

Yates County, New York

Agricultural Development and Farmland Enhancement Plan

Agricultural Planning Guide

INTRODUCTION

This Appendix has been prepared to help guide local planning board members, agricultural and farmland protection board members and elected officials in their review of development applications that affect farmlands.

The regulation of land use within agricultural areas requires balancing of growth with protection of prime farmland and, even more importantly, the rights of farmers to engage in sound agricultural practices. Good planning can help avoid future conflicts, allowing agriculture itself to grow and develop.

Land use planning and zoning with regard to agriculture cannot be rigid - the flexibility to adapt based on circumstances is critical. Many large farming operations involve a variety of land uses that may include housing for farm workers, the manufacturing of agricultural products, trucking operations, machinery repair, warehousing, or retail sales of farm products.

Section 305-a of New York State Agricultural Districts Law prohibits towns from enacting land use regulations that unnecessarily restrict the operation of farms within locally adopted agricultural districts. It also provides for the preparation of an *Agricultural Data Statement* if the proposed action “ involves a special use permit, site plan application, use variance, or subdivision application on a property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district.”

These provisions, together with Section 310 of the Law requiring disclosure of agricultural activities and protections to prospective land purchasers, can be used to reduce future farm and neighbor conflicts. Section 305-a restricts local governments from over-regulating agricultural activities. Agricultural Data Statements give affected farmers and towns notice of development proposals that impact agriculture before they're approved so that farmers' issues can be addressed. Section 310 disclosure requirements effectively put prospective lot purchasers near a dairy farm, for example, on notice that spreading of manure on adjacent fields may create smells during certain parts of the year that a one-time visit to the site may not reveal. They also serve to inform buyers that this is an ordinary practice to be expected in an agricultural area.

The primary function of these mechanisms is to ensure notification at the front end. Farmers are protected by the requirement that, prior to the sale of land within an agricultural district, the buyer must be informed that adjacent farm operations may generate certain noise, dust and odors. Disclosure prior to sale offers farmers a defense to private nuisance lawsuits. These disclosure requirements also, however, allow a Planning Board to consider and suggest alternatives to the conventional subdivision. These include use of conservation subdivision techniques where smaller residential lots are permitted in exchange for the preservation of open space between the two uses.

What follows is an overview of agricultural planning principles coupled with some specific examples of how to address various land use conflicts associated with agricultural practices and non-farm uses in agricultural areas.

JUST HOW FARM FRIENDLY IS YOUR TOWN?

The University of New Hampshire Cooperative Extension Service and the New Hampshire Coalition for Sustaining Agriculture have developed a checklist to help towns evaluate just how farm friendly they are. A modified version tailored to Yates County is offered below:

Planning Questions:

- Does your Comprehensive Plan specifically provide for agriculture or only rely upon vague statements about "preserving rural character?"

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- Does your Plan document the breadth, depth and value of agriculture to your town, including not only traditional farming and crops but also greenhouses, farm stands and specialty enterprises?
- Does your economic development strategy address agricultural opportunities and is the industry represented on these committees?
- Does your Plan recognize the open space and natural resource protection benefits of agriculture, encourage Agricultural District participation and promote techniques such as conservation easements to preserve farmland?
- Does your Plan avoid calling for infrastructure extensions in or near farmland that might encourage incompatible development or raise the carrying costs of agricultural land too high?

Zoning Questions:

Does your town zoning law:

- Allow agricultural uses in more than one or two zoning districts, especially small crop, nursery and greenhouse activities?
- Provide for seasonal agricultural businesses such as farm stands and Christmas tree sales as accessory uses within agricultural districts and other appropriate zones?
- Accommodate the unique needs of agricultural businesses for temporary signage, hours of operation, access, parking and storage without imposing any special requirements on agriculture?
- Require new residential developments to include buffers where they adjoin existing agricultural uses?
- Provide for agricultural use of mandated open spaces in new developments as an option?
- Allow offsite signs to attract and direct farm stand customers to seasonal or permanent business locations?
- Allow ancillary agricultural businesses such as equipment dealers, feed mills and veterinarians in the same areas as other agricultural activities are permitted?
- Allow on-farm processing and retail operations, farm stands and pick-you-own operations by right as principal permitted or accessory uses?
- Incorporate broad and inclusive definition of agriculture and agricultural accessory uses that include niche businesses, storage, repair, processing and sales activities?
- Allow farm stands to sell produce purchased elsewhere to complement those products grown or manufactured on-site?
- Provide for the large and unusual structures needed in agricultural operations (e.g., high grain elevators, large riding arenas, manure storage facilities)?
- Establish site plan review criteria for non-farm uses in agricultural districts that encourage houses to be located away from productive cropland, upwind of farm activities and in such manner as to not interfere with agricultural operations?

Other Questions:

- Have you taken advantage of Town Law authority to appoint a Planning Board member to specifically represent the agricultural industry?

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- Do you, in reviewing development applications, require the use of disclosure statements to notify prospective home-buyers of nearby agricultural activities?
- Have you adopted a Right to Farm Law to protect the use of sound agricultural practices?
- Is farmland being properly assessed within your town? Are your assessors knowledgeable regarding exemptions for certain farm structures and other benefits?
- Is there any annual event within your town, such as a Farm Festival, to highlight the contributions of agriculture?

THE CORE PRINCIPLES OF AGRICULTURAL PLANNING

Some of the basic principles of agricultural land use planning and zoning are as follows:

Farming is More Than Raising Animals and Crops

Agricultural enterprises, by their nature, often comprise a variety of land uses. Given the low profit margin of most agricultural operations, farms often include accessory commercial operations intended to supplement the primary sources of farm income.

Farms may include sand and gravel operations, firewood production, feed manufacturing, farm stands, tourism features, slaughterhouses, wineries and assorted other complementary activities, depending on the type of the operations.

These accessory activities assist in stabilizing farm incomes by allowing farmers to add value to farm products and direct market them for additional profit. This, in turn, helps preserve working landscapes offering valuable open space to the community.

Therefore, broad latitude to allow these uses is required. The intensity of these uses should be the basis for determining whether they should be regulated. Traditional family farm stands, for example, should be permitted as accessory uses to farm operations as a matter of right although a building permit application for a larger commercial farm market might warrant site plan review.

Reasonable regulation to address issues such as parking and access is appropriate if it does not impose special burdens on agriculture. The key is not to exclude ancillary agricultural activities from on-farm locations. A recent example from another County illustrates the point. A large landowner near a hamlet operated a vineyard and a small retail farm market operation adjoined by recent home buyers delighted with the open space. However, when the owner decided to put up a winery on the farm, these same neighbors took the position that this was a commercial use that belonged in commercial district. The municipality could have avoided this conflict if it had broadly defined agricultural to include on-farm processing and ancillary agricultural activities. A reasonable standard might be that at least one-third of the raw product must be produced from the farm on which it is located or of which it is a part (farms can include multiple unconnected properties)

The best way to accomplish this is to encompass broad definitions of agriculture and agricultural accessory activities in the text of any land use or zoning regulations. Such a definition follows:

***Agriculture** - Any activity connected with the raising of crops, livestock or production of livestock products, including but not limited to field crops, fruits, vegetables, horticultural specialties, livestock and livestock products, furs, maple sap, Christmas trees, aquaculture products and woody bio-mass. This shall encompass any activity or use now permitted by law, engaged in by or on behalf of a farmer in connection with farming including, but not limited to; housing for farm workers; stables and other tourist activities; the collection, transportation, distribution and storage of animal and poultry waste; storage, transportation and use of equipment for tillage, planting, harvesting and marketing; transportation, storage and use of*

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fertilizers and limes, and legally permitted insecticides, herbicides, and fungicides; construction of farm structures and facilities, including farm wineries and other on-farm food processing; construction and maintenance of fences and other enclosures; and the use and/or maintenance of related pastures, idle or fallow land, woodland, wetland, farm ponds, farm roads and certain farm buildings and other structures related to the agriculture practices. Agriculture shall also include the processing and wholesale and retail marketing, including U-pick sales, of the agricultural output of the farm and related products that contribute to farm income, including the sale at the owner's farm stand of agricultural products so long as a substantial portion of the annual gross sales of the farm stand have been grown on said farm.

Buffers Between Farm and Residential Uses Are Essential

Residences placed too close to farms can create unnecessary conflicts with farming activities over noise, dust and odors. These potential conflicts, however, can be greatly mitigated with the provision of open space buffers between the uses. Buffers also provide farmers with protection from adverse impacts associated with adjacent residents driving off-road vehicles into crop areas, other trespassing impacts, stormwater runoff, broken bottle litter problems and similar problems.

When residential subdivisions are proposed in close proximity to a farming operation, the responsibility of providing a sufficient buffer between the proposed home sites and the farm should be placed on the developer, not the farmer. This can be accomplished by substantially increasing minimum lot sizes for residential development within agricultural zones, requiring greater setbacks of residences along side and rear lot lines and limiting the range of residential uses allowed in these areas. These measures help to increase the separation distances between farm and residential uses.

A number of Pennsylvania, Maine and Maryland communities, for example, have required that dwellings be setback a minimum of 100 feet from land in any designated agricultural zone or tract. It is not uncommon for this distance to be increased to as much as 500 feet in the case of dwelling units proposed adjacent to intensive livestock operations within designated agricultural districts.

There are also a number of communities that have enacted agricultural protection zoning (APZ) regulations sharply limiting subdivision activity within specified prime agricultural areas. Minimum lot sizes of as much 25 acres have been imposed in these areas to effectively prevent subdivision for other than farm purposes.

More typical, however, is a sliding scale formula that provides for a maximum number of dwellings decreasing proportionally as the size of the tract increases. This is usually accompanied by a requirement that the house lots themselves be restricted in size to avoid consuming too much farm land.

The overall impact of such regulations is to keep both the total number of dwellings created from a given farm and the land consumption associated therewith as low as possible. This concept works well with the "conservation subdivision" approach discussed below.

A simple but practical approach is also incorporated in the following sample language:

***Farm and Residential Buffers** - New residences within or adjacent to agricultural districts shall be limited to single-family dwellings setback a minimum of 100 feet from all rear and side lot lines shared with a farm tract lying within the district. The Planning Board may require that this buffer area be increased to as much as 300 feet and planted with trees where the proposed dwelling adjoins any existing intensive livestock, agricultural processing or manure disposal operation.*

Other uses within agricultural districts should be limited to support and complementary activities. Ag zoning district boundaries should generally follow those of New York State Agricultural Districts. The following is a list of uses appropriate in such districts:

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Agricultural Protection District

Principal Permitted Uses

1. *Agriculture (see definition)*
2. *Cemeteries*
3. *Forest uses*
4. *Greenhouses and nurseries*
5. *Single-family dwellings (see special standards)*
6. *Wildlife preserves*

Special Uses

1. *Bed and breakfast operations*
2. *Campgrounds*
3. *Clubhouses*
4. *Communications towers*
5. *Farm equipment sales and repair*
6. *Farm and feed stores and feed manufacturing*
7. *Houses of worship*
8. *Kennels*
9. *Tool and die and other light manufacturing uses*
10. *Outdoor recreation facilities*
11. *Sawmills*
12. *Veterinary offices and animal hospitals*

Accessory Uses

1. *Home occupations*
2. *Signs*
3. *Other uses customarily incidental to Principal Permitted and Special Uses*

The above list can be modified to add or delete uses as appropriate to individual communities but it is representative of those uses that are generally compatible with agriculture.

Agriculture uses, like other activities, can also be broken down into Principal Permitted, Special and Accessory Uses. This provides municipalities with somewhat more control. However, this can easily become confusing when incidental activities not specifically listed are proposed by applicants. It also runs the serious risk of conflicting with the New York State Agricultural District Law. A simple approach that broadly defines all agriculture in one category is almost always more appropriate.

Towns can, of course, still reserve the right to require site plan review of specified activities that pose particular health and safety concerns. They must be very cautious, however, in enacting any land use regulations imposing special requirements on agricultural uses. Such regulations are inadvisable. If the farm operation is located in a county adopted, State certified Agricultural District, the proposed use is subject to Section 305-a(1)(a) of the Agriculture and Markets Law (and 283-a of the Town Law) that states local governments cannot "unreasonably restrict or regulate farm operations...unless it can be shown that the public health or safety is threatened."

Regulations brought to the attention of the Department under this provision are evaluated on the basis of whether they are reasonable on their face and as applied to a particular situation. This means a given rule found reasonable in one situation may still be found unreasonable in another, depending on the nature of the individual circumstances.

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Such problems can be avoided by: 1) permitting the broadest possible range of agricultural uses possible within agricultural districts and 2) applying needed setback and buffer requirements on the new non-farm uses proposed within the district. Should standards be proposed for particular application to agricultural uses they should first be reviewed with the Department of Agriculture and Markets.

Prime Farmland Should Be Protected from Development

The American Farmland Trust is the best overall source of information available on farmland protection. They offer technical assistance and have excellent publications on a wide variety of approaches including conservation easements, purchase or lease of developments rights and the agricultural protection zoning discussed above. There are, nevertheless, certain measures that are wholly within the province of municipal planning authorities to employ.

These include "conservation subdivision" techniques (also known as "cluster development") designed to accommodate residential growth while ensuring that prime agricultural soils remain in production. Under conservation subdivision provisions, a landowner is allowed to develop a property to the same density as allowed under present zoning, and sometimes even higher with bonuses for additional farmland protection. However, smaller lot sizes are permitted in exchange for the preservation of the open space or farmland.

For example, if a 100 acre parcel is zoned for a minimum lot size of 2 acres, a developer could create 50 residential lots from it, assuming no environmental constraints. If the developer used a conservation subdivision approach, however, the 50 lots would be clustered on perhaps 25 acres (one-half acre each), leaving seventy-five (75) acres as open space. This land could then be made available for crops and other agricultural uses and complement the residences by preserving the open space that attracted them to the area. A portion of the open space could, of course, be used to buffer the two uses.

This technique, where a farm operation is included as an integral component of the subdivision plan, can be an effective means of preserving prime agricultural soils. Subdivisions designed around beef and horse farms or productive fields can offer some of the same appeal as a community laid out around a golf course. *Rural by Design* author Randall Arendt suggests this technique. Different buyers may be involved but the open space is always valuable. Such subdivisions also help maintain the viability of adjacent farms by providing additional crop and pasture land they can lease. Care must, of course, be taken to ensure that appropriate deed restrictions are put in place to protect the continuation of the farming operation. Additionally, homeowners must be informed of potential odors, noises and dust using disclosure statements.

Most farms contain a variety of soil types with the least productive soils used for pasture and the most productive soils for crops. If farms within a town are being acquired for residential development, the Planning Board should consider encouraging or even requiring conservation subdivision techniques that preserve the prime soils and allow continuation of farming as an approved open space use.

This would provide many farmers with the opportunity to recover some of their equity in the land for retirement or other purposes while keeping the best farmland in agriculture.

Sample Subdivision Regulation Provision Requiring Protection of Farmland

Proposals for subdivision of parcels including active farm or crop land within New York State Agricultural Districts shall include delineation of proposed building sites on each lot, which sites shall be located outside of or along the edges of the active farm and crop lands. Subdivisions of five (5) lots or more shall ordinarily be required to employ conservation subdivision or clustering techniques that provide for preservation of active farm and crop land without reducing overall density of development.

Another technique available to communities is known as Transfer of Development Rights (TDR's). This is a method of removing the right to develop or build (expressed in dwelling units per acre or floor area) from land in one zoning district (e.g. agricultural) and transferring that right to land in another zoning district.

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If the farm is in a TDR sending district (where credits are assigned using the zoning or local ordinance) the farmer can sell these credits to a developer in a TDR receiving district (zone where rights can be purchased). TDR credits have value because a developer who purchases TDR credits can increase the permitted density of development on their site.

In an area with water and sewer, the increased density allowed with the TDR credits could significantly increase the profit margin for the developer. For the farmer, the sale of TDR credits can be a means to secure needed capital to make necessary improvements to their farm without losing valuable farmland. TDR can also help to ensure that the prime agricultural soils in a community are preserved for future generations.

Due to their legal complexity, TDR's are not right for every community. Simplified versions where development rights are exchanged at the time of development approval help address this problem. An active real estate market is also necessary. TDR's benefit is that it doesn't demand public funding to acquire development rights.

First, Do No Harm to Agriculture

The Hippocratic Oath taken by medical doctors begins with an admonition to "first, do no harm" to the patient. If agriculture is truly a priority industry within a community then a similar policy should apply to actions that could hurt or kill off farming.

Towns should, for example, consider using Municipal Home Rule authority to restrict their Zoning Boards of Appeals from granting use variances for incompatible nonagricultural uses within an agricultural district. Such a provision should, in addition to the four (4) part test established in New York Law for granting such variances, require that use variances within agricultural districts must not conflict with agricultural practices or farming. Sample language is offered below:

Sample Limit on Use Variances within Agricultural Districts

The Town hereby exercises its authority under Section 10 of the New York State Municipal Home Rule Law to supersede Section 267-b(2)(b) of the New York State Town Law so as to require that, in addition to items (1) through (4) thereunder, all applicants for use variances within Agricultural Districts shall demonstrate that the proposed use shall not in any way conflict with agricultural practices, the conduct thereof by persons engaging in agricultural industries or the purposes of Section 283-a of the Town Law pertaining to coordination with the Agricultural Districts program.

As farms are modernized with new facilities farmers should also be allowed to reuse old farm buildings and other facilities with great flexibility. The conversion of old barns into residences or offices provides a unique opportunity to maintain the rural landscape while preserving the unique architectural history of the community. Converting old barns to residences may also provide a unique housing alternative for farm workers. Old silos can be reused for cellular tower locations which is one means of preserving this vanishing symbol of the American farm. As an incentive, the reuse of farm buildings should be allowed as-of-right without the need for variances provided that such uses meet building code requirements.