland soils or farmland soils of statewide importance as established by the United States Department of Agriculture;
- Are located in a New York certified agricultural district.

In addition to the uses permitted in the underlying zoning district, additional uses are permitted in the overlay district including roadside farm stands, employee housing for farm workers and agriculture-related service or commercial uses.

The town planning board may require that new residential developments of three or more lots within the agricultural protection overlay district comply

with the town’s cluster requirements found in its subdivision code. Residential structures sited for parcels in this overlay district should be located:

- On the least fertile agricultural soils and in a manner which maximizes the remaining area for agricultural use;
- In locations least likely to block scenic views;
- Within woodlands or on the edges of open fields;
- On the soils most suitable for subsurface sewage disposal;
- In a manner which provides buffers between house lots and farm operations.

In addition, the planning board may require a 75 foot buffer with either fast-growing native trees and shrubs or naturally existing vegetation between residential and agricultural uses.

■ CASE STUDY

Town of Kinderhook, New York

2000 Population: 8,296

2000 Median Household Income: \$52,604

2000 Median Single-Family Home Value: \$125,600

The purpose of Kinderhook’s “prime farmland overlay district” is to “promote agricultural uses, protect prime production soils, and to prevent non-agricultural uses from negatively impacting continuation of farming as the primary use.” The overlay district requires conservation subdivisions for any subdivision within the district.

The district also requires that new non-farm buildings be sited in a way that has the least negative impact on agricultural soils and farm operations. Buffers of at least 200 feet are also required between new residences and agricultural parcels in the overlay district. The buffer must be placed on properties proposed for subdivision. Additionally, major subdivisions are required to have 30 foot vegetative buffers sited 20 feet from the boundary of any agricultural parcel.

The conservation subdivision requirements mandate that at least 50 percent of the total parcel area shall be designated as permanent open space. This open space should protect conservation values including agricultural, historic, water resource, scenic or other natural resource values. Additionally, dwellings are to be sited on non-prime agricultural soils (if possible).

■ CASE STUDY

Town of Warwick, New York

2000 Population: 30,764

2000 Median Household Income: \$61,094

2000 Median Single-Family Home Value: \$155,700

The town of Warwick's Agricultural Overlay District is targeted at land that meets the following criteria:

(a) Contiguous land in single ownership as of the effective date of this chapter on which at least 50 percent of the surficial soils are classified as prime farmland soils (Class 1 and 2), soils of statewide significance (Class 3 and 4) or black dirt soils as established by criteria of the Natural Resources Conservation Service, United States Department of Agriculture (hereinafter "agricultural soils"); or

(b) Parcels of land included in Agricultural District 2 established pursuant to the New York State Agriculture and Markets Law, Article 25-AA, §§ 303 and 304, both as of the effective date of this chapter and as may thereafter be added to the District; or

(c) Parcels of land receiving farm tax assessment as of the effective date of this chapter and as may thereafter receive such assessment; or

(d) Parcels of land that are part of operating farms as of the effective date of this chapter; and

(e) Other parcels of land, which because of their location within or adjacent to lands described in Subsection B(1)(a), (b), (c) and/or (d) above and their undeveloped nature, large size or siting amidst farmlands are necessary to include in the AP-O District to prevent the proliferation of conflicting adjacent uses that could jeopardize the future survival of farming within the District.

Owners of land within the Agricultural Protection Overlay District Qualifying Area may voluntarily choose to receive the benefits of the district by filing papers with the town clerk. Benefits of participation include:

(1) A transfer of development rights/purchase of development rights density bonus that affords a lot yield based on the minimum acreage requirements established in the 1989 Zoning Law of the Town of Warwick (compared with the lower densities permitted under the town's 2001 update to its zoning code);

(2) Qualified participation in the Town of Warwick Open Space Leasing Program;

(3) Farm market development as an accessory use involving less than 4,000 square feet of gross floor area. Farm markets more than 4,000 square feet shall require a special use permit in accordance with § 164-46;

(4) Subdivision of one additional residential lot under the 1989 Zoning Law is permissible."

Residential development on land enrolled in the overlay district must be clustered to the greatest extent practical to avoid conversion of prime and statewide significant soils. Additional siting requirements steer new residential structures toward the least fertile agricultural soils and away from the boundaries of protected farms, create buffers between house lots and active farmland, and aim to achieve other agricultural and environmental objectives.

The Agricultural Overlay District is also closely tied with the town's Transfer of Development Rights (TDR) program that defines land enrolled in the Agricultural Overlay District as the "sending areas" in the town. Receiving areas are zoning districts adjacent to existing villages and hamlets. The town's TDR program also provides for intergovernmental transfer of development rights between the Agricultural Overlay District to villages within the town.

Setback Requirements

Setback requirements help guide the location of new buildings within approved building lots. Setbacks can help reduce the likelihood of conflicts between neighbors and increase the compatibility of new development with surrounding land uses. Large setbacks from the road are sometimes promoted as a means of maintaining "rural character." While minimum setbacks of 100 to 200 feet or more from a road do ensure a longer sight line to new buildings, they can also encourage or even require that new houses be sited in the middle of farm fields rather than on the edge of fields.

■ CASE STUDY

Skagit County, Washington

2000 Population: 102,979

2000 Median Household Income: \$42,381

2000 Median Single-Family Home Value: \$158,100

Skagit County has established that new develop-

ment in its “agricultural-natural resource lands district” be compatible with agriculture. According to their zoning code, “The purpose of the agricultural-natural resource lands district is to provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities and operations as the primary use of the district. The district is composed mainly of low flat land with highly productive soil and is the very essence of the county’s farming heritage and character.”

The code requires specific dimensional standards and siting criteria so that new buildings are sited in a manner that minimizes the impact on farms. Skagit County requires a 35 ft. minimum front setback as well as a 200 foot maximum setback from public roads. This requirement is intended to prevent the siting of new houses in the middle of productive farmland. Instead, the siting criteria states, “The siting of all structures in the Agricultural-Natural Resource Lands district shall minimize potential impacts on agricultural activities,” to be achieved by siting structures on the edge of a property, either adjacent to the road or an interior lot line.

This type of approach works especially well when a new home is sited on property adjacent to an existing home. By requiring a new home to be placed in close proximity to an existing home or homes, the town can encourage the retention of the largest areas of farmland and create buffers between houses and nearby farm operations.

Cluster Zoning

The clustering of new residential subdivisions encourages the concentration of new residences in a portion of a property while keeping a piece or pieces of a property undeveloped. This technique is also called conservation subdivision or open space development design. Cluster zoning aims to produce subdivisions that retain critical farmland, natural areas and other open spaces while accommodating new development.

From an agricultural perspective, cluster subdivisions can concentrate new houses in woods or on less productive soils while keeping more productive acreage available for farming. This can be an appealing way of keeping the most productive cropland available for farming while accommodating new development.

However, important issues must be debated when considering cluster subdivision standards. First,

some farmland protection supporters question the compatibility of cluster subdivisions with nearby farm operations. Tom Daniels, a professor at the University of Pennsylvania, describes clustering in the following way: “The problem with cluster zoning is that most places that use it allow a fairly high density of one dwelling per two or one to three or five acres. At those densities, the result is likely to be clustered sprawl. Moreover, the remaining farmland will probably be used for low-value crops such as hay because animal agriculture with its manure smells is not very compatible with nonfarm neighbors and their kids and dogs.”¹⁰ Communities considering clustering as a tool to retain farmland will need to grapple with these concerns and integrate strategies for limiting conflicts between farmers and new nonfarm neighbors. Requiring appropriate buffers and right-to-farm disclosure notices as part of the final subdivision approval may help address these issues.

Additional issues to consider:

- Will the clustering provision be mandatory or voluntary?
- If you choose the voluntary approach, what incentives will you provide to encourage clustering? (Some incentives might include additional permitted residences, a streamlined approval process with reduced fees, or reduced road frontage requirements or road standards.)
- Who will own the open land that can not be developed?
- Will you require a conservation easement on the open land to keep it permanently available for farming?
- Will the clustered residences require public water or sewer, today or in the near future? If so, can this be accommodated in a way that will not accelerate the conversion of additional farmland?

■ CASE STUDY

Town of Stuyvesant, New York

2000 Population: 2,188

2000 Median Household Income: \$49,904

2000 Median Single-Family Home Value: \$106,500

The town of Stuyvesant uses an incentive-based approach to encouraging the clustering of new hous-

ing and the retention of prime farmland. Landowners proposing cluster subdivisions on parcels greater than 10 acres can receive a density bonus of one additional lot for each 10 acres of buildable area. The density bonus is in addition to the standard number of lots permitted under the town code. To be considered a cluster subdivision, 50 percent of the parcel must be permanently protected for conservation purposes including agriculture, forestry, ponds, passive recreation or recreational uses such as wooded parks, hiking trails, bridle paths or other uses having a low impact on the environment. In addition, if a landowner agrees not to create building lots or other development on lands containing prime or statewide important soils, they are eligible to receive an additional building lot per 10 acres of prime farmland that is proposed for permanent conservation.

■ CASE STUDY

Town of Milton, New York

2000 Population: 17,103

2000 Median Household Income: \$45,262

2000 Median Single-Family Home Value: \$106,600

The town of Milton offers an “open space incentive option” that gives the town planning board the ability to increase the maximum density in the town’s R2 zoning district in return for permanent open space protection. The provision allows the planning board to increase the number of permitted residences by 50 percent on properties greater than 10 acres as long as 50 percent of the original land becomes permanently protected open space. The town makes decisions about proposals for open space incentive options based upon its Rural Development Design Guidelines and the town’s desire to conserve open space resources, including existing farms and land suitable for agricultural use.

Incentive Zoning

New York State Town Law Section 261-b authorizes towns to offer incentives or bonuses to developers if they advance “the town’s specific physical, cultural or social policies.” Such benefits may include the provision of open space, affordable housing, recreational facilities, day care or elder care facilities, infrastructure improvements, drainage improvements or the construction of cultural amenities.

State law requires the following procedures to be followed for the provision of incentives or bonuses:

- Each existing zoning district in which incentives can be awarded must be designated and incorporated in any zoning ordinance and map;
- The legislature must find that each of the proposed districts has the capacity to absorb the additional development authorized by the incentives;
- The town must make a determination whether the development allowed by the zoning incentives will have significant environmentally damaging consequences. If significant environmental impact is projected, a Generic Environmental Impact Statement (GEIS) must be completed. A proportionate share of the cost of the GEIS shall be paid by each applicant for incentives under the system;
- A system or procedure must be established for applying the zoning incentives to specific parcels;
- The town must determine whether the legislation will impact the availability of affordable housing. If so, it must take action to compensate for this impact.

Towns are further authorized to accept payment in lieu of suitable community benefits if the provision of such benefits is not feasible or practical.

To be successful, incentive zoning ordinances must articulate clear expectations for the benefits that will be received by both the developer and the public. Both sides must receive something of perceived equal value to make such a system work well.

■ CASE STUDY

Town of Beekman, New York

2000 Population: 11,452

2000 Median Household Income: \$65,610

2000 Median Single-Family Home Value: \$183,700

The town of Beekman passed an incentive zoning provision in 2001. The law authorizes the town board to grant zoning incentives “to property developers to encourage the provision of certain community benefits or amenities such as parks, open space, public active and passive recreational opportunities and other physical, social or cultural benefits or amenities that are in compliance with the town comprehensive plan.”

One of the benefits that could be provided by a developer includes the “permanent conservation of natural areas or agricultural lands.” In exchange, a developer could receive an increase in permitted residential density or reductions in requirements for non-residential development (decreased minimum lot

area, setbacks or increased impervious lot coverage, floor area ratios, building heights or other standards).

The town law further describes the process and standards to be used in evaluating projects put forth for consideration under this provision of the zoning law.

Subdivision Ordinances

For more information about subdivision ordinances, see the following documents on the CD that accompanies this guide:

- Southern Tier Central Regional Planning & Development Board Rural Design Workbook
- Hudson Valley Greenway's "Saving Farmland with Development"
- Excerpt from Town of Easton's Subdivision Law
- Excerpt from Town of Caton Subdivision Regulations

Subdivision ordinances govern the division of larger parcels into smaller pieces of land. These laws provide a town planning board with the authority to review and make decisions about proposed subdivisions to protect public interests and to ensure that new subdivisions don't accelerate flooding and erosion, traffic problems, noise pollution and other negative impacts to the town.¹¹

Subdivision ordinances often require a plat or sketch that depicts the proposed location and dimensions of new roads and lots and other landscape features. These features may include wetlands, floodplains, large trees and other natural resources or improvements such as utility lines and easements, archeological sites, sewers, sidewalks, street lighting, etc.

From an agricultural perspective, subdivision ordinances can require the review of important information about the potential impacts of new subdivisions on productive farmland and nearby farm operations. They also can stipulate design standards that help reduce the potential impacts of new subdivisions on farms and farmland.

Benefits of Subdivision Laws

- Process provides important information to support informed town decision-making;
- Help limit the impacts of new subdivisions on nearby farm operations;
- Can steer new development away from productive farmland;
- May reduce likelihood of future farm/neighbor conflicts.

Drawbacks of Subdivision Laws

- May not prevent farmland conversion;
- Ability to prevent future farm/neighbor conflicts is limited;
- May be opposed by landowners who dislike land use regulations.

The Subdivision Review Process

The subdivision review process allows a town planning board to understand a proposed subdivision, its compatibility with community interests and potential problems that might be posed by the subdivision. Towns can use this process to gather information from the proposal's sponsor to better understand how the project may impact local farms. However, to review subdivisions effectively, it is important that towns have review criteria specific to agriculture.

Some criteria that towns can require developers to address in proposed subdivision applications:

- Consistency with the town's comprehensive plan;
- Compatibility with New York certified agricultural districts in the town;
- Identification of growth-inducing aspects of the project that may require additional public services or have future impacts on community interests;

Analysis of potential impacts to:

- Prime, statewide important or other productive agricultural soils
- Nearby farm operations (with an emphasis on farm buildings and infrastructure, particularly livestock) and the viability of commercial agriculture in the town
- On and off-site drainage patterns, particularly field tiling and ditching
- Historic structures and sites
- Visual character of the area
- Capacity of existing roadways, fire protection, and other public services such as water and solid waste disposal
- Traffic generated and compatibility with local roadways
- Land values and land speculation

Towns should also require copies of agricultural data statements for land use determinations affecting property within 500 feet of a farm operation in a state certified agricultural district. Notice of intent filings (for public projects) can also be required to better ascertain the impacts of projects proposed in agricultural districts. Notice of intent filings are reviewed by county agricultural and farmland protection boards and the New York State Department of Agriculture and Markets. Towns can require copies of these comments to obtain further insight into potential impacts of proposed public projects on agriculture.

Subdivision Standards

Subdivision or design standards integrate the information gathered as part of the review process with landowners' interests and community priorities. Ideally, they ensure that proposed subdivisions are well-designed, promote the orderly development of infrastructure and mitigate environmental impacts. Subdivision design standards can be used to steer new development or infrastructure away from productive farmland. They also can require that measures are taken to prevent future conflicts with nearby farm operations.

Locating New Infrastructure Creatively

One strategy for encouraging the retention of productive farmland is to guide the siting of infrastructure such as utility lines, driveways and service laterals. Utility lines can be placed on less productive land or buried below plow depth. Driveways can be sited on the edge of farm fields rather than through the middle. Shared driveways can be used to limit the number of roadways that bisect farm fields. Towns can require that service laterals are buried.

Siting New Residences

Towns can help retain the most productive land for farming by encouraging the siting of new houses away from productive cropland. Towns can keep the most productive cropland available for farming by locating new houses in wooded areas or on less productive soils. By siting structures on the edge of a property and near existing structures, towns can help reduce the footprint of nonfarm construction.

Additional considerations should be made regarding the proximity of new houses to farm buildings

and the proximity of infrastructure (particularly livestock housing) to neighboring properties, given the dominant wind and weather patterns. The thoughtful siting of new homes in areas located "upwind" from livestock housing or in places screened from prevalent wind patterns can help reduce complaints about the sights, sounds and smells of nearby farms.

Another design consideration is the location of existing field tiling and ditching. Such infrastructure improvements drain water from farm fields and increase their productivity. New development that interrupts the flow of water from neighboring farm properties may create headaches for neighboring farmers and impact the productivity of their land. Towns should plan new subdivisions in a way that is compatible with existing field drainage patterns.

Field access to neighboring farm properties should also be considered in subdivision plans. Subdivisions that site new houses along roadways and leave farmland with restricted access in the back may significantly limit opportunities for the land to be actively used for agriculture. This is an important consideration given the increasing size of commercial farm equipment, which may need wider access routes.

Reduced road frontage requirements and road/driveway standards are other design incentives for creatively siting new houses in ways compatible with agriculture. By reducing building costs and administrative fees or by providing opportunities for new houses to be creatively sited, towns can encourage landowners to adopt town design principles.

However, the "flag lots" or other creative subdivisions that may result must be carefully sited to make sure they do not accelerate the conversion of farmland. Some New York communities have specifically prohibited these types of subdivisions because they have been used to develop farmland or other undeveloped land on parcels without sufficient road frontage. Communities must clearly state their expectations and priorities in subdivision laws so that creative design approaches do not have unintended consequences. Communities also must be sure that the language in their design standards is not vague, giving landowners and design professionals clear direction as they develop their plans. Clear, concise standards also benefit planning boards by limiting variations in interpretation, ensuring uniform application and providing protection against successful court challenges.

Conservation Subdivisions

Conservation subdivision laws are similar in concept to cluster zoning ordinances. Both concentrate new development on certain parts of a parcel to protect key resources on other parts of a property.

Conservation subdivision ordinances often describe an alternative subdivision process that prioritizes the identification and protection of key resources such as active farmland, wetlands and waterways, historic areas, wildlife habitat, etc. This process contrasts with the traditional subdivision approach of siting new houses and roads first and then identifying key resources that would be protected by a site plan.

By identifying key resources first, the conservation subdivision process can be used to site new houses and roads in a manner that minimizes impacts to farmland and other natural resources.

For more information about conservation subdivisions, see the Rural Design Workbook in the CD appendix.

■ CASE STUDY

Town of Caton, New York

2000 Population: 2,097

2000 Median Household Income: \$45,875

2000 Median Single-Family Home Value: \$74,100

The town of Caton's new subdivision regulations include a step-by-step conservation subdivision design process and cluster development provision with the purpose "to encourage flexibility of design and land conservation and to develop land in such manner as to preserve the natural and scenic qualities of open lands while reducing the construction and maintenance costs of infrastructure."

A traditional subdivision plan can be submitted for major subdivisions (five or more lots) only if it is demonstrated that a traditional layout would be most beneficial to the community and compatible with the site. Otherwise, a cluster development is required that retains 50 percent of the land as undeveloped open space. The ordinance further describes the process to be used for developing the sketch for the proposed subdivision. These steps include:

Conservation Subdivision Steps

- Identify primary conservation areas;
- Identify secondary conservation areas;
- Identify potential development area;

- Locate house sites;
- Align streets and trails;
- Draw in the lot lines.

This process makes conservation the first priority in the subdivision process rather than the last. The regulations require applicants to develop an improvements construction plan that articulates the location of new infrastructure, the location of parks or other open space, landscaping plans and other aspects of the subdivision.

Buffers

Buffers are a popular strategy for reducing conflicts between new residents and nearby farm operations. Buffers on the edges of residential subdivisions are generally as small as 30 feet to as large as 600 feet. They are kept undeveloped to screen out the sights, sound and smells from nearby farm operations. Tree or shrub plantings can be required to further reduce the movement of dust and sounds. Fencing can also be required to minimize trespassing on nearby farm property.

For new subdivisions proposed on open land—pastures, cropland, etc.—landscaping plans can be required as a condition of final subdivision approval with occupancy certificates withheld until the plan is implemented. Tree plantings and other landscaping improvements can then help screen air movement and limit conflicts involving nearby farm practices.

In all cases, buffers should be required as part of new residential subdivisions. They should not restrict farm operations on neighboring properties. This practice allows farmers to retain productive use of as much of their land as possible, while ensuring that a new subdivision is as compatible as possible with nearby land uses.

While buffers can play an important role in screening new subdivisions from nearby farms, it is unrealistic to expect that they will prevent all farmer/neighbor conflicts. Some communities take the additional step of requiring that right-to-farm disclosure notices are filed with final subdivision plans or distributed with occupancy certificates for new residences in a subdivision.

■ CASE STUDY

Town of Easton, New York

2000 Population: 2,259

2000 Median Household Income: \$43,194

2000 Median Single-Family Home Value: \$99,000

The town of Easton's emphasis on supporting agriculture and mitigating the impacts of new development on farms is evident throughout its subdivision law. The town has a multi-stage subdivision process that begins with a pre-application conference. At this conference, the applicant has the opportunity to discuss the subdivision, the town's subdivision process and the compatibility of the proposed subdivision with Easton's comprehensive plan and agricultural districts. Applicants must provide the required subdivision application forms as well as a copy of an agricultural data statement (as required by New York State Agricultural Districts Law for land use determinations affecting property within 500 feet of a farm operation located in an agricultural district).

Minor subdivisions (four or fewer lots) undergo a two-step process, while major subdivisions (five or more lots) have a three-step process. The process for both scales of subdivision then moves to sketch plan review. The sketch plan must include the location of the sketch plan in relation to agricultural districts and also contains the agricultural data statements.

If a landowner submits a formal application, the planning board must determine whether the proposed action is subject to SEQR review procedures. In making determinations of significance and identifying areas of environmental concern, the planning board reviews submitted documents as well as maps of land enrolled in agricultural districts. In addition, the town has added to the list of "Type I actions" any "unlisted action that includes a non-agricultural use occurring wholly or partially within an agricultural district...which involves the physical alteration of one or more acres and/or exceeds 10 percent of any threshold established for Type I actions in SEQR, whichever is lower."

For projects that require the filing of an environmental impact statement, the town of Easton requires an agricultural element when the proposed action is located within or contiguous to an agricultural district. The agricultural element requires a description of the short- and long-term impacts on agriculture, alternatives to the proposed action and mitigation measures to minimize

adverse impacts on farm enterprises. Through these provisions of its subdivision law, the town of Easton is using the SEQR process to better evaluate the environmental impacts of new subdivisions on agriculture and is lowering the threshold for this more thorough review.

In addition to a thorough subdivision review process, the town of Easton stipulates design standards or subdivision policies that are supportive of agriculture. They include:

- Utilities should generally not be brought across agricultural land. If necessary, alternatives should be considered including alternative user locations, rerouting utility lines or subsurface installation to assure that such facilities are not damaged by farm equipment.
- Subdivisions of more than 12 lots should be phased to safeguard the quantity and quality of ground water. Six lots shall be the maximum number of lots approved at any one time.
- Disclosure notices must be given to new recipients of land in a subdivision approved by the town. These notices state the town and state's support of agriculture and inform new residents to be aware of their close proximity to active farm operations.
- Driveways should not bisect agricultural land in a manner that will disrupt cropping patterns or remove agricultural land from crop production.
- For new subdivisions of open land creating four or more lots, the subdivider shall submit and implement a landscaping plan to reduce the transmission of noise, dust, glare and other undesirable effects from neighboring properties.
- Buffers should be included in residential subdivisions as a means of reducing the likelihood of conflicts with nearby farm operations. Buffer distances will be decided on a case by case basis but should generally be between 30 ft and 600 feet wide. Further mitigation measures may be considered including the reduction of the number of lots in the proposal and/or the locating of lots in a manner that provides a more protective buffer.

Local Property Tax Reduction Programs

For more information about property tax reduction programs, see the following documents on the CD that accompanies this guide:

- American Farmland Trust’s New York Agricultural Landowner Guide to Tax, Conservation and Management Programs
- New York State Office of Real Property Services:
 - Agricultural Assessment for Rental Landowners
 - Agricultural Assessment Forms
 - Farm Worker Housing Exemption Forms
 - Farm Building Exemption
- New York State Department of Taxation and Finance:
 - Farmers’ School Tax Credit
 - Historic Barns Tax Credit
- New York State Real Property Tax Law Sections 483, 483a and 483c

Farmland is a critical asset for farm businesses. However, its purchase and maintenance requires a significant investment for farmers. The on-going costs of land ownership include management expenses and improvements such as tiling and ditching. Property taxes are an additional burden for farmers and rural landowners. Property taxes increase the cost of doing business for farmers. They can also create financial hardships for rural landowners who rent land to farmers. In a worst-case scenario, high property taxes can force landowners to sell their land for development because they can’t afford to pay them.

The use of property taxes to fund local services, such as town and county governments and schools, can seem problematic because farms and forestland generally receive fewer local services than they pay for through property taxes. Cost of Community Services (COCS) studies conducted by AFT and others around the country have analyzed local revenues and expenditures by land use to determine their impacts on local budgets.

COCS studies have consistently shown that farm and forestland generate more public revenues than they receive back in public services. These lands may generate less tax revenue than new residential development, but they typically cost communities significantly less in public services. By comparison, residences require greater public costs, principally because of local school expenditures. Therefore, the net tax impact of farm and forestland on a community is positive while the net effects for residences are negative.

COCS studies can help dispel the myth that converting farmland will lower local property taxes. COCS studies are not meant to judge the overall public good or merits of any land use. But, they can be an effective tool for a community interested in understanding the impacts of various land uses. For more information about COCS studies, see the AFT COCS factsheet in the appendix.

There are several state programs available to help reduce property taxes on actively managed farm and forestland, including:

- Agricultural Assessment Program
- Farmers’ School Tax Credit
- Farm Building Exemptions
- Forest Land Exemptions
- Replanted or Expanded Orchards or Vineyards

Town efforts to supplement state tax relief programs can be an important component of local strategies that support farm operations and protect farmland.

Benefits of Local Property Tax Reduction Programs

- Reduce operating costs for farm operations
- Help bring property taxes in line with public services required by farm and forestland
- Popular with farmers and rural landowners

Drawbacks of Local Property Tax Reduction Programs

- Shift property tax burden to other taxpayers or revenue sources
- Typically do not provide permanent protection to farmland

- Can encourage land speculation by reducing carrying costs prior to a landowner selling property for development

Acting as a Resource for Landowners

Providing information about existing property tax reduction programs is one simple way for towns to help reduce the property tax burden on farmers and rural landowners. A variety of tax relief programs are available in New York, but they can be difficult for landowners to understand. Towns can act as a resource for landowners by having information about available programs easily accessible at town halls and by promoting the programs in town newsletters and on town websites. Such a simple effort could help farmers and rural landowners save thousands of dollars in property taxes each year.

AFT’s New York Agricultural Landowner Guide to Tax, Conservation and Management Programs is a resource for towns and landowners with information about property tax reduction programs.

Providing Appropriate Assessments for Farm Buildings and Structures

Farm buildings and related structures are an integral part of farm operations. Since agricultural structures have unique purposes, they often cannot be easily transformed for other uses. Farm buildings can be expensive to construct, and they often depreciate rapidly. Towns may find it challenging to establish appropriate assessments for farm buildings. Town assessors should seek special training from Cornell Cooperative Extension, the New York State Office of Real Property Services or other agencies

about the assessment of farm structures to ensure that farm building assessments are fair and accurate.

Adopting Agricultural Assessment Values for Service Districts

New York’s Agricultural Assessment Program provides “use value” assessment for actively managed farmland meeting the eligibility requirements. Agricultural assessment allows farmland to be taxed for its agricultural value, rather than its market (non-farm development) value. Enrolled properties receive agricultural assessment for town, county and school taxes.

The governing body of a fire protection or ambulance district may adopt a resolution stating that agricultural assessment values should be used to determine the taxes levied by that district. Such a measure ensures that farmland is taxed at its current, non-speculative value, recognizing that farmland generally requires fewer public services and should be taxed appropriately.

Term Easement/Property Tax Abatement Programs

As discussed in more detail in the Lease of Development Rights section, a number of New York towns have developed local programs that reduce property tax assessments on land protected by term deed restrictions. Authorized by Section 247 of the General Municipal Law, these programs have been used to stabilize farmland and other undeveloped areas by reducing property tax assessments by 25 to 90 percent in exchange for five to 25 year deed restrictions. Such programs can be an important complement to existing property tax reduction programs, especially for part-time farmers or other rural landowners who do not qualify for agricultural assessment and other existing programs.

Purchase of Development Rights (PDR)

For more information about purchase of development rights, see the following documents on the CD that accompanies this guide:

- American Farmland Trust Fact Sheets
 - New York State Farmland Protection Program
 - Agricultural Conservation Easements
 - Estate Planning
 - Installment Purchase Agreements
 - Local PACE Programs
 - State PACE Programs
 - PACE
 - PACE Funding Sources
- United States Department of Agriculture NRCS Farm and Ranchland Protection Program Fact Sheet
- New York State Department of Agriculture and Markets Model Agricultural Conservation Easement
- New York State Environmental Conservation Law Article 49 Section 3
- Excerpt from Town of Warwick Code
- Town of Riverhead Community Preservation Act Law

PDR, also known as purchase of agricultural conservation easements (PACE), is a voluntary approach to farmland protection that pays landowners for permanently protecting their land for agriculture. In general, landowners possess a variety of rights to their property, including the right to use water resources, harvest timber or develop their property consistent with local regulations. Some or all of these rights can be transferred or sold to another person.

PDR programs essentially pay landowners to extinguish their rights to develop their land. Private landowners retain other ownership rights to the property. The property remains on the tax rolls, and its taxable value should be based upon these remaining rights.

PDR programs place a deed restriction, commonly known as a conservation easement, on the property. In most cases, conservation easements are permanent agreements tied to the land that apply to all future owners. These binding agreements permit specific government agencies (federal, state, county, municipal) and/or qualified private, nonprofit organizations to have the right to prevent nonfarm development or activities that could interfere with present or future agricultural use on the property.

The goal of agricultural conservation easements is to protect land to help support the business of farming and conserve productive soils for future generations of farmers. Land subject to an agricultural conservation easement can still be farmed or used for forestry, recreation and other uses compatible with agricultural activities. Since agriculture is constantly evolving, agricultural conservation easements typically provide opportunities for farmers to construct new farm buildings and farm worker housing or to change commodities or farm practices.

In general, the value of a permanent conservation easement equals the fair market value of a property minus its restricted value, as determined by a certified real estate appraiser. For example, if the full market value of a parcel of farmland is \$400,000, but the land is worth \$100,000 when protected, then the farmer would typically be paid the difference of \$300,000 for selling the development rights. PDR is popular with many landowners in part because the payment is financially competitive with development offers.

Benefits of PDR programs

- Protect farmland permanently, while keeping it in private ownership
- Participation is voluntary
- Allow farmers to transform land assets into liquid assets that can be used for other purposes
- Can protect a variety of agricultural and natural resources
- Help keep agricultural land affordable for farmers

Drawbacks of PDR programs

- Purchase of easements is expensive
- Demand for the programs is usually far greater than available funds

- The voluntary nature of PDR programs makes it likely that some important farms will not be protected
- PDR projects are time consuming
- Monitoring and enforcing conservation easements requires an ongoing investment of time and resources

Issues to Consider in Developing Local PDR Programs

PDR programs can be an important “carrot” to counterbalance the “stick” of land use regulations. This is especially true in communities experiencing high development pressure, where there is a need for farmland protection alternatives that are financially competitive with development proposals. PDR programs can allow communities to permanently protect significant blocks of land as a resource for local farms. This protected land will also be a community resource, providing local food, rural character and cherished scenic landscapes.

However, PDR programs are not a panacea. They will not solve all of the problems that challenge local farms. The programs are often expensive, and PDR program implementation takes considerable time and requires specific knowledge and skills.

Towns debating whether to start or support a PDR program should consider the following:

What types of land do you want to protect? How will you determine your priorities?

Due to the voluntary nature of PDR programs, landowners largely determine which properties end up enrolling. However, towns can benefit from having a ranking system, map or other plan that guides local farmland protection priorities. A local prioritization strategy can add legitimacy to PDR efforts, ensure that limited public funds are spent strategically and address landowner or resident questions about the rationale for project selections.

The specificity of a ranking system will differ by community. Some communities use their comprehensive plans to help focus PDR programs. Other towns create a priority ranking system and farmland

protection map that ranks each farm property in the community. Realistically, the comprehensiveness and complexity of a local strategy should be balanced by the community’s available time and resources. Because PDR programs tend to be landowner driven, properties identified on local maps may never be protected. Towns that spend years identifying, prioritizing and analyzing may lose opportunities for actual farmland protection.

How will projects be funded?

This question presents one of the most significant challenges for towns that want to establish PDR programs. Purchase of development rights is attractive because it offers a significant financial incentive for landowners. However, communities often are faced with significant landowner interest as well as rising real estate prices. Without a consistent source of PDR funding, local programs can be stifled and may make slower progress than originally anticipated.

Some of the traditional funding sources for local PDR programs in New York include:

- New York State Farmland Protection Program
- United States Department of Agriculture’s Farm and Ranch Land Protection Program¹³ (FRPP)
- Town bonds
- Town property taxes
- Town real estate transfer taxes

All of the above funding sources have benefits and drawbacks. The state and federal programs provide grants to eligible governments, which is an attractive option for local governments since the grants can bring hundreds of thousands of dollars to local projects. The downside to the state and federal programs is that they are currently significantly oversubscribed and require cost share funds.

New York State Farmland Protection Program

Established in 1996, New York’s Farmland Protection Program provides grants to eligible counties and towns (with approved farmland protection plans) to permanently protect land for agriculture. The grants can provide up to 75 percent of the funds needed to purchase the development rights on farmland.

Each year the New York State Department of Agriculture and Markets issues a request for proposals. Proposals are then ranked and scored. Priority is

given to projects that preserve viable agricultural land in areas facing high development or conversion pressure. Priority also is given to land that buffers a significant public natural resource. Some of the specific evaluation criteria include:

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

Federal Farm and Ranch Land Protection Program (FRPP)

The 1996 Farm Bill established FRPP to provide funding to purchase development rights on productive farm and ranchland. FRPP provides up to 50 percent of a farm's development rights value. However, the matching 50 percent of project funds must be acquired prior to submittal of an application to FRPP. Some New York farm projects have been able to secure local or state funding before applying to FRPP for matching funds.

The 2002 Farm Bill significantly increased FRPP funding so that approximately \$100 million can be allocated per year from 2002 to 2007.

Town Funding Sources

In general, local funds provide the opportunity to protect significant blocks of farmland at a scale that can't be achieved solely through state or federal grants. However, local taxpayers must pay for bonds and property taxes. Some landowners will oppose local PDR programs because they do not want to support an expense that is paid for through property taxes.

Town real estate transfer taxes can be an attractive source of funding for local PDR programs, since the funds are generated by the sale of real estate, not property taxes. However, towns in New York must be authorized by the state to enact local real estate transfer taxes, an authority that, so far, has only been provided to six towns on the eastern end of Long Island and to the town of Warwick in Orange County. The "Community Preservation Act" was

introduced in the state Senate and Assembly in 2004 and 2005 to extend this authority to towns across the state (as of 2005, the act has not yet been passed).

Who will administer projects? Who will hold and monitor conservation easements?

PDR projects are complex and time-consuming. They require expertise in real estate transactions and an understanding of the nuances of conservation easements. Towns must determine who will be involved in grant-writing, project administration, legal reviews as well as on-going monitoring and stewardship activities.

Town governments often collaborate with private land trusts that can act as partners in PDR program implementation. A land trust is a nonprofit organization that—as all or part of its mission—actively works to conserve land by undertaking or assisting direct land transactions. Most land trusts are primarily involved in the purchase or acceptance of donations of land or conservation easements. Working with local governments, land trusts can assist in negotiating conservation easements and completing other aspects of funded projects. In addition, land trusts can hold conservation easements and undertake ongoing monitoring and stewardship responsibilities.

What are agricultural conservation easements?

In general, a conservation easement is a legal agreement between a landowner and a land trust or government agency. Conservation easements are typically used to permanently limit uses of the land in order to protect conservation values. Agricultural conservation easements are one type of conservation easement. They typically limit subdivision, non-farm development and other uses that are inconsistent with agriculture. However, agricultural conservation easements often permit commercial development related to a farm operation, such as the construction of farm buildings. While some agricultural conservation easements require soil and water conservation plans, most do not restrict farm management practices, allowing farmers to adapt and change practices

as needed.

Landowners retain title to their property and can still farm, rent their land or use the property as collateral for acquiring a loan. Farmers are usually allowed to limit public access to their property, unless they agree otherwise. Some of the important issues to consider when drafting agricultural conservation easements:

- **Easement purpose.** The primary purpose usually involves supporting the continued agricultural use of the property and protecting productive agricultural soils.
- **Construction of agricultural buildings.** Farms typically need flexibility in the construction of new farm buildings so that existing farms can adapt and new farmers have opportunities to get into the business.
- **Residential construction.** Consideration should be given to allowing for the construction of farm worker housing. In addition, landowners may be interested in options for limited residential construction for family members, etc.
- **Non-agricultural uses** such as forest management, rural enterprises and recreation. Non-farm income opportunities can help keep farm families profitable and on the land. However, the impacts of non-farm activities on the farm operation must also be considered.

■ CASE STUDY

Town of Warwick

2000 Population: 30,764

2000 Median Household Income: \$61,094

2000 Median Single-Family Home Value: \$155,700

The town of Warwick's 1999 Comprehensive Plan strongly recommended the establishment of a local purchase of development rights program. In 2000, a majority of town voters approved a ballot initiative authorizing the expenditure of \$9.5 million for the acquisition of open space and development rights.

In 2001, Warwick formally reconstituted its agricultural advisory board to oversee the implementation of the town's PDR program. The board is

charged with soliciting applications from landowners, educating landowners, monitoring enrolled properties (or making provisions for monitoring), reviewing permission requests from enrolled properties and overseeing other aspects of the program. In 2001, the town also established an "agricultural and open space preservation fund" with specific guidelines for its use, an application ranking procedure and a process for submitting applications to the state Department of Agriculture and Markets for cost-share assistance on PDR projects.

■ CASE STUDY

Town of Riverhead, New York

2000 Population: 27,680

2000 Median Household Income: \$46,195

2000 Median Single-Family Home Value: \$166,000

New York State Town Law Section 64-E permits five towns in Long Island's Peconic Bay region to develop "community preservation funds" that protect farmland, natural areas and other open space. The five towns, including Riverhead, are given the authority to enact up to a two percent real estate transfer tax with proceeds going to the dedicated community preservation fund. The transfer tax can only be enacted after a majority vote by the town board and a local referendum. A portion of each residential sale price is deducted prior to the application of the transfer tax to minimize the burden on affordable housing.

The town of Riverhead has used the authority granted by the state to establish its own Community Preservation Fund Law. The law defines the purpose of the town fund, its administration and defines procedures for the application of the two percent real estate transfer tax. The law further describes how the fund will be used for land conservation and stewardship purposes.

From April 1999 through May 2002, the community preservation fund in the Peconic Bay Region towns generated \$99.28 million for land preservation. The funding has been critical to conservation efforts in an area experiencing extremely high development pressure.

Lease of Development Rights (LDR)

For more information on lease of development rights, see the following documents on the CD that accompanies this guide:

- Town of Perinton Conservation Easement Law
- Town of Perinton Conservation Easement for Farming Purposes
- Town of Clifton Park Conservation Easement Law
- Town of Southampton Agricultural Overlay District and Agricultural Planned Development District
- Town of Warwick Agricultural Overlay District

Lease of development rights (LDR) programs, also known as term conservation easement programs, provide incentives to landowners who voluntarily commit to keeping their land undeveloped for a certain number of years. LDR programs are similar in concept to purchase of development rights programs, but the incentives they offer are more modest because the commitment is not permanent.

In New York, the most common form of LDR has been town programs that reduce property tax assessments for landowners willing to sign five to 25 year deed restrictions on property meeting minimum acreage requirements. LDR programs help farmers afford the maintenance of farmland and open space. They do not permanently protect land for farming, but they can help stabilize broad areas of a community, giving towns and landowners more time to develop other farmland protection strategies.

LDR programs often draw interest from landowners with small farm acreages or from part-time farmers. Larger, commercial farmers often are already benefiting from existing state and local tax reduction programs, such as the agricultural assessment program and Farmers' School Tax Credit. While further property tax reduction may be of interest to commercial farmers, the restrictions often seem to outweigh the additional benefits for them. However, town LDR programs often help to retain rented farmland and open spaces that serve as buffers between farms and nearby residences. In this way,

LDR programs can benefit all of the farmers in a given town.

Benefits of LDR

- Helps stabilize broad areas of a community;
- Term agreements may be attractive to landowners unwilling to make permanent commitments;
- Provides “breathing room” for communities experiencing rapid land use change;
- Reduces property tax burden for farm landowners who may not qualify for agricultural assessment or other state property tax reduction programs.

Drawbacks of LDR

- Does not permanently protect land;
- Can create the perception that a town is subsidizing land speculation and landowners will receive a “windfall” at the end of the term;
- Requires property tax shift or other incentives that can be expensive;
- Requires on-going monitoring and enforcement.

LDR Options

Some localities have experimented with additional benefits or standards to make LDR programs more attractive to landowners and/or improve their effectiveness. For instance, California's Williamson Act program has a “rolling” rather than a fixed term, meaning that the length of the term continues to roll forward until a participating landowner decides to withdraw from the program. At which point the term of the agreement begins to decrease until it expires. For example, if a landowner signs a 10-year rolling term agreement in 2000, the 10-year term continues to roll forward each year. If landowner indicates that he/she wishes to withdraw from the program in 2005, then the landowner's term commitment would end in 2015 (i.e. the year of withdrawal notice plus the 10-year term).

Other programs have required that town governments receive a “right of first refusal” authority on properties enrolled in LDR programs. This gives a town the right to match purchase offers on participating properties. Such provisions usually exclude sales of property within a family. The “right of first refusal” authority may not prevent the sale of a prop-

erty, but it can provide leverage to a town if key properties come up for sale during the term of their agreement.

Several New York towns, such as Southampton and Warwick, have instituted LDR programs with additional incentives: the expedited of limited development proposals on properties enrolled in term commitment programs; the retention of current zoning standards for enrolled properties; and grant-writing assistance to help farmers acquire agricultural economic development funds. By offering incentives that may interest commercial farmers in LDR, towns can provide term protection to additional farmland

Additional Considerations

LDR programs often involve simpler deed restrictions than PDR programs, in part because towns want to reduce program complexity and transaction costs. This can be justified because the agreements are not permanent, and simple programs are more attractive to landowners and easier to administer. However, towns must have a clear understanding of the permitted uses of properties enrolled in LDR agreements (and understand what constitutes a violation). For instance, can participating landowners build barns and other agricultural structures? Can they subdivide their property? Can they store vehicles or other items on land subject to the agreements? By having clear policies on such issues, towns can help prevent future misunderstandings and make the program easier to administer.

Towns also need to develop termination provisions and penalties significant enough to discourage violations and dispel the perception that they are subsidizing land speculation. By having relatively minor penalties for the conversion of enrolled land, towns may encourage more people to participate in LDR programs but do little to discourage the loss of farmland to new development. Town LDR programs without penalty provisions may fail to achieve their stated goals or be subject to criticism by taxpayers. Funds generated by TDR penalties can be dedicated to future town efforts that permanently protect farmland and other open space.

■ CASE STUDY

Town of Perinton, New York

2000 Population: 46,090
 2000 Median Household Income: \$69,341
 2000 Median Single-Family Home Value: \$143,500

The town of Perinton established a “Conservation Easement Law” in 1976. The law does not set a minimum acreage for LDR enrollment but stipulates that a “parcel must be suitable for further development so that the limitation on development during the easement time period provides a benefit to the town.” In exchange for commitments of five to 25 years, the town reduces property tax assessments on enrolled properties by 25 to 90 percent.

In 2004, the town had roughly 3,525 acres (16 percent of total town acreage) enrolled in its LDR program. Enrollment has steadily declined since the peak year of 1977, when the town enrolled 6,844 acres, but the program continues to help stabilize a broad section of the town. The following table further details the 2004 enrollment in the program:

2004 Easement Breakdown	Easements	% of Total	Easement Acres	% of Town Acres
Total Easements	114		3,526	16%
5 Year Easements	21	18%	616	3%
6-9 Year Easements	10	9%	216	1%
10 Year or Greater Easements	83	73%	2,694	12%
Conservation Easements	51	45%	1,278	6%
Farming Easements	63	55%	2,248	10%

■ CASE STUDY

Town of Clifton Park, New York

2000 Population: 32,995
 2000 Median Household Income: \$68,999
 2000 Median Single-Family Home Value: \$143,300

In 1996, the town of Clifton Park adopted a “Conservation Easement Law” with the intent of providing for “the acquisition of interests or rights in real property for the preservation of historic buildings and landmarks and open space....” Owners of

historic buildings or landowners with a minimum of 15 acres per lot (or 7.5 acres each for any two adjoining lots) can apply to the town's program. In exchange for 15 to 25 year commitments to not develop the land, the town reduces the property tax assessments of participating landowners by 80 to 90 percent.

As of 2004, 64 parcels and 2,341 acres were enrolled in Clifton Park's term easement program. The properties included farm parcels, historic sites and other open land. This level of enrollment reduced the town's property tax rolls by approximately \$5.5 million, an estimated 0.0028 percent reduction.

■ CASE STUDY

Town of Southampton, New York

2000 Population: 54,712

2000 Median Household Income: \$53,887

2000 Median Single-Family Home Value: \$245,400

The town of Southampton, located on the east end of Suffolk County, developed an "agricultural overlay district" and "agricultural planned development district" (PDD) to encourage the business of farming and protect productive farmland for agricultural purposes.

The agricultural overlay district helps define eligibility for the program and targets the protection of the town's Bridgehampton and Haven Soil associations, some of the most productive soils in New York. Parcels of at least 10 acres located in the overlay district are eligible for the program. Parcels enrolled in a 10-year agricultural easement are subject to the following standards:

No development other than uses related to agricultural production are permitted on the property during the 10-year term (unless the landowners applies for and receives permission to terminate the agreement).

At least 150 days prior to the termination date, the town of Southampton will exercise a right of first refusal option to purchase the development rights or fee title to the property. If the landowner and town are not able to agree on terms within 30 days of the offer, the landowner may develop the property in accordance with the agricultural PDD requirements. A three-year window is provided for submittal of a development application consistent with the agricultural PDD conditions.

The landowner may submit a letter of interest during the 10-year period and request an appraisal to determine the PDR value on the property. The town will make an offer in 120 days and the landowner can accept or refuse the offer without violation of the agricultural PDD.

During this 10-year period, the landowner receives a commitment that the permitted density of development will remain fixed.

The town will assist landowners of enrolled parcels in obtaining federal, state, county or local monies for agricultural production, marketing and economic development.

This type of program may be of particular interest to landowners in communities that are considering changes in the permitted density of development, because LDR enrollment will fix density ratios for the term of the agreement. In addition, the program allows towns to stabilize broader areas while acquiring local funds to purchase development rights or developing other permanent solutions.

Transfer of Development Rights

For more information about transfer of development rights, see the following documents on the CD that accompanies this guide:

- New York State Town Law Section 261
- American Farmland Trust's Transfer of Development Rights Fact Sheet
- Proposed Town of Riverhead TDR Law
- Resources for the Future, How Well Can Markets For Development Rights Work?
- Proposed Town of Southold TDR Law

A transfer of development rights (TDR) program is another planning tool that can be used to generate funds for farmland protection. Unlike PDR or LDR programs that depend largely on public funds, TDR programs establish parameters under which the private sector pays for land conservation.

TDR programs require the designation of “sending” and “receiving” areas in order to transfer development from one part of a community to another. Sending areas are the parts of a community that will be the focus of land conservation efforts. Receiving areas are the focus of more concentrated development. A TDR program defines the location of these areas and creates standards that will govern this density transfer.

When applied to farmland protection, TDR programs transfer development away from agricultural areas to other parts of the community. TDR programs work best in places with large blocks of productive farmland, since it can be difficult to establish meaningful sending areas in fragmented farm landscapes.

Benefits of TDR Programs

- Provide alternate source of funding to protect farmland;
- Complement PDR programs and other conservation options that rely on public funds;
- Are voluntary.

Drawbacks of TDR Programs

- Depend on real estate market for land protection,

so must have demand from both sending and receiving areas;

- Can be difficult to identify receiving areas interested in and capable of handling more intense development;
- Require staff and resources to manage effectively;
- Raise property tax concerns if sending and receiving areas are in different taxing jurisdictions;
- Complex approach takes time to explain to public and landowners.

New York State Town Law 261-A states that the purpose of TDR programs is “to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource.”

The law requires towns to identify specific sending and receiving “districts” in accordance with a comprehensive plan. The town board must prepare a generic environmental impact statement prior to the designation of these areas.

Land in sending districts must be permanently protected by conservation easements that meet the standards described in New York's Environmental Conservation Law Article 49 Title 3. Towns must develop certificates of development rights for individuals or entities making transfers; the certificates are then recorded with the county clerk.

State law also permits towns to develop development rights “banks” that retain or sell development rights. Development rights banks can play an important role, particularly in beginning programs. It may be difficult for landowners interested in selling development rights to find corporations or individuals who want to buy development rights. A town development rights bank can act as a “middleman,” acquiring the development rights from interested landowners and then selling them to developers.

TDR programs have been effective farmland protection tools in other parts of the country. To date, they have had limited success in New York outside of a multi-town program that has been used to protect land in the Long Island Pine Barrens. TDR programs have been a challenge to implement in New

York because of the state's town level planning structure; challenges in developing viable markets for the purchase and sale of credits; and the complexity of establishing and running effective TDR programs.

TDR programs also require towns to be firm in their approach to variance requests. Developers must believe that they have to pay in order to build at higher densities, a belief that can be difficult to cultivate if towns frequently offer area variances. For TDR programs to be effective, members of town leadership—including the supervisor, town board, planning board and zoning board of appeals—must understand and agree with the intent and requirements of a TDR program.

TDR still has potential in New York, however. Rapidly escalating real estate prices are forcing communities to look at all available options for raising funds for land conservation, including opportunities to leverage private money. Towns also are becoming increasingly sophisticated about local planning, which makes the prospects brighter for TDR in New York.

■ CASE STUDY

Town of Riverhead, New York

2000 Population: 27,680

2000 Median Household Income: \$46,195

2000 Median Single-Family Home Value: \$166,000

The town of Riverhead's recently revised TDR law states that its purpose is "to implement the land use policies set forth in the town of Riverhead Comprehensive Plan with specific references to the preservation of agricultural lands, the support of the existing agricultural industry and the necessary and appropriate economic development of the community."

The law establishes the town's "agricultural protection zoning use district" as the sending area. A combination of residential and commercial zoning districts act as the receiving areas. The ordinance describes the process through which a landowner can apply to sell development credits to the town (for properties in the sending area). It further explains how the "preservation credits" are to be allocated and establishes the process for their redemption in receiving areas.

The credit allocation differs for each zoning dis-

trict. For example, the "hamlet residential zoning use district" permits a lot yield as determined by the planning board with a maximum density of one lot per 40,000 square feet of land area. The "business center zoning use district" permits a density yield of 1,500 square feet of floor area per preservation credit up to a maximum of 0.3 floor area ratio.

The planning board is given the complete authority to administer the TDR Program. They operate with the assistance of the town planning department staff.

■ CASE STUDY

Town of Warwick, New York

2000 Population: 30,764

2000 Median Household Income: \$61,094

2000 Median Single-Family Home Value: \$155,700

According to the town of Warwick's zoning code:

"The transfer of development rights (TDR) makes it possible to limit development in one area (called the "sending district") where there is an important resource, such as active farmland or significant open space, and transfer those development rights to another area (called the "receiving district") where there are little or no impediments to higher density, such as areas adjacent to the Town's three village centers, where public water and sewer are available or planned, or in the Town's five hamlets, where central services are available or have the potential to become available."

The town's zoning code establishes a process by which development rights can be transferred from parcels enrolled in the town's Agricultural Overlay District to specific zoning districts identified by the town's comprehensive plan as future settlement areas. The code also permits the sending of development rights to parcels in villages within the town. Such intergovernmental transfers require approval by both the town and village government.

The code also stipulates a formula for determining the development rights available for transfer. Parcels enrolled in the town's Agricultural Overlay District can use the higher density allowed by the town's 1989 zoning code (as compared to the lower density permitted by the code updated in 2001).

Infrastructure Planning

For more information about infrastructure planning, see the following documents on the CD that accompanies this guide:

- Excerpt from Genesee County's Smart Growth Plan (P. 1-6)
- 2005 Genesee County Smart Growth Plan Update
- 2005 Genesee County Smart Growth Hook Ups Map

Infrastructure planning can be used to support the farm economy and steer new development away from farmland into existing hamlets and villages. Like other industries, farms and agribusinesses require access to well-functioning and affordable infrastructure. Farms are energy intensive businesses. Access to affordable electricity and other fuels reduces farm operating costs, thereby improving farm profitability.

The agricultural industry also depends on sound roads and bridges to move machinery and to send and receive shipments of products. Many farm shipments are sent by tractor-trailer, requiring transportation infrastructure that can handle heavy loads. Public drainage systems, such as road ditches, also provide important benefits to farms. Well-managed drainage systems help move water from fields, improving their productivity.

At the same time, towns can help steer non-farm development into hamlets, villages and cities by planning the scale and location of new or expanding infrastructure. Transportation, water or sewer infrastructure allows for denser development patterns and often reduces the cost of new development. Some infrastructure expansion into farming areas may encourage the conversion of farmland and send the signal that agriculture has a limited future in a given area.

Benefits of Infrastructure Planning

- Can support farm business viability and reduce farm costs
- Non-regulatory approach for steering development away from farmland
- Fiscally responsible approach to community development

Drawbacks of Infrastructure Planning

- Fails to prevent development that does not require public infrastructure
- Planning may be compromised by infrastructure extensions for "health and safety"
- Requires on-going political commitment to be effective
- Infrastructure needed by farms likely to be expensive and require on-going commitment to maintenance

Agricultural Infrastructure Needs

The modern agricultural industry relies on the dependable movement of farm products to markets. Farm goods are often perishable, so their quality may diminish or they may become unusable if delivery is delayed for hours or days. In particular, dairy farms require daily access to milk trucks, year-round. Delays in snow plowing can prevent milk trucks from accessing farms, forcing farmers to dispose of their milk. Such a loss can hurt a farm's bottom-line and ability to remain profitable. Farms also rely on the efficient delivery of products from service providers.

The following are suggested actions for towns interested in supporting the infrastructure needs of local farms:

- Make sure that roads and bridges can handle the size and weight of modern farm vehicles, including dump trucks, tractor trailers and other large cultivating, spraying and harvesting equipment.
- Post signs on town roads frequently used by farm vehicles and distribute informational material about the presence of farm vehicles on town roads. By taking a pro-active approach to reducing conflicts between farm vehicles and other motorists, towns can prevent accidents and save lives. For more information and educational materials about slow moving vehicles, contact the New York Center for Agricultural Medicine and Health at 800-343-7527, ext. 239 or www.nycamh.com.
- Make snow-plowing near dairy farms a local priority, since delayed plowing for farmers can lead to the loss of perishable products and important income.
- Work with local farmers, economic development organizations and others to understand and

address the electricity needs of local farms (especially three-phase electric). Also engage farmers in evaluating alternative energy production systems including wind power and methane digesters.

- Actively maintain town ditching systems so that farm fields have adequate drainage. Work with town planning boards to ensure that field tiling and ditching systems aren't damaged by new developments, which could reduce the productivity of nearby farmland.

■ CASE STUDY

Town of Perry, New York

2000 Population: 6,654

2000 Median Household Income: \$39,455

2000 Median Single-Family Home Value: \$64,400

The town of Perry has one of the highest concentrations of dairy cows in New York. Dairy farms are a major force in the town's economy, and they help define the landscape and quality of life. At the same time, the farms produce large amounts of manure, and the odor has led to conflicts between farmers and residents of the village of Perry.

The town of Perry decided to assist local dairy farms in developing on-farm infrastructure that could process dairy manure and generate electricity for farms to use and sell back to electric companies. The town worked with Wyoming County Cornell Cooperative Extension to conduct a feasibility study that evaluated whether to develop a large digester for four large dairy farms; build two digesters with each digester shared by two farms; or build a digester on each of the four dairy farms.

The town then hired a grant writer to develop and submit grant applications on behalf of the town to the New York State Energy Research and Development Authority (NYSERDA) and the United States Department of Agriculture. The town was awarded \$833,000 from NYSERDA and \$380,000 from USDA to construct three digesters to be cooperatively managed on four dairy farms.

In total, the town spent approximately \$20,000 for grant writing and project management services as well as the town supervisor's time in overseeing the project. This investment will likely be paid back many times over. The local dairy farms benefit from the new on-farm infrastructure that helps to reduce electricity costs and assists with manure manage-

ment. In addition, the new methane digesters help reduce manure odors and decrease the likelihood of conflict between the farms and non-farm neighbors.

Steering Non-Farm Infrastructure Away from Priority Farming Areas

Growth-inducing infrastructure, such as major roadways and water or sewer lines, can accelerate the conversion of farmland if not carefully sited and managed. By focusing infrastructure in hamlets, villages and cities, towns can help retain farmland. This is also a fiscally responsible approach for towns in managing limited local, state and federal budgets. The extension of infrastructure throughout a town or county requires significant up-front construction costs and demands costly on-going maintenance. By focusing such infrastructure away from priority farming areas, towns can help maintain lower taxes and reduce threats to farmland.

If non-farm infrastructure needs to be extended through farming areas, steps should be taken to mitigate the potential negative impacts on nearby farmland and farm operations. Such steps may include:

- Establishing lateral restriction policies on new water or sewer extensions;
- Developing mitigation fees designed to protect farmland near new non-farm infrastructure;
- Constructing traffic calming measures on rural roadways to reduce accidents between farm machinery and vehicles;
- Creating overpasses, tunnels or other access systems for farm vehicles to ensure continued farm access to fields bisected by major roadways.

■ CASE STUDY

Town of Marilla, New York

2000 Population: 5,709

2000 Median Household Income: \$51,868

2000 Median Single-Family Home Value: \$122,500

In 1996, the town of Marilla adopted new water-line restrictions in its zoning ordinance. The new policy restricts the construction and connection of water main laterals and service connections to less than four inches in the town's agricultural zoning district. This new policy greatly limits the construction of major new subdivisions in the agricultural part of town, steering larger developments away from farms.

■ CASE STUDY

Town of Easton, New York

2000 Population: 2,259

2000 Median Household Income: \$43,194

2000 Median Single-Family Home Value: \$99,000

The town of Easton's Subdivision Law institutes several infrastructure standards intended to ensure compatibility between new development and the town's farm operations and infrastructure capacity. The requirements include:

- Subdivision approvals state that the town has no responsibility to build or maintain a new water supply or maintain sewage facilities for a new subdivision;
- Utility lines should not be brought across farmland to new subdivisions. If necessary, utility lines should be buried to below plow depth;
- Subdivisions of more than 12 lots should be phased to safeguard the quantity and quality of ground water. Six lots are the maximum number of lots approved at any one time.

■ CASE STUDY

Genesee County, New York

2000 Population: 60,370

2000 Median Household Income: \$40,542

2000 Median Single-Family Home Value: \$83,200

In 2001, the Genesee County Legislature adopted a "Smart Growth Plan" to minimize the impacts of additional growth and development that would otherwise occur as a result of the extension of water service. In particular, the county sought to:

- Focus county resources on supporting economic development opportunities in the most promising locations;
- Encourage the revitalization of existing industrial areas, business districts, and residential neighborhoods in the city of Batavia and developed

village area;

- Protect farmland and the rural character of the countryside and maintain the viability of agriculture.

The county set up a process to work with town governments in identifying "development areas" within the county. The county committed to providing public water within these areas from the county-funded portions of the county's water system. Access to the county-funded portion of the county water system is controlled to properties outside of the development areas to ensure compatibility with the county's smart growth objectives.

Development areas were identified based upon the following criteria:

- Access to transportation;
- Feasibility of extending or enhancing public water service;
- Availability or potential for extending other public infrastructure to support development;
- Minimal conflict with land in county agricultural districts and state regulated wetlands.

Once general development areas were delineated, county staff met with representatives of each municipality and the public to review the plan and the development areas. Input from these meetings was integrated into the final smart growth plan adopted by the county legislature. The Smart Growth Plan further describes a system for reviewing requests for hook-ups outside of the development areas and for bi-annually reviewing the location of development areas.

Genesee County's Smart Growth Plan represents one of the best examples of a New York community pro-actively planning for new development while placing a high priority on farmland protection. The close integration of the county's infrastructure plan with its agricultural districts program and other county priorities helps reduce the likelihood that new infrastructure will accelerate non-farm development and create future conflicts for farm operations.

Pulling It All Together

Communities interested in supporting local farms will need to evaluate all of the available tools and then select the ones that fit best. The benefits of any given option must be weighed against the drawbacks. This can, and likely will be, a challenging process. The following guidelines are for communities engaged in evaluating the tools for supporting the business and land use needs of farms.

No single tool will solve all of the challenges that New York farmers face.

Farms must deal with a complex array of challenges, including low prices for farm products, rising business costs, labor concerns, competition for land and others. No single tool will be able to address all of the needs of local farmers. Towns should develop a package of policies and programs that complement each other and address different agricultural concerns.

The appropriate mix of tools differs by community.

The state's agricultural industry, communities and landscapes are tremendously diverse. This diversity is one of the state's strengths, but it may make it difficult to replicate the policies used in one town in another community. Towns must evaluate their own priorities and circumstances to select the tools and policies that best fit their needs.

Communities are often most effective when “sticks” are balanced with “carrots.”

Regulatory policies, or “sticks,” have distinct advantages. They are comparatively inexpensive to

implement, can be adopted fairly quickly and can address community interests throughout an entire town. However, regulations also may place a significant burden on private landowners and their personal rights. Many communities find that a mix of regulatory and incentive-based programs is most effective in balancing community and private interests and achieving long-term success.

An ongoing commitment is required to be successful.

Local planning requires an ongoing commitment of resources. Land use trends, markets for farm products and other community circumstances will continue to change over time. This ongoing change will require communities to regularly update plans, consider new programs and have a dialogue between farmers and local governments. This long-term commitment of time, energy and resources can be difficult but will be necessary in order for communities to find success.

Local planning should be supported by state and federal policies.

Even the most committed town government will not be successful in supporting its farms without complementary state and federal policies. State and federal policies regarding agriculture, land use, transportation, trade, immigration and other policies can significantly influence farm viability and local land use trends. Communities should make their local priorities and policies known to state and federal officials and seek their assistance in supporting them.

Resources

American Farmland Trust

www.farmland.org
(518) 581-0078

American Planning Association

Metro Chapter
www.nyplanning.org
(212) 228-7875

Upstate New York Chapter
www.nyupstateplanning.org/

Cornell Cooperative Extension

www.cce.cornell.edu
(607) 255-2237

Cornell Community and Rural Development Institute

www.cardi.cornell.edu
(607) 255-9510

County Planning Agencies

www.dos.state.ny.us/lists/rgcoplan.html#county

Farmland Information Center

www.farmlandinfo.org
(800) 370-4879

Land Trust Alliance of New York

www.lta.org
(518) 587-0774

New York Farm Bureau

www.nyfb.org
(518) 436-8495

NY FarmLink

www.nyfarmlink.org
1-800-547-3276

NY FarmNet

www.nyfarmnet.org
(800) 547-3276

New York Planning Federation

www.nypf.org
518-270-9855

New York State Agricultural Mediation Program

www.nysdra.org/adr/adr_nysamp.html
(866) 6NYSAMP or (866) 669-7267

New York State Association of Counties

www.nysac.org
(518) 465-1473

New York State Association of Towns

www.nytowns.org
(518) 465-7933

New York State Department of Agriculture and Markets

www.agmkt.state.ny.us
(800) 554-4501

New York State Department of State Division of Local Government Services

www.dos.state.ny.us/lgss/index.htm
(518) 473-3355

New York State Department of Taxation and Finance Taxpayer Assistance Bureau

www.tax.state.ny.us
(800) 225-5829

New York State Office of Real Property Services

www.orps.state.ny.us
(518) 486-5446

New York State Soil and Water Conservation Committee

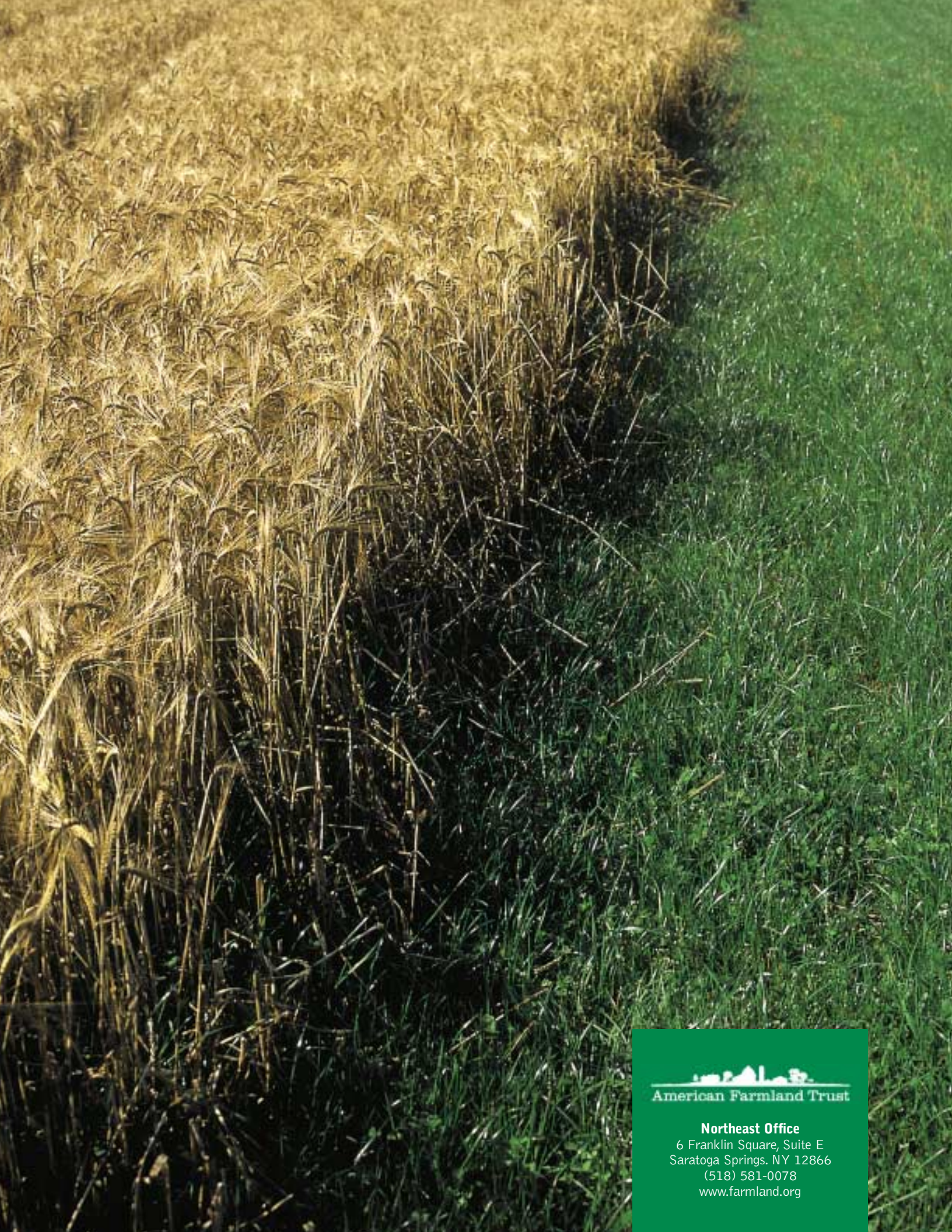
www.nys-soilandwater.org
(518) 457-3738

Regional Planning Agencies

www.dos.state.ny.us/lists/rgcoplan.html

USDA Natural Resources Conservation Service

www.ny.nrcs.usda.gov
(315) 477-6504



American Farmland Trust

Northeast Office

6 Franklin Square, Suite E
Saratoga Springs, NY 12866
(518) 581-0078
www.farmland.org